

SB 1328 by **Latvala**; (Similar to CS/H 1385) Inspectors General

881588	A	S	RCS	GO, Hays	Delete L.12 - 131:	04/03 12:02 PM
236068	A	S	WD	GO, Hays	Delete L.97 - 104:	04/03 12:02 PM
633854	A	S	WD	GO, Hays	Delete L.128 - 131:	04/03 12:02 PM
377732	A	S	RCS	GO, Hays	Delete L.132 - 203:	04/03 12:02 PM

CS/SB 286 by **RI, Richter (CO-INTRODUCERS) Latvala, Detert, Garcia, Bradley, Flores, Smith, Bean**; (Similar to CS/H 0147) Concrete Masonry Education

458180	D	S	RCS	GO, Benacquisto	Delete everything after	04/03 12:02 PM
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CS/SB 872 by **HP, Richter (CO-INTRODUCERS) Soto**; (Similar to CS/CS/H 0709) Alzheimer's Disease

CS/SB 840 by **HP, Richter**; (Similar to CS/CS/H 0711) Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board

CS/SB 1318 by **CA, Evers**; (Similar to CS/H 1051) Public Records and Meetings/Public-private Partnerships

SB 726 by **Detert**; (Identical to H 1097) Reemployment Assistance Appeals Commission

593544	A	S	RCS	GO, Bradley	Delete L.37 - 49:	04/03 12:02 PM
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CS/SB 692 by **RI, Stargel**; (Similar to CS/CS/H 0713) Engineers

CS/SB 730 by **CA, Galvano**; (Similar to CS/H 0503) Municipal Governing Body Meetings

446386	D	S	RCS	GO, Bradley	Delete everything after	04/03 12:02 PM
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SB 1046 by **Galvano**; (Similar to CS/CS/H 0865) Public Records/Motor Vehicle Crash Reports

CS/SB 350 by **HP, Abruzzo**; (Similar to CS/CS/H 0019) Public Records/Yellow Dot Critical Motorist Medical Information Program

424570	A	S	RCS	GO, Smith	Delete L.27 - 47:	04/03 12:02 PM
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CS/SB 414 by **ED, Dean**; (Similar to CS/H 0993) Public Records/Animal Researchers

CS/SB 1140 by **MS, Hays**; (Identical to CS/H 7011) Public Records/Division of Emergency Management/Emergency Planning

SB 386 by **Hays**; (Identical to H 0903) Application of Foreign Law in Certain Cases

375592	D	S	WD	GO, Simmons	Delete everything after	04/04 11:41 AM
256170	AA	S	WD	GO, Simmons	btw L.35 - 36:	04/04 11:41 AM

SB 1628 by **Bean**; (Similar to CS/H 1327) Government Accountability

645110	D	S	RCS	GO, Bean	Delete everything after	04/03 12:02 PM
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SB 866 by **HP**; OGS/Department of Health

282932	A	S	RCS	GO, Bean	Delete L.120 - 180:	04/03 12:02 PM
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SB 1266 by **Montford (CO-INTRODUCERS) Garcia**; (Identical to H 1361) State Employees' Prescription Drug Program

298574	A	S	RS	GO, Montford	Delete L.34 - 53:	04/03 12:02 PM
146720	SA	S	RCS	GO, Montford	Delete L.34 - 41:	04/03 12:02 PM

CS/SB 1442 by **CA, Bradley**; (Similar to CS/H 1189) Publicly Funded Retirement Programs

450644	A	S	RCS	GO, Bradley	Delete L.74 - 195:	04/03 12:02 PM
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SM 368 by **Simpson**; (Similar to CS/H 0261) Constitutional Convention/Single-Subject Requirement for Federal Legislation

323564	D	S	RCS	GO, Bean	Delete everything after	04/03 12:02 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Ring, Chair
Senator Hays, Vice Chair

MEETING DATE: Thursday, April 3, 2014
TIME: 9:00 —10:30 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 1328 Latvala (Similar CS/H 1385)	Inspectors General; Revising provisions relating to the duties, appointment, and removal of the Chief Inspector General; revising provisions relating to the duties, appointment, and removal of agency inspectors general, etc. GO 03/26/2014 Not Considered GO 04/03/2014 Fav/CS AP	Fav/CS Yeas 9 Nays 0
2	CS/SB 286 Regulated Industries / Richter (Similar CS/H 147)	Concrete Masonry Education; Creating the "Concrete Masonry Education Act"; creating the Florida Concrete Masonry Education Council, Inc.; authorizing the council to accept grants, donations, contributions, and gifts under certain circumstances; providing for collection of a voluntary assessment on concrete masonry units; requiring manufacturers who elect to pay the assessment to commit to paying the assessment for a specified period, etc. CA 01/08/2014 Favorable RI 02/13/2014 Fav/CS GO 04/03/2014 Fav/CS	Fav/CS Yeas 8 Nays 0
3	CS/SB 872 Health Policy / Richter (Similar CS/CS/H 709, Compare CS/CS/H 711, Link CS/S 840)	Alzheimer's Disease; Exempting grant programs administered by the Alzheimer's Disease Research Grant Advisory Board from the Administrative Procedure Act; requiring the Division of Emergency Management, in coordination with local emergency management agencies, to maintain a registry of persons with special needs; providing additional staffing requirements for special needs shelters; authorizing the Department of Health, in coordination with the division, to adopt rules relating to standards for the special needs registration program; establishing the Ed and Ethel Moore Alzheimer's Disease Research Program within the department, etc. HP 03/05/2014 Temporarily Postponed HP 03/19/2014 Fav/CS GO 04/03/2014 Favorable AP	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Thursday, April 3, 2014, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 840 Health Policy / Richter (Similar CS/CS/H 711, Compare CS/CS/H 709, Link CS/S 872)	Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board; Providing an exemption from public records requirements for research grant applications submitted to the Alzheimer's Disease Research Grant Advisory Board under the Ed and Ethel Moore Alzheimer's Disease Research Program and records generated by the board relating to the review of the applications; providing an exemption from public meetings requirements for those portions of meetings of the board during which the research grant applications are discussed; requiring the recording of closed portions of meetings; authorizing disclosure of such confidential information under certain circumstances, etc. HP 03/05/2014 Temporarily Postponed HP 03/19/2014 Fav/CS GO 04/03/2014 Favorable RC	Favorable Yeas 9 Nays 0
5	CS/SB 1318 Community Affairs / Evers (Similar CS/H 1051)	Public Records and Meetings/Public-private Partnerships; Creating an exemption from public records requirements for unsolicited proposals for a qualifying public-private project received by a responsible public entity for a specified period; creating an exemption from public meetings requirements for portions of meetings at which confidential and exempt information is discussed; requiring a recording to be made of a closed portion of a meeting; providing for future repeal and legislative review of the exemptions; providing statements of public necessity, etc. CA 03/19/2014 Fav/CS GO 04/03/2014 Favorable RC	Favorable Yeas 9 Nays 0
6	SB 726 Detert (Identical H 1097)	Reemployment Assistance Appeals Commission; Revising membership requirements of the commission; removing a provision requiring payment of a daily stipend for certain commissioners, etc. CM 02/17/2014 Favorable GO 04/03/2014 Fav/CS	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Thursday, April 3, 2014, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 692 Regulated Industries / Stargel (Similar CS/CS/H 713)	Engineers; Revising requirements for membership on the Board of Professional Engineers; authorizing the professional and technical engineering societies to provide a list of qualified nominees for consideration as board member appointments; revising requirements for an engineer license applicant who fails the fundamentals examination; authorizing such applicant who is delayed in taking the examination by military service to have additional attempts to take the examination, etc. RI 03/06/2014 Fav/CS EE 03/17/2014 Favorable GO 04/03/2014 Favorable	Favorable Yeas 8 Nays 0
8	CS/SB 730 Community Affairs / Galvano (Similar CS/H 503)	Municipal Governing Body Meetings; Authorizing the governing body of a municipality to hold joint meetings with the governing body of the county within which the municipality is located; providing for the location and time of such meetings, etc. CA 03/05/2014 Fav/CS GO 04/03/2014 Fav/CS	Fav/CS Yeas 8 Nays 0
9	SB 1046 Galvano (Similar CS/CS/H 865, Compare CS/H 863, Link CS/S 876)	Public Records/Motor Vehicle Crash Reports; Providing an exemption from public records requirements for certain personal contact information contained in motor vehicle crash reports; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. TR 03/13/2014 Favorable GO 04/03/2014 Favorable RC	Favorable Yeas 8 Nays 0
10	CS/SB 350 Health Policy / Abruzzo (Similar CS/CS/H 19, Compare CS/CS/H 17, Link CS/S 262)	Public Records/Yellow Dot Critical Motorist Medical Information Program; Providing an exemption from public records requirements for personal identifying information of participants in a yellow dot critical motorist medical information program; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. TR 01/09/2014 Favorable HP 02/11/2014 Fav/CS GO 04/03/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Thursday, April 3, 2014, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 414 Education / Dean (Similar CS/H 993)	Public Records/Animal Researchers; Providing an exemption from public records requirements for personal identifying information of certain animal researchers at public research facilities, including state universities; providing for retroactive applicability of the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. ED 03/25/2014 Fav/CS GO 04/03/2014 Favorable RC	Favorable Yeas 9 Nays 0
12	CS/SB 1140 Military and Veterans Affairs, Space, and Domestic Security / Hays (Identical CS/H 7011)	Public Records/Division of Emergency Management/Emergency Planning; Creating an exemption from public records requirements for information furnished to the Division of Emergency Management by a person or business for the purpose of obtaining assistance with emergency planning; providing for retroactive application of the exemption; providing for future repeal and legislative review of the exemption; providing a statement of public necessity, etc. MS 03/19/2014 Fav/CS GO 04/03/2014 Favorable RC	Favorable Yeas 8 Nays 0
13	SB 386 Hays (Identical H 903)	Application of Foreign Law in Certain Cases; Specifying the public policy of this state on the application of a foreign law, legal code, or system in proceedings brought under or relating to chapter 61 or chapter 88, F.S., which relate to dissolution of marriage, support, time-sharing, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act; providing for the construction of a waiver by a natural person of the person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution, etc. JU 03/25/2014 Favorable GO 04/03/2014 Favorable RC	Favorable Yeas 6 Nays 2

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Thursday, April 3, 2014, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	SB 1628 Bean (Similar CS/H 1327)	Government Accountability; Revising the responsibilities of department heads, the Supreme Court as it relates to the state courts system, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, the Florida Clerks of Court Operations Corporation, local governmental entities, and governing bodies of charter schools to include the responsibility of establishing certain internal controls; expanding the definition of the term "agency head", etc. GO 04/03/2014 Fav/CS JU ED RC	Fav/CS Yeas 8 Nays 0
15	SB 866 Health Policy	OGSR/Department of Health; Amending provisions which make confidential and exempt certain information of a patient or patient's agent, health care practitioner, and others held by the Department of Health; specifying that the Attorney General, health care regulatory boards, and law enforcement agencies may disclose certain confidential and exempt information to certain entities only if such information is relevant to an active investigation that prompted the request for the information; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 04/03/2014 Fav/CS RC	Fav/CS Yeas 8 Nays 0
16	SB 1266 Montford (Identical H 1361)	State Employees' Prescription Drug Program; Reenacting and amending provisions relating to the state employees' prescription drug program; deleting a requirement that the Department of Management Services base its decision as to whether to implement a certain 90-day supply limit on a determination that it would be in the best financial interest of the state; authorizing a retail pharmacy to fill a 90-day supply of certain drugs; repealing chapters in Laws of Florida, providing for the reversion of provisions relating to the state employees' prescription drug program, etc. GO 04/03/2014 Fav/CS AHS AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Thursday, April 3, 2014, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	CS/SB 1442 Community Affairs / Bradley (Similar CS/H 1189)	Publicly Funded Retirement Programs; Revising applicability of the Marvin B. Clayton Firefighters Pension Trust Fund Act; providing that any municipality that provides fire protection services to a municipal services taxing unit under an interlocal agreement is eligible to receive property insurance premium taxes; requiring municipal services taxing units to provide the Division of Retirement of the Department of Management Services with a certified copy of the ordinance assessing and imposing certain taxes; authorizing a municipal services taxing unit, under certain conditions, to revoke its participation and cease to receive property insurance premium taxes, etc. CA 03/19/2014 Fav/CS GO 04/03/2014 Fav/CS AP	Fav/CS Yeas 8 Nays 0
18	SM 368 Simpson (Similar CS/HM 261)	Constitutional Convention/Single-Subject Requirement for Federal Legislation; Urging Congress to call a convention for the purpose of proposing an amendment to the Constitution of the United States to provide that every law enacted by Congress shall embrace only one subject, which shall be clearly expressed in its title, etc. JU 02/11/2014 Favorable GO 04/03/2014 Fav/CS RC	Fav/CS 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 1328

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Latvala

SUBJECT: Inspectors General

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Fav/CS
2.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1328 modifies how the Chief Inspector General and agency inspectors general are appointed, supervised, and removed. Currently, the Chief Inspector General is appointed and removed solely by the Governor. The bill makes the Governor's appointment of a Chief Inspector General subject to confirmation by the Senate.

Currently, agency inspectors general are appointed by and report to agency heads. The bill provides that for agencies under the jurisdiction of the Governor, agency inspectors general are to be appointed and removed (only for cause) by the Chief Inspector General, with notice to the Governor; are to report to the Chief Inspector General; and may hire and fire their staff independently of the agency. For other state agencies, inspectors general are to be appointed and removed by agency heads. Offices of inspectors general are to have their own budgets within the agencies, and, for agencies under the jurisdiction of the Governor, must be provided independent legal counsel by the Chief Inspector General.

II. Present Situation:

Chief Inspector General

Section 14.32, F.S., creates in the Executive Office of the Governor the Office of Chief Inspector General. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor. The Chief Inspector General is appointed by and serves at the pleasure of the Governor, and serves as the inspector general for the Executive Office of the Governor. The Chief Inspector General must:

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent fraud, waste, mismanagement, and misconduct in government.
- Investigate any administrative action of any agency under the direct supervision of the Governor.
- Request assistance and information as necessary for the performance of the duties.
- Examine the records and reports of any agency under the direct supervision of the Governor.
- Coordinate complaint-handling activities with agencies.
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline.
- Report to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are grounds to believe that there has been a violation of criminal law or that a civil action should be initiated.
- Act as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government.
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction.
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor.
- Conduct special investigations and management reviews at the request of the Governor.

The Chief Inspector General has various duties relating to public-private partnerships, including advising on internal controls, conducting audits, investigating complaints of fraud, and making recommendations for improvements in the actions taken by public-private partnerships to meet performance standards.

Agency Inspectors General

Duties

Section 20.055, F.S., requires that each state agency¹ created in the organizational structure of state government have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. Each office is responsible for the following:

- Advising in the development of performance standards, their validation, and the compliance of agency activities with them.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Improving agency performance.
- Supervising and coordinating audits, investigations, and reviews relating to the operations of the state agency.

¹ For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system are considered "state agencies," in addition to the departments created in Ch. 20, F.S.

- Conducting, supervising, or coordinating other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.
- Providing central coordination of efforts to identify and remedy waste, fraud, and abuse.
- Coordinating agency-specific audit activities with those of peer federal and state agencies.
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact.
- Maintaining a balance among audit, investigative, and other accounting activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.²

Appointment

Inspectors general are appointed by the agency head. For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the inspector general.³

Removal and Qualifications

Inspectors general may be removed only by the agency head. For agencies under the direction of the Governor, the agency head must notify the Governor and the Chief Inspector General, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal.⁴ Inspectors general must possess minimum educational and experience qualifications,⁵ and the investigations they conduct must adhere to specific internal auditing standards.

Internal Audits

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by

² Section 20.055(2), F.S.

³ Section 20.055(3)(a), F.S.

⁴ Section 20.055(3)(c), F.S.

⁵ Section 20.055(4), F.S.

internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.⁶

Audit work papers and reports must be public records to the extent that they do not include information that has been made confidential and exempt from the provisions of s. 119.07(1), F.S., or information protected under s. 112.3187(5), F.S., of the Whistle-blower's Act.⁷

Reporting

At the conclusion of each audit, the inspector general must submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who must respond to any adverse findings within 20 working days after receipt of the tentative findings. Such response and the inspector general's rebuttal to the response must be included in the final audit report.⁸

The inspector general must submit the final report to the agency head and to the Auditor General. The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.⁹

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability (OPPAGA). No later than six months after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the state agency, the inspector general must provide a written response to the agency head on the status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.¹⁰

More Duties

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands related to claims against the state, and examining, auditing, adjusting, and settling accounts relating to those indebted to the state, may utilize audits performed by the inspectors general and internal auditors. For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.¹¹

⁶ Section 20.055(5)(a), F.S.

⁷ Section 20.055(5)(b), F.S.

⁸ Section 20.055(5)(d), F.S.

⁹ Section 20.055(5)(g), F.S.

¹⁰ Section 20.055(5)(h), F.S.

¹¹ Section 20.055(5)(i), F.S.

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.

For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law.
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information.
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.¹²

Each inspector general must submit a yearly report on its activities to the agency head, and provide any written complaints about the operations of the inspector general.¹³

III. Effect of Proposed Changes:

Chief Inspector General

Section 1 amends s. 14.32, F.S., to change how the Chief Inspector General is appointed and removed. Currently, the Governor appoints the Chief Inspector General, who serves, without a statutorily-prescribed term, at the pleasure of the Governor. The bill requires that appointment of the Chief Inspector General by the Governor is subject to confirmation by the Senate.

The Chief Inspector General must also provide for independent legal counsel for inspectors general in agencies under the jurisdiction of the Governor.

Agency Inspectors General

Section 2 amends s. 20.055, F.S., relating to the duties of agency inspectors general.

¹² Section 20.055(6), F.S.

¹³ Section 20.055(7) and (8), F.S.

Appointment

The bill changes the appointment process for agency inspectors general, who are currently appointed by the agency head. The bill provides that for state agencies under the jurisdiction of the Governor, the Chief Inspector General appoints the agency inspector general. For all other state agencies, the agency head appoints the inspector general; the agency head or Chief Inspector General must notify the Governor in writing seven days in advance of the hiring of an agency inspector general.

Supervision

The inspector general will report to and be under the supervision of the agency head. In addition, for state agencies under the jurisdiction of the Governor, the inspector general will report to the Chief Inspector General, and may hire and remove staff within the Office of the Inspector General in consultation with the Chief Inspector General but independently of the respective agency. Inspectors general are not subject to supervision by any other agency employee.

Removal

For state agencies under the jurisdiction of the Governor, the Chief Inspector General may remove, for cause, the inspector general. The Chief Inspector General must give 21 days' notice to the Governor before removing an inspector general, who may present written objections to the agency head or Governor. For all other state agencies, the inspector general may be removed by the agency head.

Budget

Within each agency, the Office of Inspector General must have its own budget, developed in consultation with the Chief Inspector General, and sufficient to meet its mission.

Reports and Responses to Reports

For state agencies under the jurisdiction of the Governor, the agency inspector general must submit:

- Final reports to the agency head, the Auditor General, and the Chief Inspector General; and
- Responses to OPPAGA and Auditor General reports to the Chief Inspector General; and
- Annual reports on inspector general activities to the Chief Inspector General.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires that budgets for state agency offices of inspectors general be separate from the budgets of the relevant agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 14.32 and 20.055 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 April 3, 2014:

The CS removes a provision that would have required the Governor to consult with the Cabinet on the appointment of the Chief Inspector General and clarifies the appointment, supervision, and removal procedures for agency inspectors general.

B. Amendments:

None.



881588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
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The Committee on Governmental Oversight and Accountability
(Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 12 - 131

and insert:

Section 1. Subsection (1) and paragraph (e) of subsection
(2) of section 14.32, Florida Statutes, are amended to read:

14.32 Office of Chief Inspector General.—

(1) There is created in the Executive Office of the
Governor the Office of Chief Inspector General. The Chief
Inspector General is ~~shall be~~ responsible for promoting



881588

11 accountability, integrity, and efficiency in the agencies under
12 the jurisdiction of the Governor. The Chief Inspector General
13 shall be appointed by the Governor, subject to confirmation by
14 the Senate, and shall serve at the pleasure of the Governor.

15 (2) The Chief Inspector General shall:

16 (e) Coordinate complaint-handling activities with agencies
17 and provide for independent legal counsel for inspectors general
18 in agencies under the jurisdiction of the Governor.

19 Section 2. Subsections (2), (3), (5), (7), and (8) of
20 section 20.055, Florida Statutes, are amended to read:

21 20.055 Agency inspectors general.—

22 (2) The Office of Inspector General is ~~hereby~~ established
23 in each state agency to provide a central point for coordination
24 of and responsibility for activities that promote
25 accountability, integrity, and efficiency in government. ~~It~~
26 ~~shall be the duty and responsibility of~~ Each inspector general,
27 with respect to the state agency in which the office is
28 established, shall ~~to~~:

29 (a) Advise in the development of performance measures,
30 standards, and procedures for the evaluation of state agency
31 programs.

32 (b) Assess the reliability and validity of the information
33 provided by the state agency on performance measures and
34 standards, and make recommendations for improvement, if
35 necessary, before ~~prior to~~ submission of such information ~~these~~
36 ~~measures and standards to the Executive Office of the Governor~~
37 pursuant to s. 216.1827 ~~s. 216.0166(1)~~.

38 (c) Review the actions taken by the state agency to improve
39 program performance and meet program standards and make



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40 recommendations for improvement, if necessary.

41 (d) Provide direction for, supervise, and coordinate
42 audits, investigations, and management reviews relating to the
43 programs and operations of the state agency, except that when
44 the inspector general does not possess the qualifications
45 specified in subsection (4), the director of auditing shall
46 conduct such audits.

47 (e) Conduct, supervise, or coordinate other activities
48 carried out or financed by that state agency for the purpose of
49 promoting economy and efficiency in the administration of, or
50 preventing and detecting fraud and abuse in, its programs and
51 operations.

52 (f) Keep the ~~such~~ agency head and, for state agencies under
53 the jurisdiction of the Governor, the Chief Inspector General,
54 informed concerning fraud, abuses, and deficiencies relating to
55 programs and operations administered or financed by the state
56 agency, recommend corrective action concerning fraud, abuses,
57 and deficiencies, and report on the progress made in
58 implementing corrective action.

59 (g) Ensure effective coordination and cooperation between
60 the Auditor General, federal auditors, and other governmental
61 bodies with a view toward avoiding duplication.

62 (h) Review, as appropriate, rules relating to the programs
63 and operations of such state agency and make recommendations
64 concerning their impact.

65 (i) Ensure that an appropriate balance is maintained
66 between audit, investigative, and other accountability
67 activities.

68 (j) Comply with the General Principles and Standards for



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69 Offices of Inspector General as published and revised by the
70 Association of Inspectors General.

71 (3) (a) For state agencies under the jurisdiction of the
72 Governor, the inspector general shall be appointed by the Chief
73 Inspector General agency head. For all other state agencies
74 under the direction of the Governor, the inspector general shall
75 be appointed by the agency head. The agency head or Chief
76 Inspector General shall notify appointment shall be made after
77 notifying the Governor and the Chief Inspector General in
78 writing, at least 7 days prior to an offer of employment, of his
79 or her the agency head's intention to hire the inspector general
80 at least 7 days before an offer of employment. The inspector
81 general shall be appointed without regard to political
82 affiliation.

83 (b) The Each inspector general shall report to and be under
84 the general supervision of the agency head and is shall not be
85 subject to supervision by any other employee of the state agency
86 in which the office is established. In addition, for state
87 agencies under the jurisdiction of the Governor, the inspector
88 general shall report to the Chief Inspector General, and may
89 hire and remove staff within the office of the inspector general
90 in consultation with the Chief Inspector General but
91 independently of the agency The inspector general shall be
92 appointed without regard to political affiliation.

93 (c) 1. For state agencies under the jurisdiction of the
94 Governor, the An inspector general may be removed from office by
95 the Chief Inspector General for cause, including concerns
96 regarding performance, malfeasance, misfeasance, misconduct, or
97 failure to carry out his or her duties under this section agency



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98 ~~head. The Chief Inspector General For agencies under the~~
99 ~~direction of the Governor, the agency head shall notify the~~
100 ~~Governor and the Chief Inspector General, in writing, of his or~~
101 ~~her the intention to terminate the inspector general at least 21~~
102 ~~7 days before prior to the removal. If the inspector general~~
103 ~~objects to the removal, the inspector general may present~~
104 ~~written objections to the agency head or the Governor within the~~
105 ~~21 day period.~~

106 2. For all other state agencies under the direction of the
107 Governor and Cabinet, the inspector general may be removed from
108 office by the agency head. The agency head shall notify the
109 Governor and Cabinet in writing of the intention to terminate
110 the inspector general at least 7 days prior to the removal.

111 (d) The Governor, the Governor and Cabinet, the agency
112 head, or agency staff may shall not prevent or prohibit the
113 inspector general from initiating, carrying out, or completing
114 any audit or investigation.

115 (e) The Office of Inspector General shall have its own
116 budget within the respective state agency, developed in
117 consultation with the Chief Inspector General, sufficient to
118 meet its mission.

119
120 ===== T I T L E A M E N D M E N T =====

121 And the title is amended as follows:

122 Delete lines 3 - 5

123 and insert:

124 14.32, F.S.; requiring that the Chief Inspector
125 General be confirmed by the Senate; requiring the
126 Chief Inspector General to provide independent legal



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127 counsel for specified state agencies; amending s.
128 20.055, F.S.; revising



236068

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 97 - 104
and insert:
shall be appointed without regard to political affiliation. For
state agencies under the jurisdiction of the Governor, the
inspector general shall be under the general supervision of the
agency head, shall report to the Chief Inspector General, and
may hire and remove staff within the Office of Inspector General
in consultation with the Chief Inspector General but



236068

11 independently of the respective agency.

12 (c) For state agencies under the jurisdiction of a Cabinet

13 officer or the Governor and Cabinet, the ~~an~~ inspector general

14 may be



633854

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 128 - 131

and insert:

(e) The Office of Inspector General shall have its own budget within the respective state agency, developed in consultation with the Chief Inspector General, sufficient to meet the office's mission.



377732

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 132 - 203

and insert:

(5) In carrying out the auditing duties and responsibilities in this section ~~of this act~~, each inspector general shall review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general shall conduct financial, compliance, electronic data processing, and performance audits of the agency



377732

11 and prepare audit reports of his or her findings. The scope and
12 assignment of the audits shall be determined by the inspector
13 general; however, the agency head may at any time direct the
14 inspector general to perform an audit of a special program,
15 function, or organizational unit. The performance of the audit
16 shall be under the direction of the inspector general, except
17 that if the inspector general does not possess the
18 qualifications specified in subsection (4), the director of
19 auditing shall perform the functions listed in this subsection.

20 (a) Such audits shall be conducted in accordance with the
21 current International Standards for the Professional Practice of
22 Internal Auditing as published by the Institute of Internal
23 Auditors, Inc., or, where appropriate, in accordance with
24 generally accepted governmental auditing standards. All audit
25 reports issued by internal audit staff shall include a statement
26 that the audit was conducted pursuant to the appropriate
27 standards.

28 (b) Audit workpapers and reports shall be public records to
29 the extent that they do not include information which has been
30 made confidential and exempt from the provisions of s. 119.07(1)
31 pursuant to law. However, when the inspector general or a member
32 of the staff receives from an individual a complaint or
33 information that falls within the definition provided in s.
34 112.3187(5), the name or identity of the individual shall not be
35 disclosed to anyone else without the written consent of the
36 individual, unless the inspector general determines that such
37 disclosure is unavoidable during the course of the audit or
38 investigation.

39 (c) The inspector general and the staff shall have access



377732

40 to any records, data, and other information of the state agency
41 he or she deems necessary to carry out his or her duties. The
42 inspector general is also authorized to request such information
43 or assistance as may be necessary from the state agency or from
44 any federal, state, or local government entity.

45 (d) At the conclusion of each audit, the inspector general
46 shall submit preliminary findings and recommendations to the
47 person responsible for supervision of the program function or
48 operational unit who shall respond to any adverse findings
49 within 20 working days after receipt of the preliminary
50 findings. Such response and the inspector general's rebuttal to
51 the response shall be included in the final audit report.

52 (e) At the conclusion of an audit in which the subject of
53 the audit is a specific entity contracting with the state or an
54 individual substantially affected, if the audit is not
55 confidential or otherwise exempt from disclosure by law, the
56 inspector general shall, consistent with s. 119.07(1), submit
57 the findings to the entity contracting with the state or the
58 individual substantially affected, who shall be advised in
59 writing that they may submit a written response within 20
60 working days after receipt of the findings. The response and the
61 inspector general's rebuttal to the response, if any, must be
62 included in the final audit report.

63 (f) The inspector general shall submit the final report to
64 the agency head, and to the Auditor General, and, for state
65 agencies under the jurisdiction of the Governor, the Chief
66 Inspector General.

67 (g) The Auditor General, in connection with the independent
68 postaudit of the same agency pursuant to s. 11.45, shall give



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69 appropriate consideration to internal audit reports and the
70 resolution of findings therein. The Legislative Auditing
71 Committee may inquire into the reasons or justifications for
72 failure of the agency head to correct the deficiencies reported
73 in internal audits that are also reported by the Auditor General
74 and shall take appropriate action.

75 (h) The inspector general shall monitor the implementation
76 of the state agency's response to any report on the state agency
77 issued by the Auditor General or by the Office of Program Policy
78 Analysis and Government Accountability. No later than 6 months
79 after the Auditor General or the Office of Program Policy
80 Analysis and Government Accountability publishes a report on the
81 state agency, the inspector general shall provide a written
82 response to the agency head on the status of corrective actions
83 taken. The Inspector General shall file a copy of such response
84 with the Legislative Auditing Committee.

85 (i) The inspector general shall develop long-term and
86 annual audit plans based on the findings of periodic risk
87 assessments. If appropriate, the plan must, ~~where appropriate,~~
88 ~~should~~ include postaudit samplings of payments and accounts. The
89 plan shall show the individual audits to be conducted during
90 each year and related resources to be devoted to the respective
91 audits. The Chief Financial Officer, to assist in fulfilling the
92 responsibilities for examining, auditing, and settling accounts,
93 claims, and demands pursuant to s. 17.03(1), and examining,
94 auditing, adjusting, and settling accounts pursuant to s. 17.04,
95 may use ~~utilize~~ audits performed by the inspectors general and
96 internal auditors. For state agencies under the jurisdiction of
97 the Governor, the audit plans shall be submitted to the agency



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98 head for review and to the Governor's Chief Inspector General.
99 The plan shall be submitted to the agency head for approval. For
100 all other state agencies, the plan shall be submitted to the
101 agency head for approval. A copy of the approved plan shall be
102 submitted to the Auditor General.

103 (7) (a) Except as provided in paragraph (b), each inspector
104 general shall, not later than September 30 of each year, prepare
105 an annual report summarizing the activities of the office during
106 the immediately preceding state fiscal year.

107 (b) The inspector general of the Florida Housing Finance
108 Corporation shall, not later than 90 days after the end of each
109 fiscal year, prepare an annual report summarizing the activities
110 of the Office of Inspector General during the immediately
111 preceding fiscal year.

112 (c) The final reports prepared pursuant to paragraphs (a)
113 and (b) shall be furnished to the heads of the respective
114 agencies and, for state agencies under the jurisdiction of the
115 Governor, the Chief Inspector General. Such reports must ~~shall~~
116 include, but need not be limited to:

117 1. A description of activities relating to the development,
118 assessment, and validation of performance measures.

119 2. A description of significant abuses and deficiencies
120 relating to the administration of programs and operations of the
121 agency disclosed by investigations, audits, reviews, or other
122 activities during the reporting period.

123 3. A description of the recommendations for corrective
124 action made by the inspector general during the reporting period
125 with respect to significant problems, abuses, or deficiencies
126 identified.



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127 4. The identification of each significant recommendation
128 described in previous annual reports on which corrective action
129 has not been completed.

130 5. A summary of each audit and investigation completed
131 during the reporting period.

By Senator Latvala

20-00844A-14

20141328__

1 A bill to be entitled
 2 An act relating to inspectors general; amending s.
 3 14.32, F.S.; revising provisions relating to the
 4 duties, appointment, and removal of the Chief
 5 Inspector General; amending s. 20.055, F.S.; revising
 6 provisions relating to the duties, appointment, and
 7 removal of agency inspectors general; updating a
 8 cross-reference; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (1) and paragraph (e) of subsection
 13 (2) of section 14.32, Florida Statutes, are amended to read:
 14 14.32 Office of Chief Inspector General.—
 15 (1) There is created in the Executive Office of the
 16 Governor the Office of Chief Inspector General. The Chief
 17 Inspector General shall be responsible for promoting
 18 accountability, integrity, and efficiency in the agencies under
 19 the jurisdiction of the Governor. The Chief Inspector General
 20 shall be appointed by the Governor, in consultation with the
 21 Cabinet, to a term of 4 years, is subject to confirmation by the
 22 Senate, and may be removed by unanimous vote serve at the
 23 pleasure of the Governor and Cabinet.
 24 (2) The Chief Inspector General shall:
 25 (e) Coordinate complaint-handling activities with agencies
 26 and provide for independent legal counsel for inspectors general
 27 in agencies under the jurisdiction of the Governor.
 28 Section 2. Subsections (2) and (3), paragraphs (f), (h),
 29 and (i) of subsection (5), paragraph (c) of subsection (7), and

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

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30 subsection (8) of section 20.055, Florida Statutes, are amended
 31 to read:
 32 20.055 Agency inspectors general.—
 33 (2) The Office of Inspector General is ~~hereby~~ established
 34 in each state agency to provide a central point for coordination
 35 of and responsibility for activities that promote
 36 accountability, integrity, and efficiency in government. ~~It~~
 37 ~~shall be the duty and responsibility of~~ Each inspector general,
 38 with respect to the state agency in which the office is
 39 established, shall ~~be~~:
 40 (a) Advise in the development of performance measures,
 41 standards, and procedures for the evaluation of state agency
 42 programs.
 43 (b) Assess the reliability and validity of the information
 44 provided by the state agency on performance measures and
 45 standards, and make recommendations for improvement, if
 46 necessary, before ~~prior to~~ submission of such information ~~these~~
 47 ~~measures and standards to the Executive Office of the Governor~~
 48 pursuant to s. 216.1827 ~~216.0166(1)~~.
 49 (c) Review the actions taken by the state agency to improve
 50 program performance and meet program standards and make
 51 recommendations for improvement, if necessary.
 52 (d) Provide direction for, supervise, and coordinate
 53 audits, investigations, and management reviews relating to the
 54 programs and operations of the state agency, except that when
 55 the inspector general does not possess the qualifications
 56 specified in subsection (4), the director of auditing shall
 57 conduct such audits.
 58 (e) Conduct, supervise, or coordinate other activities

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

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59 carried out or financed by that state agency for the purpose of
60 promoting economy and efficiency in the administration of, or
61 preventing and detecting fraud and abuse in, its programs and
62 operations.

63 (f) Keep ~~the such~~ agency head, or, for state agencies under
64 the jurisdiction of the Governor, the Chief Inspector General,
65 informed concerning fraud, abuses, and deficiencies relating to
66 programs and operations administered or financed by the state
67 agency, recommend corrective action concerning fraud, abuses,
68 and deficiencies, and report on the progress made in
69 implementing corrective action.

70 (g) Ensure effective coordination and cooperation between
71 the Auditor General, federal auditors, and other governmental
72 bodies with a view toward avoiding duplication.

73 (h) Review, as appropriate, rules relating to the programs
74 and operations of ~~the such~~ state agency and make recommendations
75 concerning their impact.

76 (i) Ensure that an appropriate balance is maintained
77 between audit, investigative, and other accountability
78 activities.

79 (j) Comply with the General Principles and Standards for
80 Offices of Inspector General as published and revised by the
81 Association of Inspectors General.

82 (3) (a) For state agencies under the jurisdiction of a
83 Cabinet officer or the Governor and Cabinet, the inspector
84 general shall be appointed by the agency head. For state
85 agencies under the jurisdiction direction of the Governor, the
86 inspector general shall be appointed by the Chief Inspector
87 General. The Chief Inspector General shall notify appointment

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88 ~~shall be made after notifying~~ the Governor and Cabinet ~~the Chief~~
89 ~~Inspector General~~ in writing, ~~at least 7 days prior to an offer~~
90 ~~of employment,~~ of ~~his or her~~ the agency head's intention to hire
91 the inspector general for each state agency under his or her
92 purview at least 7 days before an offer of employment.

93 (b) ~~An Each~~ inspector general is ~~shall report to and be~~
94 ~~under the general supervision of the agency head and shall not~~
95 ~~be~~ subject to supervision by any other employee of the state
96 agency in which the office is established. The inspector general
97 shall be appointed without regard to political affiliation. For
98 state agencies under the jurisdiction of the Governor, the
99 inspector general shall report to the Chief Inspector General
100 and may hire and remove staff within the Office of the Inspector
101 General in consultation with the Chief Inspector General but
102 independently of the respective agency.

103 (c) For state agencies under the jurisdiction of a Cabinet
104 officer or the Governor and Cabinet, an inspector general may be
105 removed from office by the agency head. For state agencies under
106 the jurisdiction direction of the Governor, an inspector general
107 may only be removed from office by the agency head shall notify
108 the Governor and the Chief Inspector General for cause including
109 concerns regarding performance, malfeasance, misfeasance,
110 misconduct, or failure to carry out his or her duties under this
111 section, in writing, of the intention to terminate the inspector
112 general at least 7 days prior to the removal. For state agencies
113 under the jurisdiction of the Governor, the Chief Inspector
114 General shall notify the Governor and Cabinet in writing of his
115 or her intention to remove the inspector general at least 21
116 days before the removal. For state agencies under the

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117 ~~jurisdiction direction~~ of the Governor and Cabinet, the agency
 118 head shall notify the Governor and Cabinet in writing of his or
 119 ~~her~~ the intention to ~~remove~~ ~~terminate~~ the inspector general at
 120 least ~~21~~ 7 days ~~before~~ ~~prior~~ to the removal. If the inspector
 121 general disagrees with the removal, the inspector general may
 122 present objections in writing to the Governor and Cabinet within
 123 such 21-day period.

124 (d) The Governor, the Governor and Cabinet, the agency
 125 head, or agency staff ~~may~~ ~~shall~~ not prevent or prohibit the
 126 inspector general from initiating, carrying out, or completing
 127 any audit or investigation.

128 (e) The Office of Inspector General shall have its own
 129 budget within the respective state agency sufficient to meet its
 130 mission developed in consultation with the Chief Inspector
 131 General.

132 (5) In carrying out the auditing duties and
 133 responsibilities of this section ~~act~~, each inspector general
 134 shall review and evaluate internal controls necessary to ensure
 135 the fiscal accountability of the state agency. The inspector
 136 general shall conduct financial, compliance, electronic data
 137 processing, and performance audits of the agency and prepare
 138 audit reports of his or her findings. The scope and assignment
 139 of the audits shall be determined by the inspector general;
 140 however, the agency head may at any time direct the inspector
 141 general to perform an audit of a special program, function, or
 142 organizational unit. The performance of the audit shall be under
 143 the direction of the inspector general, except that if the
 144 inspector general does not possess the qualifications specified
 145 in subsection (4), the director of auditing shall perform the

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146 functions listed in this subsection.

147 (f) The inspector general shall submit the final report to
 148 the agency head, ~~and to~~ the Auditor General, ~~and,~~ for state
 149 agencies under the jurisdiction of the Governor, the Chief
 150 Inspector General.

151 (h) The inspector general shall monitor the implementation
 152 of the state agency's response to any report on the state agency
 153 issued by the Auditor General or by the Office of Program Policy
 154 Analysis and Government Accountability. No later than 6 months
 155 after the Auditor General or the Office of Program Policy
 156 Analysis and Government Accountability publishes a report on the
 157 state agency, the inspector general shall provide a written
 158 response to the agency head or, for state agencies under the
 159 jurisdiction of the Governor, the Chief Inspector General on the
 160 status of corrective actions taken. The inspector general shall
 161 file a copy of such response with the Legislative Auditing
 162 Committee.

163 (i) The inspector general shall develop long-term and
 164 annual audit plans based on the findings of periodic risk
 165 assessments. The plan, when ~~where~~ appropriate, should include
 166 postaudit samplings of payments and accounts. The plan must
 167 ~~shall~~ show the individual audits to be conducted during each
 168 year and related resources to be devoted to the respective
 169 audits. The Chief Financial Officer, to assist in fulfilling the
 170 responsibilities for examining, auditing, and settling accounts,
 171 claims, and demands pursuant to s. 17.03(1), and examining,
 172 auditing, adjusting, and settling accounts pursuant to s. 17.04,
 173 may use ~~utilize~~ audits performed by the inspectors general and
 174 internal auditors. For state agencies under the jurisdiction of

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 175 the Governor, the audit plans shall be submitted to the
 176 ~~Governor's~~ Chief Inspector General. The plan shall be submitted
 177 to the agency head for review and to the Chief Inspector General
 178 for approval. A copy of the approved plan shall be submitted to
 179 the Auditor General. For state agencies under the jurisdiction
 180 of a Cabinet officer or the Governor and Cabinet, the plan shall
 181 be submitted to the agency head for review and approval before
 182 submitting to the Auditor General.

183 (7)

184 (c) The final reports prepared pursuant to paragraphs (a)
 185 and (b) shall be provided ~~furnished~~ to the heads of the
 186 respective agencies and, for state agencies under the
 187 jurisdiction of the Governor, the Chief Inspector General. Such
 188 reports must ~~shall~~ include, but need not be limited to:

189 1. A description of activities relating to the development,
 190 assessment, and validation of performance measures.

191 2. A description of significant abuses and deficiencies
 192 relating to the administration of programs and operations of the
 193 agency disclosed by investigations, audits, reviews, or other
 194 activities during the reporting period.

195 3. A description of the recommendations for corrective
 196 action made by the inspector general during the reporting period
 197 with respect to significant problems, abuses, or deficiencies
 198 identified.

199 4. The identification of each significant recommendation
 200 described in previous annual reports on which corrective action
 201 has not been completed.

202 5. A summary of each audit and investigation completed
 203 during the reporting period.

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 204 (8) The inspector general in each state agency shall
 205 provide to the agency head, upon receipt, all written complaints
 206 concerning the duties and responsibilities in this section or
 207 any allegation of misconduct related to the office of the
 208 inspector general or its employees, if received from subjects of
 209 audits or investigations who are individuals substantially
 210 affected or entities contracting with the state, as defined in
 211 this section. For state agencies ~~solely~~ under the jurisdiction
 212 ~~direction~~ of the Governor, the inspector general shall also
 213 provide the complaint to the Chief Inspector General.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

March 4, 2014

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

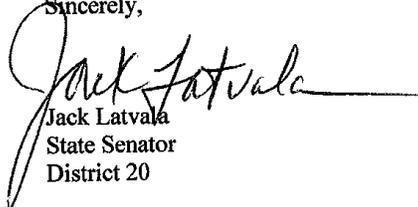
Dear Chairman Ring:

I respectfully request that Senate Bill 1328/Inspectors General be placed on the agenda of the Senate Committee on Governmental Oversight and Accountability at your earliest convenience.

There have been many examples of a lack of true independence for inspectors general and of abuse of power by agency heads. This bill would allow an inspector general in each executive agency to be hired and terminated by the State Chief Inspector General moving the agency head/IG relationship from a supervisor-employee relationship to a peer-to-peer relationship.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,


Jack Latvala
State Senator
District 20

JL:tc

CC: Joe McVaney, Staff Director; Bethany Jones, Administrative Assistant

REPLY TO:
 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 286

INTRODUCER: Governmental Oversight and Accountability Committee, Regulated Industries Committee, and Senator Richter and others

SUBJECT: Concrete Masonry Education

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
3.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 286 creates the “Concrete Masonry Education Act.” The bill creates the Florida Concrete Masonry Council, Inc., as a non-profit corporation operating under a written contract as a direct-support organization of the Florida Department of Economic Opportunity. Administrative powers and duties of the council include the power to plan, implement, and conduct educational programs related to the field of concrete masonry, particularly for individuals seeking employment. The bill provides for the appointment of a 13 member governing board.

The bill allows the council to accept grants, donations, contributions, gifts, and to collect self-imposed voluntary assessments on concrete masonry units¹ produced and sold by concrete masonry manufacturers in the state. Manufacturers that choose to pay the assessment must commit to paying the assessment for at least one year. Thereafter, the manufacturer may remit the assessment or recommit for the next year.

¹ A Concrete Masonry Unit is a building unit or block larger in size than 12 inches by 4 inches by 4 inches (305 mm by 102 mm by 102 mm) made of cement and suitable aggregates. *See* s. 2103.1 Florida Building Code (2010).

II. Present Situation:

Concrete Masonry Education

Educational programs to train individuals in the field of concrete masonry are currently offered by school districts, colleges and apprenticeship programs throughout Florida.² The Florida Department of Education develops Career and Technical Education programs in ‘Concrete Masonry’ as well as ‘Brick and Block Masonry.’ These programs are provided through a network of service providers, which include District Technical Centers, Adult Education Providers and Florida colleges.³

The Florida Department of Education’s (DOE) Career and Technical Education programs are reviewed on a three-year cycle with business and industry as required by s. 1004.92(2)(b)4., F.S. The ‘Brick and Block Masonry’ program was last reviewed in 2011 for the 2012-2013 school year, and will be reviewed again in 2014 for the 2015-2016 school year. According to DOE, the 2012 review of the ‘Concrete Masonry’ program recommended deletion of the program due to low enrollment.⁴ The program will be removed from inventory in the 2014-2015 school year.⁵ These reviews are conducted by programmatic review committees with at least fifty percent of the membership from the industry.⁶

The Masonry Association of Florida, Inc. along with the Florida Concrete & Products Association, formed the Florida Masonry Apprentice and Education Foundation, Inc. (foundation) in 2002 to add to and expand masonry apprentice programs.⁷ The foundation is a nonprofit organization providing apprenticeship education of the masonry trade.⁸

The Florida Department of Economic Opportunity’s mission is to promote economic opportunities for all Floridians; formulating and implementing a successful workforce, community, and economic development policies and strategies.⁹

Demand for Skilled Labor

According to the foundation, it is estimated that 300-500 new masons per year are needed to support demand and address attrition.¹⁰ There are only 300 apprentices enrolled in the current apprenticeship programs currently available.¹¹

² 2014 Legislative Bill Analysis for SB 286, Department of Education (Oct. 23, 2013).

³ Florida Department of Education, Career and Adult Education, available at <http://www.fldoe.org/workforce/> (Last visited Jan. 21, 2013).

⁴ Conversation with Florida Department of Education representative by Community Affairs Committee Staff (Dec. 11, 2013).

⁵ *Id.*

⁶ The committees may include directors for the Florida Concrete Masonry Education Council, as described in the bill.

⁷ Florida Masonry Apprentice and Education Foundation, Inc., *About Us*, available at <http://www.masonryeducation.org/about.html> (Last visited Feb. 16, 2014).

⁸ *Id.*

⁹ MyFlorida.com, Department of Economic Opportunity, available at <http://www.myflorida.com/agency/50/> (Last visited Feb. 10, 2014).

¹⁰ *Id.*

¹¹ *Id.*

According to a recent survey by the trade group Associated General Contractors, twenty-seven percent of Florida construction firms claim to have trouble finding cement masons.¹² The Florida construction industry lost half of its employment during the recession, and with an increase in building projects the demand for skilled labor is not being met.¹³ A growing shortage of labor and rising cost of building materials could affect the completion of some projects.¹⁴

Examples of Industry Assessment Structures

The Florida Beef Council, created by the Beef Market Development Act,¹⁵ is a not-for-profit corporation operating as a direct-support organization of the Department of Agriculture and Consumer Services.¹⁶ According to the Florida Cattlemen's Association website, this council is a wholly-owned corporation of the Florida Cattlemen's Association and functions as the promotional and educational arm of the beef industry in Florida, supporting the ability of cattlemen members to produce and market their products.¹⁷ As a direct-support organization of the Department of Agriculture and Consumer Services,¹⁸ this council is authorized to impose an assessment of not more than \$1 on each head of cattle sold to fund the purposes of the council.¹⁹ This follows the federally mandated check-off program, where half of the funds collected in Florida are designated for national promotion, research, consumer information and industry information programs; half the funds are used in Florida to disseminate nutritional and product information to the media, food service and retail industries, school educators, health professionals, consumers and producers.²⁰

The Florida Building Commission, created under s. 553.74(1), F.S., is within the Department of Business and Professional Regulation. Section 553.721 F.S. creates a surcharge to be assessed at the rate of 1.5% of the permit fees associated with the enforcement of the Florida Building Code (code), which is partly allocated to the Florida Building Commission. The Commission is responsible for adopting and enforcing the code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare.²¹ The code is required to be updated every three years by the Florida Building Commission.²² Pursuant to s. 553.73, F.S., the Commission is authorized to adopt administrative rules, impose fees for

¹² Marcia Heroux Pounds, *As projects ramp up, skilled construction workers in short supply*, Sun Sentinel, Nov. 24, 2013, available at <http://www.sun-sentinel.com/business/careers/fl-tradesmen-shortage-20131124.0.4371525.story> (Last visited Jan. 21 2014).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See s. 570.9135(4), F.S.

¹⁶ See s. 570.9135(4)(a), F.S.

¹⁷ Florida Cattlemen's Associations, About, *Beef Council*, available at <http://www.floridacattlemen.org/fbc.html> (Last visited Feb. 11, 2014).

¹⁸ See s. 570.903 F.S., requirements of a Direct Support Organization under the Department of Agriculture and Consumer Services.

¹⁹ See s. 570.9135(4) F.S.

²⁰ Florida Cattlemen's Associations, About, *Beef Council*, available at <http://www.floridacattlemen.org/fbc.html> (Last visited Feb. 11, 2014).

²¹ See s. 553.73 and 553.74, F.S.

²² See s. 553.73(7)(a), F.S. See also Florida Department of Business & Professional Regulation, Florida Building Commission, available at http://www.floridabuilding.org/fbc/information/building_commission.htm (Last visited Dec. 9, 2013).

binding code interpretations, and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the code.

III. Effect of Proposed Changes:

Section 1 provides that the section may be cited as the “Concrete Masonry Education Act.”

Section 2 creates the Florida Concrete Masonry Education Council, Inc. (council) as a nonprofit corporation operating under a written contract as a direct-support organization of the Florida Department of Economic Opportunity.

The council is required to do the following:

- Plan, implement, and conduct programs of education for the purpose of training individuals in the field of concrete masonry.
- Develop and improve educational access to individuals seeking employment in the field of concrete masonry.
- Develop and implement outreach programs to ensure diversity among those trained in the field of concrete masonry.
- Coordinate educational programs with other state or national programs.
- Inform and educate the public concerning the sustainability and economic benefits of concrete masonry products in order to increase employment opportunities in the field of concrete masonry.
- Develop, implement, and monitor a system for collection of a self-imposed voluntary assessment on each concrete masonry unit produced and sold by concrete masonry manufacturers in this state.
- Submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by January of each year detailing the revenues it receives, industry participation, use of its funds, number of individuals trained or assisted, its goals and objectives for the year and information of job placement and industry workforce needs.

The council may:

- Upon request, provide governmental bodies with information relating to the concrete masonry industry;
- Sue and be sued as a council;
- Maintain a financial reserve for emergency use, which shall not exceed 10 percent of the council’s income;
- Employ subordinate officers and employees;
- Cooperate with other organizations and agencies engaged in activities related to concrete masonry education; and
- Meet with concrete masonry manufacturers in this state to coordinate collection of the self-imposed voluntary assessments on concrete masonry units.

The council is prohibited from:

- Participating in a political campaign, or state or local ballot initiatives;
- Using receipts to benefit directors, officers, or other private persons, not including reasonable compensation for services; and

- Participating in activities prohibited for non-profit corporations under federal tax law.

Governing Board

The Florida Concrete Masonry Education Council, Inc., shall be governed by a board of directors serving without compensation, except for reimbursement for per diem and travel expenses incurred in carrying out the intent and purposes of this section. Thirteen members will occupy the board, as follows:

- Eight members representing concrete masonry manufacturers:
 - Each must represent a different manufacturer;
 - Each must have been employed by a manufacturer engaging in manufacturing of the concrete masonry products and one member of whom must have at least five years of experience prior to starting service on the board; and
 - At least five must be members of the Masonry Association of Florida (MAF);
- One member representing a major building industry association in the state;
- One member having expertise in apprenticeship or workforce education training;
- Two members who are masonry contractors and members of the MAF; and
- One member who is not a masonry contractor but who is otherwise a stakeholder in the masonry industry.

The initial board shall be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, each making five appointments, with five members serving 1-year terms, four members serving 2-year terms, and four members serving 3-year terms. Each person who appoints the board has a designated number of appointees allocated per each year-term category. Thereafter, members shall be appointed to serve 3-year terms and may be reappointed to serve one additional consecutive term.

Participation in the voluntary assessment on concrete masonry units is not a requirement of appointment.

In addition to the fifteen voting members, the executive director of the Department of Economic Opportunity or their designee shall serve as an ex officio nonvoting member.

Acceptance of Grants and Gifts

The bill authorizes the council to receive grants and donations provided that there are no restrictions that the council considers to be inconsistent with the objectives of the program.

Payments to Organizations

The bill authorizes the council to make payments to other organizations for services rendered through a written agreement which is consistent with the objectives of this section.

Before making such payments:

- The council must secure a written agreement that the organization will furnish reports of program activity, including financial data relative to the council's funding of such activities. These must be furnished at annually or, on the request of the council, more frequently; and
- The council may require proof of security on the payments.

Collection of Moneys

The bill requires manufacturers electing to pay the voluntary assessment to collect money for each masonry unit produced and sold by the manufacturer, and forward these moneys to the council on a quarterly basis. Participating manufacturers must commit to pay the assessment for at least one year before electing to terminate payment or continue payment for the next year. The council must maintain a separate accounting of all moneys received and provide for an annual financial audit.

Bylaws

The bill requires the council to adopt bylaws by September 30, 2014 to carry out the purposes of this section, which must conform to this section but may also address any matter not in conflict with the general law of this state.

Section 3 provides for an effective date of 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:

Section 3, Art. II of the State Constitution provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

The bill creates a direct support organization for the Department of Economic Opportunity. The board of directors of this direct support organization will be appointed by the Governor, President of the Senate, and the Speaker of the House of Representatives. If the direct support organization is an entity of the executive branch of state government, it is unclear whether the structure of the appointment process of executive branch officials (the board of directors), with the direct involvement of the presiding officers of the legislature, is a violation of the principle of separation of powers.

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

None.

B. Private Sector Impact:

Proposed payments by concrete masonry manufacturers to Florida Concrete Masonry Council, Inc., are self-imposed voluntary assessments on concrete masonry units produced and sold in the state. Additionally, the council may accept grants, donations, contributions, or gifts.

The fiscal impact cannot be determined because of the voluntary nature of the anticipated revenue.

C. Government Sector Impact:

The council may provide governmental bodies with requested information relating to subjects of concern to the industry. The council may act jointly or in cooperation with the state or federal government and their agencies in the development or administration of programs that the council considers to be consistent with this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

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

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

CS/CS by Governmental Oversight and Accountability on April 3, 2014:

The committee substitute:

- Provides that the council must operate pursuant to a written contract with specified provisions;
- Changes the size of the council's board of directors from 15 to 13 members;
- Deletes a provision that the Chancellor of Career and Adult Education must be on the board; and
- Provides that the council's audits must be performed in accordance with s. 215.981, F.S.

CS by Regulated Industries February 13, 2014:

The committee substitute (CS) creates the “Concrete Masonry Council, Inc., a nonprofit corporation operating as a direct-support organization of the Department of Economic Opportunity rather than the Department of Education.

- The council is required to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by January of each year on revenues, participation, use of funds, number of persons trained and other information.
- The funds held in reserve may not exceed 10 percent of the council’s income.
- The initial board of fifteen members shall be appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, each making five appointments after soliciting recommendations from the Masonry Association of Florida, and of these five, a designated number of appointees per each year-term category.
- Participation in the voluntary assessment on concrete masonry units is not a requirement of appointment.
- In addition to the fifteen voting members, the executive director of the Department of Economic Opportunity or their designee shall serve as an ex officio nonvoting member.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
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The Committee on Governmental Oversight and Accountability
(Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This section may be cited as the "Concrete
Masonry Education Act."

Section 2. Concrete masonry education.-

(1) (a) The Florida Concrete Masonry Education Council,
Inc., is created as a nonprofit corporation organized under the
laws of this state and operating as a direct-support



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11 organization of the Department of Economic Opportunity.

12 (b) The council shall operate under a written contract with
13 the department which provides, at a minimum, for:

14 1. Approval of the articles of incorporation and bylaws of
15 the council by the department.

16 2. Submission of an annual budget for approval by the
17 department.

18 3. Reversion of moneys and property held in trust by the
19 council for concrete masonry education to the department if the
20 council ceases to exist or to the state if the department ceases
21 to exist.

22 (c) The council shall:

23 1. Plan, implement, and conduct programs of education for
24 the purpose of training individuals in the field of concrete
25 masonry.

26 2. Develop and improve access to education for individuals
27 seeking employment in the field of concrete masonry.

28 3. Develop and implement outreach programs to ensure
29 diversity among individuals trained in the programs conducted
30 pursuant to this section.

31 4. Coordinate educational programs with national programs
32 or programs of other states.

33 5. Inform and educate the public about the sustainability
34 and economic benefits of concrete masonry products in order to
35 increase employment opportunities for individuals trained in the
36 programs conducted pursuant to this section.

37 6. Develop, implement, and monitor a system for the
38 collection of a self-imposed voluntary assessment on each
39 concrete masonry unit produced and sold by concrete masonry



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40 manufacturers in this state.

41 7. Submit a report to the Governor, the President of the
42 Senate, and the Speaker of the House of Representatives by
43 January 15 of each year outlining the revenues received by the
44 council, the percentage of the industry participating in the
45 programs, the use of the funds received, the goals and
46 objectives for the year and the methods of achieving such goals
47 and objectives, the number of individuals who have received
48 training or assistance from the programs supported by the
49 council, and information relating to job placements and industry
50 workforce needs.

51 (d) The council may:

52 1. Provide to governmental bodies, on request, information
53 relating to subjects of concern to the concrete masonry industry
54 and act jointly or in cooperation with the state or Federal
55 Government, and agencies thereof, in the development or
56 administration of programs that the council considers to be
57 consistent with the objectives of this section.

58 2. Sue and be sued as a council without individual
59 liability of the members for actions of the council when acting
60 within the scope of the powers conferred by this section and in
61 the manner prescribed by the laws of this state.

62 3. Maintain a financial reserve for emergency use, the
63 total of which must not exceed 10 percent of the council's
64 anticipated annual income.

65 4. Employ subordinate officers and employees of the
66 council, prescribe their duties, and fix their compensation and
67 terms of employment.

68 5. Cooperate with any local, state, regional, or nationwide



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69 organization or agency engaged in work or activities consistent
70 with the objectives of this section.

71 6. Meet with concrete masonry manufacturers in this state
72 to coordinate the collection of self-imposed voluntary
73 assessments on concrete masonry units.

74 (e)1. The council may not participate or intervene in any
75 political campaign on behalf of or in opposition to any
76 candidate for public office or any state or local ballot
77 initiative, including, but not limited to, the publication or
78 distribution of any statement.

79 2. The net receipts of the council may not in any part
80 inure to the benefit of or be distributable to its directors,
81 its officers, or other private persons; however, the council may
82 pay reasonable compensation for services rendered by council
83 officers and employees and may make payments and distributions
84 in furtherance of the purposes of this section.

85 3. Notwithstanding any other provision of law, the council
86 may not carry on any other activity not permitted to be carried
87 on by a corporation:

88 a. That is exempt from federal income taxation under s.
89 501(c)(3) of the Internal Revenue Code; or

90 b. To which charitable contributions are deductible under
91 s. 170(c)(2) of the Internal Revenue Code.

92 (2) (a) The Florida Concrete Masonry Education Council,
93 Inc., shall be governed by a board of directors composed of 13
94 voting members as follows:

95 1. Eight members representing concrete masonry
96 manufacturers of various sizes. After receiving recommendations
97 from the Masonry Association of Florida, the Governor shall



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98 appoint two of these board members, and the President of the
99 Senate and the Speaker of the House of Representatives shall
100 each appoint three of these board members. Of the eight board
101 members appointed under this subparagraph, at least five members
102 must be representatives of manufacturers that are members of the
103 Masonry Association of Florida. A manufacturer may not be
104 represented by more than one board member.

105 2. One member representing a major building industry
106 association in the state appointed by the Governor.

107 3. One member having expertise in apprenticeship or
108 workforce education training appointed by the Speaker of the
109 House of Representatives.

110 4. One member who is not a masonry contractor or
111 manufacturer or an employee of a masonry contractor or
112 manufacturer but who is otherwise a stakeholder in the masonry
113 industry. This member shall be appointed by the President of the
114 Senate.

115 5. Two members who are masonry contractors and who are
116 members of the Masonry Association of Florida, one of whom shall
117 be appointed by the President of the Senate and one of whom
118 shall be appointed by the Speaker of the House of
119 Representatives.

120 (b)1. Five of the initial board members shall be appointed
121 to serve 1-year terms. Of the five members, one shall be
122 appointed by the Governor, two shall be appointed by the
123 President of the Senate, and two shall be appointed by the
124 Speaker of the House of Representatives.

125 2. Four of the initial board members shall be appointed to
126 serve 2-year terms. Of the four members, one shall be appointed



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127 by the Governor, one shall be appointed by the President of the
128 Senate, and two shall be appointed by the Speaker of the House
129 of Representatives.

130 3. Four of the initial board members shall be appointed to
131 serve 3-year terms. Of the four members, one shall be appointed
132 by the Governor, two shall be appointed by the President of the
133 Senate, and one shall be appointed by the Speaker of the House
134 of Representatives.

135 4. Each subsequent vacancy on the board of directors shall
136 be filled in accordance with the initial appointment.
137 Thereafter, each board member shall be appointed to serve a 3-
138 year term and may be reappointed to serve an additional
139 consecutive term. However, a member may not serve more than two
140 consecutive terms.

141 (c) A board member may not be required to participate in a
142 voluntary assessment on concrete masonry units as a condition of
143 appointment. A member representing a manufacturer must have been
144 employed by a manufacturer engaging in the trade of manufacture
145 of concrete masonry products for at least 5 years immediately
146 preceding the first day of his or her service on the board. All
147 members of the board shall serve without compensation but are
148 entitled to reimbursement for per diem and travel expenses
149 incurred in carrying out the intents and purposes of this
150 section in accordance with s. 112.061, Florida Statutes.

151 (d) In addition to the 13 voting members described in
152 paragraph (a), the executive director of the Department of
153 Economic Opportunity, or his or her designee, shall serve ex
154 officio as a nonvoting member of the board of directors of the
155 council.



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156 (3) The council may accept grants, donations,
157 contributions, or gifts from any source if the use of such
158 resources is not restricted in a manner that the council
159 considers to be inconsistent with the objectives of this
160 section.

161 (4) (a) The council may make payments to other organizations
162 for work or services performed that are consistent with the
163 objectives of this section.

164 (b) Before making payments described in this subsection,
165 the council must secure a written agreement that the
166 organization receiving payment will furnish at least annually,
167 or more frequently upon request of the council, written or
168 printed reports of program activities and reports of financial
169 data that are relative to the council's funding of such
170 activities.

171 (c) The council may require adequate proof of security
172 bonding on the payments to any individual, business, or other
173 organization.

174 (5) (a) The self-imposed voluntary assessment shall be paid
175 for each masonry unit produced and sold by the manufacturer.

176 (b) Each manufacturer that elects to pay the self-imposed
177 voluntary assessment must commit to paying the assessment for at
178 least 1 year. Thereafter, the manufacturer may elect to
179 terminate payment or continue payment for the next year.

180 (c) The manufacturer shall collect all such moneys and
181 forward them quarterly to the council.

182 (d) The council shall maintain within its financial records
183 a separate accounting of all moneys received under this
184 subsection. The council shall provide for an annual financial



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185 audit of its accounts and records in accordance with s. 215.981,
186 Florida Statutes.

187 (6) (a) The council shall, by September 30, 2014, adopt
188 bylaws to carry out the intents and purposes of this section.
189 Before adoption by the council, the bylaws must be approved by
190 the department. The bylaws must conform to the requirements of
191 this section but may also address any matter not in conflict
192 with the general laws of this state.

193 (b) Amendments to adopted bylaws may be proposed with 30
194 days' notice to board members at any regular or special meeting
195 called for such purpose and may be adopted by the council
196 following approval by the department.

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

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

200 And the title is amended as follows:

201 Delete everything before the enacting clause
202 and insert:

203 A bill to be entitled
204 An act relating to concrete masonry education;
205 providing a short title; creating the Florida Concrete
206 Masonry Education Council, Inc.; requiring the council
207 to operate under a written contract with the
208 Department of Economic Opportunity; providing powers
209 and duties of the council; providing restrictions;
210 providing for appointment and terms of the governing
211 board of the council; authorizing the council to
212 accept grants, donations, contributions, and gifts
213 under certain circumstances; authorizing the council



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214 to make payments to other organizations under certain
215 circumstances; providing for collection of a voluntary
216 assessment on concrete masonry units; requiring
217 manufacturers who elect to pay the assessment to
218 commit to paying the assessment for a specified
219 period; requiring the council to adopt bylaws;
220 providing for the adoption of bylaws and amendments to
221 bylaws; providing an effective date.

By the Committee on Regulated Industries; and Senators Richter,
Latvala, Detert, Garcia, Bradley, Flores, and Smith

580-01791-14

2014286c1

A bill to be entitled

An act relating to concrete masonry education;
providing a short title; creating the Florida Concrete
Masonry Education Council, Inc.; specifying the powers
and duties of the council; providing restrictions;
providing for appointment and terms of the governing
board of the council; authorizing the council to
accept grants, donations, contributions, and gifts
under certain circumstances; authorizing the council
to make payments to other organizations under certain
circumstances; providing for collection of a voluntary
assessment on concrete masonry units; requiring
manufacturers who elect to pay the assessment to
commit to paying the assessment for a specified
period; requiring the council to adopt bylaws by a
specified date; providing an effective date.

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

Section 1. Concrete masonry education.

(1) This section may be cited as the "Concrete Masonry
Education Act."

(2) (a) There is created the Florida Concrete Masonry
Education Council, Inc., a nonprofit corporation organized under
the laws of this state and operating as a direct-support
organization of the Department of Economic Opportunity.

(b) The council shall:

1. Plan, implement, and conduct programs of education for
the purpose of training individuals in the field of concrete

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masonry.

2. Develop and improve access to education for individuals
seeking employment in the field of concrete masonry.

3. Develop and implement outreach programs to ensure
diversity among individuals trained in the programs conducted
pursuant to this section.

4. Coordinate educational programs with national programs
or programs of other states.

5. Inform and educate the public about the sustainability
and economic benefits of concrete masonry products in order to
increase employment opportunities for individuals trained in the
programs conducted pursuant to this section.

6. Develop, implement, and monitor a system for the
collection of a self-imposed voluntary assessment on each
concrete masonry unit produced and sold by concrete masonry
manufacturers in this state.

7. Do all other things necessary or expedient for the
administration of the affairs and achievement of the purposes of
the council.

8. By January 15 of each year, provide a report to the
Governor, the President of the Senate, and the Speaker of the
House of Representatives outlining the revenues received by the
council, the percentage of the industry participating in the
program, the use of the funds received, the number of
individuals who have received training or assistance in the
reporting year from the programs supported by the council, the
goals and objectives for the year and methods of achieving those
goals, and information relating to job placement and industry
workforce needs.

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59 (c) The council may:

60 1. Provide to governmental bodies, upon request,
61 information relating to subjects of concern to the concrete
62 masonry industry and act jointly or in cooperation with the
63 state or Federal Government and their agencies in the
64 development or administration of programs that the council
65 considers to be consistent with the objectives of this section.

66 2. Sue and be sued as a council without incurring
67 individual liability of the members for actions of the council
68 when acting within the scope of the powers conferred by this
69 section and in the manner prescribed by the laws of this state.

70 3. Maintain a financial reserve for emergency use, which
71 may not exceed 10 percent of the council's income.

72 4. Employ subordinate officers and employees of the
73 council, prescribe their duties, and fix their compensation and
74 terms of employment.

75 5. Cooperate with any local, state, regional, or nationwide
76 organization or agency engaged in work or activities consistent
77 with the objectives of this section.

78 6. Meet with concrete masonry manufacturers in this state
79 to coordinate the collection of self-imposed voluntary
80 assessments on concrete masonry units.

81 7. Do all other things necessary to further the intent of
82 this section which are not prohibited by law.

83 (d)1. The council may not participate or intervene in any
84 political campaign on behalf of or in opposition to any
85 candidate for public office or any state or local ballot
86 initiative, including, but not limited to, the publication or
87 distribution of any statement.

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88 2. The net receipts of the council may not inure to the
89 benefit of or be distributable to its directors, its officers,
90 or other private persons; however, the council may pay
91 reasonable compensation for services rendered by council
92 officers and employees and may make payments and distributions
93 in furtherance of the purposes of this section.

94 3. Notwithstanding any other provision of law, the council
95 may not carry on any other activity not permitted to be carried
96 on by a corporation:

97 a. That is exempt from federal income taxation under s.
98 501(c)(3) of the Internal Revenue Code; or

99 b. To which charitable contributions are deductible under
100 s. 170(c)(2) of the Internal Revenue Code.

101 (3) (a) The Florida Concrete Masonry Education Council,
102 Inc., shall be governed by a board of directors consisting of 15
103 members, as follows:

104 1. Nine members representing concrete masonry manufacturers
105 of various sizes, each of whom must represent a different
106 manufacturer. Of these members, at least five must be
107 representatives of manufacturers that are members of the Masonry
108 Association of Florida.

109 2. One member representing a major building industry
110 association in the state.

111 3. One member having expertise in apprenticeship or
112 workforce education training.

113 4. Two members who are masonry contractors and who are
114 members of the Masonry Association of Florida.

115 5. One member who is not a masonry contractor or
116 manufacturer or an employee of a masonry contractor or

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117 manufacturer but who is otherwise a stakeholder in the masonry
118 industry.

119 6. The Chancellor of Career and Adult Education or his or
120 her designee.

121 (b) The initial board of directors shall consist of 15
122 voting members, with the Governor, the President of the Senate,
123 and the Speaker of the House of Representatives each making five
124 appointments after soliciting recommendations from the Masonry
125 Association of Florida. Five of the initial board members shall
126 be appointed to a 1-year term: two who are appointed by the
127 Governor, two who are appointed by the President of the Senate,
128 and one who is appointed by the Speaker of the House of
129 Representatives. Five of the initial board members shall be
130 appointed to 2-year terms: two who are appointed by the
131 Governor, one who is appointed by the President of the Senate,
132 and two who are appointed by the Speaker of the House of
133 Representatives. Five of the initial board members shall be
134 appointed to 3-year terms: one appointed by the Governor, two
135 appointed by the President of the Senate, and two appointed by
136 the Speaker of the House of Representatives. Each subsequent
137 vacancy shall be filled in accordance with the initial
138 appointment. Participation in the voluntary assessment on
139 concrete masonry units is not a requirement of appointment.
140 Thereafter, members shall be appointed to 3-year terms and may
141 be reappointed to one additional consecutive term. In addition
142 to the 15 voting members, the executive director of the
143 Department of Economic Opportunity, or his or her designee,
144 shall serve as an ex officio nonvoting member. A member
145 representing a manufacturer must have been employed by a

Page 5 of 7

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

580-01791-14

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146 manufacturer engaging in the trade of manufacture of concrete
147 masonry products for at least 5 years immediately preceding the
148 first day of his or her service on the board. All members of the
149 board shall serve without compensation but are entitled to
150 reimbursement for per diem and travel expenses incurred in
151 carrying out the intent and purposes of this section in
152 accordance with s. 112.061, Florida Statutes.

153 (4) The council may accept grants, donations,
154 contributions, or gifts from any source if the use of such
155 resources is not restricted in a manner that the council
156 considers to be inconsistent with the objectives of this
157 section.

158 (5) (a) The council may make payments to other organizations
159 for work or services performed which are consistent with the
160 objectives of this section.

161 (b) Before making such payments, the council must secure a
162 written agreement that the organization receiving payment will
163 furnish at least annually, or more frequently on the request of
164 the council, printed or written reports of program activities.
165 The reports must include financial data relative to the
166 council's funding of such activities.

167 (c) The council may require adequate proof of security
168 bonding on the payments to any individual, business, or other
169 organization.

170 (6) (a) The self-imposed voluntary assessment shall be paid
171 for each masonry unit produced and sold by the manufacturer.

172 (b) Each manufacturer that elects to pay the self-imposed
173 voluntary assessment must commit to paying the assessment for at
174 least 1 year. Thereafter, the manufacturer may elect to

Page 6 of 7

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2014286c1

175 terminate payment or continue payment for the next year.

176 (c) The manufacturer shall collect all such moneys and
177 forward them quarterly to the council.

178 (d) The council shall maintain within its financial records
179 a separate accounting of all moneys received under this
180 subsection. The council shall provide for an annual financial
181 audit of its accounts and records to be conducted by an
182 independent certified public accountant licensed under chapter
183 473, Florida Statutes.

184 (7) The council shall, by September 30, 2014, adopt bylaws
185 to carry out the intent and purposes of this section. These
186 bylaws may be amended upon 30 days' written notice to board
187 members at any regular or special meeting called for such
188 purpose. The bylaws must conform to the requirements of this
189 section but may also address any matter not in conflict with the
190 general laws of this state.

191 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)

4 1 3 1201 Y

Meeting Date

Topic _____

Bill Number 286
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

Be heard for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-3-14

Meeting Date

Topic Concrete Masonry Education

Name Larry Kidd

Job Title Construction Worker

Address 820 Virginia Dr

Street

Orlando FL 32803

City

State

Zip

Bill Number 286

Amendment Barcode (if applicable)

Phone 407-896-7271

E-mail LKidd01@aol.com

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

Representing Self

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

Lobbyist registered with Legislature: [] Yes [X] 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.

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THE FLORIDA SENATE

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4-3-14

Meeting Date

Topic Concrete Industry creating a DSO

Bill Number 286 (if applicable)

Name John Parker

Amendment Barcode (if applicable)

Job Title President, FLORIDA BUILDING TRADES

Address 401 E MONROE ST

Phone 850-224-4440

TALLAHASSEE State Zip

E-mail

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

Representing Florida Building Trades

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/3/14
Meeting Date

Topic _____

Name Gerard Sommers

Bill Number 286
(if applicable)

Job Title _____

Amendment Barcode _____
(if applicable)

Address 8164 English Elm d

Phone GERARDF.SOMMERS@fla1.com

Spring Hill FL 34606
Street City State Zip

E-mail 585-613-5571

Speaking: For Against Information

Representing self

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/3/14
Meeting Date

Topic Masonry

Bill Number SB 286
(if applicable)

Name Richard Watson

Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address P.O. Box 10035

Phone 850-222-6000

Street _____
City Tallahassee State FL Zip 32302

E-mail rick@r.watsonandassociates.com

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/3/14
Meeting Date

Topic Masonry Education legislation

Bill Number 286
(if applicable)

Name Carol Bower

Amendment Barcode _____
(if applicable)

Job Title VP Government Affairs

Address 3730 Coconut Creek Pkwy Suite 200
Street
Coconut Creek FL 33066
City State Zip

Phone 954-465-6811

E-mail cbower@caracraftflorida.com

Speaking: For Against Information

Representing ~~AB~~ Associated Builders and Contractors FL East Coast Chapter

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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APR 3, 2014
Meeting Date

Topic MASONRY EDUCATION

Bill Number 286 (if applicable)

Name MIKE MURPHY

Amendment Barcode (if applicable)

Job Title PRESIDENT

Address 6353 LEE VISTA BLVD

Phone

ORLANDO FL 32822
City State Zip

E-mail

Speaking: For Against Information

Representing FLORIDA CONCRETE AND PRODUCTS ASSOC

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/3/14

Meeting Date

Topic Concrete masonry Education Act

Bill Number 286

Name Curtis Leonard

(if applicable)

Job Title Advocate

Amendment Barcode (if applicable)

Address 645 Riverpark Circle

Phone 407-709-9000

Street

Longwood FL 32779

City

State

Zip

E-mail cleonard@titanamerica.com

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

Representing Titan America

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

Lobbyist registered with Legislature: [] Yes [X] 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.

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THE FLORIDA SENATE
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4-3-2014

Meeting Date

Topic Concrete Masonry Education Act

Bill Number SB 286
(if applicable)

Name JIM PAINTER

Amendment Barcode _____
(if applicable)

Job Title OWNER

Address 2425 NE 19th Drive
Street
Gainesville FL 32609
City State Zip

Phone 352-378-7511

E-mail jim@paintermasonry.com

Speaking: For Against Information

Representing PAINTER MASONRY INC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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April 3, 2014
Meeting Date

Topic Masonry Education Act

Bill Number 286
(if applicable)

Name Patrick McLaughlin

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 398 Camino Cardenas Blvd

Phone 561-239-2462

Boca Raton FL 33432
City State Zip

E-mail pat@FloridaMasonry.com

Speaking: For Against Information

Representing Masonry Association of Florida

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.

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THE FLORIDA SENATE
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4-3-14

Meeting Date

Topic Concrete Masonry Education Act

Bill Number SB 286
(if applicable)

Name Rocky Jenkins

Amendment Barcode _____
(if applicable)

Job Title Director

Address 880 Maple Ridge Drive

Phone 321 543 1415

Street

Merritt Island FL 32952

City

State

Zip

E-mail rockys.jenkins@
cemex.com

Speaking: For Against Information

Representing CEMEX

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.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

February 19, 2014

The Honorable Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

CS/Senate Bill 286, Concrete Masonry Act, has been referred to the Committee on Governmental Oversight and Accountability. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

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 872

INTRODUCER: Health Policy Committee and Senator Richter and others

SUBJECT: Alzheimer's Disease

DATE: April 2, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 872 makes a number of changes related to Alzheimer's disease that implement recommendations of the Purple Ribbon Task Force which was created by the Legislature in 2012.

The bill requires the Division of Emergency Management (DEM), in coordination with local emergency management agencies, to maintain a registry of persons with special needs using an electronic registration form and database. The bill requires memory disorder clinics, and authorizes licensed physicians and pharmacies, to provide information and assistance to individuals with special needs and their caregivers regarding special needs shelter registration.

The bill requires county health departments to staff special needs shelters with a person who is familiar with the needs of persons with Alzheimer's disease, and requires that all special needs shelters establish designated sheltering areas for persons with Alzheimer's disease or related dementia.

The bill creates the Ed and Ethel Moore Alzheimer's Disease Research Program (program) to fund research for the prevention and cure of Alzheimer's disease. The bill establishes program goals and provides for the award of grants and fellowships through a competitive, peer-reviewed process based on scientific merit. The bill also creates the Alzheimer's Disease Research Grant Advisory Board (board), which is an 11-member board of clinical professionals, to advise the

State Surgeon General on the program and funding awards made under it. The bill requires the board to report annually on a number of measures related to the program.

Finally, the bill requires the Department of Elder Affairs (DOEA) to develop performance standards for memory disorder clinics and to condition contract funding on compliance with the standards.

II. Present Situation:

Alzheimer's Disease

Alzheimer's disease is a progressive, degenerative disorder that attacks the brain's nerve cells and results in loss of memory, thinking, and language skills, and behavioral changes.¹

Alzheimer's disease was named after Dr. Alois Alzheimer, a German physician, who in the early 1900's cared for a 51-year-old woman suffering from severe dementia. Upon the woman's death, Dr. Alzheimer conducted a brain autopsy and found bundles of neurofibers and plaques in her brain, which are distinguishing characteristics of what we call Alzheimer's disease today.²

More than 5 million Americans currently live with Alzheimer's disease, and that number is projected to rise to 16 million by 2050.³ As the life expectancy for Americans has continued to rise, so has the number of new cases of Alzheimer's disease. For instance, in 2000 there were an estimated 411,000 new cases of Alzheimer's disease in the United States, and in 2010 that number was estimated to be 454,000 – a 10 percent increase.⁴ The number is expected to rise to 959,000 new cases of Alzheimer's disease by 2050, a 130 percent increase from 2000.⁵ Specifically in Florida, approximately 360,000 people age 65 or older had Alzheimer's disease in 2000 and in 2010 that number had risen to 450,000.⁶

As the number of people with Alzheimer's disease increases, so does the cost of caring for these individuals. In 2013, the aggregate cost for health care, long-term care, and hospice for persons with Alzheimer's and other dementia was estimated to be \$203 billion. That number is projected to be \$1.2 trillion by 2050.⁷ A major contributing factor to the cost of care for persons with Alzheimer's disease is that these individuals have more hospital stays, skilled nursing home stays, and home health care visits than older persons who do not have Alzheimer's disease. Research shows that 29 percent of individuals with Alzheimer's disease who have Medicare also have Medicaid coverage, which pays for nursing home care and other long-term care services.⁸

¹ Alzheimer's Foundation of America, *About Alzheimer's, Definition of Alzheimer's*, <http://www.alzfdn.org/AboutAlzheimers/definition.html> (last visited Feb. 25, 2014).

² Michael Plontz, *A Brief History of Alzheimer's Disease*, TODAY'S CAREGIVER, http://www.caregiver.com/channels/alz/articles/a_brief_history.htm (last visited Feb. 25, 2014).

³ Alzheimer's Association., *Fact Sheet: 2013 Alzheimer's Disease Facts and Figures* (March 2013), available at http://www.alz.org/documents_custom/2013_facts_figures_fact_sheet.pdf (last visited Feb. 25, 2014).

⁴ Alzheimer's Association., *2013 Alzheimer's Disease Facts and Figures*, 9 ALZHEIMER'S & DEMENTIA (Issue 2) at 20, available at http://www.alz.org/downloads/facts_figures_2013.pdf (last visited Feb. 25, 2014).

⁵ *Id.*

⁶ *Id.* at 21.

⁷ *Id.* at 49.

⁸ *Id.* at 39.

The total Medicaid spending for people with Alzheimer's disease (and other dementia) in 2013 is projected to be \$37 billion.⁹

In addition to the cost of health care, there is a significant cost associated with unpaid caregivers. An unpaid caregiver is primarily a family member, but can also be other relatives or friends. These caregivers often provide assistance with daily activities, such as shopping for groceries, preparing meals, bathing, dressing, grooming, assisting with mobility, helping the person take medications, making arrangements for medical care, and performing other household chores. In 2012, 15.4 million unpaid caregivers provided an estimated 17.5 billion hours of unpaid care, valued at \$216.4 billion.¹⁰ In 2010, there were 1,015,000 million caregivers in Florida who provided an estimated value of unpaid care reaching nearly \$14.3 million.¹¹

Florida Purple Ribbon Task Force

In 2012, the Legislature established the Purple Ribbon Task Force (task force) within the DOEA to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on a comprehensive set of issues related to Alzheimer's disease and related forms of dementia. Specifically, the task force was required to:¹²

- Submit an interim study on state trends on persons with Alzheimer's disease and their needs;
- Assess the current and future impact of Alzheimer's disease and related forms of dementia on the state;
- Examine the existing industries, services, and resources addressing the needs of persons having Alzheimer's disease or a related form of dementia and their family caregivers;
- Examine the needs of persons of all cultural backgrounds having Alzheimer's disease or a related form of dementia and how their lives are affected by the disease from younger-onset, through mid-stage, to late-stage;
- Develop a strategy to mobilize a state response to Alzheimer's disease; and,
- Hold public meetings and employ technological means to gather feedback on the recommendations submitted by persons having Alzheimer's disease or a related form of dementia and their family caregivers and by the general public.

Other issues to be addressed by the task force included:

- The role of the state in providing community-based care, long-term care, family caregiver support, and assistance to persons who are in the early stages of Alzheimer's disease, who have younger-onset Alzheimer's disease, or who have a related form of dementia;
- The development of state policy with respect to persons having Alzheimer's disease or a related form of dementia;
- Surveillance of persons having Alzheimer's disease or a related form of dementia for the purpose of accurately estimating the number of such persons in the state;
- Existing services, resources, and capacity; including:
 - The type, cost, and availability of dementia services in the state;

⁹ *Id.* at 49.

¹⁰ This number was established by using an average of 21.9 hours of care a week with a value of \$12.33 per hour. (*Id.* at 30).

¹¹ *Id.* at 32.

¹² Ch. 2012-172, Laws of Fla.

- Policy requirements and effectiveness for dementia-specific training for professionals providing care;
- Quality care measures employed by providers of care;
- The capability of public safety workers and law enforcement officers to respond to persons having Alzheimer's disease or a related form of dementia;
- The availability of home and community-based services and respite care for persons having Alzheimer's disease or a related form of dementia and education and support services to assist their families and caregivers;
- An inventory of long-term care facilities and community-based services serving persons having Alzheimer's disease or a related form of dementia;
- The adequacy and appropriateness of geriatric-psychiatric units for persons having behavior disorders associated with Alzheimer's disease or other dementia;
- Residential assisted living options for persons having Alzheimer's disease or a related form of dementia;
- The level of preparedness of service providers before, during, and after a catastrophic emergency involving a person having Alzheimer's disease or a related form of dementia; and
- Needed state policies or responses.

As its final responsibility, the task force was required to submit final, date-specific recommendations in the form of an Alzheimer's disease state plan to the Governor and Legislature by August 1, 2013.

The task force has issued its final report and recommendations.¹³ Pertinent to this bill are the following recommendations:

- To allocate \$10 million annually to support Alzheimer's disease research through a peer-reviewed grant program;¹⁴
- To develop a well-coordinated and dementia-capable emergency management system, including reforms to the special needs shelter and registry function;¹⁵ and,
- To fund memory disorder clinics according to performance standards and benchmark goals related to base level and incentive funding.¹⁶

Alzheimer's Research Funding

The 2014 budget passed by Congress and signed into law by the President on January 17, 2014, contains increased funding for Alzheimer's disease initiatives. The new federal funding includes a \$100 million increase for the National Institute on Aging (NIA)¹⁷ for Alzheimer's research,

¹³ Florida Department of Elder Affairs, *Purple Ribbon Task Force Final Report and Recommendations* (2013), available at http://elderaffairs.state.fl.us/doea/purple_ribbon/PRTF_final_report.pdf (last visited Feb. 26, 2014).

¹⁴ *Id.* at 30.

¹⁵ *Id.* at 64 – 66.

¹⁶ *Id.* at 72 – 73.

¹⁷ NIA is one of the 27 institutes and centers of the National Institutes of Health. NIA is the primary federal agency supporting and conducting Alzheimer's research.

which will be added to what the National Institutes of Health (NIH) estimates will be \$484 million in Alzheimer's research funding across NIH in the 2013 fiscal year.¹⁸

The NIA funds Alzheimer's Disease Centers (ADC) at major medical institutions with the goal of improving diagnosis and care, and ultimately finding a way to cure and possibly prevent Alzheimer's disease. Although each center has its own unique area of emphasis, a common goal of the ADCs is to enhance research on Alzheimer's disease by providing a network for sharing new ideas as well as research results. Collaborative studies draw upon the expertise of scientists from many different disciplines. Currently, there are 29 NIA-funded centers, including one at the Mayo Clinic in Jacksonville.¹⁹

In 2002, the Legislature created the Florida Alzheimer's Center and Research Institute (institute) at the University of South Florida (USF).²⁰ The institute was governed by a not-for-profit corporation, acting as an instrumentality of the state, under the direction of its 16-member Board of Directors. Its mission related to research, education, treatment, prevention, and early detection of Alzheimer's disease.²¹ In 2004, the Legislature renamed the institute the Johnnie B. Byrd, Sr. Alzheimer's Center and Research and funded it with a \$15 million distribution from alcoholic beverage tax collections for the purposes of conducting research, developing and operating integrated data projects, and providing assistance to memory disorder clinics.²² The 2006 Legislature replaced the automatic distribution with a recurring appropriation from General Revenue, and clarified that researchers from any university or established research institution were eligible for funding from the institute.²³ The recurring appropriation was reduced to \$13.5 million in 2007²⁴ and eliminated in 2008.²⁵ In 2009, the statute authorizing the institute was substantially revised to establish the Institute as an entity within and operated by the USF and provided that its budget included any money specifically appropriated in the General Appropriations Act, or otherwise provided to it from private, local, state, or federal sources, or income generated by activities at the Institute.²⁶

Finally, s. 430.501, F.S., creates the Alzheimer's Disease Advisory Committee, appointed by the Governor, to advise the DOEA in the performance of its duties. The committee also has responsibility for awarding research grants to qualified entities from any funds made available to the DOEA through gifts, grants, or other sources.

¹⁸ Alzheimer's Association, *Record \$122 million increase for Alzheimer's disease signed into law by President Obama*, http://www.alz.org/news_and_events/law_by_obama.asp (last visited Feb. 26, 2014).

¹⁹ U.S. Department of Health & Human Services, National Institute on Aging, *Alzheimer's Disease Research Centers*, <http://www.nia.nih.gov/alzheimers/alzheimers-disease-research-centers#florida> (last visited Feb. 26, 2014).

²⁰ Ch. 2002-387, s. 191, Laws of Fla.; ch. 2002-389, s. 2, Laws of Fla.

²¹ *Id.*

²² Ch. 2004-2, ss. 3 & 5, Laws of Fla.

²³ Ch. 2006-182, s.12, Laws of Fla.

²⁴ Ch. 2007-332, Laws of Fla.

²⁵ Ch. 2008-113, Laws of Fla. The Institute received \$1.25 million in FY 2013–2014 funding via an allocation to the USF Medical Center in the Department of Education's budget.

²⁶ Ch. 2009-60, s. 5, Laws of Fla.

Special Needs Shelters

The Comprehensive Emergency Management Plan (CEMP) is the master operations document for the state in responding to all emergencies, and all catastrophic disasters, whether major or minor.²⁷ The CEMP, which is developed and maintained by the DEM, in coordination with local governments and agencies and organizations with emergency management responsibilities, defines the responsibilities of all levels of government and private, volunteer, and non-governmental organizations that make up the State Emergency Response Team. In general, the CEMP assumes that all emergencies and disasters are local, but local governments may require state assistance.²⁸

The CEMP includes a shelter component which provides policy guidance for sheltering people with special needs.²⁹ Specifically, it states:³⁰

All shelters must meet physical and programmatic accessibility requirements as defined by the Americans with Disabilities Act and Florida Accessibility Codes. Special Needs Shelters provide a higher level of attendant care than general population shelters. Any facility designated as a shelter must meet minimum safety requirements. To ensure consistency with state and national standards, guidelines and best practices, the Division has adopted the American Red Cross (ARC) 4496 Standards for Hurricane Evacuation Shelter Selection.³¹

Each local emergency management agency is required to maintain a registry of persons with special needs.³² The information is used to identify people with special needs, people who may need assistance with transportation to the shelters, and to ensure that any area affected by an emergency or disaster has adequate special needs shelter capacity, staffing, equipment, and supplies.³³

The DEM has lead responsibility for community outreach and education about registration and shelter stays.³⁴ However, community-based service providers, including home health agencies, hospices, nurse registries, and home medical equipment providers, and state agencies likely to serve individuals with special needs, including the Department of Children and Families, the Department of Health (DOH), the Agency for Health Care Administration, the Department of Education, the Agency for Persons with Disabilities, and the DOEA, are directed to provide registration information

²⁷ Section 252.35(2)(a), F.S.

²⁸ Florida Division of Emergency Management, *The State of Florida Comprehensive Emergency Management Plan*, 11, (Feb. 2012), available at <http://floridadisaster.org/documents/CEMP/2012/2012%20State%20CEMP%20Basic%20Plan%20-%20Final.pdf> (last visited Feb. 26, 2014). “Initial response is by local jurisdictions working with county emergency management agencies. It is only after local emergency response resources are exhausted, or local resources do not exist to address a given emergency or disaster that state emergency response resources and assistance may be requested by local authorities.” (*Id.* at 19).

²⁹ A “person with special needs” means someone, who during periods of evacuation or emergency, requires sheltering assistance, due to physical impairment, mental impairment, cognitive impairment, or sensory disabilities. (Rule 64-3.010(1), F.A.C.)

³⁰ Florida Division of Emergency Management, *supra* note 28 at 35.

³¹ Available at <http://www.floridadisaster.org/Response/engineers/documents/newarc4496.pdf> (last visited Feb. 26, 2014).

³² Section 252.355(1), F.S.

³³ Florida Department of Health, *Senate Bill 872 Legislative Bill Analysis* (Feb. 5, 2014) (on file with the Senate Health Policy Committee).

³⁴ Section 252.355(2), F.S.

to all of their special needs clients and to collect registration information during the client intake process.³⁵

The law further requires agencies that contract with providers for the care of people with disabilities or who are otherwise dependent on others for care to include emergency and disaster planning conditions in their service contracts. Among other provisions, the contract must include a requirement for the provider to have a procedure to help its clients register for special needs sheltering.³⁶

The DOH, through the county public health units, is tasked with lead responsibility, in coordination with the local emergency management agency, to recruit and staff special needs shelters with appropriate health care personnel, pursuant to a staffing plan developed at the local level.³⁷ Designation and operation of the shelter, however, remains the responsibility of the local emergency management agency,³⁸ although subject to operational standards established by rule of the DOH.³⁹

Admission to a special needs shelter is subject to an assessment of the person's eligibility. A person is eligible if he or she:⁴⁰

- Has special needs;
- Has care needs that exceed basic first aid that is available at the general emergency shelters; and
- Has impairments that are medically stable and do not exceed the capacity, staffing, and equipment of the shelter.

A shelter may accept someone whose needs exceed the eligibility criteria. Decisions related to shelter capacity, both available skills and equipment, are made by the local emergency management agency and the county public health department.⁴¹

Alzheimer's Disease Initiative

In 1985, the Florida Legislature created the Alzheimer's Disease Initiative (ADI) to provide a continuum of services to individuals with Alzheimer's disease and their families.⁴² The ADI has four objectives: (1) to provide supportive services; (2) to establish memory disorder clinics; (3) to provide model day care programs to test new care alternatives; and (4) to establish a research database and brain bank to support research.⁴³ There are 15 memory disorder clinics throughout the state, 13 of which are state funded.⁴⁴ The purpose of these clinics is to conduct research

³⁵ Section 252.355(1) & (6), F.S.

³⁶ Section 252.356(3), F.S.

³⁷ Section 381.0303(1) & (2), F.S.

³⁸ Section 381.0303(2)(d), F.S.

³⁹ Section 381.0303(6), F.S., requires the DOH to adopt rules for the following: the definition of "person with special needs;" shelter services; practitioner and facility reimbursement; staffing levels; supplies and equipment; registration procedures; family and caretaker needs; and pre-event planning.

⁴⁰ Rule 64-3.020, F.A.C.

⁴¹ *Id.*

⁴² See ss. 430.501 – 430.504, F.S.

⁴³ Florida Department of Elder Affairs, *Summary of Programs & Services, Alzheimer's Disease Initiative* (Jan. 2013) at 91, available at <http://elderaffairs.state.fl.us/does/pubs/pubs/sops2013/2013%20SOPS%20Section%20D.pdf> (last visited Feb. 25, 2014).

⁴⁴ *Id.*

related to diagnostic technique, therapeutic interventions, and supportive services for persons with Alzheimer's disease and to develop caregiver-training materials.⁴⁵ According to the ADI, the memory disorder clinics are required to:

- Provide services to persons suspected of having Alzheimer's disease or other related dementia;
- Provide 4 hours of in-service training during the contract year to all ADI respite and model day care service providers and develop and disseminate training models to service providers and the DOEA;
- Develop training materials and educational opportunities for lay and professional caregivers and provide specialized training for caregivers and caregiver organizations;
- Conduct service-related applied research;
- Establish a minimum of one annual contact with each respite care and model day care service provider to discuss, plan, develop, and conduct service-related research projects; and
- Plan for the public dissemination of research findings through professional papers and to the general public.⁴⁶

Individuals diagnosed with or suspected of having Alzheimer's disease are eligible for memory disorder clinic services. In the fiscal year 2012-2013, Florida's memory disorder clinics received nearly \$3 million in state funds and served a projected 6,722 clients.⁴⁷

Model day care programs have been established in conjunction with memory disorder clinics to test therapeutic models and provide day care services. These programs provide a safe environment where Alzheimer's patients can socialize with each other, as well as receive therapeutic interventions designed to maintain or improve their cognitive functioning. Model day care programs also provide training for health care and social service personnel in the care of individuals with Alzheimer's disease or related memory disorders. There are currently four model day care programs in the state.⁴⁸

The ADI also includes respite care services, which includes in-home, facility-based, emergency and extended care respite for caregivers who serve individuals with memory disorders.⁴⁹ In addition to respite care services, caregivers and consumers may receive supportive services essential to maintaining individuals with Alzheimer's disease or related dementia in their own homes. The supportive services may include caregiver training and support groups, counseling, consumable medical supplies, and nutritional supplements. Services are authorized by a case manager based on a comprehensive assessment. Alzheimer's Respite Care programs are established in all of Florida's 67 counties.⁵⁰

Statutory Creation of Advisory Bodies, Commissions, or Boards

The statutory creation of any collegial body to serve as an adjunct to an executive agency is subject to certain provisions in s. 20.052, F.S. Such a body may only be created when it is found

⁴⁵ Section 430.502(2), F.S.

⁴⁶ Florida Department of Elder Affairs, *supra* note 43 at 90-91.

⁴⁷ *Id.* at 96.

⁴⁸ *Id.* at 92.

⁴⁹ *Id.* at 91.

⁵⁰ *Id.*

to be necessary and beneficial to the furtherance of a public purpose, and it must be terminated by the Legislature when it no longer fulfills such a purpose. The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of any collegial or advisory bodies.

Private citizen members of any advisory body (with exceptions for members of commissions or boards of trustees) may only be appointed by the Governor, the head of the executive agency to which the advisory body is adjunct, the executive director of the agency, or a Cabinet officer. Private citizen members of a commission or a board of trustees may only be appointed by the Governor, must be confirmed by the Senate, and are subject to the dual-office-holding prohibition of section 5(a) of Article II of the State Constitution.

Members of agency advisory bodies serve for 4-year staggered terms and are ineligible for any compensation other than travel expenses, unless expressly provided otherwise in the State Constitution. Unless an exemption is specified by law, all meetings are public, and records of minutes and votes must be maintained.

III. **Effect of Proposed Changes:**

Section 1 exempts grant programs administered by the Alzheimer's Disease Research Grant Advisory Board (the board) from ch. 120, F.S., the Administrative Procedure Act (APA).⁵¹

Section 2 requires the DEM to develop a special needs shelter registration program by January 1, 2015, and to fully implement the program by March 1, 2015. The bill shifts responsibility for maintaining a special needs registry from the local emergency management agencies to the DEM, working in coordination with the local agencies. In effect, the bill centralizes the registry into a single agency, although still providing access to the local emergency management agencies. The bill directs the DEM to develop a uniform electronic registration form and database, as a minimum component of the registration program, which the local agencies can use to upload registration information they receive. The DEM is directed to develop and post on its website a brochure describing the registration procedures.

The bill adds memory disorder clinics to the existing list of providers and agencies that are required to: give registration information to their special needs clients; and assist emergency management by collecting registration information for persons with special needs during their program intake procedures and establishing education programs for their clients about the registration process and disaster preparedness. These duties are expanded by the bill to require the providers and agencies also to provide registration information to client caregivers and to register their special needs clients annually. The bill specifies that physicians and pharmacies may, but are not required to, perform all of these same duties.

Section 3 requires county health departments to ensure that special needs shelters are staffed with a person who is familiar with the needs of persons with Alzheimer's disease. In addition, the bill requires that all special needs shelters designate areas within the shelter for persons with

⁵¹ The APA establishes comprehensive and standardized administrative procedures pertaining to executive branch agency actions.

Alzheimer's disease or related dementia to maximize their normal routines to the greatest extent possible. The bill specifies that the DOH must work in conjunction with the DEM to adopt rules related to the special needs shelters and includes forms within the scope of the DOH's rulemaking authority.

Section 4 creates the Ed and Ethel Moore Alzheimer's Disease Research Program within the DOH to fund research leading to prevention of or a cure for Alzheimer's disease. Long-term goals of the program are to:

- Enhance the health of Floridians by researching improved prevention, diagnosis, treatment, and cure of Alzheimer's disease.
- Expand the foundation of knowledge relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease.
- Stimulate activity in the state related to Alzheimer's disease research.

The program is modeled after the James and Esther King Biomedical Research Program that is established in s. 215.5602, F.S.

The bill specifies that:

- Program funds may be used only for awards of grants and fellowships through a competitive, peer-reviewed process and expenses related to program administration. Grants will be awarded by the State Surgeon General on the basis of scientific merit.
- Funding applications may be submitted from any university or established research institute⁵² in the state and qualified investigators, regardless of institution, will have equal access to compete for funding.
- Implementation of the program is contingent upon a legislative appropriation.

In addition, the bill creates the 11-member Alzheimer's Disease Research Grant Advisory Board (board) within the DOH, as follows:

- The board consists of two gerontologists, two geriatric psychiatrists, two geriatricians, two neuroscientists, and three neurologists appointed by the State Surgeon General to 4-year terms, except that six of the initial appointees shall serve 2-year terms. Initial appointments must be made by October 1, 2014. Appointees must have experience in Alzheimer's disease or related biomedical research. The board chair is elected by the members to serve as chair for 2 years. No board member may serve on the board more than two consecutive terms.
- The board must adopt internal organization procedures, as necessary, for its organization and establish and follow guidelines for ethical conduct to avoid conflicts of interest. A member may not participate in any discussion or decision related to a research proposal by any entity with which the member has a relationship, whether as governing board member, employee, or contracted party.

⁵² Currently, the DOH defines an "established research institute" as an organization that is any Florida nonprofit or foreign nonprofit covered under ch. 617, F.S., with a physical location in Florida, whose stated purpose and powers are scientific, biomedical or biotechnological research and/or development and is legally registered with the Florida Department of State, Division of Corporations. This includes federal government and non-profit medical and surgical hospitals including Veteran's Administration hospitals. Florida Department of Health, *James and Esther King Biomedical Research Program, Announcement of Funding Opportunity and Call for Applications* (2013-2014), available at <http://www.research.fsu.edu/newsletters/2013/July/documents/2013-2014%20SUMMER%20CALL%20King%20Program.pdf> (last visited Feb. 25, 2014).

- Members of the board serve without compensation.
- The DOH must provide staff to the board.
- The board's role is to:
 - Advise the State Surgeon General on the scope of the program and proposals to be funded;
 - Advise on program priorities and emphases;
 - Assist in the development of appropriate linkages to nonacademic entities; and,
 - Develop and provide oversight of mechanisms for disseminating research results.
- The board must submit a fiscal year progress report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by February 15 annually that includes:
 - A list of funded projects;
 - A list of funded researchers;
 - A list of publications in peer-reviewed journals involving research supported by grants or fellowships awarded under the Program;
 - The state ranking and total amount of Alzheimer's disease research funding received from the National Institutes of Health;
 - New grants for Alzheimer's disease research which were based on researched funded by the Program;
 - Progress toward the goals of the program; and,
 - Recommendations to further the mission of the program.

Section 5 directs the DOEA to develop performance standards for memory disorder clinics; to include the standards as a condition of each clinic's funding contract; and to measure and score each clinic based on the standards.

Base-level funding standards must address, at a minimum, quality of care, comprehensiveness of services, and access to services.

Standards for incentive funding beyond base-level funding, subject to legislative appropriation, include:

- A significant increase in the volume of clinical services;
- A significant increase in public outreach to low-income and minority populations;
- A significant increase in the acceptance of Medicaid and commercial insurance policies; and
- Significant institutional financial commitments.

Section 6 provides an effective date of 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:

Section 4 of the bill creates the Ed and Ethel Moore Alzheimer's Disease Research Program. The bill states that funds appropriated for the program must be used exclusively for the award of grants and fellowships through a competitive, peer-reviewed process for certain research. An advisory board makes recommendations on the submitted proposals, but the Surgeon General awards, after consultation with the advisory board, the grants based on scientific merit.

The only criteria for the Surgeon General's decision regarding to whom to award the grant is "scientific merit." The bill does not provide any guidelines as to how "scientific merit" should be interpreted and section 1 of the bill appears to preclude the promulgation of rules to further implement the grant process. Thus, the authority granted to the Surgeon General may constitute an unconstitutional delegation of legislative authority. An invalid delegation of authority violates the principle of separation of powers in Art. II, s. 3, Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The research program created by the bill, if funded, will have a positive fiscal impact on any private institutions or researchers who are awarded grants or fellowships under the program.

It is not clear; however, whether incentive funding for the Memory Disorder Clinics, as contemplated by the bill, would be the result of a supplemental appropriation for the program, or a redistribution of the existing appropriation. Thus, it is not possible to determine the economic impact on the programs at this time.

C. Government Sector Impact:

The DEM estimates the nonrecurring cost to develop, test, and implement the electronic registry at \$400,000, and the recurring cost to maintain and house the system also at \$400,000. The DEM has identified federal grant funding that will cover the cost.⁵³

Local governments may incur costs related to facilities they now designate as special needs shelters due to the requirement to provide dedicated space at each for persons with

⁵³ Florida Department of Law Enforcement, *Senate Bill 872 Legislative Bill Analysis* (Feb. 26, 2014) (on file with the Senate Health Policy Committee).

Alzheimer's disease. Not all facilities may be able to accommodate the dedicated space requirement. The DOH suggests that the requirement may be addressed in those shelters that cannot provide dedicated secure shelter space that would prevent wandering and elopement by providing increased security. The DOH estimates the cost at \$480 per 24-hour period for each point of egress.⁵⁴

The bill requires a minimum of one staff person at each special needs shelter who is familiar with the needs of patients with Alzheimer's disease. The DOH indicates that appropriate staffing would mean at least one nurse per facility and possibly a nurse's aide for any person who presents without a caregiver. Those county health departments whose special needs shelter personnel lack the expertise in Alzheimer's disease may need to contract for services through a nurse staffing company. The DOH estimates the cost per shelter for a 24-hour period at \$1,560 for nurse coverage and an additional \$432 for a nurse's aide to assist with any unaccompanied patients. Currently, there are 127 special needs shelters statewide.⁵⁵ It is not possible to estimate how many shelters would be activated or for how long in any given year.

The research program created by the bill, if funded, will have a positive fiscal impact on any public institutions or researchers employed at public institutions who are awarded grants or fellowships under the program.

The DOH anticipates expenses for the research program related to contract management, peer review, and support of the board. Total projected expenses are \$629,503 in fiscal year 2014–2015 and \$642,448 in fiscal year 2015–2016. Expenses include two FTE and related expenses; peer review honoraria; and board support expenses.⁵⁶

The requirement for performance standards for the memory disorder clinics⁵⁷ may enable more effective administration of the Memory Disorder Clinic funding.

VI. Technical Deficiencies:

Section 1 of the bill exempts the grant program “administered” by the advisory council from ch. 120, F.S. This presumably is intended to negate the need to adopt rules relating to how the council makes recommendations and/or how the Surgeon General grants the awards. However, nothing in this bill suggests that the advisory council “administers” the grant program. The advisory council appears to be advisory in nature, and DOH and Surgeon General appear to administer the program. If the intent of the bill is to exempt the grant program the requirements of chapter 120, F.S., the bill could be amended to provide: “This chapter does not apply to grant programs authorized in s. 381.82.” But see “IV. D. Other Constitutional Issues” above.

It may be appropriate to add language to line 305 expressly requiring that awards under the program be pursuant to a competitive, peer-reviewed process. This is a stated element of the

⁵⁴ Florida Department of Health, *supra* note 33.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ The DOEA indicates it has already begun including performance standards for base level funding. Conversation with Mary Hodges, Chief, Bureau of Community & Support Services, Florida Department of Elder Affairs (Feb. 28, 2014).

Program, but not part of the portion of the bill that specifically addresses awards. Similar language appears in s. 215.5602(5)(b) (6), F.S., relating to the James and Esther King Biomedical Research Program, s. 381.922(3)(a), F.S., relating to the William G. “Bill” Bankhead, Jr. and David Coley Cancer Research Program, and s. 381.84(6), F.S., relating to contracts awarded under the Comprehensive Statewide Tobacco Education and Use Prevention Program. Line 305 could be amended with the language that appears in Florida’s other competitive grant programs to read: “consultation with the board, on the basis of scientific merit as determined by an open, competitive, peer-reviewed process to ensure objectivity, consistency, and high quality.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.80, 252.355, 381.0303, and 430.502.

This bill creates section 381.82 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 Health Policy on March 19, 2014:

Requires the DEM to have developed the special needs shelter registration program by January 1, 2015, with full implementation by March 1, 2015.

- Reduces the Alzheimer’s Disease Research Grant Advisory Board by one member, from 12 to 11 and revises the composition of the board by adding two neuroscientists and reducing the number of gerontologists, geriatric psychiatrists, and geriatricians each by one, from three to two.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senators Richter and Soto

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1 A bill to be entitled
 2 An act relating to Alzheimer's disease; amending s.
 3 120.80, F.S.; exempting grant programs administered by
 4 the Alzheimer's Disease Research Grant Advisory Board
 5 from the Administrative Procedure Act; amending s.
 6 252.355, F.S.; requiring the Division of Emergency
 7 Management, in coordination with local emergency
 8 management agencies, to maintain a registry of persons
 9 with special needs; requiring the division to develop
 10 and maintain a special needs shelter registration
 11 program by a specified date; requiring specified
 12 agencies and authorizing specified health care
 13 providers to provide registration information to
 14 special needs clients or their caregivers and to
 15 assist emergency management agencies in registering
 16 persons for special needs shelters; amending s.
 17 381.0303, F.S.; providing additional staffing
 18 requirements for special needs shelters; requiring
 19 special needs shelters to establish designated shelter
 20 areas for persons with Alzheimer's disease or related
 21 forms of dementia; authorizing the Department of
 22 Health, in coordination with the division, to adopt
 23 rules relating to standards for the special needs
 24 registration program; creating s. 381.82, F.S.;
 25 establishing the Ed and Ethel Moore Alzheimer's
 26 Disease Research Program within the department;
 27 requiring the program to provide grants and
 28 fellowships for research relating to Alzheimer's
 29 disease; creating the Alzheimer's Disease Research

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30 Grant Advisory Board; providing for appointment and
 31 terms of members; providing for organization, duties,
 32 and operating procedures of the board; requiring the
 33 department to provide staff to assist the board in
 34 carrying out its duties; requiring the board to
 35 annually submit recommendations for proposals to be
 36 funded; requiring a report to the Governor,
 37 Legislature, and State Surgeon General; providing that
 38 implementation of the program is subject to
 39 appropriation; amending s. 430.502, F.S.; requiring
 40 the Department of Elderly Affairs to develop minimum
 41 performance standards for memory disorder clinics to
 42 receive base-level annual funding; requiring the
 43 department to provide incentive-based funding, subject
 44 to appropriation, for certain memory disorder clinics;
 45 providing an effective date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Subsection (15) of section 120.80, Florida
 50 Statutes, is amended to read:

51 120.80 Exceptions and special requirements; agencies.—

52 (15) DEPARTMENT OF HEALTH.—

53 (a) Notwithstanding s. 120.57(1)(a), formal hearings may
 54 not be conducted by the State Surgeon General, the Secretary of
 55 Health Care Administration, or a board or member of a board
 56 within the Department of Health or the Agency for Health Care
 57 Administration for matters relating to the regulation of
 58 professions, as defined by chapter 456. Notwithstanding s.

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59 120.57(1) (a), hearings conducted within the Department of Health
 60 in execution of the Special Supplemental Nutrition Program for
 61 Women, Infants, and Children; Child Care Food Program;
 62 Children's Medical Services Program; the Brain and Spinal Cord
 63 Injury Program; and the exemption from disqualification reviews
 64 for certified nurse assistants program need not be conducted by
 65 an administrative law judge assigned by the division. The
 66 Department of Health may contract with the Department of
 67 Children and Families ~~Family Services~~ for a hearing officer in
 68 these matters.

69 (b) This chapter does not apply to grant programs
 70 administered by the Alzheimer's Disease Research Grant Advisory
 71 Board pursuant to s. 381.82.

72 Section 2. Section 252.355, Florida Statutes, is amended to
 73 read:

74 252.355 Registry of persons with special needs; notice;
 75 registration program.-

76 (1) In order to meet the special needs of persons who would
 77 need assistance during evacuations and sheltering because of
 78 physical, mental, cognitive impairment, or sensory disabilities,
 79 the division, in coordination with each local emergency
 80 management agency in the state, shall maintain a registry of
 81 persons with special needs located within the jurisdiction of
 82 the local agency. The registration shall identify those persons
 83 in need of assistance and plan for resource allocation to meet
 84 those identified needs.

85 (2) In order to ensure that all persons with special needs
 86 may register, the division shall develop and maintain a special
 87 needs shelter registration program. The registration program

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88 must be developed by January 1, 2015, and fully implemented by
 89 March 1, 2015.

90 (a) The registration program shall include, at a minimum, a
 91 uniform electronic registration form and a database for
 92 uploading and storing submitted registration forms which may be
 93 accessed by the appropriate local emergency management agency.
 94 The link to the registration form shall be easily accessible on
 95 each local emergency management agency's website. Upon receipt
 96 of a paper registration form, the local emergency management
 97 agency shall enter the person's registration information into
 98 the database.

99 (b) To assist the local emergency management agency in
 100 identifying ~~such~~ persons with special needs, home health
 101 agencies, hospices, nurse registries, home medical equipment
 102 providers, the Department of Children and ~~Families~~ Family
 103 ~~Services~~, the Department of Health, the Agency for Health Care
 104 Administration, the Department of Education, the Agency for
 105 Persons with Disabilities, the ~~and~~ Department of Elderly
 106 Affairs, and memory disorder clinics shall, and any physician
 107 licensed under chapter 458 or chapter 459 and any pharmacy
 108 licensed under chapter 465 may, annually ~~shall~~ provide
 109 registration information to all of their special needs clients
 110 or their caregivers and to all persons with special needs who
 111 ~~receive services~~. The division shall develop a brochure that
 112 provides information regarding special needs shelter
 113 registration procedures. The brochure shall be published on the
 114 division's website. All appropriate agencies and community-based
 115 service providers, including memory disorder clinics, home
 116 health care providers, hospices, nurse registries, and home

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117 medical equipment providers shall, and any physician licensed
 118 under chapter 458 or chapter 459 may, assist emergency
 119 management agencies by annually registering persons with special
 120 needs for special needs shelters, collecting registration
 121 information for persons with special needs as part of the
 122 program intake process, and establishing programs to educate
 123 clients about the registration process and disaster preparedness
 124 safety procedures. A client of a state-funded or federally
 125 funded service program who has a physical, mental, or cognitive
 126 impairment or sensory disability and who needs assistance in
 127 evacuating or while in a shelter must register as a person with
 128 special needs. The registry shall be updated annually. The
 129 registration program shall give persons with special needs the
 130 option of preauthorizing emergency response personnel to enter
 131 their homes during search and rescue operations if necessary to
 132 ensure ~~assure~~ their safety and welfare following disasters.

133 (c)(2) The division shall be the designated lead agency
 134 responsible for community education and outreach to the public,
 135 including special needs clients, regarding registration and
 136 special needs shelters and general information regarding shelter
 137 stays.

138 (d)(4)(a) On or before May 31 of each year, each electric
 139 utility in the state shall annually notify residential customers
 140 in its service area of the availability of the registration
 141 program available through their local emergency management
 142 agency by:

143 1. An initial notification upon the activation of new
 144 residential service with the electric utility, followed by one
 145 annual notification between January 1 and May 31; or

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146 2. Two separate annual notifications between January 1 and
 147 May 31.

148
 149 ~~(b)~~ The notification may be made by any available means,
 150 including, but not limited to, written, electronic, or verbal
 151 notification, and may be made concurrently with any other
 152 notification to residential customers required by law or rule.

153 (3) A person with special needs must be allowed to bring
 154 his or her service animal into a special needs shelter in
 155 accordance with s. 413.08.

156 ~~(4)(5)~~ All records, data, information, correspondence, and
 157 communications relating to the registration of persons with
 158 special needs as provided in subsection (1) are confidential and
 159 exempt from the ~~provisions of~~ s. 119.07(1), except that such
 160 information shall be available to other emergency response
 161 agencies, as determined by the local emergency management
 162 director. Local law enforcement agencies shall be given complete
 163 shelter roster information upon request.

164 ~~(6)~~ All ~~appropriate agencies and community-based service~~
 165 ~~providers, including home health care providers, hospices, nurse~~
 166 ~~registries, and home medical equipment providers, shall assist~~
 167 ~~emergency management agencies by collecting registration~~
 168 ~~information for persons with special needs as part of program~~
 169 ~~intake processes, establishing programs to increase the~~
 170 ~~awareness of the registration process, and educating clients~~
 171 ~~about the procedures that may be necessary for their safety~~
 172 ~~during disasters. Clients of state or federally funded service~~
 173 ~~programs with physical, mental, cognitive impairment, or sensory~~
 174 ~~disabilities who need assistance in evacuating, or when in~~

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175 ~~shelters, must register as persons with special needs.~~

176 Section 3. Present subsections (3) through (7) of section
177 381.0303, Florida Statutes, are redesignated as subsections (4)
178 through (8), respectively, paragraph (b) of subsection (2) and
179 present subsection (6) are amended, and a new subsection (3) is
180 added to that section, to read:

181 381.0303 Special needs shelters.—

182 (2) SPECIAL NEEDS SHELTER PLAN; STAFFING; STATE AGENCY
183 ASSISTANCE.—If funds have been appropriated to support disaster
184 coordinator positions in county health departments:

185 (b) County health departments ~~shall~~, in conjunction with
186 the local emergency management agencies, have the lead
187 responsibility for coordination of the recruitment of health
188 care practitioners to staff local special needs shelters. County
189 health departments shall assign their employees to work in
190 special needs shelters when those employees are needed to
191 protect the health and safety of persons with special needs.
192 County governments shall assist the department with nonmedical
193 staffing and the operation of special needs shelters. The local
194 health department and emergency management agency shall
195 coordinate these efforts to ensure appropriate staffing in
196 special needs shelters, including a staff member who is familiar
197 with the needs of persons with Alzheimer's disease.

198 (3) SPECIAL CARE FOR PERSONS WITH ALZHEIMER'S DISEASE OR
199 RELATED FORMS OF DEMENTIA.—All special needs shelters must
200 establish designated shelter areas for persons with Alzheimer's
201 disease or related forms of dementia to enable those persons to
202 maintain their normal habits and routines to the greatest extent
203 possible.

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204 (7)(6) RULES.—The department, in coordination with the
205 Division of Emergency Management, may have the authority to adopt
206 rules ~~necessary~~ to implement this section. Rules shall include:

207 (a) The definition of a "person with special needs,"
208 including eligibility criteria for individuals with physical,
209 mental, cognitive impairment, or sensory disabilities and the
210 services a person with special needs can expect to receive in a
211 special needs shelter.

212 (b) The process for special needs shelter health care
213 practitioners and facility reimbursement for services provided
214 in a disaster.

215 (c) Guidelines for special needs shelter staffing levels to
216 provide services.

217 (d) The definition of and standards for special needs
218 shelter supplies and equipment, including durable medical
219 equipment.

220 (e) Standards for the special needs shelter registration
221 program process, including all necessary forms and guidelines
222 for addressing the needs of unregistered persons in need of a
223 special needs shelter.

224 (f) Standards for addressing the needs of families where
225 only one dependent is eligible for admission to a special needs
226 shelter and the needs of adults with special needs who are
227 caregivers for individuals without special needs.

228 (g) The requirement of the county health departments to
229 seek the participation of hospitals, nursing homes, assisted
230 living facilities, home health agencies, hospice providers,
231 nurse registries, home medical equipment providers, dialysis
232 centers, and other health and medical emergency preparedness

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233 stakeholders in pre-event planning activities.

234 Section 4. Section 381.82, Florida Statutes, is created to
235 read:

236 381.82 Ed and Ethel Moore Alzheimer's Disease Research
237 Program.—

238 (1) There is established the Ed and Ethel Moore Alzheimer's
239 Disease Research Program within the Department of Health. The
240 purpose of the program is to fund research leading to prevention
241 of or a cure for Alzheimer's disease. The long-term goals of the
242 program are to:

243 (a) Enhance the health of Floridians by researching
244 improved prevention, diagnosis, treatment, and cure of
245 Alzheimer's disease.

246 (b) Expand the foundation of knowledge relating to the
247 prevention, diagnosis, treatment, and cure of Alzheimer's
248 disease.

249 (c) Stimulate economic activity in the state in areas
250 related to Alzheimer's disease research.

251 (2) (a) Funds appropriated for the Ed and Ethel Moore
252 Alzheimer's Disease Research Program shall be used exclusively
253 for the award of grants and fellowships through a competitive,
254 peer-reviewed process for research relating to the prevention,
255 diagnosis, treatment, and cure of Alzheimer's disease and for
256 expenses incurred in the administration of this section.
257 Priority shall be granted to research designed to prevent or
258 cure Alzheimer's disease.

259 (b) Applications for Alzheimer's disease research funding
260 under the program may be submitted from any university or
261 established research institute in the state. All qualified

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262 investigators in the state, regardless of institution
263 affiliation, shall have equal access and opportunity to compete
264 for research funding. The following types of applications may be
265 considered for funding:

266 1. Investigator-initiated research grants.

267 2. Institutional research grants.

268 3. Predoctoral and postdoctoral research fellowships.

269 4. Collaborative research grants, including those that
270 advance the finding of cures through basic or applied research.

271 (3) There is created the Alzheimer's Disease Research Grant
272 Advisory Board within the Department of Health.

273 (a) The board shall consist of 11 members appointed by the
274 State Surgeon General. The board shall be composed of two
275 gerontologists, two geriatric psychiatrists, two geriatricians,
276 two neuroscientists, and three neurologists. Initial
277 appointments to the board shall be made by October 1, 2014. The
278 board members shall serve 4-year terms, except that, to provide
279 for staggered terms, six of the initial appointees shall serve
280 2-year terms and six shall serve 4-year terms. All subsequent
281 appointments shall be for 4-year terms. The chair of the board
282 shall be elected from the membership of the board and shall
283 serve as chair for 2 years. An appointed member may not serve
284 more than two consecutive terms. Appointed members must have
285 experience in Alzheimer's disease or related biomedical
286 research. The board shall adopt internal organizational
287 procedures as necessary for its organization. The board shall
288 establish and follow guidelines for ethical conduct and adhere
289 to a policy established to avoid conflicts of interest. A member
290 of the board may not participate in any discussion or decision

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291 of the board or a panel with respect to a research proposal by
 292 any firm, entity, or agency with which the member is associated
 293 as a member of the governing body or as an employee or with
 294 which the member has entered into a contractual arrangement.

295 (b) The department shall provide such staff, information,
 296 and other assistance as necessary to assist the board in
 297 carrying out its responsibilities. Members of the board shall
 298 serve without compensation and may not receive reimbursement for
 299 per diem or travel expenses.

300 (c) The board shall advise the State Surgeon General as to
 301 the scope of the research program and shall submit its
 302 recommendations for proposals to be funded to the State Surgeon
 303 General by December 15 of each year. Grants and fellowships
 304 shall be awarded by the State Surgeon General, after
 305 consultation with the board, on the basis of scientific merit.
 306 Other responsibilities of the board may include, but are not
 307 limited to, providing advice on program priorities and emphases;
 308 assisting in the development of appropriate linkages to
 309 nonacademic entities, such as voluntary organizations, health
 310 care delivery institutions, industry, government agencies, and
 311 public officials; and developing and providing oversight
 312 regarding mechanisms for the dissemination of research results.

313 (4) The board shall submit a fiscal-year progress report on
 314 the programs under its purview to the Governor, the President of
 315 the Senate, the Speaker of the House of Representatives, and the
 316 State Surgeon General by February 15 of each year. The report
 317 must include:

318 (a) A list of research projects supported by grants or
 319 fellowships awarded under the program.

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320 (b) A list of recipients of program grants or fellowships.

321 (c) A list of publications in peer-reviewed journals
 322 involving research supported by grants or fellowships awarded
 323 under the program.

324 (d) The state ranking and total amount of Alzheimer's
 325 disease research funding allocated to the state from the
 326 National Institutes of Health.

327 (e) New grants for Alzheimer's disease research which were
 328 funded based on research supported by grants or fellowships
 329 awarded under the program.

330 (f) Progress toward programmatic goals, particularly in the
 331 prevention, diagnosis, treatment, and cure of Alzheimer's
 332 disease.

333 (g) Recommendations to further the mission of the program.

334 (5) Implementation of the Ed and Ethel Moore Alzheimer's
 335 Disease Research Program is subject to legislative
 336 appropriation.

337 Section 5. Present subsections (3) through (9) of section
 338 430.502, Florida Statutes, are redesignated as subsections (6)
 339 through (12), respectively, new subsections (3), (4), and (5)
 340 are added to that section, and present subsections (4), (5),
 341 (8), and (9) of that section are amended, to read:

342 430.502 Alzheimer's disease; memory disorder clinics and
 343 day care and respite care programs.—

344 (3) The department shall develop minimum performance
 345 standards for memory disorder clinics and include those
 346 standards in each memory disorder clinic contract as a condition
 347 for receiving base-level funding. The performance standards must
 348 address, at a minimum, quality of care, comprehensiveness of

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349 services, and access to services.

350 (4) The department shall develop performance goals that
 351 exceed the minimum performance standards developed under
 352 subsection (3) which must be achieved in order for a memory
 353 disorder clinic to be eligible for incentive funding above the
 354 base level, subject to legislative appropriation. Incentive
 355 funding shall be based on criteria including, but not limited
 356 to:

357 (a) A significant increase in the volume of clinical
 358 services.

359 (b) A significant increase in public outreach to low-income
 360 and minority populations.

361 (c) A significant increase in the acceptance of Medicaid
 362 and commercial insurance policies.

363 (d) Significant institutional financial commitments.

364 (5) The department shall measure and score each memory
 365 disorder clinic based on minimum performance standards and
 366 incentive performance goals.

367 (7)(4) Pursuant to the provisions of s. 287.057, the
 368 department of ~~Elderly Affairs~~ may contract for the provision of
 369 specialized model day care programs in conjunction with the
 370 memory disorder clinics. The purpose of each model day care
 371 program must be to provide service delivery to persons suffering
 372 from Alzheimer's disease or a related memory disorder and
 373 training for health care and social service personnel in the
 374 care of persons having Alzheimer's disease or a related memory
 375 disorder disorders.

376 (8)(5) Pursuant to s. 287.057, the department of ~~Elderly~~
 377 Affairs shall contract for the provision of respite care. All

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378 funds appropriated for the provision of respite care shall be
 379 distributed annually by the department to each funded county
 380 according to an allocation formula. In developing the formula,
 381 the department shall consider the number and proportion of the
 382 county population of individuals who are 75 years of age and
 383 older. Each respite care program shall be used as a resource for
 384 research and statistical data by the memory disorder clinics
 385 established in this part. In consultation with the memory
 386 disorder clinics, the department shall specify the information
 387 to be provided by the respite care programs for research
 388 purposes.

389 (11)(8) The department shall implement the waiver program
 390 specified in subsection (10) (7). The agency and the department
 391 shall ensure the selection of ~~that~~ providers who have a history
 392 of successfully serving persons with Alzheimer's disease ~~are~~
 393 ~~selected~~. The department and the agency shall develop
 394 specialized standards for providers and services tailored to
 395 persons in the early, middle, and late stages of Alzheimer's
 396 disease and designate a level of care determination process and
 397 standard that is most appropriate to this population. The
 398 department and the agency shall include in the waiver services
 399 designed to assist the caregiver in continuing to provide in-
 400 home care. The department shall implement this waiver program
 401 subject to a specific appropriation or as provided in the
 402 General Appropriations Act.

403 (12)(9) Authority to continue the waiver program specified
 404 in subsection (10) (7) shall be automatically eliminated at the
 405 close of the 2010 Regular Session of the Legislature unless
 406 further legislative action is taken to continue it ~~before prior~~

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407 ~~to~~ such time.

408 Section 6. 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)

4/13/14

Meeting Date

Topic

Alzheimer's

Bill Number

872

Name

Elizabeth Gianni

(if applicable)

Job Title

VP Government Relations

Amendment Barcode

(if applicable)

Address

6400 Sangre Road

Street

Orlando FL

City

State

Zip

Phone

4075951919

E-mail

Egiani@SamfordBarham.org

Speaking:

For

Against

Information

Representing

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)

Meeting Date _____

Topic Special Need Registry Bill Number 872

Name Sally Heyman (if applicable)

Job Title County Commissioner - Former House Member Amendment Barcode _____ (if applicable)

Address 111 NW 1 ST Phone 305 375-5128

City Miami State FL Zip 33128 E-mail heyman@miamidade.gov

Speaking: For Against Information

Representing Emergency Management - MIAMI-DODE COUNTY

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)

4/13/14

Meeting Date

Topic Alzheimer's Disease

Bill Number 272
(if applicable)

Name Laura Cantwell

Amendment Barcode _____
(if applicable)

Job Title Associate State Director

Address 400 Camdon Pkwy, Suite 100

Phone 850-570-2110

Street

St. Pete

FL

33716

City

State

Zip

E-mail lcantwell@compas

Speaking: For Against Information

Representing AARP

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/2014
Meeting Date

Topic _____

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

St Petersburg FL 33705
City State Zip

Bill Number 872
(if applicable)

Amendment Barcode _____
(if applicable)

Phone 727/897-9291

E-mail justice2jesus@yahoo.com

Speaking: For Against Information

Representing _____

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/14
Meeting Date

Topic Alzheimers

Bill Number 872
(if applicable)

Name ERIL POOLE

Amendment Barcode _____
(if applicable)

Job Title Asst Leg Director

Address 100 Monroe
Street

Phone 927 4300

Tallah FL 32311
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Assoc. Counties

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/3/14
Meeting Date

Topic Alzheimer's Disease

Bill Number 872
(if applicable)

Name Layne Smith

Amendment Barcode _____
(if applicable)

Job Title Director, State Government Relations

Address 4500 San Pablo Road
Street

Phone 904-953-7334

Jacksonville FL 32224
City State Zip

E-mail smith.layne@mayo.edu

Speaking: For Against Information

Representing Mayo Clinic

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

4.3.14

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

Meeting Date

Topic Alzheimer's

Bill Number 872
(if applicable)

Name Pam Pfeifer

Amendment Barcode _____
(if applicable)

Job Title Assoc. VP, Govt Affairs

Address 12901 Bruce B Downs Blvd

Phone 850.990.3802

Street

Tampa

FL

33612

City

State

Zip

E-mail ppfeifer@health.usf.edu

Speaking: For Against Information

Representing USF Health

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)

4/3/2014

Meeting Date

Topic Alzheimer's/Special Needs Shelters

Bill Number SB 872
(if applicable)

Name Dana Farmer

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 2728 Center View Dr, Ste 102

Phone 850.617.9709

Street

Tallahassee FL 32301

denef2

E-mail disabilityrightsflorida.org

City

State

Zip

Speaking: For Against Information

Representing Disability Rights Florida

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 GARRETT RICHTER

President Pro Tempore
23rd District

COMMITTEES:

Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:

Joint Legislative Budget Commission

March 20, 2014

The Honorable Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

Senate Bill 872, Alzheimer's Disease and the linked bill SB 840, Public Records and Meetings, have been referred to the Committee on Governmental Oversight and Accountability. I would appreciate the placing of these bills on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

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 840

INTRODUCER: Health Policy Committee and Senator Richter

SUBJECT: Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board

DATE: April 2, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 840, which is tied to CS/SB 872, creates a public records exemption for information related to the Alzheimer's Disease Research Grant Advisory Board's (board) receipt and review of research grant applications. The information is designated confidential and exempt, but may be disclosed under certain circumstances. The bill also exempts from the public meetings laws those portions of the Board's meetings at which the grant applications are discussed. The bill requires that the closed meetings be recorded and disclosed under specified circumstances.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

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

Because this bill creates new public records and public meetings exemptions, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Ed and Ethel Moore Alzheimer's Disease Research Program

CS/SB 872, which is tied to CS/SB 840, creates the Ed and Ethel Moore Alzheimer's Disease Research Program to fund research to help prevent or cure Alzheimer's disease. Awards must be made through a competitive, peer-reviewed process in any of the following categories:

- Investigator-initiated research.
- Institutional research.
- Predoctoral and postdoctoral research fellowships.
- Collaborative research.

The bill creates an 11-member Alzheimer's Disease Research Grant Advisory Board to provide the State Surgeon General input on the scope of the research program and its recommendations for proposals to be funded. The State Surgeon General, in turn, awards grants, after consulting with the board, on the basis of scientific merit. The board may also advise on program priorities; assist in developing linkages with nonacademic entities; and develop and provide oversight of mechanisms for disseminating research results.

The board reports annually to the Governor, President of the Senate, Speaker of the House of Representatives, and the State Surgeon General on elements of the program's implementation, its impact on leveraging additional funding, progress towards its goals, and recommendations to further its mission.

Implementation of the program is contingent upon an appropriation.

Public Records and Public Meetings Laws

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

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

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

The Florida Constitution also requires that all meetings of any board or commission of any agency or authority of the state or of any county, municipal corporation, or political subdivision at which official acts are to be taken or public business of such body is to be transacted or discussed be open and noticed to the public.⁶ In addition, the Sunshine Law⁷ requires all meetings of any board or commission of any local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or public 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

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.¹³ It

⁴ Section 119.011(12), F.S., defines “public records” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). But, *see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

⁵ Section 119.07(1)(a), F.S.

⁶ Article I, Section 24(b), of the Florida Constitution.

⁷ Section 286.011, F.S. Section 286.011, F.S., has been construed to apply to any gathering, formal or informal, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by that board or commission. *See generally Hough v. Stembridge*, 278 So.2d 288 (Fla. 3rd DCA 1973).

⁸ Section 286.011(1)-(2), F.S. The intent of the Legislature is to “extend application of the ‘open meeting’ concept so as to bind every ‘board or commission’ of the state, or of any county or political subdivision over which it has dominion or control.” *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971).

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 119.15, 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

requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴ The Act provides that a public records or open meetings exemption may be maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁵ 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.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷

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.¹⁸ 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 exception¹⁹ to the exemption is created.²⁰

III. Effect of Proposed Changes:

The bill creates a public records exemption for grant applications submitted to the Alzheimer's Disease Research Grant Advisory Board and the records, except the final recommendations, generated by the board during its review. The information is confidential and exempt.²¹ 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.).

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ 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?

¹⁸ 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.

¹⁹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²⁰ *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).

²¹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. *See supra* note 9.

records may be released; however, with the express written consent of the person to whom the information pertains or the person's legally authorized representative, or by court order upon a showing of good cause.

The bill further provides that those portions of the board's meetings at which the grant applications are discussed are exempt from the public meetings law. The bill requires that the closed portions of the meetings be recorded and the recordings may be released under the same circumstances as apply to the exempt records—with the express written consent of the person to whom the information pertains or the person's legally authorized representative, or by court order upon a showing of good cause.

The bill provides for repeal of the exemptions pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. The bill states that the public records exemption is necessary to protect the intellectual property of the applicants, to promote scientific innovation, and to ensure a peer review process that conforms to national practices. It states that the public meetings exemption is necessary to ensure candid exchanges among reviewers, thereby ensuring that decisions are based on merit and not subject to bias or undue influence.

The bill takes effect on the same date CS/SB 872 or similar legislation takes effect, if adopted during the 2014 Session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

CS/SB 840 protects sensitive, intellectual data, which if released, could result in economic harm to the applicants if it were obtained and used by others who might be competing for similar grants or to develop pharmaceuticals or other treatments of a proprietary nature.

C. Government Sector Impact:

The impact would be the same for applications from public institutions as described above for applications from private researchers.

In addition, the bill could create a minimal fiscal impact for the DOH, because staff responsible for complying with public records requests may need training related to the new public records exemption.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 381.82(3) 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 Health Policy on March 19, 2014:

- Amends the directory and the effective date to add references to CS/SB 872, which is the substantive tied bill.
- Requires that closed portions of meetings at which applications are discussed be recorded and released in accordance with the procedures applicable to the exempt records.

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 Health Policy; and Senator Richter

588-02825-14

2014840c1

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 amending s. 381.82, F.S.; providing an exemption from
 4 public records requirements for research grant
 5 applications submitted to the Alzheimer's Disease
 6 Research Grant Advisory Board under the Ed and Ethel
 7 Moore Alzheimer's Disease Research Program and records
 8 generated by the board relating to the review of the
 9 applications; providing an exemption from public
 10 meetings requirements for those portions of meetings
 11 of the board during which the research grant
 12 applications are discussed; requiring the recording of
 13 closed portions of meetings; authorizing disclosure of
 14 such confidential information under certain
 15 circumstances; providing for legislative review and
 16 repeal of the exemptions under the Open Government
 17 Sunset Review Act; providing a statement of public
 18 necessity; providing a contingent effective date.

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

20
 21 Section 1. Paragraph (d) is added to subsection (3) of
 22 section 381.82, Florida Statutes, as created by SB 872, 2014
 23 Regular Session, to read:

24 381.82 Ed and Ethel Moore Alzheimer's Disease Research
 25 Program.—

26 (3) There is created the Alzheimer's Disease Research Grant
 27 Advisory Board within the Department of Health.

28 (d)1. Applications submitted to the board for Alzheimer's
 29

Page 1 of 3

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

588-02825-14

2014840c1

30 disease research grants under this section and, with the
 31 exception of final recommendations, records generated by the
 32 board relating to the review of such applications are
 33 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 34 of the State Constitution.

35 2. Portions of a meeting of the board at which applications
 36 for Alzheimer's disease research grants under this section are
 37 discussed are exempt from s. 286.011 and s. 24(b), Art. I of the
 38 State Constitution. The closed portion of a meeting must be
 39 recorded. The recording shall be maintained by the board and
 40 shall be subject to disclosure in accordance with subparagraph
 41 3.

42 3. Information that is held confidential and exempt under
 43 this paragraph may be disclosed with the express written consent
 44 of the individual to whom the information pertains or the
 45 individual's legally authorized representative, or by court
 46 order upon a showing of good cause.

47 4. This paragraph is subject to the Open Government Sunset
 48 Review Act in accordance with s. 119.15 and shall stand repealed
 49 on October 2, 2019, unless reviewed and saved from repeal
 50 through reenactment by the Legislature.

51 Section 2. (1) The Legislature finds that it is a public
 52 necessity that applications for Alzheimer's disease research
 53 grants submitted to the Alzheimer's Disease Research Grant
 54 Advisory Board and records generated by the board relating to
 55 the review of such applications are confidential and exempt from
 56 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 57 State Constitution. The research grant applications and the
 58 records generated by the board relating to the review of such

Page 2 of 3

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

588-02825-14

2014840c1

59 applications contain information of a confidential nature,
60 including ideas and processes, which could injure the affected
61 researchers and stifle scientific innovation if publicly
62 disclosed. Maintaining confidentiality is a hallmark of
63 scientific peer review when awarding grants and is practiced by
64 the National Science Foundation and the National Institutes of
65 Health. The Legislature further finds that any public benefit
66 derived from the disclosure of such information is significantly
67 outweighed by the public and private harm which could result
68 from the disclosure of such applications and records.

69 (2) The Legislature finds that it is a public necessity
70 that portions of meetings of the Alzheimer's Disease Research
71 Grant Advisory Board at which the applications are discussed be
72 held exempt from s. 286.011, Florida Statutes, and s. 24(b),
73 Article I of the State Constitution. Maintaining confidentiality
74 allows for candid exchanges among reviewers critiquing
75 applications. The Legislature further finds that closing access
76 to those portions of meetings of the board during which the
77 Alzheimer's disease research grant applications are discussed
78 serves a public good by ensuring that decisions are based upon
79 merit without bias or undue influence. This exemption is
80 narrowly drawn in that only those portions of meetings at which
81 the applications for research grants are discussed are exempt
82 from public meetings requirements.

83 Section 3. This act shall take effect on the same date that
84 SB 872 or similar legislation takes effect, if such legislation
85 is adopted in the same legislative session or an extension
86 thereof and becomes law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

March 20, 2014

The Honorable Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

Senate Bill 872, Alzheimer's Disease and the linked bill SB 840, Public Records and Meetings, have been referred to the Committee on Governmental Oversight and Accountability. I would appreciate the placing of these bills on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

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 1318

INTRODUCER: Community Affairs Committee and Senator Evers

SUBJECT: Public Records/Public-private Partnerships

DATE: April 2, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Fav/CS
2.	Kim	McVaney	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1318 creates public records and public meetings exemptions for materials related to unsolicited proposals and held by a responsible public entity. The bill provides conditions under which the public records exemption will terminate.

The bill provides a definition of “proprietary confidential business information.”

The bill states that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reenacted by the Legislature.

The bill provides statements of public necessity for the exemptions.

II. Present Situation:

Public Access

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

Paragraph (a) and (b) of Section 24, Art. I of the State Constitution provide the following:

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

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Public-Private Partnerships and the Unsolicited Proposal Procurement Model

A public-private partnership (PPP) is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects.¹ Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.² In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.³

Chapter 287, F.S., governs the procurement process for public-private partnerships (P3s) for public purpose projects. Section 287.05712, F.S., authorizes responsible public entities⁴ to enter

¹ See The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: <http://www.fhwa.dot.gov/ipd/p3/defined/index.htm> (last visited on March 8, 2014).

² See generally The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: <http://www.ncppp.org/ppp-basics/7-keys/> (last visited on March 8, 2014).

³ *Id.*

⁴ Section 287.05712(1)(j), F.S., defines “responsible public entity” as a county, municipality, school board, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

into P3s for specified qualifying projects⁵ if the public entity determines the project is in the public's best interest.⁶

There are different types of PPPs with varying levels of private sector involvement, one of which is the Unsolicited Proposal Procurement Model (UPPM). The UPPM allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.⁷ Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.⁸ A local government's "acceptance" of a proposal results in the publishing of a notice to other prospective proposers for the project.⁹ These other proposers have a certain amount of time in which to submit a competing proposal, after which the local government considers and ranks all of the proposals, including the initial proposal that began the process.¹⁰

Unsolicited proposals from private entities must be accompanied by the following material and information, unless waived by the responsible public entity:¹¹

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of the person who may be contacted for further information concerning the proposal.
- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information the responsible public entity reasonably requests.

⁵ Section 287.05712(1)(i), F.S., defines "qualifying project" as a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects.

⁶ Section 287.05712(5), F.S.

⁷ See *Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 2.

⁸ *Id.*

⁹ Section 287.05712(4)(b), F.S.

¹⁰ Section 287.05712(4)(b) and (6)(c), F.S.

¹¹ Section 287.05712(5), F.S.

The UPPM allows local governments to engage in a PPP without incurring the costs associated with preparation of detailed proposal solicitation documents.¹² Use of the UPPM results in a faster review and procurement process while still allowing for the receipt of competitive project proposals.

Public Record Exemption for Records Related to a Competitive Solicitation

Only the Legislature may create an exemption to public records requirements.¹³ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁴ 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 provisions¹⁵ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁶

Current law does not provide a public record exemption for unsolicited proposals submitted to responsible public entities. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt¹⁷ from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.¹⁸ If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new

¹² Fumero at 2.

¹³ 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).

¹⁴ FLA. CONST., art. I, s. 24(c).

¹⁵ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁶ FLA. CONST., art. I, s. 24(c).

¹⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁸ Section 119.071(1)(b), F.S.

¹⁹ *Id.*

exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

III. Effect of Proposed Changes:

Section 1 makes an unsolicited proposal received by a responsible public entity confidential and exempt from the public records laws until that responsible public entity receives, opens, and ranks the proposals and provides notice of its intended decision. The bill states that an unsolicited proposal is not confidential and exempt for more than 90 days after the date the responsible public entity rejects all proposals or the date of receipt of a proposal for a project the responsible public entity does not intend to accept.

The bill provides a definition for “proprietary confidential business information” (PCBI). If an unsolicited proposal contains information designated as PCBI by the private entity submitting the unsolicited proposal, that information shall remain confidential and exempt indefinitely.

The bill states that portions of public meetings of a responsible public entity at which information related to an unsolicited proposal is discussed are confidential and exempt from the public meetings laws. The bill requires exempt portions of meetings to be recorded and transcribed. Portions of public meetings which reveal PCBI are confidential and exempt.

The bill states that the subsection is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless saved from repeal by the Legislature.

Section 2 of the bill provides statements of public necessity for the public records and public meetings exemptions.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 for final passage of a newly created or expanded public record or public meeting exemption. The bill creates both a public record exemption and a public meetings exemption for materials related to an unsolicited proposal; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates both a public record exemption and a public meetings exemption for records related to an unsolicited proposal; thus, it includes public necessity statements.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the records related to an unsolicited proposal. Furthermore, the bill restricts the timeframe of the exemption to that period most likely to be damaging (and therefore most discouraging) to a private party that might otherwise submit an unsolicited proposal.

The bill also creates a public meetings exemption for portions of a public meeting related to an unsolicited proposal that is confidential and exempt. The exemption only applies to those portions of meetings that are necessary to preserve the confidentiality of the information. Furthermore, the bill requires such portions to be transcribed and recorded, including the times of commencement and termination of the meeting and the names of all persons speaking.

As such, the exemptions do not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill exempts records and meetings related to unsolicited proposals to engage in a PPP, which may encourage more private parties to enter into such agreements.

C. Government Sector Impact:

The bill may encourage the formation of more PPPs. One of the primary advantages of PPPs is their tendency to encourage a reduction in the costs of project implementation. Therefore, the bill may reduce the financial burden on the state and local governments.

VI. Technical Deficiencies:

The definition of “proprietary confidential business information” includes information that is “intended to be and is treated by the private entity as private and the disclosure of which would harm the business operations of the entity, and has not otherwise been intentionally disclosed.” This standard is subjective in that it relies on the intent and actions of the private entity. It is unclear how a records custodian will be able to discern what records could be released.

This bill may be overly broad in that it states that information “that concerns” several categories of records are proprietary confidential business information.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.05712 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 Community Affairs on March 19, 2014:**

- Defines “proprietary confidential business information” (PCBI).
- Provides that an unsolicited proposal is confidential and exempt until the responsible public entity receives, opens, and ranks the proposals and provides notice of its intended decision.
- Provides that an unsolicited proposal is not confidential and exempt for more than 90 days after the date the responsible public entity rejects all proposals or the date of receipt of a proposal for a project which the responsible public entity does not intend to enter into an agreement for. However, if the proposal contains information designated as PCBI by the private party, then that information will remain confidential and exempt indefinitely.
- Provides that portions of meetings at which the information from an unsolicited proposal is discussed are exempt from the public meetings law.
- Provides that the exempt portions of public meetings will nonetheless be transcribed.
- Provides that a portion of a transcript that reveals PCBI is confidential and exempt.
- Provides that the subsection is subject to the OGSR.
- Provides statements of public necessity.

B. Amendments:

None.

By the Committee on Community Affairs; and Senator Evers

578-02840-14

20141318c1

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 amending s. 287.05712, F.S.; defining the term
 4 "proprietary confidential business information";
 5 creating an exemption from public records requirements
 6 for unsolicited proposals for a qualifying public-
 7 private project received by a responsible public
 8 entity for a specified period; providing that
 9 proprietary confidential business information in an
 10 unsolicited proposal remains confidential and exempt
 11 from public records requirements; creating an
 12 exemption from public meetings requirements for
 13 portions of meetings at which confidential and exempt
 14 information is discussed; requiring a recording to be
 15 made of a closed portion of a meeting; providing for
 16 future repeal and legislative review of the
 17 exemptions; providing statements of public necessity;
 18 providing an effective date.
 19
 20 Be It Enacted by the Legislature of the State of Florida:
 21
 22 Section 1. Subsection (16) is added to section 287.05712,
 23 Florida Statutes, to read:
 24 287.05712 Public-private partnerships; public records and
 25 public meetings exemptions.-
 26 (16) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.-
 27 (a) As used in this subsection, the term "proprietary
 28 confidential business information" means information that has
 29 been designated by a private entity when provided to a

Page 1 of 4

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

578-02840-14

20141318c1

30 responsible public entity as information that is owned or
 31 controlled by the private entity, is intended to be and is
 32 treated by the private entity as private and the disclosure of
 33 which would harm the business operations of the private entity,
 34 has not otherwise been intentionally disclosed by the private
 35 entity, and is information concerning:
 36 1. Trade secrets as defined in s. 688.002;
 37 2. Financial statements or financing terms;
 38 3. Patent-pending or copyrighted designs;
 39 4. Leasing or real property acquisition plans; or
 40 5. Marketing studies.
 41 (b)1. An unsolicited proposal received by a responsible
 42 public entity is confidential and exempt from s. 119.07(1) and
 43 s. 24(a), Art. I of the State Constitution until such time that
 44 the responsible public entity receives, opens, and ranks the
 45 proposals as set forth in paragraph (6)(c) and provides notice
 46 of its intended decision.
 47 2. An unsolicited proposal is not confidential and exempt
 48 for more than 90 days after the date the responsible public
 49 entity rejects all proposals submitted as provided in paragraph
 50 (6)(c) or the date of receipt of a proposal for a project which
 51 the responsible public entity does not intend to enter into an
 52 agreement for. If the unsolicited proposal contains information
 53 designated by the private entity as proprietary confidential
 54 business information, such information shall remain confidential
 55 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 56 Constitution.
 57 (c)1. A portion of a meeting of a responsible public entity
 58 at which information that is confidential and exempt under

Page 2 of 4

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

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59 paragraph (b) is discussed, is exempt from s. 286.011 and s.
 60 24(b), Art. I of the State Constitution.

61 2. An exempt portion of a meeting shall be recorded and
 62 transcribed. The responsible public entity shall record the
 63 times of commencement and termination of the meeting, all
 64 discussions and proceedings, the names of all persons present at
 65 any time, and the names of all persons speaking. An exempt
 66 portion of a meeting may not be off the record.

67 3. A portion of the transcript of a meeting which reveals
 68 proprietary confidential business information is confidential
 69 and exempt from s. 119.07(1) and s. 24(a), Art. II of the State
 70 Constitution.

71 (d) This subsection is subject to the Open Government
 72 Sunset Review Act in accordance with s. 119.15 and shall stand
 73 repealed on October 2, 2019, unless reviewed and saved from
 74 repeal through reenactment by the Legislature.

75 Section 2. (1) The Legislature finds that it is a public
 76 necessity that an unsolicited proposal held by a responsible
 77 public entity pursuant to s. 287.05712, Florida Statutes, be
 78 made confidential and exempt from s. 119.07(1), Florida
 79 Statutes, and s. 24(a), Article I of the State Constitution
 80 until such time that the responsible public entity receives,
 81 opens, and ranks the proposals set forth in s. 287.05712(6)(c),
 82 Florida Statutes, or, if the responsible public entity rejects
 83 all proposals or decides not to enter into an agreement, no more
 84 than 90 days after such decision. The disclosure of information
 85 in an unsolicited proposal, such as financing mechanisms and
 86 terms, formulas, and designs, could give competitors an unfair
 87 business advantage by publicizing the proposal's financial

578-02840-14 20141318c1

88 strategy and innovative plans, thereby injuring the private
 89 entity that submitted the unsolicited proposal and placing the
 90 private entity at a competitive disadvantage in the marketplace.
 91 Without the exemption, private entities might not submit
 92 unsolicited proposals that could provide timely and cost-
 93 effective solutions for qualifying projects that serve a public
 94 need. The exemption is narrowly drawn in that only proprietary
 95 confidential business information in an unsolicited proposal
 96 will remain confidential and exempt if such information has not
 97 otherwise been made available by a private entity. Therefore,
 98 the Legislature finds that the harm that may result from the
 99 release of such information outweighs any public benefit that
 100 may be derived from disclosure of such the information.

101 (2) The Legislature further finds that, in order to
 102 maintain the confidential and exempt status of this information,
 103 it is a public necessity that a portion of a meeting of a
 104 responsible public entity at which information made confidential
 105 and exempt from public records requirements under this act is
 106 discussed be made exempt from s. 286.011, Florida Statutes, and
 107 s. 24(b), Article I of the State Constitution. Public oversight
 108 is preserved by requiring a transcript of any portion of such
 109 closed meetings of a responsible public entity.

110 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)

4/3/14
Meeting Date

Topic Public Records Exemption For PPPs

Bill Number 1318
(if applicable)

Name Carol Bowen

Amendment Barcode _____
(if applicable)

Job Title VP Government Affairs

Address 3730 Coconut Creek Pkwy Suite 200
Street

Phone 954-984-0075

Coconut Creek FL 33066
City State Zip

E-mail cbowen@abearsfronda.com

Speaking: For Against Information

Representing Associated Builders and Contractors FL East Coast Chapter

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)

Meeting Date _____

Topic Public Private Partnership *Public Record Exempt* Bill Number 1318
(if applicable)

Name Richard Watson Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address P.O. Box 10038 Phone 850 222-0000
Street

Tallahassee, FL 32302 E-mail rick@watsonand
City State Zip associates.com

Speaking: For Against Information

Representing _____

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
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 726

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Detert

SUBJECT: Reemployment Assistance Appeals Commission

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Hrdlicka</u>	<u>CM</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 726 reconfigures the Reemployment Assistance Appeals Commission to expand its membership to nine members and provide regional representation by the appointment of members of Regional Workforce Boards. The commissioners are to be appointed by the Governor, subject to Senate confirmation. Commissioners will serve 2 year terms, except for some initial appointments, which will be for 1 year to allow the appointments to be staggered. The full-time chair of the commission will continue to be selected and appointed by the Governor, subject to Senate confirmation, and serve a 4 year term. Appointments will be made in a manner that prevents any regional workforce board to be represented on the commission more than once in a 6 year period. The bill outlines the criteria for a quorum and contains conflict of interest provisions. The bill also eliminates the \$100 stipend paid to commission members.

II. Present Situation:

Reemployment Assistance

The Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.¹ The program is administered as a partnership of the federal government and the states.²

¹ United States Department of Labor, Employment and Training Administration, [State Unemployment Insurance Benefits](http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp), available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited Feb. 6, 2014).

² There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

Florida's unemployment insurance program was created by the Legislature in 1937.³ The program was rebranded as the "reemployment assistance program" in 2012.⁴ The Department of Economic Opportunity (DEO) is the current agency responsible for administering Florida's reemployment assistance laws, primarily through its Division for Workforce Services.

An individual must apply to the DEO for benefits. To receive benefits, a claimant must meet certain monetary and non-monetary eligibility requirements.⁵ Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment. A notice of claim is sent to a claimant's most recent employer and all employers whose employment records are liable for benefits.

Determinations and Redeterminations

The DEO issues determinations and redeterminations on the monetary and non-monetary eligibility requirements.⁶ Determinations and redeterminations are statements by the DEO regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account. A party who believes a determination is inaccurate may request reconsideration and the DEO must review the information on which the request is based and issue a redetermination.

Appeals of DEO Determinations – Office of Appeals

If a party disagrees with either the determination or redetermination, the applicant or employer may request an administrative hearing before an appeals referee. Appeals referees in the DEO's Office of Appeals hold hearings and issue decisions to resolve disputes related to eligibility for unemployment compensation and the payment and collection of unemployment compensation taxes.⁷

Appeals of Appeals Referee Decisions – Reemployment Assistance Appeals Commission

A decision by an appeals referee can be appealed to the Reemployment Assistance Appeals Commission (commission). The commission may affirm, modify, remand with instructions, or reverse the determination made by the appeals referee based on evidence previously submitted in the case or additional evidence taken at the direction of the commission.⁸ However, the

³ Chapter 18402, L.O.F.

⁴ Chapter 2012-30, L.O.F.

⁵ See s. 443.091, F.S.

⁶ Section 443.151(3), F.S. The Social Security Act requires states to offer "an opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied." 42 U.S.C. 503(a)(3).

⁷ Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Special deputies within the Office of Appeals handle appeals related to matters on tax, reimbursement, and liability protests.

⁸ Rule 73B-22, F.A.C. The commission will review the appeals referee's decision to determine whether the findings are supported by competent, substantial evidence in the record and the legal conclusions are in accord with the essential requirements of law.

commission may also assume jurisdiction of a case prior to completion of proceedings by an appeals referee.⁹

Appeals of Commission Decisions – Florida District Courts of Appeal

A party to an appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.¹⁰ The notice of appeal should be filed either in the district court of appeal in the appellate district in which a claimant resides or the job separation arose or in the appellate district where the order was issued. If the notice of appeal is filed with the commission, then the appeal will be filed in the district court of appeal in the appellate district where the order was issued.

Reemployment Assistance Appeals Commission

The commission was established in 1977 as the Board of Review.¹¹ The commission is administratively housed within the DEO, but is a quasi-judicial administrative appellate body independent of the DEO.¹² The commission is funded from federal grants that are received by the DEO for the operation of Florida's reemployment assistance program.

The current composition of the commission includes a full-time chairperson and two other members, appointed by the Governor and subject to Senate confirmation. The members serve staggered terms of 4 years each. The chair of the commission is required to have the same qualifications of a circuit judge and is restricted from engaging in any other business or employment. Only one appointee may be a representative of employers and one may be a representative of employees as demonstrated by each member's previous vocation, employment, or affiliation. The chair is paid a salary comparable to that of a circuit judge and the other two members are paid a stipend of \$100 for each day they are engaged in work for the commission.

For FY 2012-2013, the commission received 12,328 appeals and issued 12,542 final or remand orders. If one of the commissioners disagrees with a staff recommendation or otherwise requests discussion of a case, it is docketed for a publicly-noticed deliberation meeting. The commissioners reviewed approximately 9,400 cases that were docketed for the commission and each spent, on average, 1,060 hours reviewing these cases.¹³ Additionally, each commissioner spends an average of two hours per week to meet and discuss cases, plus any additional time the commissioner may need to prepare for the meeting. For each case, a commissioner receives a staff summary, the lower level appeal decision, the letter of appeal, legal briefs or other documents filed with the commission, and any exhibits and other evidence reviewed by the DEO appeals referee. Legal staff of the commission is available to provide the commissioners with

⁹ Department of Economic Opportunity, *Agency Legislative Bill Analysis*, (Feb. 12, 2014) (on file with the Senate Committee on Commerce and Tourism). The commission does not generally hold oral arguments and has not removed cases from the appeals referees.

¹⁰ Section 443.151(4)(c), (d), and (e), F.S.

¹¹ Chapter 77-399, L.O.F.

¹² Section 20.60(8), F.S.

¹³ DEO, *Agency Bill Analysis*. To calculate the amount of time spent an average of 10 minutes per case for an "experienced commissioner" is used.

legal research and analysis for questions that may arise during their independent review of cases or during the public deliberations of the commission.¹⁴

Commissioners are provided case information on a daily basis so that the commission can remain within federally-required timelines.¹⁵ The commission must dispose of 50 percent of cases within 45 days, 80 percent within 75 days, and 95 percent within 150 days. Failure to meet federal performance standards may negatively affect federal funding for the reemployment assistance program. For FY 2012-2013, the commission disposed of 75 percent of its cases within 45 days, 98 percent within 75 days, and 100 percent within 150 days.¹⁶

Regional Workforce Boards

The Workforce Innovation Act of 2000 was passed in an effort to better connect the state's economic development strategies with its workforce development system.¹⁷ The act established a three-tier system for the delivery of workforce services.¹⁸

The DEO is Florida's lead state workforce agency.¹⁹ However, CareerSource Florida²⁰ sets the state's workforce development policy and guidance.²¹ Workforce services in Florida are provided by 24 regional workforce boards (RWB) who deliver services through nearly 100 One-Stop Centers around the state.²²

Each RWB develops a local plan for using federal workforce funds and oversees workforce development activities in the region. The boards also select contractors to operate local One-Stop Career Centers. The One-Stop Career Centers deliver employment services to job seekers and employers. Services include job placement and recruitment assistance as well as funding for skills training.

The service areas of the RWBs generally align with the community college system. Each board is allowed to implement policies based upon the economic development, business, and workforce needs of its particular region of the state.²³

The county or city governing bodies, within an RWB's designated service area, enter into an inter-local agreement to establish the local parameters under which the RWB will operate. This includes the manner in which board members are appointed. Board membership must comply

¹⁴ DEO, *Agency Bill Analysis*. Commission meetings are generally held by conference call.

¹⁵ DEO, *Agency Bill Analysis*. Timeliness standards are specified in the State Quality Service Plan. This plan serves as the performance document and the grant document through which the state receives administrative funding.

¹⁶ DEO, *Agency Bill Analysis*.

¹⁷ Chapter 2000-165, L.O.F. See bill analysis for SB 2050 and HB 1135 (2000).

¹⁸ See ch. 445, F.S.

¹⁹ Primarily through its Division of Workforce Services.

²⁰ Workforce Florida, Inc., is transitioning to a new unified brand, CareerSource Florida. CareerSource Florida, [Florida Activates New Unified Workforce Brand](http://careersourceflorida.com/wp-content/uploads/2014/01/CareerSourceFloridaLaunchRelease.pdf), available at <http://careersourceflorida.com/wp-content/uploads/2014/01/CareerSourceFloridaLaunchRelease.pdf> (last visited Feb. 12, 2014).

²¹ Workforce Florida, Inc., is Florida's state workforce investment board. See 29 U.S.C. 2821.

²² See <http://careersourceflorida.com/about-careersource-florida> (last visited Feb. 12, 2014).

²³ See s. 445.003, F.S.

with the requirements outlined in federal workforce law.²⁴ Specifically, the Governor of the state, in partnership with the state board, shall establish criteria for use by chief elected officials in the local areas for appointment of members of the local boards. Such criteria shall require, at a minimum, that the membership of each local board shall include the following:

- Representatives of business in the local area, who:
 - Are owners of businesses, chief executives or operating officers of businesses, and other business executives or employers with optimum policymaking or hiring authority;
 - Represent businesses with employment opportunities that reflect the employment opportunities of the local area; and
 - Are appointed from among individuals nominated by local business organizations and business trade associations;
- Representatives of local educational entities, including representatives of local educational agencies, local school boards, entities providing adult education and literacy activities, and postsecondary educational institutions (including representatives of community colleges, where such entities exist), selected from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such local educational entities;
- Representatives of labor organizations (for a local area in which employees are represented by labor organizations), nominated by local labor federations, or (for a local area in which no employees are represented by such organizations), other representatives of employees;
- Representatives of community-based organizations (including organizations representing individuals with disabilities and veterans, for a local area in which such organizations are present);
- Representatives of economic development agencies, including private sector economic development entities;
- Representatives of each of the one-stop partners; and
- Other individuals or representatives of entities as the chief elected official in the local area may determine to be appropriate.

Additionally, state law requires that if a public education or training provider is represented on the board, a representative of a private nonprofit provider and a representative of a private for-profit provider must also be appointed to the board. If the board is located in a region in which there is a military installation, the board must also include one nonvoting military representative.²⁵ The Governor may remove a member of the board for cause.²⁶

III. Effect of Proposed Changes:

Section 1 amends s. 443.012, F.S., to redefine the membership of the Reemployment Assistance Appeals Commission (commission). The bill provides that the terms of the members, except for the chair, currently serving on the commission will expire on September 30, 2014.

²⁴ 29 U.S.C. s. 2832(b). See also Department of Economic Opportunity, Administrative Policy FG-OSPS-73, *Regional Workforce Board Composition, Certification and Decertification* (rev. Sept. 11, 2013), available at <http://www.floridajobs.org/PDG/guidancepapers/DEOGuidancePaperCert073.pdf> (last visited Feb. 14, 2014).

²⁵ Section 445.007(1), F.S.

²⁶ “Cause” includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance. See s. 445.007(2)(b), F.S.

Beginning October 1, 2014, the commission will be composed of nine members. The chair will continue to be appointed by the Governor, subject to Senate confirmation, for a term of 4 years. The Governor will appoint eight other commissioners, subject to confirmation by the Senate, for a term of 2 years. Four members of the commission are to be selected from the even-numbered regional workforce boards; and four members of the commission are to be selected the odd-numbered regional workforce boards.

Only a single member of a regional workforce board may be represented on the commission at any given time. An individual regional workforce board cannot be represented more than once in a 6 year period. *For example:*

Year	Even-numbered RWBs	Odd-numbered RWBs
2014	2,4,6, and 8*	1,3,5,and 7*
2015	6 and 8	5 and 7
2016	10 and 12	9 and 11
2017	14 and 16	13 and 19
2018	18 and 20	17 and 19
2019	22 and 24	21 and 23

*For the initial appointments, two of the members appointed from the even-numbered regional workforce boards and two of the members appointed from the odd-numbered regional workforce boards will be appointed for a one year term in order to stagger the terms of the appointments. These individuals would be eligible to be reappointed for an additional 2 year term. Vacancies for unexpired terms will be filled in the same manner as the original appointment.

Commission members will only be reimbursed for travel expenses and will not receive the \$100 daily stipend currently paid to commission members for each day they are engaged in commission work.

The bill provides that the presence of four members, in addition to the chair, will constitute a quorum. A member may not participate in a case in which he or she is an interested party or may have a conflict of interest.

Section 2 provides an effective date of 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:

The DEO estimates the following impacts:²⁷

- There may be significant impact on the commission staff to provide legal and administrative support to nine members instead of three.
- There will be increased travel costs, as the commission meets in person at least two times per year. New members will also be required to travel to Tallahassee for training, which commission staff anticipates will last approximately one week.
- Additional computers and computer support will be needed for the additional commissioners.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The legislation may impact the commission's ability to meet federal timeliness standards for the reemployment assistance appeals process. With eight new commissioners in the first year and then four new commissioners each year, the rate at which cases can be reviewed may be significantly reduced.²⁸

VIII. Statutes Affected:

This bill substantially amends section 443.012 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 April 3, 2014:

The CS eliminates the authority of the presiding officers of the Legislature to recommend the membership for appointment to the appeals commission. Instead, the Governor must select 4 members from the even-numbered regional workforce boards and 4 members from the odd-numbered regional workforce boards.

²⁷ DEO, *Agency Bill Analysis*.

²⁸ DEO, *Agency Bill Analysis*.

B. Amendments:

None.

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



593544

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 37 - 49
and insert:
from the even-numbered regional workforce boards under s.
445.007(1) and four members shall be appointed from the odd-
numbered regional workforce boards under s. 445.007(1). However,
to stagger the terms of the initial appointments, two members
appointed from the even-numbered workforce boards and two
members appointed from the odd-numbered workforce boards shall



593544

11 be appointed to a term of 1 year and may be reappointed for an
12 additional term of 2 years. In making appointments, the Governor
13 shall consider representation of labor, minorities, persons with
14 disabilities, small business, and veterans.

By Senator Detert

28-00857B-14

2014726__

A bill to be entitled

An act relating to the Reemployment Assistance Appeals Commission; amending s. 443.012, F.S.; revising membership requirements of the commission; removing a provision requiring payment of a daily stipend for certain commissioners; providing an effective date.

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

Section 1. Section 443.012, Florida Statutes, is amended to read:

443.012 Reemployment Assistance Appeals Commission.—

(1) CREATION.—The Reemployment Assistance Appeals Commission ~~There is created within the Division of Workforce Services of the Department of Economic Opportunity a Reemployment Assistance Appeals Commission. The commission is composed of a chair and two other members appointed by the Governor, subject to confirmation by the Senate. Only one appointee may be a representative of employers, as demonstrated by his or her previous vocation, employment, or affiliation; and only one appointee may be a representative of employees, as demonstrated by his or her previous vocation, employment, or affiliation.~~

(2) MEMBERS.—

(a) Except for the chair, the terms of the members serving as of July 1, 2014, shall expire on September 30, 2014. Beginning October 1, 2014, the commission shall be composed of nine members, consisting of the following:

1. When the term of the chair serving as of July 1, 2014,

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

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expires, a chair, who shall be appointed by the Governor, subject to confirmation by the Senate, for a term of 4 years. The chair must have the qualifications required by law for a judge of the circuit court.

2. Eight members appointed by the Governor, subject to confirmation by the Senate, for a term of 2 years, notwithstanding s. 20.052(4)(c). Four members shall be appointed from a list submitted by the President of the Senate which may include only members of the even-numbered regional workforce boards under s. 445.007(1). Four members shall be appointed from a list submitted by the Speaker of the House of Representatives which may include only members of the odd-numbered regional workforce boards under s. 445.007(1). Each list must include at least twice the number of persons as positions required to be filled. However, to stagger the terms of the initial appointments, two members appointed from the list submitted by the President of the Senate and two members appointed from the list submitted by the Speaker of the House of Representatives shall be appointed to a term of 1 year and may be reappointed for an additional term of 2 years.

(b) Only one member may be appointed from an individual regional workforce board at a time. An individual regional workforce board may not be represented by an appointee more than once within a 6-year period.

(c) A vacancy for the unexpired term of a member shall be filled in the same manner as the original appointment.

(d) ~~(a)~~ The chair:

1. Shall devote his or her entire time to commission duties and Is responsible for the administrative functions of the

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

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59 commission.

60 ~~2.(b)~~ May The chair has authority to appoint a general
61 counsel and other personnel to carry out the duties and
62 responsibilities of the commission.

63 ~~3.(c)~~ Shall devote his or her entire time to commission
64 duties The chair must have the qualifications required by law
65 ~~for a judge of the circuit court~~ and may not engage in any other
66 business vocation or employment.

67 4. Notwithstanding any other law, ~~the chair~~ shall be paid a
68 salary equal to that paid under state law to a judge of the
69 circuit court.

70 ~~(e)(d)~~ The remaining members shall be paid a stipend of
71 \$100 for each day they are engaged in the work of the
72 ~~commission~~. The chair and other members are entitled to be
73 reimbursed for travel expenses, as provided in s. 112.061.

74 ~~(e)~~ The ~~total~~ salary of the chair and the travel expenses
75 of the chair and other members ~~each member of the commission~~
76 shall be paid from the Employment Security Administration Trust
77 Fund.

78 (3) HEARINGS.—

79 (a) The presence of four members, in addition to the chair,
80 constitutes a quorum of the commission.

81 (b) A member may not take part in a discussion,
82 deliberation, or action on a matter in which he or she is an
83 interested party or has a conflict of interest as defined in s.
84 112.312.

85 ~~(2)~~ The members of the commission shall be appointed to
86 staggered terms of 4 years each. A vacancy for the unexpired
87 term of a member shall be filled in the same manner as the

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88 original appointment. The presence of two members constitutes a
89 quorum for any called meeting of the commission.

90 ~~(4)(3)~~ AUTHORITY, POWERS, AND DUTIES.—The commission has
91 all authority, powers, and duties, ~~and responsibilities~~ relating
92 to reemployment assistance appeal proceedings under this
93 chapter.

94 ~~(a)(4)~~ The property, personnel, and appropriations relating
95 to the specified authority, powers, and duties, ~~and~~
96 ~~responsibilities~~ of the commission shall be provided to the
97 commission by the Department of Economic Opportunity.

98 ~~(5)~~ The commission is not subject to control, supervision,
99 or direction by the Department of Economic Opportunity in
100 performing its powers or duties under this chapter.

101 ~~(b)(6)~~ The commission may do any of the following:

102 1. Make expenditures, including expenditures for personal
103 services and rent, for law books, books of reference,
104 periodicals, furniture, equipment, and supplies, and for
105 printing and binding as necessary in exercising its authority
106 and powers and carrying out its duties and responsibilities. All
107 such expenditures of the commission shall be allowed and paid as
108 provided in s. 443.211 upon the presentation of itemized
109 vouchers approved by the chair.

110 ~~2.(7)~~ The commission may Charge fees for publications,
111 subscriptions, and copies of records and documents. These fees
112 must be deposited into ~~in~~ the Employment Security Administration
113 Trust Fund.

114 3. Adopt rules under ss. 120.536(1) and 120.54 to
115 administer the provisions of law conferring duties upon it.

116 ~~(c)(8)~~ The commission shall do all of the following:

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117 1. Maintain and keep open during reasonable business hours
118 an office in Tallahassee for the purpose of transacting its
119 business, at which office the commission shall keep its official
120 records and papers. The offices shall be furnished and equipped
121 by the commission. The commission may hold sessions and conduct
122 hearings at any place within the state.

123 ~~2.(9) The commission shall~~ Prepare and submit a budget
124 covering the necessary administrative cost of the commission.

125 ~~3.(10) The commission shall~~ Have a seal for authenticating
126 its orders, awards, and proceedings, upon which shall be
127 inscribed the words "State of Florida-Reemployment Assistance
128 Appeals Commission-Seal," and it shall be judicially noticed.

129 ~~(11) The commission has authority to adopt rules under ss.~~
130 ~~120.536(1) and 120.54 to administer the provisions of law~~
131 ~~conferring duties upon it.~~

132 (d)(12) Orders of the commission relating to reemployment
133 assistance under this chapter are subject to review only by
134 notice of appeal to the district courts of appeal in the manner
135 provided in s. 443.151(4)(e).

136 Section 2. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 18, 2014

I respectfully request that **726**, relating to Reemployment Assistance Appeals Commission be placed on the:

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

A handwritten signature in black ink that reads "Nancy C. Detert".

Senator Nancy C. Detert
Florida Senate, District 28

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 692

INTRODUCER: Regulated Industries Committee and Senator Stargel

SUBJECT: Engineers

DATE: April 2, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Roberts</u>	<u>Roberts</u>	<u>EE</u>	Favorable
3.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 692 amends s. 471.007, F.S., to revise the qualifications and procedures for the appointment and reappointment of members to the Board of Professional Engineers and to provide staggered terms for the membership.

The bill amends s. 471.013, F.S., to revise the requirements for an applicant who fails more than three times who wishes to retake an examination in order to practice in the state as an engineer, and allowing additional attempts for an applicant delayed in taking the examination due to his or her service in the U.S. Armed Forces.

The bill amends s. 471.017, F.S., to revise the requirements for license renewal for engineers by increasing professional development hours needed during a two-year renewal period from eight to eighteen.

The bill amends s. 471.015(5)(a), F.S., by removing options for an applicant to be deemed as having passed an examination substantially equivalent to the fundamentals examination, which along with the principles and practice examination, is required to become a licensed engineer.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Section 471.007(1), F.S., creates the Board of Professional Engineers (board) in the Department of Business and Professional Regulation (department). Members of the board are appointed by the Governor for terms of four years each.¹ The board consists of eleven members, nine licensed engineers and two laypersons who have never been engineers or members of a loosely related profession.² Of the nine licensed engineers, the following six are required:³

- One structural engineer;
- One electrical or electronic engineer;
- One mechanical engineer;
- One industrial engineer;
- One engineering educator; and
- One from any engineering discipline other than civil engineering.

According to Florida Engineering Society (FES), it has been difficult to find individuals to fill these specified roles, and board membership is an extremely technical position with a “steep learning curve.”⁴ Currently, the new board members are appointed and begin terms at the same time every four years.

Section 471.013, F.S., sets out the examination prerequisites for a person to take an examination for the purpose of determining whether he or she is qualified to practice in this state as an engineer. The examination, provided by the National Council of Engineers and Surveyors (NCEES), is a two-part exam covering fundamentals (Part I) and principles and practice (Part II).⁵ Applicants for licensure by examination must apply to take the examinations and be graduates of a board approved engineering program defined in the rules.⁶ The acceptance of the fundamentals exam does not automatically mean acceptance to take the principles and practice examination.⁷

Section 471.013(1)(e), F.S., allows every qualified candidate to take either examination up to three times. Eligibility to take an examination after failing three times is conditioned on an applicant completing twelve additional college-level credit hours with grades of at least “C” or equivalent.⁸ For Part I, these additional courses are undergraduate courses in higher mathematics, basic sciences or engineering as described in the rules.⁹ For Part II, these additional courses shall be upper level courses in engineering as defined in the rules.¹⁰

¹ Section 471.007(2), F.S.

² Section 471.007(1), F.S.

³ *Id.*

⁴ Conversation with Frank Rudd, Florida Engineering Society (FES)(Feb. 6, 2014). (Allowing varying term times allows experienced members to consistently occupy the board and introduce new members to their duties.)

⁵ Rule 61G15-21.001(1), F.A.C.

⁶ *See* rule 61G15-21.001(2), F.A.C.

⁷ *Id.*; *see also* s. 471.013, F.S.

⁸ Section 471.013(1)(e), F.S.; *see also* rule 61G15-21.007, F.A.C.

⁹ Rule 61G15-21.007, F.A.C.; *see also* 61G15-20.007(1)(a), (b) and (c), F.A.C. for described courses.

¹⁰ *Id.*; *see also* 61G15-20.007(1)(c), F.A.C. for described courses.

Section 471.015(5)(a), F.S., allows applicants who seek licensure by endorsement to be deemed to have passed an examination substantially equivalent to the fundamentals examination when one of three qualifications are met. The fundamentals examination, or an examination substantially equivalent, is one of two examinations required to become a licensed engineer. The fundamentals examination covers material from academic curriculum, knowledge primarily gained through college level courses.¹¹ An applicant will be deemed as passing this examination when such an applicant has:

- Held a valid license in another state for fifteen years and has had twenty years of continuous professional level experience;
- Received a doctorate degree in engineering from an institution with an undergraduate engineering program accredited by the Accreditation Board for Engineering Technology; or
- Received a doctorate degree in engineering and after receiving that degree has taught engineering full time for at least three years at the baccalaureate level or higher.

According to the Florida Board of Professional Engineers, these exemptions stem from the fact that doctorate degree holders and such professors are required to have additional coursework beyond acquiring a bachelors' degree, and professors especially are exposed to the basic math and science that engineering is based upon, and that is covered in the fundamentals examination, while they are teaching.¹²

Section 471.017, F.S., lays out the biennial renewal requirements for a licensed engineer. Section 471.017(3), F.S., requires a demonstration of continuing professional competency for renewal. Four professional development hours are required each year of the license renewal period for a total of eight hours.¹³ Four hours shall relate to chapter 471, F.S., and the remaining four hours shall relate to the licensee's practice area.¹⁴ Section 471.017(3), F.S., authorizes the board to adopt rules consistent with the guidelines of the National Council of Examiners for Engineering and Surveying (Council) for the purpose of avoiding proprietary continuing professional competency requirements¹⁵ and shall allow non-classroom hours to be credited.

The council's model rules section 240.30, Continuing Professional Competency guidelines are set forth for the purpose of providing consistency in those jurisdictions that adopt mandatory requirements and for those that wish to encourage voluntary usage, and to demonstrate a level of competency of professionals.¹⁶

¹¹ Conversation with Florida Board of Professional Engineers (FBPE) representative (March 4, 2014).

¹² *Id.*

¹³ Section 471.017(3), F.S.

¹⁴ *Id.*

¹⁵ National Council of Examiners for Engineering and Surveying, *Continuing Professional Competency Guidelines*, (Aug. 2013) available at <http://ncees.org/about-ncees/publications/> follow hyperlink "continuing professional competency guideline" (Last visited Feb. 6, 2014).

¹⁶ *Id.*

III. Effect of Proposed Changes:

Board of Professional Engineers Membership and Appointment

CS/SB 692 amends s. 471.007(1), F.S., to remove the requirement that a certain number of the board members be licensed as specific types of engineers. The bill requires all board members to be licensed engineers and be appointed based on their qualifications to provide expertise to the board in civil engineering, structural engineering, electrical or electronic engineering, mechanical engineering, or engineering education.

The bill specifies that professional and technical engineering societies may submit a list of qualified nominees to be considered by the Governor for appointment.

The bill creates staggered terms for board members beginning with expiration of the terms of the members serving on the board as of July 1, 2014. The terms of these immediate successors, as determined by the Governor, shall be as follows: three members will be appointed for two years, four members will be appointed for three years, and four members will be appointed for four years. Following the expiration of terms of the immediate successors, the terms of the board members will be for four years.

The bill permits each member to hold office until the expiration of his or her appointment or until a successor has been appointed.

Conditions to Retake an Examination

The bill amends s. 471.013, F.S., to allow an engineering applicant who has failed either the “fundamentals examination” or the “principles and practice examination three times to complete a board-approved relevant examination review course as a condition of future eligibility to retake the examinations.

The bill allows an applicant who is delayed in taking the examination due to reserve or active duty service in the U.S. Armed Forces or National Guard to have two additional attempts, five altogether, to take the examination before the board will require additional college-level courses or an examination review course.

Licensure by Endorsement

The bill amends s. 471.015, F.S., to delete the provisions that allow an applicant for licensure by endorsement to be deemed as having passed an examination substantially equivalent to the fundamentals examination who: holds a doctorate degree in engineering from an accredited institution; or holds a doctorate degree in engineering who has also been teaching at least three years since receiving that degree at the baccalaureate level or higher.

Professional Development Hours

The bill amends s. 471.017, F.S., to increase the required number of professional development hours to nine hours for each year of the license renewal period, for a total of eighteen hours for each two-year renewal period. The bill also provides that one hour must relate to ch. 471, F.S.,

and the rules adopted under that chapter; one hour must relate to professional ethics; four hours must relate to the licensee's area of practice; and the remaining may relate to any topic pertinent to the practice of engineering.

The bill provides that continuing education hours may be earned by presenting or attending seminars, in-house or non-classroom courses, workshops, or professional or technical presentations made at meetings, webinars, conventions, or conferences, including those presented by vendors with specific knowledge related to the licensee's area of practice. Up to four hours may be earned by serving as an officer or actively participating on a committee of a board-recognized professional or technical engineering society. The hours required relating to ch. 471, F.S., the rules adopted pursuant to that chapter, and ethics may be earned by serving as a member of the Legislature or as an elected state or local official. It allows courses already required under s. 471.095, F.S., to apply to these requirements, except the hour relating to ch. 471, F.S., and rules adopted under that chapter.

The bill also amends s. 471.017(3)(b), F.S., to require the board to adopt rules that are substantially consistent with the most recent published Continuing Professional Competency Guidelines of the NCEES.¹⁷

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:

The bill increases the hours of professional development. This may increase the cost for renewal applicants and the revenue generated by continuing education providers.

¹⁷ NCEES, *Continuing Professional Competency Guidelines*, (Aug. 2013) available at <http://ncees.org/about-ncees/publications/> follow hyperlink "continuing professional competency guideline" (Last visited Feb. 6, 2014).

C. **Government Sector Impact:**

The bill will create additional workload related to the review of disclosure materials and possible compliance actions; however, the additional workload should be able to be handled by existing staff.¹⁸

VI. **Technical Deficiencies:**

The bill provides that the four hours of continuing education related to this chapter, the rule pursuant to this chapter, and ethics may be earned by serving as a member of the Legislature or as an elected state or local official. The bill requires only two hours for these subjects.

VII. **Related Issues:**

According to the Florida Board of Professional Engineers, although service on the board as an officer or on a committee for a qualified society may be rationally related to keeping up professional competence, the bill lacks criteria for the type of service necessary. The board noted that a committee set up to organize social events may be used by members for professional competence hours.¹⁹

The bill allows examination applicants delayed in taking the examination due to reserve or active duty service in the U.S. Armed Forces or National Guard two additional examination attempts, but offers no definite parameters around what the “delay” may encompass.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 471.007, 471.013, and 471.017.

IX. **Additional Information:**

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

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

CS by Regulated Industries on March 06, 2014:

- The CS removes plumbing engineers and fire protection engineering from the qualifications required to provide expertise and experience by the Florida Board of Professional Engineers members.
- The CS permits the professional and technical engineering societies to provide a list of qualified member candidates, which the governor may consider for his appointments.
- The CS does not include a section allowing a provisional member, and it provides that a board member holds office until expiration of their appointment or until a successor has been appointed.
- The CS does not include a provision for successive terms of board members.

¹⁸2014 Legislative Bill Analysis for SB 692, Florida Board of Professional Engineers (Feb. 18, 2014).

¹⁹ *Id.*

- The CS removes options for licensure by endorsement applicants to be deemed as having passed an examination substantially equivalent to the fundamentals examination, one of the requirements for licensure.
- The CS clarifies that service in the U.S. Armed Forces needed to allow the accommodation of two additional examination attempts must be reserve or active duty service in the U.S. Armed Forces or National Guard.
- The CS requires eighteen instead of twenty continuing education hours per two-year license renewal period, with one hour required relating to this chapter and the rules adopted under this chapter, one related to professional ethics, four relating to the licensee's area of practice, and the remaining relating to any topic pertinent to the practice of engineering.
- The CS allows webinars, non-classroom courses, and serving or actively participating on a committee of a board-recognized professional or technical engineering society to qualify as continuing education hours and it does not limit the list of offerings to 12 hours.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Stargel

580-02209-14

2014692c1

1 A bill to be entitled
 2 An act relating to engineers; amending s. 471.007,
 3 F.S.; revising requirements for membership on the
 4 Board of Professional Engineers; authorizing the
 5 professional and technical engineering societies to
 6 provide a list of qualified nominees for consideration
 7 as board member appointments; providing for staggered
 8 terms; amending s. 471.013, F.S.; revising
 9 requirements for an engineer license applicant who
 10 fails the fundamentals examination; authorizing such
 11 applicant who is delayed in taking the examination by
 12 military service to have additional attempts to take
 13 the examination; amending s. 471.015, F.S.; revising
 14 requirements for obtaining a licensure by endorsement;
 15 amending s. 471.017, F.S.; revising requirements for
 16 professional development hours and license renewal for
 17 engineers; providing effective dates.
 18

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

20
 21 Section 1. Section 471.007, Florida Statutes, is amended to
 22 read:

23 471.007 Board of Professional Engineers.—

24 (1) There is created in the department the Board of
 25 Professional Engineers. The board shall consist of 11 members,
 26 nine of whom shall be licensed engineers and two of whom shall
 27 be laypersons who are not and have never been engineers or
 28 members of any closely related profession or occupation. The
 29 members of the board who are licensed engineers must be

Page 1 of 5

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

580-02209-14

2014692c1

30 appointed based on their qualifications to provide expertise and
 31 experience to the board at all times in civil engineering,
 32 structural engineering, electrical or electronic engineering,
 33 mechanical engineering, or engineering education ~~Of the members~~
 34 ~~who are licensed engineers, three shall be civil engineers, one~~
 35 ~~shall be a structural engineer, one shall be either an~~
 36 ~~electrical or electronic engineer, one shall be a mechanical~~
 37 ~~engineer, one shall be an industrial engineer, one shall be an~~
 38 ~~engineering educator, and one shall be from any discipline of~~
 39 ~~engineering other than civil engineering.~~

40 (2) Following the expiration of the initial staggered terms
 41 under subsection (3), members of the board ~~Members~~ shall be
 42 appointed by the Governor for terms of 4 years each.
 43 Professional and technical engineering societies may submit a
 44 list of qualified nominees to be considered by the Governor for
 45 appointment.

46 (3) When the terms of members serving as of July 1, 2014,
 47 expire, the terms of their immediate successors shall be
 48 staggered so that three members are appointed for 2 years, four
 49 members are appointed for 3 years, and four members are
 50 appointed for 4 years, as determined by the Governor. Each
 51 member holds office until the expiration of his or her appointed
 52 term or until a successor has been appointed.

53 Section 2. Paragraph (e) of subsection (1) of section
 54 471.013, Florida Statutes, is amended to read:

55 471.013 Examinations; prerequisites.—

56 (1)

57 (e) Every applicant who is qualified to take the
 58 fundamentals examination or the principles and practice

Page 2 of 5

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

580-02209-14

2014692c1

59 examination shall be allowed to take either examination three
60 times, notwithstanding the number of times either examination
61 has been previously failed. If an applicant fails either
62 examination three times, the board shall require the applicant
63 to complete additional college-level education courses or a
64 board-approved relevant examination review course as a condition
65 of future eligibility to take that examination. If the applicant
66 is delayed in taking the examination due to reserve or active
67 duty service in the United States Armed Forces or National
68 Guard, the applicant is allowed an additional two attempts to
69 take the examination before the board may require additional
70 college-level education or review courses.

71 Section 3. Paragraph (a) of subsection (5) of section
72 471.015, Florida Statutes, is amended to read:

73 471.015 Licensure.—

74 (5) (a) The board shall deem that an applicant who seeks
75 licensure by endorsement has passed an examination substantially
76 equivalent to the fundamentals examination when such applicant
77 has+

78 1. Has held a valid professional engineer's license in
79 another state for 15 years and has had 20 years of continuous
80 professional-level engineering experience;

81 2. Has received a doctorate degree in engineering from an
82 institution that has an undergraduate engineering degree program
83 which is accredited by the Accreditation Board for Engineering
84 Technology; or

85 3. Has received a doctorate degree in engineering and has
86 taught engineering full-time for at least 3 years, at the
87 baccalaureate level or higher, after receiving that degree.

580-02209-14

2014692c1

88 Section 4. Effective March 1, 2015, subsection (3) of
89 section 471.017, Florida Statutes, is amended to read:

90 471.017 Renewal of license.—

91 (3) (a) The board shall require a demonstration of
92 continuing professional competency of engineers as a condition
93 of license renewal or relicensure. Every licensee must complete
94 9 continuing education ~~4 professional development~~ hours, for
95 each year of the license renewal period, totaling 18 continuing
96 education hours for the license renewal period. For each renewal
97 period for such continuing education; ~~—4~~

98 1. One hour must ~~hours shall~~ relate to this chapter and the
99 rules adopted under this chapter;

100 2. One hour must relate to professional ethics; and the
101 remaining 4

102 3. Four hours must ~~shall~~ relate to the licensee's area of
103 practice; and

104 4. The remaining hours may relate to any topic pertinent to
105 the practice of engineering.

106
107 Continuing education hours may be earned by presenting or
108 attending seminars, in-house or nonclassroom courses, workshops,
109 or professional or technical presentations made at meetings,
110 webinars, conventions, or conferences, including those presented
111 by vendors with specific knowledge related to the licensee's
112 area of practice. Up to 4 hours may be earned by serving as an
113 officer or actively participating on a committee of a board-
114 recognized professional or technical engineering society. The 4
115 hours of continuing education hours relating to this chapter,
116 the rules adopted pursuant to this chapter, and ethics may be

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117 earned by serving as a member of the Legislature or as an
118 elected state or local official. The hours required pursuant to
119 s. 471.0195 may apply to any requirements of this section except
120 for those required under subparagraph 1.

121 (b) The board shall adopt rules that are substantially
122 consistent with the most recent published version of the
123 Continuing Professional Competency Guidelines of the National
124 Council of Examiners for Engineering and Surveying ~~for~~
125 ~~multijurisdictional licensees for the purpose of avoiding~~
126 ~~proprietary continuing professional competency requirements and~~
127 shall allow nonclassroom hours to be credited. The board may, by
128 rule, exempt from continuing professional competency
129 requirements retired professional engineers who no longer sign
130 and seal engineering documents and licensees in unique
131 circumstances that severely limit opportunities to obtain the
132 required continuing education ~~professional development~~ hours.

133 Section 5. Except as otherwise provided in this act, this
134 act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 18, 2014

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

Dear Chairman Ring:

I am respectfully requesting that SB 692, related to *Engineers*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
Senator, District 15

Cc: Joe McVaney/ Staff Director
Bethany Jones/ AA

REPLY TO:

- 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 730

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee and Senator Galvano

SUBJECT: Municipal Governing Body Meetings

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 730 authorizes the governing body of a municipality to hold meetings outside of its boundaries. This bill provides that the governing body of a municipality will be permitted to hold a joint meeting anywhere within the county where the municipality is located when there are matters of mutual interest between the municipality and the county. A municipality will also be permitted to meet in another municipality to discuss matters of mutual interest. The time and place of the meetings must be prescribed by ordinance or resolution.

II. Present Situation:

County Government Meeting Authority

The Florida Constitution provides non-charter counties the power of self-government as is provided by general or special law.¹ The legislative and governing body of a non-charter county has the power to carry on county government to the extent not inconsistent with general or special law.² Non-charter counties are further authorized to hold special and regular meetings at “any appropriate public place in the county,” after giving proper public notice.³ Charter counties have all powers of local self-government not inconsistent with general law or special law.⁴ These

¹ Fla. Const. art. VIII, s. 1(f).

² Section 125.01, F.S.

³ Section 125.001, F.S.

⁴ Fla. Const. art VIII, s. 1(g).

provisions give charter and non-charter counties the authority to hold joint meetings with cities at any place within the county.

Municipal Government Meeting Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.⁵ However, the Florida Constitution states that annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.⁶ Similarly, s. 166.021, F.S., gives municipalities home rule powers with the following exceptions: annexation, merger, exercise of extraterritorial power, and subjects prohibited by the state constitution or preempted to state or county government.

In 2011, the Legislature created s. 166.0213, F.S., to allow small municipalities that did not have the proper facilities available to act as a temporary city hall to hold public meetings within five miles of their jurisdictional boundaries. Prior to the enactment of that law, multiple attorney general opinions had indicated that there was no statutory authorization to hold public meetings outside of the municipality, as required by the Florida Constitution.⁷ “[I]n the absence of such statutory authorization, acts and proceedings at meetings held outside the municipal jurisdiction are void unless such actions are statutorily authorized.”⁸

Joint meetings between the governing bodies of cities and counties are common practice across the state. These meetings generally take place in the concerned city, however, legislative staff has found several instances of joint meetings held beyond municipal boundaries, including in the counties of Highlands, Charlotte and Indian River.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 166.0213, F.S., to authorize the governing bodies of a municipality and the county in which it is located to hold joint meetings anywhere in that county so long as the two governing bodies are acting on or discussing matters of mutual interest. This bill also permits the governing body of a municipality to meet within the boundaries of another municipality when the two governing bodies wish to discuss or act on matters of mutual interest.

The time and place of a joint meeting must be noticed, as provided for by ordinance or resolution.

Section 2 provides an effective date of July 1, 2014.

⁵ Art. VIII, s. 2(b), Fla. Const.; *see also* s. 166.021, F.S.

⁶ Art. VIII, s. 2(c), Fla. Const.

⁷ Art. VIII, s. 2(c), Fla. Const.; s. 166.021, F.S., Op. Att’y Gen. Fla 2008-01 (2008); Op. Att’y Gen. Fla 2003-03 (2003); Op. Att’y Gen. Fla 75-139 (1975); *see also County of Okeechobee v. Florida Nat. Bank*, 150 So. 124, 126 (Fla. 1933).

⁸ Op. Att’y Gen. Fla 2008-01 (2008).

⁹ List of Meeting Notices for Joint meetings held beyond municipal boundaries on file with Community Affairs Committee Staff.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, section 24(b) of the Florida Constitution, and s. 286.011, F.S., known as the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken. No resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.¹⁰

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Unknown.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 166.0213 of the Florida Statutes.

¹⁰ Section 286.011, F.S.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on April 3, 2014:

The CS/CS provides that the governing body of a municipality may meet within the boundaries of another municipality.

CS by Community Affairs on March 5, 2014:

Provides that the county governing body may attend a joint meeting with a municipal governing body within the municipal boundaries under certain circumstances.

- B. **Amendments:**

None.



446386

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 166.0213, Florida Statutes, is amended
to read:

166.0213 Governing body meetings.—

(1) The governing body of a municipality having a
population of 500 or fewer residents may hold meetings within 5
miles of the exterior jurisdictional boundary of the



446386

11 municipality at such time and place as may be prescribed by
12 ordinance or resolution.

13 (2) The governing body of a municipality may hold joint
14 meetings to receive, discuss, and act upon matters of mutual
15 interest with the governing body of the county within which the
16 municipality is located or the governing body of another
17 municipality at such time and place as shall be prescribed by
18 ordinance or resolution.

19 Section 2. This act shall take effect July 1, 2014.

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

22 And the title is amended as follows:

23 Delete everything before the enacting clause
24 and insert:

25 A bill to be entitled
26 An act relating to municipal governing body meetings;
27 amending s. 166.0213, F.S.; authorizing the governing
28 body of a municipality to hold joint meetings with the
29 governing body of the county within which the
30 municipality is located or the governing body of
31 another municipality; authorizing the governing body
32 of a municipality to prescribe the time and place of
33 joint meetings by ordinance or resolution; providing
34 an effective date.

By the Committee on Community Affairs; and Senator Galvano

578-02187-14

2014730c1

1 A bill to be entitled
2 An act relating to municipal governing body meetings;
3 amending s. 166.0213, F.S.; authorizing the governing
4 body of a municipality to hold joint meetings with the
5 governing body of the county within which the
6 municipality is located; providing for the location
7 and time of such meetings; providing an effective
8 date.

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

11
12 Section 1. Section 166.0213, Florida Statutes, is amended
13 to read:

14 166.0213 Governing body meetings.—

15 (1) The governing body of a municipality having a
16 population of 500 or fewer residents may hold meetings within 5
17 miles of the exterior jurisdictional boundary of the
18 municipality at such time and place as may be prescribed by
19 ordinance or resolution.

20 (2) The governing body of a municipality may hold joint
21 meetings with the governing body of the county within which the
22 municipality is located in order to receive, discuss, and act
23 upon matters of mutual interest. A joint meeting may be held
24 within the municipality or the county at such time and place as
25 may be prescribed by ordinance or resolution.

26 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)

4-3-14

Meeting Date

Topic Municipal Governing Body Meetings

Bill Number 730

(if applicable)

Name Holly McPhail

Amendment Barcode _____
(if applicable)

Job Title Legislative Asst.

Address 301 S. Bronough
Street

Phone (850) 701-3604

Tallahassee, FL 32302
City State Zip

E-mail hmephai@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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO

26th District

March 5, 2014

Senator Jeremy Ring
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

I respectfully request that CS/SB 730, Municipal Governing Body Meetings, be scheduled for a hearing in the Committee on Governmental Oversight & Accountability at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Joe McVaney
Bethany Jones

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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 1046

INTRODUCER: Senator Galvano

SUBJECT: Public Records/Motor Vehicle Crash Reports

DATE: April 2, 2014

REVISED: 4/4/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Favorable
2.	Kim	McVaney	GO	Favorable
3.			RC	

I. Summary:

SB 1046 expands a public record exemption restricting access to certain personal information contained in traffic crash reports obtained by the media.

Current law allows radio and television stations licensed by the Federal Communication Commission, newspapers qualified to publish legal notices, and certain free newspapers to request information contained in traffic crash reports. The bill requires and clarifies that these outlets may continue to make requests of traffic crash reports. However, for a period of 60 days after a report is filed, a crash report must be requested on an individual basis, and may not contain home, cellular, employment, or other telephone numbers, or the home or employment addresses of any of the parties involved in the crash.

The exemption is subject to repeal on October 2, 2019 unless reviewed and reenacted. Also provided is a statement of public necessity as required by the Florida Constitution.

This bill expands an existing public records exemption and requires a two-thirds vote of the Legislature for passage.

II. Present Situation:

PIP Fraud

In a statewide Grand Jury report on insurance fraud relating to PIP coverage, the Fifteenth Statewide Grand Jury found that individuals called “runners” would pick up copies of crash reports filed with law enforcement agencies. The reports would then be used to solicit people involved in motor vehicle accidents. The Grand Jury found a strong correlation between illegal

solicitations and the commission of a variety of frauds, including insurance fraud. These runners generally work for attorneys, auto body shops, or health care professionals.¹

According to the Grand Jury report:

Probably the single biggest factor contributing to the high level of illegal solicitations is the ready access to public accident reports in bulk by runners. These reports provide runners, and the lawyers and medical professionals who use them, the ability to contact large numbers of potential clients at little cost and with almost no effort. As a result, virtually anyone involved in a car accident in Florida is fair game to the intrusive and harassing tactics of solicitors. Such conduct can be emotionally, physically, and ultimately, financially destructive.

.....
Some runners attempt to disguise their use of these police reports by claiming they would be used to publish what they called "transportation news" or "accident journals." These periodicals are nothing more than flimsy two or three page copies of a list of the names, addresses and phone numbers of accident victims, which information is summarized from the police reports. These "journals" are then sold at high prices to chiropractors, lawyers, auto body shops and even other solicitors for the specific purpose of soliciting the accident victims. This easy access to these reports so soon after the accident gives unscrupulous individuals an opportunity to directly contact victims of accidents with specific information about their accident.²

Crash Reports

Currently, s. 316.066(2)(a), F.S., provides that crash reports revealing identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

Closing access to crash reports for 60 days helps protect crash victims and their families from illegal personal injury protection (PIP) solicitation.

The law also provides several exceptions to this public records exemption. Crash reports may be made immediately available to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.11 and

¹ The Office of the Attorney General, Statewide Grand Jury Report, Second Interim Report of the Fifteenth Statewide Grand Jury, No. 95,746. (Fla. 2000). This document can be viewed at: <http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/9ab243305303a0e085256cca005b8e2e!opendocument> (Last viewed March 27, 2014).

² *Id.*

50.031, F.S., and free newspapers of general circulation, published once a week or more often, available and of interest to the public generally for the dissemination of news.³

The exemption does not prevent state and federal government agencies acting in furtherance of their duties from having access to information in crash reports.⁴

A person attempting to access a crash report within 60 days after the date the report is filed must present identification and file a written sworn statement stating that confidential and exempt information contained in a crash report will not be used for commercial solicitation of accident victims, or knowingly disclosed to any third party during the time that information remains confidential and exempt.

In lieu of requiring a written sworn statement, an agency may provide crash reports by electronic means to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt will not be used for commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, during the period of time the information remains confidential and exempt. The vendor must provide a copy of the contract to the agency.⁵

The law does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information.⁶

Criminal Penalties for Illegal Use of Crash Report Information:

Current law provides criminal penalties for malfeasant use of crash reports.

- Section 316.066(3)(c), F.S., provides that anyone, knowing that he or she is not entitled to obtain confidential and exempt information in a crash report, who obtains or attempts to obtain such information commits a third degree felony.
- Section 316.066(3)(d), F.S., provides that anyone who knowingly uses confidential and exempt information in a crash report in violation of a filed written sworn statement or contractual agreement commits a third degree felony.
- Section 817.234(8), F.S., prohibits anyone from soliciting business for the purpose of filing a motor vehicle tort claim, or claims for PIP benefits. Violations of this statute are a third degree felony.⁷
- Section 817.505, F.S., prohibits anyone from paying, directly or indirectly to induce the referral of patients from a health care provider or facility, or to solicit any kind of payment

³ Section 316.066(2)(b), F.S. This section also provides that “the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes.”

⁴ Section 316.066(2)(c), F.S.

⁵ Section 316.066(2)(d), F.S.

⁶ Section 316.066(2)(e), F.S.

⁷ Section 817.234(c), F.S.

directly or indirectly in return for referring a patient to a health care provider or facility. Violations of this statute are a third degree felony.⁸

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.⁹ The records of the legislative, executive, and judicial branches are specifically included.¹⁰

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹¹ guarantees every person's right to inspect and copy any state or local government public record¹² at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹³

Only the Legislature may create an exemption to public records requirements.¹⁴ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁵ 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 provisions¹⁶ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁷

⁸ Section 817.505(4), F.S.

⁹ FLA CONST., art. I, s. 24(a).

¹⁰ Id.

¹¹ Chapter 119, F.S.

¹² 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)).

¹³ Section 119.07(1)(a), F.S.

¹⁴ 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).

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁷ FLA. CONST., art. I, s. 24(c).

General Public Records Exemption for Victims of Crimes and Accidents

There is a general public records exemption for police reports protecting victims of crimes and accidents. This law provides that no one may use confidential or exempt information contained in accident reports to solicit victims or disclose that information to a third party who would solicit victims while records are confidential or exempt.¹⁸ This prohibition does not apply to publication by the media.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act), s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ 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.²¹ 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.

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.²² 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.²³

The Act also requires specified questions to be considered during the review process.²⁴

¹⁸ Section. 119.105, F.S.

¹⁹ Section. 119.105, F.S.

²⁰ 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.).

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S.

²³ *Id.*

²⁴ 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?

If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are *not* required.

Effect of Proposed Changes:

Section 1 amends the current public records exemption for crash reports by prohibiting radio and television stations, and newspapers qualified to publish legal notices, and certain free newspapers from obtaining the personal and work addresses and phone numbers of individuals involved in an accident. The media will not have access to this information for 60 days. The identities of the individuals in a crash report are not included in this exemption and remain accessible to the media.

In addition, traffic crash report requests must be filed on an individual basis. This measure would eliminate bulk public records requests being made for crash reports.

Under the bill, this public records exemption is subject to repeal on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides that personal contact information contained in a motor vehicle crash report be exempt from public records disclosure. It is public necessity that personal information by radio, television stations, and newspapers be restricted for the 60-day period after the filing date of traffic crash reports. The restriction is to combat widespread insurance fraud that occurs when information is unlawfully used to contact the parties involved in a crash. Moreover, the exemption prohibits the media's access to addresses and telephone numbers of the parties involved in crashes in order to protect the parties from those who would unlawfully solicit and make claims against their personal injury protection insurance policies.

This act shall take effect on the same date that CS/SB 876 or HB 865 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

• Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ FLA. CONST., art. I, s. 24(c). An existing exemption may be treated as a new exemption if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

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 substantially amends an exception to the current public records exemption, it expands the exemption and therefore it requires a two-third 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 an existing public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

The last paragraph in s. 316.066(2), F.S., and CS/SB 876 (which amends s. 316.066(2), F.S.) is paragraph “(e).” This bill is currently drafted to create s. 316.066(2)(g) and will have to be amended to become s. 316.066(2)(f).

The public necessity statement appears to be facially constitutional, in that the public necessity statement justifies, with specificity, the necessity for the exemption and the exemption is no broader than is necessary to accomplish its purpose.²⁶ The public necessity statement provides that this exemption is necessary in order to protect the public from insurance fraud and

²⁶ Article 1, Section 24, of the Florida Constitution provides in pertinent part:

The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.

illicit solicitations, thus implying that unscrupulous actors are using lawful media access for illicit purposes. It is unclear if the public necessity statement is not legally sufficient because it does not explicitly articulate the nexus between the media's lawful access to information in crash reports and the unlawful use of confidential and exempt information by unscrupulous actors.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends section 316.066 of the Florida Statutes.

VIII. 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 Galvano

26-01759-14

20141046__

A bill to be entitled

An act relating to public records; amending s. 316.066, F.S.; providing an exemption from public records requirements for certain personal contact information contained in motor vehicle crash reports; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (g) is added to subsection (2) of section 316.066, Florida Statutes, as amended by SB 876, 2014 Regular Session, to read:

316.066 Written reports of crashes.—

(2)

(g) Radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and free newspapers of general circulation published once a week or more often, available and of interest to the public generally for the dissemination of news, which request crash reports before 60 days have elapsed after the report is filed must request such crash reports on an individual basis and may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal

Page 1 of 2

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

26-01759-14

20141046__

through reenactment by the Legislature.

Section 2. The Legislature finds that the personal contact information contained in a motor vehicle crash report is confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 60 days after the report is filed and that it is a public necessity that access to such information during that 60-day period by newspapers and radio and television stations be restricted to combat widespread insurance fraud that occurs when the information is unlawfully used to contact the parties involved in a crash. The exemption prohibits access by newspapers and television and radio stations to the addresses and telephone numbers of the parties involved in a crash to protect the parties from those who would unlawfully solicit the parties to make claims against their personal injury protection insurance policies.

Section 3. This act shall take effect on the same date that SB 876 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-3-14
Meeting Date

Topic Public Records - Motor Vehicles

Bill Number 1046
(if applicable)

Name Richard Gentry

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2305 BRAEBURN CIR.
Street

Phone 251-1837

THH FL 32309
City State Zip

E-mail _____

Speaking: For Against Information

Representing Economic Council of Palm Beach Co.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic PR / Motor Vehicle Crash Reports

Bill Number 1046
(if applicable)

Name SAM MORLEY

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 326 College Ave
Street

Phone 850 212 4395

TAM. FL 32312
City State Zip

E-mail smorley@flpress.com

Speaking: For Against Information

Representing FLORIDA PRESS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO

26th District

March 17, 2014

Senator Jeremy Ring
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Ring:

I respectfully request that SB 1046, Public Records/Motor Vehicle Crash Reports, be scheduled for a hearing in the Committee on Governmental Oversight and Accountability at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Joe McVaney
Bethany Jones

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 350

INTRODUCER: Governmental Oversight and Accountability Committee; Health Policy Committee and Senator Abruzzo

SUBJECT: Public Records/Yellow Dot Critical Motorist Medical Information Program

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Favorable
2.	Peterson	Stovall	HP	Fav/CS
3.	Kim	McVaney	GO	Fav/CS
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 350, which is tied to CS/SB 262, creates a public records exemption for personal identifying information of a person who participates in a yellow dot critical motorist medical information program. A yellow dot critical motorist medical information program creates a mechanism for providing medical and emergency contact information to emergency medical responders in the event of a motor vehicle accident or medical emergency. Program participants receive a yellow dot to place on their vehicle's rear window, which alerts law enforcement or emergency medical responders to look for a yellow folder in the glove box that contains the medical information.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless saved from repeal by the Legislature.

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

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

II. Present Situation:

The yellow dot critical motorist medical information program is a means to alert first responders at an accident scene to search for information about the injured person—especially if the person is unable to speak. The program, which began in Connecticut in 2002, has now been adopted in other states, including seven Florida counties.¹

CS/SB 262 creates specific authorization for counties to implement a program, as follows. After completing an application, the participant will receive a yellow dot decal to place on the vehicle rear window (or clearly visible location on a motorcycle), a yellow dot folder, and a form for the participant's information. The form, which is to be placed inside the folder, includes the following information about the participant:

- Name;
- Photograph;
- Emergency contact information of not more than two people;
- Medical information, including medical conditions, recent surgeries, allergies and medications;
- Preferred hospital; and,
- Contact information for not more than two physicians.

The participant's signature on the form authorizes release of the information for the purposes authorized by the bill. These include: to identify the participant; to determine whether the participant has a medical condition that would impede communication; to access the medical information form; and to ensure that information about current medications and conditions may be considered during emergency medical treatment.

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.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

¹ Broward, Miami/Dade, Orange, Osceola, Palm Beach County, Polk, and St. Lucie. My Yellow Dots Program Information Exchange, http://www.myyellowdots.com/florida_yellow_dot.php (last visited Jan. 30, 2014).

² FLA CONST. art. I, s. 24(a).

³ *Id.*

⁴ Chapter 119, F.S.

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

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

III. Effect of Proposed Changes:

The bill creates a public records exemption for personal identifying information of a participant in a yellow dot critical motorist medical information program which is held by a county. CS/CS/SB 350 makes a record kept by a county exempt from public disclosure, not *confidential* and exempt. Exempt records may be disclosed by a records custodian at his or her discretion.¹³

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)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

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.

¹³ See footnote 7.

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

The bill provides a public necessity statement, which is required by the Florida Constitution. The bill states the exemption is necessary to protect a program participant's privacy. In addition, the public necessity statement provides that this exemption is necessary in order to prevent a participant from being the victim of criminal activity.

The bill takes effect on the same date CS/SB 262 or similar legislation authorizing a yellow dot critical motorist medical information program takes effect, if adopted during the 2014 Session. CS/SB 262 takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to CS/SB 262,¹⁴ the application form states that information contained in the forms will only be disclosed to authorized law enforcement personnel, public safety and emergency services agencies as well as hospitals. When read together, CS/SB 262 and CS/CS/SB 350 may give a participant the mistaken impression that medical information contained in the forms is exempt from public records. The information recorded on the yellow dot form will be created by and in the possession of the participant and not the county. This means that information in the forms are not public record within the meaning of s. 119.011(12), F.S., and therefore not subject to a public records exemption. CS/CS/SB 350 will only make the information in the hands of the county exempt from public disclosure.

VIII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Governmental Oversight and Accountability on April 3, 2014:

The CS/CS revises the public necessity statement and clarifies that counties will be distributing yellow dot folders. The CS/CS also removes a reference to a participant's medical records being correlated to his or her participation in the yellow dot program.

CS by Health Policy on February 11, 2014:

The CS corrects the Open Government Sunset Review repeal date to October 2, 2019.

B. Amendments:

None.

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

¹⁴ CS/SB 262 was amended and passed in the Senate on April 3, 2014.



424570

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 27 - 47
and insert:
information program held by a county participating in such
program be made exempt from s. 119.07(1), Florida Statutes, and
s. 24(a), Article I of the State Constitution. Nevertheless,
allowing the participating counties to distribute yellow dot
folders, as well as allowing emergency medical responders and
law enforcement agents to access the information provided in



424570

11 yellow dot folders, will ensure the most rapid and effective
12 treatment for victims of serious traffic accidents. If the
13 personal identifying information of a participant in such
14 program were not exempt from disclosure, any person could
15 inspect and copy documentation that identifies the program
16 participant. Consequently, the availability of such information
17 to the public would result in the invasion of the program
18 participant's privacy. Finally, protecting the personal
19 identifying information

By the Committee on Health Policy; and Senator Abruzzo

588-01760-14

2014350c1

A bill to be entitled

An act relating to public records; providing an exemption from public records requirements for personal identifying information of participants in a yellow dot critical motorist medical information program; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Public records exemption; participants in a yellow dot critical motorist medical information program.-

(1) Personal identifying information of a participant in a yellow dot critical motorist medical information program which is held by a county participating in such program is exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(2) Subsection (1) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, Florida Statutes, and is repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the personal identifying information of a participant in a yellow dot critical motorist medical information program held by the governing body of a county participating in such program be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State

Page 1 of 3

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

588-01760-14

2014350c1

Constitution. Nevertheless, allowing the governing bodies of participating counties to distribute yellow dot folders, as well as allowing emergency medical responders and law enforcement agents to access the information provided in yellow dot folders, will ensure the most rapid and effective treatment for victims of serious traffic accidents. If the personal identifying information of a participant in such program were not exempt from disclosure, any person could inspect and copy documentation that identifies the program participant. Consequently, the availability of such information to the public would result in the invasion of the program participant's privacy. If information regarding the program participant could be correlated with his or her medical records, it would be possible for the public to become aware of any diseases or other medical concerns for which the qualifying patient is being treated by his or her physician. This knowledge could be used to embarrass or humiliate a qualifying patient or to discriminate against him or her. Finally, protecting the personal identifying information of a participant in such program prevents the identification of program participants who could be victimized by robbery, burglary, or illicit drug activities. Accordingly, the Legislature finds that the harm to a program participant which could result from the release of personal identifying information of the participant outweighs any minimal public benefit that would be derived from disclosure of that information to the public. Therefore, it is the finding of the Legislature that such identifying information must be made confidential and exempt from public disclosure.

Section 3. This act shall take effect on the same date that

Page 2 of 3

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

588-01760-14

2014350c1

59 SB 262 or similar legislation authorizing the governing body of
60 a county to create a yellow dot critical motorist medical
61 information program takes effect, if such legislation is adopted
62 in the same legislative session or an extension thereof and
63 becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/2014
Meeting Date

Topic _____

Bill Number 350
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

E-mail justice2jesus@yahoo.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 414

INTRODUCER: Education Committee and Senator Dean

SUBJECT: Public Records/Animal Medical Researchers

DATE: April 2, 2014 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Letarte	Klebacha	ED	Fav/CS
2.	Kim	McVaney	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 414 provides an exemption from public record requirements for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts animal research or is engaged in activities related to animal research.

The provision is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature. The bill also includes a public necessity statement as required by the Constitution of the State of Florida.

This bill requires a two-thirds vote for passage because it creates a public records exemption.

The bill takes effect on July 1, 2014.

II. Present Situation:

Currently, there is no exemption from public record requirements for personal identifying information of individuals who conduct animal research or engage in activities related to animal research at a public research facility.

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

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

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.

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

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

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.¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷

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 119.15, 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.).

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ 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?

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.¹⁸ 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 exception¹⁹ to the exemption is created.²⁰

III. Effect of Proposed Changes:

CS/SB 414 provides an exemption from public record requirements for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts animal research or is engaged in activities related to animal research.

The bill makes such personal identifying information exempt from public record requirements when it is contained in the following records:

- Animal records, including animal care and treatment records;
- Research protocols and approvals;
- Purchasing, funding, and billing records related to animal research or activities;
- Animal care and use committee records;
- Facility and laboratory records related to animal research or activities.

The exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The public necessity statement provides that the exemption is necessary to protect researchers from physical and emotional harm from animal rights advocates who oppose the use of animals for medical research. The statement provides that certain university employees have been harassed and threatened after personal identifying information was disclosed pursuant to public records requests.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ 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.

¹⁹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²⁰ 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).

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 for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption and therefore requires a two-thirds vote for final passage.

Public Necessity Statement

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Public research facilities will be required to redact personal identifying information in the future. The fiscal impact for this new requirement is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates a new unnumbered section 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 Education March 25, 2014:

The committee substitute:

- Broadens the exemption by protecting “personal identifying information” as opposed to just home addresses, telephone numbers, dates of birth, and photographs as in SB 414.
- Expands the group of people to whom the exemption applies by including individuals “employed by, under contract with, or volunteering for a public research facility,” as opposed to “current or former researchers” as in SB 414.
- Expands the qualifying activity to include a research facility that “conducts animal research or is engaged in activities related to animal research” as opposed to requiring that the work be for the purpose of “conducting life-sustaining medical research” as in SB 414.
- Provides that personal identifying information is exempt from public records requirements when such information is located within a specific list of documents.

- B. **Amendments:**

None.

By the Committee on Education; and Senator Dean

581-03198-14

2014414c1

1 A bill to be entitled
2 An act relating to public records; providing an
3 exemption from public records requirements for
4 personal identifying information of certain animal
5 researchers at public research facilities, including
6 state universities; providing for retroactive
7 applicability of the exemption; providing for future
8 legislative review and repeal of the exemption;
9 providing a statement of public necessity; providing
10 an effective date.

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

14 Section 1. (1) Personal identifying information of a person
15 employed by, under contract with, or volunteering for a public
16 research facility, including a state university, that conducts
17 animal research or is engaged in activities related to animal
18 research, is exempt from s. 119.07(1), Florida Statutes, and s.
19 24(a), Article I of the State Constitution, when such
20 information is contained in the following records:

21 (a) Animal records, including animal care and treatment
22 records.

23 (b) Research protocols and approvals.

24 (c) Purchasing, funding, and billing records related to
25 animal research or activities.

26 (d) Animal care and use committee records.

27 (e) Facility and laboratory records related to animal
28 research or activities.

29 (2) This exemption applies to personal identifying

Page 1 of 3

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581-03198-14

2014414c1

30 information as described in subsection (1) held by a public
31 research facility, including a state university, before, on, or
32 after the effective date of this exemption.

33 (3) This section is subject to the Open Government Sunset
34 Review Act in accordance with s. 119.15, Florida Statutes, and
35 shall stand repealed on October 2, 2019, unless reviewed and
36 saved from repeal through reenactment by the Legislature.

37 Section 2. The Legislature finds that it is a public
38 necessity that personal identifying information of a person who
39 is employed by, under contract with, or volunteering for a
40 public research facility, including a state university, that
41 conducts animal research or is engaged in activities related to
42 animal research, be made exempt from s. 119.07(1), Florida
43 Statutes, and s. 24(a), Article I of the State Constitution. The
44 Legislature also finds that it is a public necessity that this
45 exemption apply to such personal identifying information held by
46 a public research facility, including a state university,
47 before, on, or after the effective date of the exemption. The
48 Legislature finds that the release of such personal identifying
49 information will place such persons in danger of threats and
50 harassment as well as physical and emotional harm from those who
51 advocate against such research. University employees have been
52 harassed and threatened after animal care records that included
53 their personal identifying information were disclosed pursuant
54 to public records requests. Thus, the Legislature finds that the
55 harm and threat to such persons' safety which results from the
56 release of personal identifying information in records about the
57 animals or about the animal research outweighs any public
58 benefit that may be derived from the disclosure of the

Page 2 of 3

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581-03198-14

2014414c1

59 information. The public research facilities, including state
60 universities, remain responsible and accountable for the animal
61 research conducted at their institutions.

62 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)

4/3/2014

Meeting Date

Topic _____

Bill Number 414
(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)

4.3.14

Meeting Date

Topic Public Records/Animal Res.

Bill Number 414
(if applicable)

Name Pam Pforster

Amendment Barcode _____
(if applicable)

Job Title AVP, Govt Affairs

Address 12901 Bruce B Downs Blvd

Phone 850.980.3202

Street

Tampa

FL

33612

City

State

Zip

E-mail ppforster@health.usf.edu

Speaking: For Against Information

Representing USF Health

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)

4/3/14

Meeting Date

Topic Animal Research / Public Records

Bill Number 414
(if applicable)

Name Ryan Britton

Amendment Barcode _____
(if applicable)

Job Title Director of State Relations

Address 777 Glades Rd.

Phone 561.297.2583

Street

Boca Raton FL 33431

City

State

Zip

E-mail rbritto2@fau.edu

Speaking: For Against Information

Representing Florida Atlantic University

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)

4.3.14

Meeting Date

Topic Animal Research

Bill Number 414
(if applicable)

Name WILBUR BREWSTER

Amendment Barcode _____
(if applicable)

Job Title _____

Address 225 S. Adams #250
Street

Phone 850-222-7718

TLH, FL 32302
City State Zip

E-mail wbrewster@bpl.org

Speaking: For Against Information

Representing University of Florida

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)

4/3/14
Meeting Date

Topic Animal Researcher Protection

Bill Number SB 414
(if applicable)

Name Marion Hoffmann

Amendment Barcode _____
(if applicable)

Job Title Assoc. v.p. Govt. Relations

Address 215 S. Monroe Street

Phone 850-488-2447

Tallahassee FL 32301
City State Zip

E-mail marionh@ufl.edu

Speaking: For Against Information

Representing Univ. of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR CHARLES S. DEAN, SR.
5th District

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

April 1, 2014

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

Dear Chairman Ring:

Thank you for allowing Committee Substitute for Senate Bill 414, relating Public Records/Animal Researchers, to be placed on your agenda. Unfortunately, I will be unable to attend the Committee meeting and would like to request your permission to allow my aide, Chase Daniels, to present this bill in my place.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Charles S. Dean".

Charles S. Dean
State Senator, District 5

Cc: Joe McVaney, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1140

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Hays

SUBJECT: Public Records/Division of Emergency Management/Emergency Planning

DATE: April 2, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ryon/Spaulding</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1140 creates a public records exemption for certain personal identification information provided to the Florida Division of Emergency Management (DEM) by an individual or a business for the purpose of receiving assistance with emergency planning. The bill provides for retroactive application of the exemption, and for legislative review and repeal under the provisions of the Open Government Sunset Review Act.

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

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

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.

Open Government Sunset Review Act

The Open Government Sunset Review Act¹³ sets forth a legislative review process for newly-created or substantially-amended public-records or public-meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

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

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

The Act also requires consideration of six questions regarding the scope of the exemption and related protections.¹⁴

Division of Emergency Management's "Get a Plan" Campaign

The Florida Division of Emergency Management (DEM), established in the Executive Office of the Governor,¹⁵ is the state's emergency management agency. The State Emergency Management Act directs the DEM to oversee and manage emergency preparedness, response, recovery and mitigation programs in Florida.¹⁶ Among the DEM's statutorily required duties is the requirement to institute a multifaceted public educational campaign on emergency preparedness.¹⁷ Such a campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.¹⁸

In 2006, the DEM launched its "Get a Plan" campaign to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. "Get a Plan" is an online preparedness tool that allows individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user. The tool allows users to establish a user name and password to access the online tool at their convenience to adjust or update any aspect of their emergency response plan.

Emergency plans may include sensitive information such as alternative locations for families to meet or business relocation in the event of building damage; business contacts, including utility providers, supplier, and employees; backup suppliers for key materials and services dependent

¹³ Section 119.15, F.S.

¹⁴ Section 119.15(6)(a), F.S.

¹⁵ Section 14.2016, F.S.

¹⁶ Section 252.31, F.S.

¹⁷ Section 252.35(2)(i), F.S.

¹⁸ Id.

upon by businesses; important records and documents that the business needs to operate; and emergency community contacts and disaster resources.

From 2006 to 2013, the DEM's "Get a Plan" tool hosted emergency response plans for 50,628 families and 8,551 businesses. Due to technical issues, the "Get a Plan" online tool has been temporarily removed from the DEM's website. However, the DEM plans to re-launch the "Get a Plan" online tool with an improved design and function to encourage more participation among Florida residents and businesses in planning for emergencies.¹⁹

Currently, information collected by the DEM for the purpose of assisting families and businesses with emergency planning is not exempt from the public records requirements in s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

III. Effect of Proposed Changes:

The bill creates s. 252.905, F.S., to exempt from public records requirements any information provided by an individual or business to the DEM for the purpose of receiving assistance with emergency planning. The exemption applies to information held by the DEM before, on, or after July 1, 2014.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill contains a finding of public necessity for this exemption. It states that it is a public necessity that information furnished by a person or business to the DEM for the purpose of obtaining assistance with emergency planning be exempt from public records requirements. The finding provides that the DEM manages a public awareness program to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. These disaster plans may include sensitive information and the potential disclosure of such information serves as a disincentive for creating a disaster plan. The bill finds that without the exemption, the effective and efficient administration of the DEM's statewide public awareness program is significantly impaired. The bill further finds that the harm that may result from the release of personal or business information obtained by the DEM for emergency disaster planning outweighs any public benefit that may be derived from disclosure of information.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁹ "Get a Plan" Campaign information obtained via e-mail correspondence with DEM staff on March 13, 2014. (On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

B. Public Records/Open Meetings Issues:

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

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

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

Breadth: A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.²⁰ The public records exemption in the bill applies only to the DEM for the purpose of providing assistance with emergency planning.

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.

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

VIII. Statutes Affected:

This bill creates section 252.905 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 Military and Veterans Affairs, Space, and Domestic Security on March 19, 2014:

The committee substitute:

- Creates a new section in ch. 252, F.S., to accommodate the public records exemption in the bill.
- Provides that the exemption is subject to the Open Government Sunset Review Act.
- Adds to the statement of public necessity that without the exemption, the effective and efficient administration of DEM's public awareness program is significantly impaired.

B. Amendments:

None.

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

583-02834-14

20141140c1

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 252.905, F.S.; creating an exemption from public
 4 records requirements for information furnished to the
 5 Division of Emergency Management by a person or
 6 business for the purpose of obtaining assistance with
 7 emergency planning; providing for retroactive
 8 application of the exemption; providing for future
 9 repeal and legislative review of the exemption;
 10 providing a statement of public necessity; providing
 11 an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 252.905, Florida Statutes, is created to
 16 read:
 17 252.905 Emergency planning information; public records
 18 exemption.—
 19 (1) Any information furnished by a person or a business to
 20 the division for the purpose of being provided assistance with
 21 emergency planning is exempt from s. 119.07(1) and s. 24(a),
 22 Art. I of the State Constitution. This exemption applies to
 23 information held by the division before, on, or after the
 24 effective date of this exemption.
 25 (2) This section is subject to the Open Government Sunset
 26 Review Act in accordance with s. 119.15, and shall stand
 27 repealed on October 2, 2019, unless reviewed and saved from
 28 repeal through reenactment by the Legislature.
 29 Section 2. The Legislature finds that it is a public

Page 1 of 3

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

583-02834-14

20141140c1

30 necessity that information furnished by a person or a business
 31 to the Division of Emergency Management for the purpose of being
 32 provided assistance with emergency planning be made exempt from
 33 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 34 State Constitution. The Division of Emergency Management manages
 35 a statewide public awareness program to educate the public to be
 36 self-sufficient for up to 72 hours following a natural or
 37 manmade disaster. The public awareness program encourages
 38 individuals, families, and businesses to develop disaster plans
 39 in preparation of and in response to such natural or manmade
 40 disasters. Emergency plans may include sensitive information
 41 such as alternate locations for families to meet or business
 42 relocation in the event of building damage; business contacts,
 43 including utility providers, suppliers, and employees; backup
 44 suppliers for key materials and services depended upon by the
 45 business; important records and documents that the business
 46 needs to operate; and emergency community contacts and disaster
 47 resources. Without this exemption, the effective and efficient
 48 administration of the Division of Emergency Management's
 49 statewide public awareness program is significantly impaired.
 50 The potential disclosure of sensitive information has served as
 51 a disincentive for creating a disaster plan, particularly among
 52 businesses that fear that the disclosure of sensitive
 53 information may place their businesses at a competitive
 54 disadvantage. Therefore, the Legislature finds that the harm
 55 that may result from the release of personal or business
 56 information obtained by the Division of Emergency Management for
 57 the purpose of providing assistance with emergency planning for
 58 the preparation of and response to a natural or manmade disaster

Page 2 of 3

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

583-02834-14

20141140c1

59 outweighs any public benefit that may be derived from disclosure
60 of the information.

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)

4/3/2014

Meeting Date

Topic _____

Bill Number 1140
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/897-9291

Street

St Petersburg FL 33705

City

State

Zip

E-mail justice2jesus@yahoo.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-3-14

Meeting Date

Topic DEM Public Records

Bill Number 1140
(if applicable)

Name Julie Roberts

Amendment Barcode _____
(if applicable)

Job Title External Affairs Director

Address 2555 Shumard Oak

Phone 850-413-9969

Street

Tallahassee

FL

32399

City

State

Zip

E-mail julie.roberts@em.myflorida.com

Speaking: For Against Information

Representing Division of Emergency mgmt

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 1140 – Public Records/Emergency Planning or Notification by Agency

Date: March 19, 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: SB 386

INTRODUCER: Senator Hays

SUBJECT: Application of Foreign Law in Certain Cases

DATE: April 2, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 386 restricts courts and arbitration tribunals from applying foreign law, legal codes, and systems to disputes brought under chapters 61 and 88, F.S. These chapters relate to divorce, alimony, division of marital assets, child support, and child custody.

The bill restricts courts from applying foreign laws that do not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

Specifically, the bill prohibits the courts of this state from:

- Basing a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforcing a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforcing a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Granting a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

The bill authorizes a party to a contract to waive his or her rights, but requires the court to narrowly construe the scope of a waiver.

This bill does not apply to the following:

- Corporations, partnerships, and other types of business associations, unless chapters 61 or 88, F.S., govern the dispute;
- Ecclesiastical matters; and
- Matters governed by federal treaty or international agreements to which the United States is a party and which preempt state law.

II. Present Situation:

Choice of Law and Choice of Forum

Questions of choice of law or forum generally arise when a case involves parties or situations with connections to multiple states or countries.

Domestic Law

The Full Faith and Credit Clause, found in section 1, Article IV of the U.S. Constitution, provides, in part: “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.” The question of full faith and credit may arise after a state refuses to enforce another state’s judgment, considered to be a “sister state.”¹ A full faith and credit issue may also arise when a party to a case involving contacts in one state seeks to have the law of another state apply.

In choice of law cases, a court typically requires proof of sufficient contacts to a state, such as through residency, home ownership, or place of work to apply the law of that state. This test remains the prevailing standard in choice of law cases.²

Foreign Law

Choice of Law

Some contracts stipulate a choice of law, defined as “A contractual provision by which the parties designate the jurisdiction whose law will govern any disputes that may arise between the parties.”³

Numerous policies exist which favor application of foreign law by U.S. state and federal courts.⁴ These policies are based on principles of international comity, reciprocity,

¹ William B. Sohn, *Supreme Court Review of Misconstructions of Sister State Law*, 98 VA. L. REV. 1861, 1864-65 (December 2012).

² In the seminal case of *Allstate Insurance Co. v. Hague*, the Supreme Court considered whether Minnesota law could apply where the widow established the following state ties to Minnesota: the decedent’s long-term workplace, a daily commute between states, the insurer’s place of operation, and the wife’s new place of residency. The Court required proof of a singular or aggregate significant contact to a state so that choice of its law is not arbitrary or fundamentally unfair. Here, the court determined that the aggregate of contacts justified application of Minnesota law. 449 U.S. 302, 313-319 (1981).

³ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁴ Nicholas M. McLean, *Intersystemic Statutory Interpretation in Transnational Litigation*, 122 YALE L.J. 303, 304 (October 2012). “A court sitting in diversity might apply a state choice-of-law rule that requires the court to apply the tort law of a foreign nation. In a contract dispute, a federal court might apply foreign substantive law pursuant to an international

predictability, fairness, and disapproval of forum shopping.⁵ The term “comity” is defined as “A practice among political entities (as nations, states, or courts of different jurisdictions), involving esp[ecially] mutual recognition of legislative, executive, and judicial acts.”⁶ Principles of comity are the international equivalent of full faith and credit.⁷

A court does not take judicial notice of the law of another country.⁸ Instead, if relevant to a case, a court reviews foreign statutes, case law, and secondary sources and heavily relies on expert testimony.⁹

Forum Non Conveniens

The term “forum non conveniens” is defined as:

The doctrine that an appropriate forum – even though competent under the law – may divest itself of jurisdiction if, for the convenience of the litigants and the witnesses, it appears that the action should proceed in another forum in which the action might also have been properly brought in the first place.¹⁰

Courts apply a strong presumption in favor of a plaintiff’s choice of forum.¹¹ Still, the proponent must firmly establish bona fide connections to the forum choice to outweigh perceptions of forum shopping.¹² Courts typically allow a U.S. citizen to choose a U.S. forum, rather than have the case heard in a foreign jurisdiction. However, if a U.S. corporation operates in international commerce, not all litigation will be heard in the U.S.¹³

Courts place a high burden on a defendant who seeks dismissal of a case based on forum non conveniens. Although international treaty requirements promote the principle “equal access to courts,” in practice, courts do not accord foreign plaintiffs the same deference to move a case to another jurisdiction as U.S. citizens.¹⁴

agreement’s choice-of-law clause. In the realm of corporate law, a court might find, based on an application of the internal affairs doctrine, that a foreign nation’s procedural requirements govern a shareholder derivative suit (citation omitted).” *Id.*⁵ *Id.* at 304.

⁶ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁷ James Botsford and Paul Stenzel, *The Wisconsin Way Forward with Comity: A Legal Term for Respect*, 47 TULSA L. REV. 659 (Spring 2012). “Full faith and credit is a constitutional principle requiring states to enforce fully the judgments and orders of other states. Comity is the principle of international law by which a sovereign gives deference to the judgments of another due to mutual respect.” *Id.* at 660.

⁸ Determination of question relating to foreign law as one of law or fact, 34 A.L.R. 1447.

⁹ McLean, *supra* note 4, at 306-307.

¹⁰ BLACK’S LAW DICTIONARY (9th ed. 2009).

¹¹ Plaintiff’s choice of forum, 32A AM. JUR. 2D FED. CTS. § 1364.

¹² Forum Non Conveniens – Deference to Plaintiff’s Forum Choice, 14D FED. PRAC. & PROC. JURIS. § 3828.2 (3d ed.)

¹³ American citizenship of party; suits by aliens, 32A AM. JUR. 2D FED. CTS. §1365.

¹⁴ 14D FED. PRAC. & PROC. JURIS. §3828.2 (3d ed.).

Validity of Judgment

U.S. courts are generally not bound by foreign judgments. Still, principles of comity dictate strong consideration of another country's judicial orders, based on deference and mutual respect. Criteria that courts apply in accepting a foreign judgment include proof that:

- The parties had access to a full and fair trial.
- The proceeding took place after due notice and voluntary appearance.
- The jurisdiction operates under impartiality, rather than prejudice, between its own citizens and those of other countries.
- No evidence of fraud existed in securing the judgment.¹⁵

Chapter 61, F.S.

Chapter 61, F.S., addresses dissolution of marriage including distribution of assets and liabilities, alimony, and child support and custody arrangements. Regarding child support, the public policy of the state is that each parent has a fundamental obligation towards dependent children.¹⁶ Child support is based in part on a parent's income and the child's needs.¹⁷ Child custody arrangements, whether developed by the parents or by a court, must comply with state law and international treaties.¹⁸

Florida courts distribute assets and liabilities through equitable distribution, rather than, for example, community property, as is done in California and a handful of other Western states. Under equitable distribution, a court considers various factors including contributions to the marriage, economic circumstances of the parties, and the length of marriage.¹⁹ The court also considers various factors in awarding alimony and awards it on different bases such as monthly, lump sum, temporary, or permanent.²⁰

Florida recognizes written, signed premarital agreements as enforceable contracts.²¹ These agreements may include choice of law clauses.²² An agreement cannot negatively affect the rights of a child to support.²³ Grounds for unenforceability of a premarital agreement include coercion, fraud, duress, or overreaching or that the agreement is unconscionable.²⁴

To relocate with a child, absent an agreement between the parents, the relocating parent must petition the court or face contempt charges.²⁵

¹⁵ 9 AM. JUR. *Proof of Facts* 3D 687 §1.5. Comity (December 2012).

¹⁶ Section 61.29, F.S.

¹⁷ Section 61.30, F.S.

¹⁸ These laws include the Uniform Child Custody Jurisdiction and Enforcement Act, the International Child Abduction Remedies Act, the Parental Kidnapping Prevention Act, and the Convention on the Civil Aspects of International Child Abduction.

¹⁹ Section 61.075(1), F.S.

²⁰ The law recognizes bridge-the-gap, rehabilitative, durational, and permanent forms of alimony. Section 61.08(1) and (2), F.S.

²¹ Section 61.079, F.S.

²² Section 61.079(4)(a)7., F.S.

²³ Section 61.079(4) (b), F.S.

²⁴ Section 61.079(7), F.S.

²⁵ Section 61.13001(3), F.S.

Chapter 88, F.S.

Federal law required each state to adopt the Uniform Interstate Family Support Act (UIFSA), codified in chapter 88, F.S.²⁶ The purpose of the UIFSA is to unify state law among the states regarding child support obligations, reconcile child support orders issued by multiple states, and streamline procedures for out-of-state petitioners.²⁷ Under the Act, only one court possesses jurisdiction and only one order is in effect at any given time.²⁸ This can change, however, to another court for modification, if that court has personal jurisdiction.²⁹

The UIFSA applies to support proceedings involving a foreign support order (meaning an order entered into out-of-state), a foreign tribunal, or a case in which an obligee, obligor, or child lives in a foreign country.³⁰

The UIFSA governs the:

- Establishment of a spousal or child support order.
- Enforcement of support orders and income-withholding orders without the registration of an order from out-of-state with a court in this state.
- Registration of a support order of another state for enforcement in this state.
- Modification of a child support order issued by a court of the state in which the support obligations originated.
- Registration of an order of another state for modification.
- Determination of parentage as it relates to child support.³¹

Jurisdiction

Section 88.2011, F.S., addresses a court's jurisdiction over parties to a support order or parentage determination. When a court exercises personal jurisdiction over a nonresident, in some circumstances, the state procedural and substantive laws apply, including choice of law rules, unless specified otherwise in the UIFSA:

²⁶ Building on earlier federal efforts to address the complications of enforcing child support across state lines, Congress passed the original UIFSA in 1992, and later amended it in 1996 and 2001. Kimball Denton, *A Brief History of Uniform Laws for Private Interstate Support Enforcement*, 20 J. CONTEMP. LEGAL ISSUES 323, 326 (2011-12). “[T]he Act innovatively created a one-order system by including a long-arm jurisdiction provision, which provided that a case should be kept in the obligee’s home state as often as possible. The long-arm provision called for ‘extended personal jurisdiction over nonresidents’” This was thought to remove the noncustodial parent’s advantage of having automatic case transfer to his or her home state. Nicole K. Bridges, *The “Strengthen and Vitalize Enforcement of Child Support (Save Child Support) Act: Can the Save Child Support Act Save Child Support from the Recent Economic Downturn?”*, 36 OKLA. CITY U.L. REV. 679, 692-93 (Fall 2011).

²⁷ Denton, *supra* note 26 at 326-328.

²⁸ Denton, *supra* note 26 at 327.

²⁹ *Id.* at 327. In Florida, a court may establish personal jurisdiction over an individual based on any of the following: The individual is served with citation, summons, or notice in-state; the individual consents to jurisdiction in the state; the individual lived with the child in-state and provided prenatal expenses or child support; the child lives in the state as a result of the acts or directives of the individual; the individual had sexual intercourse in this state which may have resulted in the conception of the child; the individual asserted parentage in a court or putative father registry in the state; or any other basis which is constitutional for the exercise of personal jurisdiction. Section 88.2011, F.S.

³⁰ Section 88.1041(1), F.S.

³¹ 23 AM. JUR. 2D *Desertion and Nonsupport* § 74.

Under ... choice of law ... the substantive law of an issuing state applies to petitions filed in a responding state to enforce the existing ... orders of the issuing state; ... the substantive law of the issuing state does not apply to petitions filed in a [subsequent] responding state to modify the existing child support orders of the issuing state.

A foreign country may be a “state” for purposes of application of the UIFSA, but the Act does not apply to obligations established under the law of a foreign country where there is no state law or contravening treaty or federal statute recognizing the enforcement of support orders from the foreign country ...³²

Enforcement of Income-Withholding Orders Without Registration

Part V of chapter 88, F.S., provides for income-withholding orders issued by another state to be self-executing and treated as if a Florida court issued them.³³ However, a Florida court can enforce out-of-state support and income-withholding orders once a party registers the order with the Florida court.³⁴

Choice of Law

Under the UIFSA, the law of the issuing or originating state applies regarding the nature, extent, amount and duration of payments and other support obligations, including arrearages. In proceedings to collect arrearages under support orders, the statute of limitation that applies is whichever is longer, this state’s or the issuing state’s.³⁵

Enforcement and Modification of Support Order After Registration

Under the UIFSA, jurisdiction to enforce or modify another state’s child support order in a registration proceeding in this state is proper if all parties, including children, reside here.³⁶ To modify a support order from another state, an agency or party must register it in Florida.³⁷ Once the recipient meets personal jurisdiction and other factors, the court can enforce the order just as if it had been issued in-state.³⁸

To enforce orders involving a foreign country, the UIFSA authorizes:

- A tribunal of this state to assume jurisdiction to modify an order and make it the controlling order if a foreign country lacks or refuses jurisdiction to modify its own order.³⁹
- A party or support enforcement agency seeking to modify or enforce a foreign order which is not governed by an international convention to register the order in this state.⁴⁰

³² Section 88.2021, F.S.; 67A C.J.S. *Parent and Child* § 267.

³³ Sections 88.5011 and 88.50211(2), F.S.

³⁴ Section 88.6011, F.S.

³⁵ Section 88.6041(1) and (2), F.S.

³⁶ Section 88.6131(1), F.S.

³⁷ Section 88.6091, F.S.

³⁸ Section 88.6101, F.S.; Requirements for modification of child support orders issued out-of-state are provided in s. 88.6111, F.S.

³⁹ Section 88.6151(1) and (2), F.S.

⁴⁰ Section 88.6161, F.S.

The UIFSA requires courts to recognize and enforce foreign support orders and agreements, unless:

- A court finds that a registered convention support order is manifestly incompatible with public policy. Incompatibility with public policy includes the failure of the issuing court to maintain minimum standards of due process such as notice and an opportunity to be heard.⁴¹
- A court finds that a registered foreign support agreement is manifestly incompatible with public policy.”⁴²

Use and Acceptance of Religious Law by U.S. Courts

The U.S. Constitution does not permit official adoption of religious law by federal, state, or local governments.⁴³ Examples exist, however, of judicial deference to religious edicts.

In the seminal case of *Wisconsin v. Yoder*, the U.S. Supreme Court reviewed a challenge by Amish parents of a Wisconsin law requiring mandatory school attendance.⁴⁴ At the time, the law did not recognize home schooling as alternative education. The parents asserted that high school would negatively impact their children through exposure to “worldly” views, self-distinction, and social life, all antithetical to Amish religion.⁴⁵ The Court noted the reputable work ethic, law-abiding nature, and potentially-compromised survival of the Amish.⁴⁶ The Court found the parents’ violation of compulsory school attendance firmly rooted in Amish religion.⁴⁷ Requiring high school attendance would violate the defendants’ rights to religious Free Exercise, under the First Amendment of the U.S. Constitution.⁴⁸

Scholars suggest that the Court is inclined to uphold a religious practice that violates a law if the statute unduly burdens religious First Amendment rights. This is particularly so where the practice cannot be said to harm others.⁴⁹ Still, “American laws impose behavioral mandates on all citizens, regardless of faith, and to the extent that religious regimes tolerate behaviors that fall outside those mandates, the secular court system will always come down on the side of secular laws.”⁵⁰

Another group that the Court recognizes is the Beth Din of America (BDA), or a Jewish rabbinic court. The BDA established itself as a limited court alternative to civil

⁴¹ Section 88.7081(1) and (2)(a), F.S.

⁴² Section 88.7101(3), F.S.

⁴³ Jaron Ballou, *Sooners vs. Shari’a: The Constitutional and Societal Problems Raised by the Oklahoma State Ban on Islamic Shari’a Law*, 30 LAW & INEQ. 309, 314 (Summer 2012).

⁴⁴ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁴⁵ *Id.* at 210-11.

⁴⁶ *Id.* at 212-13.

⁴⁷ *Id.* at 213-16.

⁴⁸ *Id.* at 234.

⁴⁹ Omar T. Mohammedi, *Sharia-compliant Wills: Principles, Recognition, and Enforcement*, 57 N.Y.L. SCH. L. REV. 259, 280 (2012-13).

⁵⁰ Michael J. Broyde, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of American Precedent*, 57 N.Y.L. SCH. L. REV. 287, 303 (2012-13).

disputes.⁵¹ Functioning primarily as a court of arbitration, BDA has undergone significant changes since its inception 50 years ago.⁵² Present day proceedings include:

- A detailed and standardized rules of procedure.
- An internal appellate process.
- Consideration of choice of law.
- Testimony from experts on secular law and commercial practice.
- Recognition of common commercial custom.
- Belief in communal governance, as reflected in multiple individual arbitration.⁵³

As noted, the BDA incorporated these features over time. “Recognizing this secular focus on procedure and procedural fairness, the BDA adopted detailed rules and procedures that contributed tremendously to the eventual secular acceptance of BDA decisions.”⁵⁴

The Beth Din of America (BDA) cases apply to situations in which:

- A contract contains an arbitration provision that designates the BDA as the preferred forum for arbitration; or
- A party to a dispute invites an opposing party to bring the case to the BDA.⁵⁵

Anti-Foreign Law

In recent years, state legislatures have moved to limit Sharia law or the applicability of foreign law through choice of law and choice of forum clauses in contracts. Starting with Louisiana and Tennessee, 32 states have considered some limits on the application of foreign law, either through legislation or ballot initiative.⁵⁶

Scholars generally classify initiatives or legislation in one of three ways:

- Bills that singularly restrict the use of Sharia law;⁵⁷
- Bills that include Sharia as one of several banned types of law or tradition;⁵⁸ or

⁵¹ *Id.* at 288.

⁵² *Id.* at 288.

⁵³ *Id.* at 288-89. “Traditionally, Jewish law did not offer an appellate process like the American secular court system Over time, however, the BDA came to find that if it did not provide an internal mechanism by which parties could appeal perceived errors, secular judges would interject and substitute their own judgment. Because the ultimate goal for litigants submitting to a religious tribunals’ jurisdiction (and for the tribunal itself) is to have matters resolved internally from start to finish, the BDA added an appellate process to its arbitration services.” *Id.* at 293.

⁵⁴ *Id.* at 290.

⁵⁵ *Id.* at 291-92.

⁵⁶ Faiza Patel, Matthew Duss, and Amos Toh, *Foreign Law Bans: Legal Uncertainties and Practical Problems*, Center for American Progress at the Brennan Center for Justice, N.Y.U. School of Law 1 (May 2013).

⁵⁷ Alabama’s proposed language read, in part: “The courts shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia.” H.R. 597 (Ala. 2011). Iowa, Missouri, and New Mexico proposed virtually the same language. Language before the Wyoming legislature would have prohibited the court from both direct use of Sharia law, and the citing of other states that use Sharia law. H.R. 8, (Wyo. 2011). Asma T. Uddin and Dave Pantzer, *A First Amendment Analysis of Anti-Sharia Initiatives*, 10 FIRST AMEND. L. REV. 363, 370-71, 373 (Winter 2012.)

⁵⁸ An example of this was the language initially proposed in Arizona, which provided, in part: “... court shall not use ... [a] tenet of any body of religious sectarian law in to any decision, finding or opinion as controlling or influential authority.” The bill defined “religious sectarian law”, as including sharia law, canon law, halacha and karma” H.R. 2582 (Ariz. 2011). Udder and Pantzer, *supra* note 57, at 373-74.

- Prohibitions on foreign law generally, commonly known as a foreign or international law bill.⁵⁹

Currently, six states have laws restricting foreign law in state courts. The states are Arizona, Kansas, Louisiana, North Carolina, South Dakota, and Tennessee.⁶⁰ Of these, South Dakota's law focuses exclusively on religious code, rather than foreign law, or foreign and religious law.⁶¹ No foreign law bill identifies specific religions as disfavored.

The Missouri Legislature passed a foreign law bill, but the Governor vetoed the bill, citing concerns about the legislation's possible effect on international adoptions.⁶²

Most recently, North Carolina passed foreign law legislation.⁶³ The Governor allowed it to become law without his signature.⁶⁴ The legislation does not specifically reference religions or ethnicities as disfavored, and limits the law's application to family law.

Perhaps the most notable attempt to limit court use of foreign law was the constitutional amendment placed on the ballot in Oklahoma in 2010. The amendment restricted courts to the use of federal and state law and expressly banned consideration of international and Sharia laws. The initiative defined Sharia law as Islamic law, based on the Koran and the teachings of Mohammed.⁶⁵ Fewer than one percent of Oklahoma's population self-identifies as Muslim.⁶⁶ Known as the "Save our State" amendment, the measure passed handily both in the legislature and through adoption by voters.⁶⁷

A Muslim Oklahoma resident challenged the amendment on the basis that it violated his First Amendment rights under the Establishment Clause and the Free Exercise Clause of the U.S. Constitution. The U.S. District Court for the Western District of Oklahoma ruled in favor of the plaintiff. The plaintiff argued that the initiative unconstitutionally interfered with his ability to indicate his wishes as detailed in his will. Specifically, the will provided for:

charitable allotments to be made "in a manner that does not exceed the proscribed limitations found in Sahih Bukhari ... a highly respected collection of the "sayings

⁵⁹ *Id.* at 373-74. The more generalist approach was tried in Michigan. It defined foreign law as "any law, rule or legal code or system other than the constitution, laws and ratified treaties of the United States and the territories of the United States, or the constitution and laws of this state a court ... shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution of this state or of the United States" *Id.* at 375.

⁶⁰ Sara Praasatik, *Assessing the Viability of State International Law Prohibitions*, 35 HOUS. J. INT'L L. 465, 467 (Spring 2013).

⁶¹ South Dakota's HB 123 reads: "No court, administrative agency or other governmental agency may enforce any provisions of any religious code."

⁶² http://www.huffingtonpost.com/2013/07/29/sharia-law-usa-states-ban_n_3660813.html.

⁶³ Known as HB 522, the North Carolina bill passed in July of 2013. <http://www.newsobserver.com/2013/07/19/3042514/nc-senate-passes-sharia-law-bill.html>.

⁶⁴ <http://www.bizpacreview.com/2013/08/29/nc-shariah-ban-becomes-law-without-governors-signature-despite-cair-pressure-82373>.

⁶⁵ *Id.* at 377.

⁶⁶ Ballou, *supra* note 43, at 310.

⁶⁷ Uddin and Pantzer, *supra* note 57, at 377.

and deeds of Prophet Muhammad,” and the cited provision appears to set a cap on the amount of property that a decedent may give to charity by will. It also provides for the preparation of Awad’s body in a manner that “comports precisely with ... Sahih Bukhari” ... and for “a burial plot that allows my body to be interned [sic] with my head pointed in the direction of Mecca.”⁶⁸

His will, the plaintiff argued, would be rendered unenforceable under the amendment.⁶⁹

The court noted that the amendment language subjected the plaintiff and other Muslims in the state to disfavored treatment.⁷⁰ In determining the proper test to apply, the Court reviewed the principles of the tests established in *Lemon v. Kurtzman*⁷¹ and *Larson v. Valente*.⁷² The Court cited *Larson* for the proposition that *Lemon* applies to laws providing a uniform benefit to all religions, while *Larson* applies in instances where a law discriminates among religions. Therefore, *Larson* provided the proper test in the Oklahoma challenge.⁷³ The *Larson* test requires both strict scrutiny, and more narrowly, language “closely fitting” to a compelling interest.⁷⁴

This case presents even stronger ‘explicit and deliberate distinctions’ among religions than the provision that warranted strict scrutiny in *Larson* *Larson* involved a ... statute that imposed certain registration and reporting requirements upon only those religious organizations that solicited more than 50 percent of their funds from nonmembers Unlike the provision in *Larson*, the Oklahoma amendment specifically names the target of its discrimination.⁷⁵

The court selected the *Larson* test as the proper test. To satisfy strict scrutiny, the state must show that the interest addresses a real, identified problem, rather than a mere perception of harm.⁷⁶ As the state could not identify even a single time when an Oklahoma court applied Sharia law, the court found that the state failed to illustrate an actual problem, and therefore, failed to show a compelling state interest.⁷⁷ As the state failed the first prong, the court did not reach whether the state complied with the “close fit” required of the second prong.⁷⁸

⁶⁸ *Id.* at 390.

⁶⁹ *Id.* at 390-91.

⁷⁰ *Awad v. Zirriax*, 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).

⁷¹ 403 U.S. 602 (1971). The *Lemon* test of constitutionality requires the language in question to have a secular legislative purpose, a primary effect that neither advances nor inhibits religion, and that does not foster an excessive government entanglement with religion. *Id.* at 612-13.

⁷² *Larson v. Valente*, 456 U.S. 228 (1982).

⁷³ *Awad*, 670 F.3d at 1126-27, 1128.

⁷⁴ *Larson*, 456 U.S. at 246-248.

⁷⁵ *Awad*, 670 F.3d at 1128.

⁷⁶ *Awad*, 670 F.3d at 1129-30.

⁷⁷ *Awad*, 670 F.3d at 1129.

⁷⁸ *Awad*, 670 F.3d at 1130-31.

Constitutional Impairment of Contracts

Article 1, Section 10, of the Florida Constitution provides, “No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”

As a result of the constitutional limitation, the courts typically invalidate statutes that retroactively apply to existing contracts. In a 1940 Florida Supreme Court case, the Court ruled any statute enacted by the Legislature void which would impair the obligation of a contract.⁷⁹ Subsequent courts, however, carved out limited exceptions.

In *Pomponio v. Claridge of Pompano Condo, Inc.*, the Florida Supreme Court recognized that the state may have a legitimate interest in amending a law that impacts existing contracts based on its police power.⁸⁰ In determining legitimacy, the Court employed a balancing test to “weigh the degree to which a party’s contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy.”⁸¹

The Court then applied the test established in the U.S. Supreme Court case of *Allied Structural Steel Co. v. Spannaus* to determine whether a law may apply to existing contracts.⁸² Under the test, a law is more likely to be upheld if it meets the following three prongs of the test, which are, cumulatively that:

- The law was enacted to deal with a broad, generalized economic or social problem.
- The law operates in an area already subject to state regulation at the time the parties’ contractual obligations were originally undertaken, rather than invading an area not previously subject to regulation by the state.
- The law effects a temporary alteration of the contractual relationships of those within its coverage, instead of working a severe, permanent, and immediate change in those relationships irrevocably and retroactively.⁸³

In an impairment of contracts challenge to a local ordinance, the Fifth District Court of Appeal reiterated that laws reasonable and necessary to preserve public health, safety, and welfare are constitutional even if obligations of a private contract are impaired.⁸⁴ Still, governmental authority is not unrestrained.⁸⁵

In *Cohn v. Grand Condominium Association, Inc.*, the statute changed voting arrangements in condominium governance. In employing the *Pomponio* test, the court determined that the state failed to identify a current social problem, the law did not

⁷⁹ *Bedell v. Lassiter*, 143 Fla. 43, 49 (Fla. 1940).

⁸⁰ *Pomponio v. Claridge of Pompano Condo, Inc.*, 378 So. 2d 774, 781 (Fla. 1979).

⁸¹ *Id.* at 780.

⁸² *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978). “Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.” *Id.* at 245.

⁸³ *Pomponio*, 378 So. 2d at 779.

⁸⁴ *Brevard County v. Florida Power & Light Co.*, 693 So. 2d 77, 81 (Fla. 5th DCA 1997).

⁸⁵ *Id.* at 81.

regulate the specific area at issue at the time that the condo organized, and the resulting change from the law would be severe, permanent, and immediate.⁸⁶ Therefore, the state failed to meet its burden.⁸⁷ On appeal, the Florida Supreme Court affirmed but recognized that new laws apply to related contracts with provisions which incorporate future changes to the law.⁸⁸

III. Effect of Proposed Changes:

SB 386 restricts courts from applying foreign law, legal codes, and systems to disputes brought under chs 61 and 88, F.S. These chapters relate to divorce, alimony, the division of marital assets, child support, and child custody

This bill restricts courts from applying foreign law to dissolution of marriage cases and issues involving multiple-state child support enforcement actions.

Specifically, under the bill, the courts of this state may not:

- Base a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Grant a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution in the foreign forum.

This bill does not apply to:

- Corporations, partnerships, and other types of business associations, unless chs. 61 or 88, F.S., are implicated;
- Ecclesiastical matters; and
- Matters governed by federal treaty or international agreements to which the United States is a party and which are preempted by federal law.

Although this bill recognizes that a party may waive his or her rights through a contract, the bill requires a court to narrowly construe the scope of the waiver.

The bill does not identify any laws or conduct authorized under foreign laws within the family law context which would deny a person's fundamental liberties, rights, and privileges. As such, courts will likely determine the impact of the bill on a case-by-case basis.

⁸⁶ *Cohn v. Grand Condominium Assoc.*, 26 So. 3d 8, 11 (Fla. 3d DCA 2009).

⁸⁷ *Id.* at 11.

⁸⁸ *Cohn v. Grand Condominium Assoc.*, 62 So. 3d 1120 (Fla. 2011).

The bill requires a court to invalidate contractual provisions or judgments not based on laws that provide the parties with the “same” constitutional protections as the state and federal constitutions. As the “same” standard appears inflexible, the bill may result in the invalidation of contractual provisions or judgments based on foreign laws that grant the parties similar, or greater rights, privileges, and immunities as those granted by this country.

The bill declares in s. 45.022(4), F.S., that court orders based on disfavored foreign laws are void and unenforceable. However, the bill does not specifically address a situation in which a person seeks to enforce in this state a court order from a sister state which is based on a disfavored foreign law. In those situations, a court may likely rule that the Full Faith and Credit Clause of the U.S. Constitution requires enforcement of the order.

Similarly, the bill does not specifically address how a court would reconcile the bill with ch. 88, F.S., the Uniform Interstate Family Support Act (UIFSA), which was mandated by Congress. Under the bill, a support order entered in a foreign nation whose laws are inconsistent with this nation’s constitutional “fundamental liberties, rights, and privileges” is unenforceable. In contrast, ch. 88, F.S., renders foreign support orders and agreements unenforceable if they are “manifestly incompatible with public policy.” Although the two provisions appear to overlap (for example, manifest incompatibility includes due process and opportunity to be heard), the scope of the bill is likely broader than the restrictions on foreign law under the UIFSA.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill implicates four constitutional issues:

First Amendment

State legislatures that have restricted courts from applying foreign law have banned the use of Sharia law, banned several types of law or tradition including Sharia law, or prohibited the use of foreign law generally. Of the three initiatives, this bill comes under the third category, as it contains no mention of Sharia or another specific type of banned

law other than foreign law in general. In contrast to the law at issue in *Awad v. Ziriax*,⁸⁹ the bill appears to carry the greatest merit constitutionally, as it does not specifically single out a particular religion for disfavor or preference. If this bill is challenged on First Amendment grounds, a court will review the language for facial discrimination. As religion is not mentioned at all, the court will deem it facially neutral. A court will then apply the *Lemon* test, and likely find both a secular government purpose and that the law does not facilitate excessive governmental entanglement with religion. Because of this, a court will likely uphold the law from a First Amendment challenge.

Impairment of Contracts

The bill takes effect upon becoming a law and applies to lawsuits filed after the effective date. If a party attempts to apply the law to invalidate pre-existing contracts, the party must demonstrate that the law is a legitimate use of the state's police power and that the change operates in less than a severe, permanent, and immediate fashion, as required in *Pomponio v. Claridge of Pompano Condo, Inc.*⁹⁰ This test places a very high burden on the state. Alternatively, this bill may reach back to existing contracts, if a contractual provision expressly incorporates future changes to the law.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"⁹¹ and the action must pose a "great potential for disruption or embarrassment"⁹² to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as perception of the U.S. abroad. These factors could only be evaluated if and when a challenge to this bill was brought.

Separation of Powers

The first three articles of the U.S. Constitution define the powers given to the three branches of government in the United States.⁹³ Article I defines the legislative branch and vests with it all power to make law. Article II defines the executive branch and vests in it the power to enforce the law. Article III defines the judicial branch and vests in it all

⁸⁹ 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).

⁹⁰ 378 So. 2d 774 (Fla. 1979).

⁹¹ *Zschernig v. Miller*, 389 U.S. 429, 434 (1968).

⁹² *Id.* at 435.

⁹³ Articles I, II, III, U.S. Const.

judicial power. For time immemorial, that power has been understood to mean the power to interpret and apply the law.⁹⁴

As discussed above, to the extent that this bill directs Florida courts to consider and interpret foreign decisions and law in a certain manner, it may interfere with the federal government's ability to govern foreign policy with one voice. As such, this bill could be challenged as preempted by the federal government. Similarly, as previously stated, the judiciary's constitutional role is to act as the sole interpreter of laws; therefore, the bill could be challenged as an infringement on the essential role of the judicial branch in violation of the constitutional separation of powers. Similarly, the Florida Constitution explicitly mandates separation of powers between branches of the Florida government. Article II, section 3 of the Florida Constitution provides: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

Because of this language, Florida's separation of powers doctrine is even stronger than the federal concept of separation of powers. Therefore, the bill may face an additional separation of powers inquiry.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The extent to which private parties will be impacted by the provisions of this bill is unknown.

C. Government Sector Impact:

The Office of the State Courts Administrator expects an impact from the bill on judicial workload in ch. 61 and ch. 88, F.S., proceedings by requiring the court to determine whether application of foreign law would grant litigants the same fundamental rights as the state and federal constitutions grant. These determinations will require the court to research liberties, right, and privileges granted under foreign law. The fiscal impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload.⁹⁵

VI. Technical Deficiencies:

None.

⁹⁴ *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

⁹⁵ Office of the State Courts Administrator, *2014 Judicial Impact Statement* (December 30, 2013); on file with the Senate Judiciary Committee.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 45.022 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.



375592

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Application of the law of a foreign country in
courts.-

(1) As used in this section, the term "strong public
policy" means public policy of sufficient importance to outweigh
the policy of protecting freedom of contract.

(2) A court may not enforce:



375592

11 (a) A choice of law provision in a contract selecting the
12 law of a foreign country which contravenes strong public policy
13 of this state or that is unjust or unreasonable.

14 (b) A forum selection clause in a contract that selects a
15 forum in a foreign country if the clause is shown to be
16 unreasonable or unjust or if strong public policy would prohibit
17 the enforceability of the clause under the specific facts of the
18 case.

19 (3) Before enforcing a judgment or order of a court of a
20 foreign country, a court must review the judgment or order to
21 ensure that it complies with the rule of comity. A judgment or
22 order of a court of a foreign country is not entitled to comity
23 if the parties were not given adequate notice and the
24 opportunity to be heard, the foreign court did not have original
25 jurisdiction, or the judgment or order of the foreign court
26 offends the public policy of this state.

27 (4) A contract that seeks to apply the law of a foreign
28 country is void as against the public policy of this state if it
29 is injurious to the interest of the public or contravenes some
30 established interest in society.

31 (5) A trial court may not dismiss an action on the grounds
32 that a satisfactory remedy may be more conveniently sought in a
33 foreign country unless the trial court finds in accordance with
34 the applicable rules of civil procedure and this section, that
35 an adequate alternate forum exists.

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

37
38 ===== T I T L E A M E N D M E N T =====

39 And the title is amended as follows:



375592

40 Delete everything before the enacting clause
41 and insert:

42 A bill to be entitled
43 An act relating to the application of foreign law in
44 courts; defining the term "strong public policy";
45 prohibiting a court from enforcing certain choice of
46 law or forum selection contractual provisions;
47 requiring a court to review judgments and orders of
48 foreign courts for comity before enforcing such orders
49 or judgments; specifying judgments and orders of
50 foreign courts that are not entitled to comity;
51 providing that certain contracts are void as against
52 the public policy of this state; prohibiting a trial
53 court from dismissing an action on the grounds that a
54 satisfactory remedy may be more conveniently sought in
55 a foreign country; providing an exception; providing
56 an effective date.



256170

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2014	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (375592) (with title amendment)

Between lines 35 and 36
insert:

(6) This section applies only to matters governed by or relating to chapter 61 or chapter 88.

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

And the title is amended as follows:



256170

11 Delete line 56
12 and insert:
13 applicability; providing an effective date.

By Senator Hays

11-00143-14

2014386__

1 A bill to be entitled
 2 An act relating to the application of foreign law in
 3 certain cases; creating s. 45.022, F.S.; providing
 4 legislative intent; defining the term "foreign law,
 5 legal code, or system"; providing for applicability;
 6 specifying the public policy of this state on the
 7 application of a foreign law, legal code, or system in
 8 proceedings brought under or relating to chapter 61 or
 9 chapter 88, F.S., which relate to dissolution of
 10 marriage, support, time-sharing, the Uniform Child
 11 Custody Jurisdiction and Enforcement Act, and the
 12 Uniform Interstate Family Support Act; providing that
 13 certain decisions rendered under such laws, codes, or
 14 systems are void; providing that certain contracts and
 15 contract provisions are void; providing for the
 16 construction of a waiver by a natural person of the
 17 person's fundamental liberties, rights, and privileges
 18 guaranteed by the State Constitution or the United
 19 States Constitution; providing that claims of forum
 20 non conveniens or related claims must be denied under
 21 certain circumstances; providing that the act may not
 22 be construed to require or authorize any court to
 23 adjudicate, or prohibit any religious organization
 24 from adjudicating, ecclesiastical matters in violation
 25 of specified constitutional provisions or to conflict
 26 with any federal treaty or other international
 27 agreement to which the United States is a party to a
 28 specified extent; providing for severability;
 29 providing a directive to the Division of Law Revision

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

11-00143-14

2014386__

30 and Information; providing an effective date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Section 45.022, Florida Statutes, is created to
 35 read:
 36 45.022 Application of foreign law contrary to public policy
 37 in certain cases.—
 38 (1) While the Legislature fully recognizes the right to
 39 contract freely under the laws of this state, it also recognizes
 40 that this right may be reasonably and rationally circumscribed
 41 pursuant to the interest of the state to protect and promote
 42 liberties, rights, and privileges granted under the State
 43 Constitution or the United States Constitution.
 44 (2) As used in this section, the term "foreign law, legal
 45 code, or system" means any law, legal code, or system of a
 46 foreign country, or a state, nation, or subdivision thereof,
 47 outside the United States or its territories, including, but not
 48 limited to, a foreign or international organization claiming the
 49 status of a country, state, or nation or asserting legal
 50 authority to act on behalf of one or more foreign countries,
 51 states, nations, or any other similar international
 52 organizations or tribunals, which is applied by that
 53 jurisdiction's courts, administrative bodies, or other formal or
 54 informal tribunals. The term does not include the common law and
 55 statute laws of England as described in s. 2.01 or any laws of
 56 the Native American tribes in this state.
 57 (3) This section applies:
 58 (a) Only to actual or foreseeable denials of a natural

Page 2 of 5

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

11-00143-14 2014386__

59 person's fundamental liberties, rights, and privileges
 60 guaranteed by the State Constitution or the United States
 61 Constitution from the application of a foreign law, legal code,
 62 or system in actions or proceedings brought under, pursuant to,
 63 or pertaining to the subject matter of chapter 61 or chapter 88
 64 and filed after the effective date of this act; and

65 (b) To a corporation, partnership, or other form of
 66 business association only as necessary to provide effective
 67 relief in actions or proceedings brought under, pursuant to, or
 68 pertaining to the subject matter of chapter 61 or chapter 88.

69 (4) Any court, arbitration, tribunal, or administrative
 70 agency ruling or decision violates the public policy of this
 71 state and is void and unenforceable if the court, arbitration,
 72 tribunal, or administrative agency bases its ruling or decision
 73 in the matter at issue in whole or in part on any foreign law,
 74 legal code, or system that does not grant the parties affected
 75 by the ruling or decision the same fundamental liberties,
 76 rights, and privileges guaranteed by the State Constitution or
 77 the United States Constitution.

78 (5) A contract, or contractual provision, if severable,
 79 violates the public policy of this state and is void and
 80 unenforceable if:

81 (a) The contract or contractual provision provides for the
 82 choice of a foreign law, legal code, or system to govern some or
 83 all of the disputes arising from the contract between the
 84 parties and the foreign law, legal code, or system chosen
 85 includes or incorporates any substantive or procedural law, as
 86 applied to the dispute at issue, which would deny the parties
 87 the same fundamental liberties, rights, and privileges

Page 3 of 5

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

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88 guaranteed by the State Constitution or the United States
 89 Constitution. This paragraph does not limit the right of a
 90 natural person in this state to voluntarily restrict or limit
 91 his or her fundamental liberties, rights, and privileges
 92 guaranteed by the State Constitution or the United States
 93 Constitution by contract or specific waiver consistent with
 94 constitutional principles, but the language of any such contract
 95 or waiver must be strictly construed in favor of preserving such
 96 liberties, rights, and privileges; or

97 (b) The contract or contractual provision provides for the
 98 choice of venue or choice of forum outside a state or territory
 99 of the United States and the enforcement of the choice of venue
 100 or choice of forum provision would result in a violation of any
 101 fundamental liberties, rights, and privileges guaranteed by the
 102 State Constitution or the United States Constitution.

103 (6) If a natural person who is subject to personal
 104 jurisdiction in this state seeks to maintain litigation,
 105 arbitration, agency, or similarly binding proceedings in this
 106 state and the courts of this state find that granting a claim of
 107 forum non conveniens or a related claim denies or would likely
 108 lead to the denial of any fundamental liberties, rights, and
 109 privileges of the nonclaimant guaranteed by the State
 110 Constitution or the United States Constitution in the foreign
 111 forum with respect to the matter in dispute, it is the public
 112 policy of this state that the claim be denied.

113 (7) This section may not be construed to:

114 (a) Require or authorize any court to adjudicate, or
 115 prohibit any religious organization from adjudicating,
 116 ecclesiastical matters, including, but not limited to, the

Page 4 of 5

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11-00143-14

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117 election, appointment, calling, discipline, dismissal, removal,
118 or excommunication of a member, officer, official, priest, nun,
119 monk, pastor, rabbi, imam, or member of the clergy of the
120 religious organization, or determination or interpretation of
121 the doctrine of the religious organization, if such adjudication
122 or prohibition would violate s. 3, Art. I of the State
123 Constitution or the First Amendment to the United States
124 Constitution; or

125 (b) Conflict with any federal treaty or other international
126 agreement to which the United States is a party to the extent
127 that such federal treaty or international agreement preempts or
128 is superior to state law on the matter at issue.

129 Section 2. If any provision of this act or its application
130 to any natural person or circumstance is held invalid, the
131 invalidity does not affect other provisions or applications of
132 this act which can be given effect without the invalid provision
133 or application, and to that end the provisions of this act are
134 severable.

135 Section 3. The Division of Law Revision and Information is
136 directed to replace the phrase "the effective date of this act"
137 wherever it occurs in this act with the date this act becomes a
138 law.

139 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/2014
Meeting Date

* both bill and amendment

Topic Application of Foreign Law in Certain Cases

Bill Number SB 386
(if applicable)

Name MARK SCHLAKMAN

Amendment Barcode 375592
(if applicable)

Job Title senior program director

Address FSU/CAHR, 426 W. Jefferson St.
Street
Tallahassee, FL 32301-1602
City State Zip

Phone 850 644-4614

E-mail mschlakman@admin.fsu.edu

Speaking: For Against Information

Representing FSU Center for the Advancement of Human Rights and on behalf of FL Bar Int. Law Section and Anti Defection League (ADL)

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)

4-3-14

Meeting Date

Topic Foreign Law Bill Number 386
Name Sara Johnson Amendment Barcode _____
Job Title Legislative Assistant to the President (if applicable)
Address 4853 S. Orange Ave Phone 850-567-8143
Orlando FL 32806 E-mail sara.j@FFamily.org
City State Zip (if applicable)

Speaking: For Against Information

Representing Florida Family Action

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)

4/3/14
Meeting Date

Topic Foreign Application of Law

Bill Number 386
(if applicable)

Name Pamela Burch Fort

Amendment Barcode _____
(if applicable)

Job Title _____

Address 104 S. Monroe St

Phone 850-425-1344

Tallahassee FL 32301
City State Zip

E-mail TcgLobby@aol.com

Speaking: For Against Information

Representing ACLU of Florida

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)

4/3/14

Meeting Date

Topic Foreign Law

Bill Number SB 380
(if applicable)

Name Carolyn Johnson

Amendment Barcode 375592
(if applicable)

Job Title Policy Director

Address 136 S Bronough St
Street

Phone 521-1235

City

State

Zip

E-mail cjohnson@flchamber.com

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/14
Meeting Date

Topic FOREIGN LAW

Bill Number 384 SIMMONS
836 - AMENDMENT
(if applicable)

Name MARK FLYNN

Amendment Barcode _____
(if applicable)

Job Title LOBBYIST

Address 210 BRITT ST.
Street

Phone 850 320 5555

TOLLONASSEE FL
City State Zip

E-mail MWFLYNN@MSN.COM

Speaking: For Against Information

Representing EMERGE USA

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)

4/3/2014

Meeting Date

Topic _____

Bill Number 386
(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

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



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 386 – Application of Foreign Law in Certain Cases

Date: March 25, 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 1628

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Government Accountability

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.			JU	
3.			ED	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The position of the Auditor General is created in the State Constitution. The Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Specified reports on such audit findings must be submitted to the President of the Senate, Speaker of the House, and the Legislative Auditing Committee.

CS/SB 1628 revises auditing provisions governing state agencies, the state courts system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities. The bill requires such entities to establish, maintain, and document the effective operation of internal controls, including controls designed to prevent and detect fraud, waste, and abuse; to ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; to promote and encourage economic and efficient operations; to ensure the reliability of financial records and reports; and to safeguard assets.

The bill also requires each Florida College System institution to annually file with the State Board of Education financial statements prepared in conformity with accounting principles

generally accepted by the United States and the uniform classification of accounts prescribed by the State Board of Education. The State Board of Education's rules must prescribe the filing deadline for the financial statements.

The bill may have an indeterminate fiscal impact on state and local governments. *See* Fiscal Comments. The provisions of s. 18, Art. VII, of the State Constitution, relating to restricted mandates imposed upon cities and counties, may apply. *See* IV. A. Municipality/County Mandates Restrictions.

II. Present Situation:

Background

Auditor General

The position of Auditor General is established by s. 2, Art. III of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.¹ The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.²

The Auditor General, before entering upon the duties of the office, must take the oath of office required of state officers by the State Constitution.³ At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and must have not less than 10 years' experience in an accounting or auditing related field.⁴

To carry out his or her duties, the Auditor General must make all spending decisions within the annual operating budget approved by the President of the Senate and the Speaker of the House of Representatives.⁵ The Auditor General must employ qualified persons necessary for the efficient operation of the Auditor General's office and must fix their duties and compensation and, with the approval of the President of the Senate and Speaker of the House of Representatives, must adopt and administer a uniform personnel, job classification, and pay plan for employees.⁶

The headquarters of the Auditor General are at the state capital, but to facilitate auditing and to eliminate unnecessary traveling, the Auditor General may establish field offices located outside the state capital. The Auditor General must be provided with adequate quarters to carry out the position's functions in the state capital and in other areas of the state.⁷

¹ Section 11.42(2), F.S.

² Section 11.42(5), F.S.

³ Section 11.42(4), F.S.

⁴ Section 11.42(2), F.S.

⁵ Section 11.42(3)(a), F.S.

⁶ *Id.*

⁷ Section 11.42(6)(a), F.S.

All payrolls and vouchers for the operations of the Auditor General's office must be submitted to the Chief Financial Officer for payment.⁸ The Auditor General may make and enforce reasonable rules and regulations necessary to facilitate authorized audits.⁹

The Auditor General must:¹⁰

- Conduct audits of records and perform related duties as prescribed by law, concurrent resolution of the Legislature, or as directed by the Legislative Auditing Committee;
- Annually conduct a financial audit of state government;
- Annually conduct financial audits of all state universities and state colleges;
- Annually conduct financial audits of all accounts and records of all district school boards in counties with populations of fewer than 150,000, according to the most recent federal decennial statewide census;
- Once every three years, conduct financial audits of the accounts and records of all district school boards in counties that have populations of 150,000 or more, according to the most recent federal decennial statewide census;
- At least every three years, conduct operational audits of the accounts and records of state agencies, state universities, state colleges, district school boards, and Florida Clerks of Court Operations, water management districts, and the Florida School of Deaf and the Blind;
- At least every three years, conduct a performance audit of the local government financial reporting system, which means any statutory provision related to local government financial reporting;
- At least every three years, conduct a performance audit of the Department of Revenue's administration of the ad valorem tax laws;
- Once every three years, review a sample of internal audit reports at each state agency¹¹ to determine compliance with the current Standards for Professional Practice of Internal Auditing or, if appropriate, government auditing standards; and
- Conduct audits of local governmental entities when determined to be necessary by the Auditor General, when directed by the Legislative Auditing Committee, or when otherwise required by law.

The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:¹²

- The accounts and records of any governmental entity created or established by law;
- The information technology programs, activities, functions, or systems of any governmental entity created or established by law;
- The accounts and records of any charter school created or established by law;

⁸ Section 11.42(6)(b), F.S.

⁹ Section 11.42(7), F.S.

¹⁰ Section 11.45(2), F.S.

¹¹ Section 20.055, F.S., defines "state agency" as each department created pursuant to chapter 20, F.S., and also includes the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation of the Financial Services Commission, the Office of Financial Regulation of the Financial Services Commission, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system.

¹² Section 11.45(3), F.S.

- The accounts and records of any direct-support organization or citizen support organization created or established by law;
- The public records associated with any appropriation made by the Legislature to a nongovernmental agency, corporation, or person;
- State financial assistance provided to any nonstate entity;
- The Tobacco Settlement Financing Corporation;
- Any purchases of federal surplus lands for use as sites for correctional facilities;
- Enterprise Florida, Inc., including any of its boards, advisory committees, or similar groups created by Enterprise Florida, Inc., and programs;
- The Florida Development Finance Corporation or the capital development board or the programs or entities created by the board;
- The records pertaining to the use of funds from voluntary contributions on a motor vehicle registration application or on a driver's license application;
- The records pertaining to the use of funds from the sale of specialty license plates;
- The transportation corporations under contract with the Department of Transportation that are acting on behalf of the state to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of such systems;
- The acquisition and divestitures related to the Florida Communities Trust Program;
- The Florida Water Pollution Control Financing Corporation;
- The school readiness program, including the early learning coalitions;
- The Florida Special Disability Trust Fund Financing Corporation;
- Workforce Florida, Inc., or other programs or entities created by Workforce Florida, Inc.;
- The corporation under contract with the Department of Business and Professional Regulation to provide administrative, investigative, examination, licensing, and prosecutorial support services;
- The Florida Engineers Management Corporation;
- The books and records of any permitholder that conducts race meetings or jai alai exhibitions;
- The corporation known as the Prison Rehabilitative Industries and Diversified Enterprise, Inc., or PRIDE Enterprises;
- The Florida Virtual School; and
- Virtual education providers receiving state funds or funds from local ad valorem taxes.

Auditor General Reports

The Auditor General must conduct audits, examinations, or reviews of government programs.¹³ Various provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.¹⁴ The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Legislative Auditing Committee an annual report by December 1; such report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and

¹³ Section 11.45(7), F.S.

¹⁴ Section 11.45(7)(f), F.S.

a list of statutory and fiscal changes recommended by the Auditor General.¹⁵ In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.¹⁶

The annual report for the Auditor General for November 1, 2012, through October 31, 2013, recommended, among others, the following two changes to the current law:¹⁷

- Require each state and local government to maintain internal controls designed to prevent fraud and detect fraud, waste, and abuse; ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; promote and encourage economic and efficient operations; ensure the reliability of financial records and reports; and safeguard assets; and
- Require the Justice Administration Commission, whose agencies are currently not audited by an internal auditor, to jointly employ an internal auditor or provide for internal audit services by interagency agreement with a state agency.

III. Effect of Proposed Changes:

The bill requires each agency head, state attorney, public defender, criminal conflict and civil regional counsel, Guardian Ad Litem program, Florida Clerk of Courts Operations Corporation, local government entity, charter school, Florida College System institution, and state university, as well as the Supreme Court and the Justice Administrative Commission to establish, maintain, and document the effective operation of internal controls, including controls designed to prevent and detect fraud, waste, and abuse; to ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; to promote and encourage economic and efficient operations; to ensure the reliability of financial records and reports; and to safeguard assets.

The bill also requires each Florida College System institution to annually file with the State Board of Education financial statements prepared in conformity with accounting principles generally accepted by the United States and the uniform classification of accounts prescribed by the State Board of Education. The State Board of Education's rules must prescribe the filing deadline for the financial statements.

The bill requires the State Board of Education to prescribe by rule the filing deadline for the required financial statements.

Section 1 amends s. 11.45, F.S., to clarify that the audit provisions in s. 11.45(2)(j), F.S., do not apply to water management districts; instead, the audit provisions in s. 11.45(2)(f), F.S., apply to water management districts. It clarifies the applicability of Auditor General audits on district school boards, which are already required in chapter 11, F.S., for state colleges and universities.

Sections 2, 4, 5, 6, 8, and 11 amend ss. 20.05, 25.382, 28.35, 43.16, 218.33, and 1002.33, F.S., respectively, to expand the responsibilities of department heads, the Supreme Court as it relates

¹⁵ Section 11.45(7)(h), F.S.

¹⁶ *Id.*

¹⁷ A copy of the report can be found online at: <http://www.myflorida.com/audgen/pages/whatsnew.htm> (last visited March 21, 2014).

to the state courts system, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, the Florida Clerk of Court Operations Corporation, local governmental entities, and governing bodies of charter schools to include the specific responsibility of establishing certain internal controls.

Section 3 amends s. 20.055, F.S., revising provisions relating to agency inspectors general; clarifying the definition of the term “agency head” with respect to the Florida Housing Finance Corporation to mean the chair of the board of directors.

Section 7 amends s. 215.985, F.S., to require the Department of Financial Services to specify the manner and form for the submission of water management district monthly financial statements.

Section 9 amends s. 373.536, F.S., to delete obsolete language.

Section 10 amends s. 1001.42, F.S., revising the responsibilities of a district school board’s internal auditor to perform certain audits and reviews.

Section 12 amends s. 1010.01, F.S., requiring each Florida College System institution to file certain annual financial statements with the State Board of Education; requiring each school district, Florida College System institution, and state university to establish certain internal controls.

Section 13 provides a finding that the bill fulfills an important state interest.

Section 14 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Sec. 18, of the State Constitution provides in pertinent part that “[n]o 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 includes a legislative determination that the bill fulfills an important state interest, and 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 2013-2014), are exempt.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires state agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities to establish, maintain, and document the effective use of specified internal controls. Such requirements may require additional time and expense to create the internal controls and document the effective operation of such internal controls.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 11.45, 20.05, 20.055, 25.382, 28.35, 43.16, 215.985, 218.33, 373.536, 1001.42, 1002.33, and 1010.01.

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 April 3, 2014:

The Committee Substitute:

- Clarifies that for purposes of the local government audits in s. 11.45, F.S., local governmental entities do not include water management districts, and that certain audit provisions apply to district school boards;
- Amends the audit requirements in the bill to remove the requirement that governmental entities document the effective operation of internal controls;
- Removes the addition of the Justice Administration Commission from the definition of “state agency” in s. 20.055, F.S., and from the definition of “agency head;”
- Adds the capital collateral regional counsel to the list of entities required to establish and maintain internal controls within the Justice Administrative Commission;
- Amends s. 215.985, F.S., to require water management districts to submit the monthly financial statement in the form and manner prescribed by the Department of Financial Services;
- Amends s. 373.536, F.S., to delete obsolete language; and
- Provides that the act fulfills an important state interest.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (j) of subsection (2) and paragraph
(j) of subsection (7) of section 11.45, Florida Statutes, are
amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(j) Conduct audits of local governmental entities when



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11 determined to be necessary by the Auditor General, when directed
12 by the Legislative Auditing Committee, or when otherwise
13 required by law. No later than 18 months after the release of
14 the audit report, the Auditor General shall perform such
15 appropriate followup procedures as he or she deems necessary to
16 determine the audited entity's progress in addressing the
17 findings and recommendations contained within the Auditor
18 General's previous report. The Auditor General shall notify each
19 member of the audited entity's governing body and the
20 Legislative Auditing Committee of the results of his or her
21 determination. For purposes of this paragraph, local
22 governmental entities do not include water management districts.
23

24 The Auditor General shall perform his or her duties
25 independently but under the general policies established by the
26 Legislative Auditing Committee. This subsection does not limit
27 the Auditor General's discretionary authority to conduct other
28 audits or engagements of governmental entities as authorized in
29 subsection (3).

30 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

31 (j) The Auditor General shall notify the Legislative
32 Auditing Committee of any financial or operational audit report
33 prepared pursuant to this section which indicates that a
34 district school board, state university, or Florida College
35 System institution has failed to take full corrective action in
36 response to a recommendation that was included in the two
37 preceding financial or operational audit reports.

38 1. The committee may direct the governing body of the
39 district school board, state university, or Florida College



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40 System institution to provide a written statement to the
41 committee explaining why full corrective action has not been
42 taken or, if the governing body intends to take full corrective
43 action, describing the corrective action to be taken and when it
44 will occur.

45 2. If the committee determines that the written statement
46 is not sufficient, the committee may require the chair of the
47 governing body of the district school board, state university,
48 or Florida College System institution, or the chair's designee,
49 to appear before the committee.

50 3. If the committee determines that the district school
51 board, state university, or Florida College System institution
52 has failed to take full corrective action for which there is no
53 justifiable reason or has failed to comply with committee
54 requests made pursuant to this section, the committee shall
55 refer the matter to the State Board of Education or the Board of
56 Governors, as appropriate, to proceed in accordance with s.
57 1008.32 or s. 1008.322, respectively.

58 Section 2. Subsection (1) of section 20.05, Florida
59 Statutes, is amended to read:

60 20.05 Heads of departments; powers and duties.—

61 (1) Each head of a department, subject to the allotment of
62 executive power under Article IV of the State Constitution, and
63 except as otherwise provided by law, must:

64 (a) Plan, direct, coordinate, and execute the powers,
65 duties, and functions vested in that department or vested in a
66 division, bureau, or section of that department; powers and
67 duties assigned or transferred to a division, bureau, or section
68 of the department must not be construed to limit this authority



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69 and this responsibility;

70 (b) Have authority, without being relieved of
71 responsibility, to execute any of the powers, duties, and
72 functions vested in the department or in any administrative unit
73 thereof through administrative units and through assistants and
74 deputies designated by the head of the department from time to
75 time, unless the head of the department is explicitly required
76 by law to perform the same without delegation;

77 (c) Compile annually a comprehensive program budget
78 reporting all program and fiscal matters related to the
79 operation of his or her department, including each program,
80 subprogram, and activity, and other matters as required by law;

81 (d) Reimburse the members of advisory bodies, commissions,
82 and boards of trustees for their actual and necessary expenses
83 incurred in the performance of their duties in accordance with
84 s. 112.061;

85 (e) Subject to the requirements of chapter 120, exercise
86 existing authority to adopt rules pursuant and limited to the
87 powers, duties, and functions transferred to the department;

88 (f) Exercise authority on behalf of the department to
89 accept gifts, grants, bequests, loans, and endowments for
90 purposes consistent with the powers, duties, and functions of
91 the department. All such funds must be deposited in the State
92 Treasury and appropriated by the Legislature for the purposes
93 for which they were received by the department;

94 (g) If a department is under the direct supervision of a
95 board, including a board consisting of the Governor and Cabinet,
96 however designated, employ an executive director to serve at its
97 pleasure; ~~and~~



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98 (h) Make recommendations concerning more effective internal
99 structuring of the department to the Legislature. Unless
100 otherwise required by law, such recommendations must be provided
101 to the Legislature at least 30 days before the first day of the
102 regular session at which they are to be considered, when
103 practicable; and

104 (i) Establish and maintain internal controls designed to
105 prevent and detect fraud, waste, and abuse; to ensure the
106 administration of assigned public duties and responsibilities in
107 accordance with applicable laws, rules, contracts, grant
108 agreements, and best practices; to promote and encourage
109 economic and efficient operations; to ensure the reliability of
110 financial records and reports; and to safeguard assets.

111 Section 3. Paragraph (b) of subsection (1) of section
112 20.055, Florida Statutes, is amended to read:

113 20.055 Agency inspectors general.—

114 (1) For the purposes of this section:

115 (b) "Agency head" means the Governor, a Cabinet officer, a
116 secretary as defined in s. 20.03(5), or an executive director as
117 defined in s. 20.03(6). It also includes the chair of the Public
118 Service Commission, the Director of the Office of Insurance
119 Regulation of the Financial Services Commission, the Director of
120 the Office of Financial Regulation of the Financial Services
121 Commission, the chair of the board of directors of the Florida
122 Housing Finance Corporation, and the Chief Justice of the State
123 Supreme Court.

124 Section 4. Subsection (5) is added to section 25.382,
125 Florida Statutes, to read:

126 25.382 State courts system.—



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127 (5) The Supreme Court shall ensure that the state courts
128 system establishes and maintains internal controls designed to
129 prevent and detect fraud, waste, and abuse; to ensure the
130 administration of assigned public duties and responsibilities in
131 accordance with applicable laws, rules, contracts, grant
132 agreements, and best practices; to promote and encourage
133 economic and efficient operations; to ensure the reliability of
134 financial records and reports; and to safeguard assets.

135 Section 5. Paragraph (i) is added to subsection (2) of
136 section 28.35, Florida Statutes, to read:

137 28.35 Florida Clerks of Court Operations Corporation.—

138 (2) The duties of the corporation shall include the
139 following:

140 (i) Establishing and maintaining internal controls designed
141 to prevent and detect fraud, waste, and abuse; to ensure the
142 administration of assigned public duties and responsibilities in
143 accordance with applicable laws, rules, contracts, grant
144 agreements, and best practices; to promote and encourage
145 economic and efficient operations; to ensure the reliability of
146 records and reports; and to safeguard assets.

147 Section 6. Present subsections (6) and (7) of section
148 43.16, Florida Statutes, are renumbered as subsections (7) and
149 (8), respectively, and a new subsection (6) is added to that
150 section, to read:

151 43.16 Justice Administrative Commission; membership, powers
152 and duties.—

153 (6) The commission, each state attorney, each public
154 defender, each criminal conflict and civil regional counsel,
155 each capital collateral regional counsel, and the guardian ad



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156 litem program must establish and maintain internal controls
157 designed to prevent and detect fraud, waste, and abuse; to
158 ensure the administration of assigned public duties and
159 responsibilities in accordance with applicable laws, rules,
160 contracts, grant agreements, and best practices; to promote and
161 encourage economic and efficient operations; to ensure the
162 reliability of financial records and reports; and to safeguard
163 assets.

164 Section 7. Subsection (11) of section 215.985, Florida
165 Statutes, is amended to read:

166 215.985 Transparency in government spending.—

167 (11) Each water management district shall provide a monthly
168 financial statement in the form and manner prescribed by the
169 Department of Financial Services to the district's ~~its~~ governing
170 board and make such monthly financial statement available for
171 public access on its website.

172 Section 8. Present subsection (3) of section 218.33,
173 Florida Statutes, is renumbered as subsection (4), and a new
174 subsection (3) is added to that section, to read:

175 218.33 Local governmental entities; establishment of
176 uniform fiscal years and accounting practices and procedures.—

177 (3) Each local governmental entity must establish and
178 maintain internal controls designed to prevent and detect fraud,
179 waste, and abuse; to ensure the administration of assigned
180 public duties and responsibilities in accordance with applicable
181 laws, rules, contracts, grant agreements, and best practices; to
182 promote and encourage economic and efficient operations; to
183 ensure the reliability of financial records and reports; and to
184 safeguard assets.



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185 Section 9. Paragraph (e) of subsection (4) of section
186 373.536, Florida Statutes, is amended to read:

187 373.536 District budget and hearing thereon.—

188 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

189 (e) ~~By September 1, 2012,~~ Each district shall provide a
190 monthly financial statement in the form and manner prescribed by
191 the Department of Financial Services to the district's governing
192 board and make such monthly financial statement available for
193 public access on its website.

194 Section 10. Paragraph (1) of subsection (12) of section
195 1001.42, Florida Statutes, is amended to read:

196 1001.42 Powers and duties of district school board.—The
197 district school board, acting as a board, shall exercise all
198 powers and perform all duties listed below:

199 (12) FINANCE.—Take steps to assure students adequate
200 educational facilities through the financial procedure
201 authorized in chapters 1010 and 1011 and as prescribed below:

202 (1) *Internal auditor.*—May employ an internal auditor to
203 perform ongoing financial verification of the financial records
204 of the school district and such other audits and reviews as the
205 district school board directs for the purpose of establishing
206 and maintaining internal controls designed to prevent and detect
207 fraud, waste, and abuse; to ensure the administration of
208 assigned public duties and responsibilities in accordance with
209 applicable laws, rules, contracts, grant agreements, school
210 board-approved policies, and best practices; to promote and
211 encourage economic and efficient operations; to ensure the
212 reliability of financial records and reports; and to safeguard
213 assets. The internal auditor shall report directly to the



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214 district school board or its designee.

215 Section 11. Paragraph (j) of subsection (9) of section
216 1002.33, Florida Statutes, is amended to read:

217 1002.33 Charter schools.—

218 (9) CHARTER SCHOOL REQUIREMENTS.—

219 (j) The governing body of the charter school shall be
220 responsible for:

221 1. Establishing and maintaining internal controls designed
222 to prevent and detect fraud, waste, and abuse; to ensure the
223 administration of assigned public duties and responsibilities in
224 accordance with applicable laws, rules, contracts, grant
225 agreements, and best practices; to promote and encourage
226 economic and efficient operations; to ensure the reliability of
227 financial records and reports; and to safeguard assets.

228 2.1. Ensuring that the charter school has retained the
229 services of a certified public accountant or auditor for the
230 annual financial audit, pursuant to s. 1002.345(2), who shall
231 submit the report to the governing body.

232 3.2. Reviewing and approving the audit report, including
233 audit findings and recommendations for the financial recovery
234 plan.

235 4.a.3.a. Performing the duties in s. 1002.345, including
236 monitoring a corrective action plan.

237 b. Monitoring a financial recovery plan in order to ensure
238 compliance.

239 5.4. Participating in governance training approved by the
240 department which must include government in the sunshine,
241 conflicts of interest, ethics, and financial responsibility.

242 Section 12. Present subsections (3) and (4) of section



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243 1010.01, Florida Statutes, are renumbered as subsections (4) and
244 (5), respectively, and a new subsection (3) and subsection (6)
245 are added to that section, to read:

246 1010.01 Uniform records and accounts.-

247 (3) Each Florida College System institution shall annually
248 file with the State Board of Education financial statements
249 prepared in conformity with accounting principles generally
250 accepted in the United States and the uniform classification of
251 accounts prescribed by the State Board of Education. The State
252 Board of Education's rules shall prescribe the filing deadline
253 for the financial statements.

254 (6) Each school district, Florida College System
255 institution, and state university shall establish and maintain
256 internal controls designed to prevent and detect fraud, waste,
257 and abuse; to ensure the administration of assigned public
258 duties and responsibilities in accordance with applicable laws,
259 rules, contracts, grant agreements, and best practices; to
260 promote and encourage economic and efficient operations; to
261 ensure the reliability of financial records and reports; and to
262 safeguard assets.

263 Section 13. The Legislature finds that a proper and
264 legitimate state purpose is served when internal controls are
265 established to prevent and detect fraud, waste, and abuse, and
266 to safeguard and account for government funds and property.
267 Therefore, the Legislature determines and declares that this act
268 fulfills an important state interest.

269 Section 14. This act shall take effect July 1, 2014.

270
271 ===== T I T L E A M E N D M E N T =====



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272 And the title is amended as follows:

273 Delete everything before the enacting clause
274 and insert:

275 A bill to be entitled

276 An act relating to government accountability; amending
277 s. 11.45, F.S.; excluding water management districts
278 from certain audit requirements; expanding certain
279 audit provisions to include district school boards;
280 amending ss. 20.05, 25.382, 28.35, 43.16, 218.33, and
281 1002.33, F.S.; revising the responsibilities of a
282 department head, the Justice Administrative
283 Commission, a state attorney, a public defender, a
284 criminal conflict and civil regional counsel, a
285 capital collateral counsel, the guardian ad litem
286 program, the State Supreme Court as it relates to the
287 state courts system, the Florida Clerks of Court
288 Operations Corporation, a local governmental entity,
289 and the governing body of a charter school to include
290 the responsibility of establishing certain internal
291 controls; amending s. 20.055, F.S.; revising the
292 definition of the term "agency head"; amending s.
293 215.985, F.S.; specifying requirements for a monthly
294 financial statement provided by a water management
295 district; amending s. 373.536, F.S.; removing an
296 obsolete provision; amending s. 1001.42, F.S.;
297 revising the responsibilities of a district school
298 board's internal auditor to perform certain audits and
299 reviews; amending s. 1010.01, F.S.; requiring each
300 Florida College System institution to file certain



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301 annual financial statements with the State Board of
302 Education; requiring each school district, Florida
303 College System institution, and state university to
304 establish certain internal controls; providing that
305 the act fulfills an important state interest;
306 providing an effective date.

By Senator Bean

4-01137A-14

20141628__

A bill to be entitled

An act relating to government accountability; amending ss. 20.05, 25.382, 43.16, 218.33, and 1002.33, F.S.; revising the responsibilities of department heads, the Supreme Court as it relates to the state courts system, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, the Guardian Ad Litem program, the Florida Clerks of Court Operations Corporation, local governmental entities, and governing bodies of charter schools to include the responsibility of establishing certain internal controls; amending s. 20.055, F.S.; revising provisions relating to agency inspectors general; revising the definition of the term "state agency" to include the Justice Administrative Commission and the agencies it administratively supports; expanding the definition of the term "agency head"; amending s. 1001.42, F.S.; revising the responsibilities of a district school board's internal auditor to permit certain audits and reviews; amending s. 1010.01, F.S.; requiring each Florida College System institution to file certain annual financial statements with the State Board of Education; requiring each school district, Florida College System institution, and state university to establish certain internal controls; providing an effective date.

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

Page 1 of 7

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

4-01137A-14

20141628__

Section 1. Paragraphs (g) and (h) of subsection (1) of section 20.05, Florida Statutes, are amended, and paragraph (i) is added to that subsection, to read:

20.05 Heads of departments; powers and duties.—

(1) Each head of a department, subject to the allotment of executive power under Article IV of the State Constitution, and except as otherwise provided by law, must:

(g) If a department is under the direct supervision of a board, including a board consisting of the Governor and Cabinet, however designated, employ an executive director to serve at its pleasure; ~~and~~

(h) Make recommendations concerning more effective internal structuring of the department to the Legislature. Unless otherwise required by law, such recommendations must be provided to the Legislature at least 30 days before the first day of the regular session at which they are to be considered, when practicable; and

(i) Establish, maintain, and document the effective operation of internal controls, including controls designed to prevent and detect fraud, waste, and abuse; to ensure the administration of assigned public duties and responsibilities in accordance with applicable laws, rules, contracts, grant agreements, and best practices; to promote and encourage economic and efficient operations; to ensure the reliability of financial records and reports; and to safeguard assets.

Section 2. Paragraphs (a) and (b) of subsection (1) of section 20.055, Florida Statutes, are amended to read:

20.055 Agency inspectors general.—

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

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59 (1) For the purposes of this section:

60 (a) "State agency" means each department created pursuant
61 to this chapter, and also includes the Executive Office of the
62 Governor, the Department of Military Affairs, the Fish and
63 Wildlife Conservation Commission, the Office of Insurance
64 Regulation of the Financial Services Commission, the Office of
65 Financial Regulation of the Financial Services Commission, the
66 Public Service Commission, the Board of Governors of the State
67 University System, the Florida Housing Finance Corporation, the
68 Justice Administrative Commission and the agencies it
69 administratively supports pursuant to s. 43.16(5), and the state
70 courts system.

71 (b) "Agency head" means the Governor, a Cabinet officer, a
72 secretary as defined in s. 20.03(5), or an executive director as
73 defined in s. 20.03(6). It also includes the chair of the Public
74 Service Commission, the Director of the Office of Insurance
75 Regulation of the Financial Services Commission, the Director of
76 the Office of Financial Regulation of the Financial Services
77 Commission, the chair of the board of directors of the Florida
78 Housing Finance Corporation, the chair of the Justice
79 Administrative Commission, and the Chief Justice of the ~~State~~
80 Supreme Court.

81 Section 3. Subsection (5) is added to section 25.382,
82 Florida Statutes, to read:

83 25.382 State courts system.—

84 (5) The Supreme Court shall ensure that the state courts
85 system establishes, maintains, and documents the effective
86 operation of internal controls, including controls designed to
87 prevent and detect fraud, waste, and abuse; to ensure the

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88 administration of assigned public duties and responsibilities in
89 accordance with applicable laws, rules, contracts, grant
90 agreements, and best practices; to promote and encourage
91 economic and efficient operations; to ensure the reliability of
92 financial records and reports; and to safeguard assets.

93 Section 4. Subsections (6) and (7) of section 43.16,
94 Florida Statutes, are renumbered as subsections (7) and (8),
95 respectively, and a new subsection (6) is added to that section
96 to read:

97 43.16 Justice Administrative Commission; membership, powers
98 and duties.—

99 (6) The commission, each state attorney, public defender,
100 and criminal conflict and civil regional counsel, the Guardian
101 Ad Litem program, and the Florida Clerks of Court Operations
102 Corporation must establish, maintain, and document the effective
103 operation of internal controls, including controls designed to
104 prevent and detect fraud, waste, and abuse; to ensure the
105 administration of assigned public duties and responsibilities in
106 accordance with applicable laws, rules, contracts, grant
107 agreements, and best practices; to promote and encourage
108 economic and efficient operations; to ensure the reliability of
109 financial records and reports; and to safeguard assets.

110 Section 5. Subsection (3) of section 218.33, Florida
111 Statutes, is renumbered as subsection (4), and a new subsection
112 (3) is added to that section to read:

113 218.33 Local governmental entities; establishment of
114 uniform fiscal years and accounting practices and procedures.—

115 (3) Each local governmental entity must establish,
116 maintain, and document the effective operation of internal

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

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 117 controls designed to prevent and detect fraud, waste, and abuse;
 118 to ensure the administration of assigned public duties and
 119 responsibilities in accordance with applicable laws, rules,
 120 contracts, grant agreements, and best practices; to promote and
 121 encourage economic and efficient operations; to ensure the
 122 reliability of financial records and reports; and to safeguard
 123 assets.

124 Section 6. Paragraph (1) of subsection (12) of section
 125 1001.42, Florida Statutes, is amended to read:

126 1001.42 Powers and duties of district school board.—The
 127 district school board, acting as a board, shall exercise all
 128 powers and perform all duties listed below:

129 (12) FINANCE.—Take steps to assure students adequate
 130 educational facilities through the financial procedure
 131 authorized in chapters 1010 and 1011 and as prescribed below:

132 (1) *Internal auditor.*—May employ an internal auditor to
 133 perform ongoing financial verification of the financial records
 134 of the school district and such other audits and reviews as the
 135 district school board directs for the purpose of establishing,
 136 maintaining, and documenting the effective operation of internal
 137 controls, including controls designed to prevent and detect
 138 fraud, waste, and abuse; to ensure the administration of
 139 assigned public duties and responsibilities in accordance with
 140 applicable laws, rules, contracts, grant agreements, school
 141 board-approved policies, and best practices; to promote and
 142 encourage economic and efficient operations; to ensure the
 143 reliability of financial records and reports; and to safeguard
 144 assets. The internal auditor shall report directly to the
 145 district school board or its designee.

4-01137A-14 20141628__
 146 Section 7. Paragraph (j) of subsection (9) of section
 147 1002.33, Florida Statutes, is amended to read:
 148 1002.33 Charter schools.—
 149 (9) CHARTER SCHOOL REQUIREMENTS.—
 150 (j) The governing body of the charter school shall be
 151 responsible for:
 152 1. Establishing, maintaining, and documenting the effective
 153 operation of internal controls, including controls designed to
 154 prevent and detect fraud, waste, and abuse; to ensure the
 155 administration of assigned public duties and responsibilities in
 156 accordance with applicable laws, rules, contracts, grant
 157 agreements, and best practices; to promote and encourage
 158 economic and efficient operations; to ensure the reliability of
 159 financial records and reports; and to safeguard assets.
 160 ~~2.1.~~ Ensuring that the charter school has retained the
 161 services of a certified public accountant or auditor for the
 162 annual financial audit, pursuant to s. 1002.345(2), who shall
 163 submit the report to the governing body.
 164 ~~3.2.~~ Reviewing and approving the audit report, including
 165 audit findings and recommendations for the financial recovery
 166 plan.
 167 ~~4.3.~~a. Performing the duties in s. 1002.345, including
 168 monitoring a corrective action plan.
 169 b. Monitoring a financial recovery plan in order to ensure
 170 compliance.
 171 ~~5.4.~~ Participating in governance training approved by the
 172 department which must include government in the sunshine,
 173 conflicts of interest, ethics, and financial responsibility.
 174 Section 8. Subsections (3) and (4) of section 1010.01,

4-01137A-14 20141628__

175 Florida Statutes, are renumbered as subsections (4) and (5),
176 respectively, and new subsections (3) and (6) are added to that
177 section, to read:

178 1010.01 Uniform records and accounts.—

179 (3) Each Florida College System institution shall annually
180 file with the State Board of Education financial statements
181 prepared in conformity with accounting principles generally
182 accepted by the United States and the uniform classification of
183 accounts prescribed by the State Board of Education. The State
184 Board of Education's rules shall prescribe the filing deadline
185 for the financial statements.

186 (6) Each school district, Florida College System
187 institution, and state university shall establish, maintain, and
188 document the effective operation of internal controls, including
189 controls designed to prevent and detect fraud, waste, and abuse;
190 to ensure the administration of assigned public duties and
191 responsibilities in accordance with applicable laws, rules,
192 contracts, grant agreements, and best practices; to promote and
193 encourage economic and efficient operations; to ensure the
194 reliability of financial records and reports; and to safeguard
195 assets.

196 Section 9. 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)

4/3/2014
Meeting Date

Topic _____

Bill Number 1628
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

E-mail justice2jesus@yahoo.com

Speaking: For Against Information

Representing _____

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:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

March 6, 2014

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

Dear Chairman Ring:

This letter is to request to have my bill *SB 1628 relating to Government Accountability* be heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Joe McVaney, Staff Director
Bethany Jones, Committee Administrative Assistant

/jk

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

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 866

INTRODUCER: Governmental Oversight and Accountability Committee and Health Policy Committee

SUBJECT: OGSR/Department of Health

DATE: April 4, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Looke</u>	<u>Stovall</u>		HP SPB 7014 as introduced
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 866 amends, s. 893.0551, F.S., the public records exemption for the prescription drug monitoring program (PDMP). Currently, personal identifying information in the prescription drug monitoring program (PDMP) is confidential and exempt from public records may only be released in limited circumstances.

CS/SB 866 modifies the conditions for releasing confidential and exempt records in the following manner:

- Assistant Attorneys General prosecuting prescription Medicaid fraud cases may only disclose relevant information to a criminal justice agency.
- Department of Health’s (DOH’s) health care regulatory boards may receive information, however, they may only disclose relevant information to a law enforcement agency.
- Law enforcement agencies may only have access to confidential information if they have entered into a user agreement with the DOH;
- Law enforcement agencies may disclose only relevant information to a criminal justice agency.
- Health care practitioners may disclose a patient’s information to the patient.
- Consultants monitoring a health care practitioner with a substance abuse problem may have access to the practitioner’s profile.
- State Attorneys may release information only in response to a request for discovery or pursuant to a court order.

The bill saves the exemption for personal identifying information in the PDMP from repeal on October 2, 2014.

II. Present Situation:

Florida's Prescription Drug Monitoring Program

Chapter 2009-197, Laws of Florida, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic system/database to monitor the prescribing and dispensing of certain controlled substances.¹ Dispensers of certain controlled substances must report specified information to the PDMP database, including the name of the prescriber, the date the prescription was filled and dispensed, and the name, address, and date of birth of the person to whom the controlled substance is dispensed.²

The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.³ Dispensers have reported over 87 million controlled substance prescriptions to the PDMP since its inception.⁴ Health care practitioners began accessing the PDMP on October 17, 2011.⁵ Law enforcement began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.⁶

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information⁷ of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.⁸

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists.⁹ Currently, prescribers are not required to consult the PDMP database prior to prescribing a controlled substance for a patient however physicians and pharmacists queried the database more than 3.7 million times during fiscal year 2012-2013.¹⁰

Indirect access to the PDMP database is provided to:

- The DOH or its relevant health care regulatory boards;

¹ S. 893.055(2)(a), F.S.

² S. 893.055(3)(a)-(c), F.S.

³ 2012-2013 PDMP Annual Report, available at <http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf>, last visited on Jan. 9, 2014.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.

⁸ S. 893.0551(2)(a)-(h), F.S.

⁹ S. 893.055(7)(b), F.S.

¹⁰ Supra at n. 3

- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations¹¹ involving potential criminal activity, fraud, or theft regarding prescribed controlled substances; and
- Patients, or the legal guardians or designated health care surrogates of incapacitated patients.¹²

Law enforcement agencies may receive information from the PDMP database through the procedures outlined in the DOH's "Training Guide for Law Enforcement and Investigative Agencies."¹³ Agencies that wish to gain access to the PDMP database must first appoint a sworn law enforcement officer as an administrator who verifies and credentials other law enforcement officers' within the same agency.¹⁴ The administrator may then register individual law enforcement officers with the DOH.

Registered law enforcement officers may not directly access the PDMP, instead when they wish to obtain information from the PDMP database, they must submit a query to the DOH.¹⁵ These queries may be for a patient's history, a prescriber's history, or a pharmacy's dispensing history.¹⁶ The registered law enforcement officer must fill out a form indicating what type of search they want to perform, what parameters (name, date, time period, etc.) they want to include, and some details of the active investigation they are pursuing including a case number. This form is submitted to the DOH and, in most instances, the requested information is made available to the requesting officer. In some cases a request is denied. Generally, a request is denied due to lack of sufficient identifying information (incorrect spelling of a name, wrong social security number, etc.) or, alternatively, a request may return no results. The DOH may also deny a request that it finds not to be authentic or authorized.¹⁷

Prescription Drug Monitoring Programs in Other States

As of December 2013, every state except Missouri has passed PDMP legislation and only New Hampshire and Washington D.C. have yet to bring their PDMP to operation status.¹⁸ The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) examined the PDMPs of 26 of those states, including Florida.¹⁹ All PDMPs examined are either

¹¹ S. 893.055(1)(h), F.S., defines an "active investigation" as an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

¹² S. 893.055(7)(c)1.-4., F.S.

¹³ This training guide may be found at

http://www.hidinc.com/assets/files/flpdms/FL%20PDMP_Training%20Guide%20for%20Enforcement%20and%20Investigative%20Agencies.pdf, last viewed on Jan. 9, 2014.

¹⁴ See the DOH's "Law enforcement administrator appointment form," available at <http://www.floridahealth.gov/reports-and-data/e-forcse/law-enforcement-information/documents/admin-appoint-form.pdf>, last visited on Jan. 9, 2014.

¹⁵ During FY 2012-2013 a total of 487 authorized law enforcement users queried the PDMP database 32,839 times. Id. at note 3.

¹⁶ Id. at note 11.

¹⁷ S. 893.055(7)(c), F.S., requires the DOH to verify a request as being "authentic and authorized" before releasing information from the PDMP.

¹⁸ National Alliance for Model State Drug Laws. *Compilation of State Prescription Monitoring Programs Maps*, can be found at <http://www.namsdl.org/library/6D4C4D9F-65BE-F4BB-A428B392538E0663/>, last visited on Jan. 10, 2014.

¹⁹ *OPPAGA Review of State Prescription Drug Monitoring Programs*, Jan. 31, 2013, on file with the Senate Health Policy Committee.

run by the states in-house or by contract with private vendors. Most states do not require prescribers to register in order to use the PDMP and primarily encourage prescribers to use the database through education and outreach programs.²⁰ Only three of the 26 states require prescribers to access the database prior to prescribing most or all controlled substances.²¹ In 17 of 23 states, including Florida, accessing the database is strictly voluntary and in the remaining six states accessing the database is only required under limited circumstances.²²

All states reviewed have the authority to take punitive action against dispensers of prescription drugs that do not comply with their state's respective laws and rules on their state's PDMP. These punitive actions can come in the form of fines, licensure disciplinary action, and/or criminal charges, however, states rarely use these punitive measures when dispensers do not comply with PDMP requirements.

As of December 5, 2013, 18 states require law enforcement to obtain a search warrant, subpoena, court order, or other type of judicial process in order to access the information in their state's PDMP.²³

Unauthorized Release of PDMP Data

In the early summer of 2013, the PDMP information of approximately 3,300 individuals was improperly shared with a person or persons who were not authorized to obtain such information.²⁴ The original information was released from the PDMP by the DOH during a Drug Enforcement Administration (DEA) investigation of a ring of individuals who used four doctor's information to conduct prescription fraud. Although as a result of the investigation only six individuals were ultimately charged, the information of approximately 3,300 individuals was released to the DEA because the DEA searched the PDMP for the records of all the patients of the four doctors who had been the victims of the prescription drug fraud.²⁵ During the investigation and the resulting prosecution, the DEA shared the full file with the prosecutor who, in turn, shared the full file with the defense attorney during discovery. The improper release of information occurred when a defense attorney associated with the case shared the file with a colleague who was not associated with the case.²⁶

²⁰ Id., p. 8

²¹ Kentucky, New Mexico, and New York. Id., p. 4

²² These circumstances typically revolve around how often a drug is prescribed, if the drug is in a specific class or schedule, if there is a reasonable suspicion that the patient is abusing drugs, or if the prescription was written in a pain clinic. Id.

²³ These states are: Alaska, Arkansas, Colorado, Georgia, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, and Wisconsin. See the National Alliance for Model State Drug Laws, *Law Enforcement Access to State PMP Data*, available at <http://www.namsdl.org/library/C4AA9EA3-65BE-F4BB-AAFBAB1F5736F070/>, last visited on Jan 10, 2014.

²⁴ See John Woodrow Cox, *Did Florida's prescription pill database really spring a leak?*, Tampa Bay Times, July 5, 2013. Available at <http://www.tampabay.com/news/politics/did-floridas-prescription-pill-database-really-spring-a-leak/2130108>, Last visited on Jan. 9, 2014, and see the DOH presentation to the Senate Health Policy Committee on the PDMP, Sep. 24, 2013, on file with Health Policy Committee staff.

²⁵ Id.

²⁶ Id.

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.²⁷ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.²⁸ Article I, s. 24 of the State Constitution, provides that:

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

In addition to the State Constitution, the Public Records Act,²⁹ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

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

Unless specifically exempted, all agency³⁰ records are available for public inspection. The term “public record” is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.³¹

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.³²

²⁷ Section 1390, 1391 Florida Statutes. (Rev. 1892).

²⁸ Article I, s. 24 of the State Constitution.

²⁹ Chapter 119, F.S.

³⁰ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

³¹ S. 119.011(12), F.S.

³² *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

Only the Legislature is authorized to create exemptions to open government requirements.³³ An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.³⁴ A bill enacting an exemption³⁵ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.³⁶

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.³⁷ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.³⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act)³⁹ provides for the systematic review, through a five year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Sunshine Law.

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁴⁰

³³ Article I, s. 24(c) of the State Constitution.

³⁴ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

³⁵ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

³⁶ Article I, s. 24(c) of the State Constitution.

³⁷ Attorney General Opinion 85-62.

³⁸ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

³⁹ S. 119.15, F.S.

⁴⁰ S. 119.15(6)(b), F.S.

The Act also requires the Legislature to consider the following:

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

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.⁴¹ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Senate Review of s. 893.0551, F.S.

In the course of conducting the Open Government Sunset Review of s. 893.0551, F.S., Senate Health Policy Committee staff invited input from various stake holders. Staff met with representatives from various agencies and groups including the DOH, the Florida Department of Law Enforcement, the DEA, Florida Sheriffs Association, Florida Police Chiefs Association, the Attorney General's office, and various advocacy groups representing pharmacists and pain management physicians. Staff also observed several meetings held by the DOH on proposed rule amendments for the PDMP.⁴²

⁴¹ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

⁴² CS/SB 866 is not linked to CS/SB 862, which amends the statute governing prescription drug monitoring program, s. 893.055, F.S., however the two bills are highly related. CS/SB 862 makes substantive changes to:

- Require the DOH to adopt a user agreement rule that requires users to maintain procedures to protect the confidentiality of information from the prescription drug monitoring program's database;
- Require a law enforcement agency to execute the user agreement before information from the prescription drug monitoring program is released to the agency;
- Allow the DOH to send only relevant information which is not personal identifying information to a law enforcement agency when the DOH determines a pattern consistent with indicators of controlled substance abuse exists;
- Provide requirements for the release of information from the prescription drug monitoring program's database shared with a state attorney in response to a discovery demand;
- Authorize a law enforcement agency to use information from the prescription drug program database to determine whether an active investigation is warranted;
- Allow DOH to provide a patient advisory report to the appropriate health care practitioner if the manager of the prescription drug monitoring program determines that a specified pattern exists;

III. Effect of Proposed Changes:

The bill saves the public records exemption for personal identifying information in the PDMP from repeal and enhances the security pertaining to information that is released from the PDMP.

The following entities may receive and disclose confidential and exempt information from the PDMP:

- Assistant Attorneys General prosecuting prescription Medicaid fraud cases may only disclose information relevant to an active investigation prompting the request for information from the PDMP. Disclosure may be made to a criminal justice agency, and Assistant Attorneys General must take steps to ensure the continued confidentiality of all confidential and exempt information, including making redactions.
- DOH's health care regulatory boards may release information relevant to a specific investigation to a law enforcement agency. The boards must take steps to ensure the continued confidentiality of all confidential and exempt information, including making redactions.
- Law enforcement agencies may only have access to confidential and exempt information if they have entered into a user agreement with the DOH. Law enforcement agencies may disclose information to a criminal justice agency, but must take steps to ensure the continued confidentiality of all confidential and exempt information, including making redactions.
- Health care practitioners may disclose a patient's PDMP information to the patient and put the information in the patient's file.
- Consultants monitoring a health care practitioner with substance abuse problems may have access to the practitioner's profile.
- State Attorneys may only release information directly related to a criminal case in response to a request for discovery. Information that is unrelated to the criminal case may only be released pursuant to a court order.

This bill also deletes the Open Government Sunset Review language that automatically repeals this section of law on October 2, 2014.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

-
- Define the term "dispense" or "dispensing" using existing language in the statute and in the definitions section of chapter 893, F.S.;
 - Allow an impaired practitioner consultant retained by the DOH access to information in the prescription drug monitoring program's database which relates to a practitioner who has agreed to be evaluated or monitored by the consultant.

B. Public Records/Open Meetings Issues:

This bill does not create or expand a public records exemption and therefore does not require two-thirds vote 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:

The Attorney General's office, the DOH's regulatory boards, and law enforcement agencies may incur costs associated with redacting or deleting non-relevant PDMP information.

VI. Technical Deficiencies:

This bill does not state with specificity what information is considered "relevant" or "nonrelevant" to an investigation. This is a vague and subjective standard for each agency. For example, information that is not relevant to a health regulatory board's investigation may be relevant to a law enforcement agency's investigation.

By requiring agencies to redact information before passing it along to the next agency, it may make it difficult to identify, investigate and prosecute cases involving several conspirators or witnesses.

CS/SB 866 makes several references to provisions CS/SB 862. CS/SB 866 and CS/SB 862 are not linked bills and if CS/SB 862 does not pass, CS/SB 866 will make references to provisions which do not exist.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 893.0551 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 April 3, 2014:

The CS makes the following substantive changes:

- Provides that information may be released to a law enforcement agency pursuant to a user agreement, rather than a court order.
- Permits DOH consultants who monitor health care practitioners with substance abuse problems to have access to PDMP information.
- Provides that state attorneys may only release relevant information if a demand for discovery is made in a criminal case. A state attorney may only release unrelated information pursuant to a court order.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 120 - 180

and insert:

substances and that has entered into a user agreement with the
department as required under s. 893.055. The law enforcement
agency may disclose to a criminal justice agency as defined in
s. 119.011 only ~~the~~ confidential and exempt information received
from the department which is relevant to ~~a criminal justice~~
agency as ~~defined in s. 119.011 as part of an active~~



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11 investigation that prompted the request for the information that
12 is specific to a violation of prescription drug abuse or
13 prescription drug diversion law as it relates to controlled
14 substances. Before disclosing any information to a criminal
15 justice agency, a law enforcement agency must take steps to
16 ensure the continued confidentiality of all confidential and
17 exempt information. At a minimum, these steps must include
18 redacting or deleting all nonrelevant information. A law
19 enforcement agency may request information from the department
20 but may not have direct access to its database.

21 (d) A health care practitioner who certifies that the
22 information is necessary to provide medical treatment to a
23 current patient in accordance with ss. 893.05 and 893.055. A
24 health care practitioner who receives a current patient's
25 confidential and exempt information under this subsection may
26 disclose such information to the patient or the patient's legal
27 representative. Upon the patient's or the legal representative's
28 written consent, the health care practitioner may place such
29 information in the patient's medical record, including
30 electronic medical records, and may disclose such information
31 subject to the requirements of s. 456.057.

32 (e) A pharmacist who certifies that the requested
33 information will be used to dispense controlled substances to a
34 current patient in accordance with ss. 893.04 and 893.055.

35 (f) A patient or the legal guardian or designated health
36 care surrogate for an incapacitated patient, if applicable,
37 making a request as provided in s. 893.055(7)(c)4.

38 (g) The patient's pharmacy, prescriber, or dispenser who
39 certifies that the information is necessary to provide medical



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40 treatment to his or her current patient in accordance with s.
41 893.055.

42 (h) An impaired practitioner consultant who is retained by
43 the department under s. 456.076 for the purpose of reviewing the
44 controlled substance prescription history of a practitioner who
45 has agreed to be evaluated or monitored by the consultant.

46 (4) If the department determines that there exists a
47 pattern of controlled substance abuse consistent with department
48 rules for identifying indicators of such abuse, the department
49 may provide a patient advisory report to an appropriate health
50 care practitioner shall disclose such confidential and exempt
51 information to the applicable law enforcement agency in
52 accordance with s. 893.055(7)(f). The law enforcement agency may
53 disclose the confidential and exempt information received from
54 the department to a criminal justice agency as defined in s.
55 119.011 as part of an active investigation that is specific to a
56 violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s.
57 893.13(8)(b).

58 (5) An Any agency or person who obtains any such
59 confidential and exempt information specified in pursuant to
60 this section must maintain the confidential and exempt status of
61 that information and may not disclose such information unless
62 authorized under this section. Information shared with a state
63 attorney pursuant to paragraph (3)(a) or paragraph (3)(c) may be
64 released only in response to a discovery demand if such
65 information is directly related to the criminal case for which
66 the information was requested. Unrelated information may be
67 released only upon an order of a court of competent jurisdiction
68 as provided in s. 893.055(6)(c).



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

And the title is amended as follows:

Delete lines 18 - 32

and insert:

to enter into a user agreement before such agency may receive information from the prescription drug monitoring database; requiring the law enforcement agency to ensure the continued confidentiality of all confidential and exempt information; authorizing a health care practitioner to share a patient's information with that patient and put such information in the patient's medical record upon consent; authorizing certain impaired practitioner consultants to access information for a specified purpose; authorizing the department to disclose a patient advisory report to a health care practitioner under certain circumstances; prohibiting

By the Committee on Health Policy

588-01652-14

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunshine Review Act; amending s. 893.0551, F.S., which
 4 makes confidential and exempt certain information of a
 5 patient or patient's agent, health care practitioner,
 6 and others held by the Department of Health;
 7 specifying that the Attorney General, health care
 8 regulatory boards, and law enforcement agencies may
 9 disclose certain confidential and exempt information
 10 to certain entities only if such information is
 11 relevant to an active investigation that prompted the
 12 request for the information; requiring the Attorney
 13 General, health care regulatory boards, and law
 14 enforcement agencies to take certain steps to ensure
 15 the continued confidentiality of all nonrelevant
 16 confidential and exempt information before disclosing
 17 such information; requiring a law enforcement agency
 18 to obtain a court order before such agency may receive
 19 information from the prescription drug monitoring
 20 database; authorizing a health care practitioner to
 21 share a patient's information with that patient and
 22 put such information in the patient's medical record
 23 upon consent; authorizing the department to disclose,
 24 under certain circumstances, a patient advisory report
 25 to a health care practitioner and relevant information
 26 that does not include personal identifying information
 27 to a law enforcement agency, rather than requiring the
 28 department to disclose confidential and exempt
 29 information; authorizing a law enforcement agency to

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

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30 use specified information to support a court order,
 31 rather than to disclose confidential and exempt
 32 information to a criminal justice agency; prohibiting
 33 an agency or person who obtains specified confidential
 34 and exempt information from disclosing such
 35 information except under certain circumstances; saving
 36 the exemption from repeal under the Open Government
 37 Sunset Review Act; providing an effective date.
 38
 39 Be It Enacted by the Legislature of the State of Florida:
 40
 41 Section 1. Section 893.0551, Florida Statutes, is amended
 42 to read:
 43 893.0551 Public records exemption for the prescription drug
 44 monitoring program.—
 45 (1) As used in ~~For purposes of~~ this section, the term:
 46 (a) "Active investigation" has the same meaning as provided
 47 in s. 893.055.
 48 (b) "Dispenser" has the same meaning as provided in s.
 49 893.055.
 50 (c) "Health care practitioner" or "practitioner" has the
 51 same meaning as provided in s. 893.055.
 52 (d) "Health care regulatory board" has the same meaning as
 53 provided in s. 893.055.
 54 (e) "Law enforcement agency" has the same meaning as
 55 provided in s. 893.055.
 56 (f) "Pharmacist" means a ~~any~~ person licensed under chapter
 57 465 to practice the profession of pharmacy.
 58 (g) "Pharmacy" has the same meaning as provided in s.

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59 893.055.

60 (h) "Prescriber" has the same meaning as provided in s.
61 893.055.

62 (2) The following information of a patient or patient's
63 agent, a health care practitioner, a dispenser, an employee of
64 the practitioner who is acting on behalf of and at the direction
65 of the practitioner, a pharmacist, or a pharmacy which that is
66 contained in records held by the department under s. 893.055 is
67 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
68 of the State Constitution:

69 (a) Name.

70 (b) Address.

71 (c) Telephone number.

72 (d) Insurance plan number.

73 (e) Government-issued identification number.

74 (f) Provider number.

75 (g) Drug Enforcement Administration number.

76 (h) Any other unique identifying information or number.

77 (3) The department shall disclose such confidential and
78 exempt information to the following persons or entities after
79 using a verification process to ensure the legitimacy of that
80 person's or entity's request for the information:

81 (a) The Attorney General and his or her designee when
82 working on Medicaid fraud cases involving prescription drugs or
83 when the Attorney General has initiated a review of specific
84 identifiers of Medicaid fraud regarding prescription drugs. The
85 Attorney General or his or her designee may disclose to a
86 criminal justice agency as defined in s. 119.011 only the
87 confidential and exempt information received from the department

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88 which is relevant to a criminal justice agency as defined in s.
89 119.011 as part of an active investigation that prompted the
90 request for the information that is specific to a violation of
91 prescription drug abuse or prescription drug diversion law as it
92 relates to controlled substances. Before disclosing any
93 information to a criminal justice agency, the Attorney General
94 or his or her designee must take steps to ensure the continued
95 confidentiality of all confidential and exempt information. At a
96 minimum, these steps must include redacting or deleting all
97 nonrelevant information. The Attorney General's Medicaid fraud
98 investigators may not have direct access to the department's
99 database.

100 (b) The department's relevant health care regulatory boards
101 responsible for the licensure, regulation, or discipline of a
102 practitioner, pharmacist, or other person who is authorized to
103 prescribe, administer, or dispense controlled substances and who
104 is involved in a specific controlled substances investigation
105 for prescription drugs involving a designated person. The health
106 care regulatory boards may request information from the
107 department but may not have direct access to its database. The
108 health care regulatory boards may provide ~~such information~~ to a
109 law enforcement agency pursuant to ss. 456.066 and 456.073 only
110 information that is relevant to the specific controlled
111 substances investigation that prompted the request for the
112 information. Before disclosing any information to a law
113 enforcement agency, a healthcare regulatory board must take
114 steps to ensure the continued confidentiality of all
115 confidential and exempt information. At a minimum, these steps
116 must include redacting or deleting all nonrelevant information.

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117 (c) A law enforcement agency that has initiated an active
 118 investigation involving a specific violation of law regarding
 119 prescription drug abuse or diversion of prescribed controlled
 120 substances and that has obtained a court order issued by a court
 121 of competent jurisdiction upon a showing of reasonable suspicion
 122 of potential criminal activity, fraud, or theft regarding
 123 prescribed controlled substances. The law enforcement agency may
 124 disclose to a criminal justice agency as defined in s. 119.011
 125 only the confidential and exempt information received from the
 126 department which is relevant to a criminal justice agency as
 127 defined in s. 119.011 as part of an active investigation that
 128 prompted the request for the information that is specific to a
 129 violation of prescription drug abuse or prescription drug
 130 diversion law as it relates to controlled substances. Before
 131 disclosing any information to a criminal justice agency, a law
 132 enforcement agency must take steps to ensure the continued
 133 confidentiality of all confidential and exempt information. At a
 134 minimum, these steps must include redacting or deleting all
 135 nonrelevant information. A law enforcement agency may request
 136 information from the department but may not have direct access
 137 to its database.

138 (d) A health care practitioner who certifies that the
 139 information is necessary to provide medical treatment to a
 140 current patient in accordance with ss. 893.05 and 893.055. A
 141 health care practitioner who receives a current patient's
 142 confidential and exempt information under this subsection may
 143 disclose such information to the patient or the patient's legal
 144 representative. Upon the patient's or the legal representative's
 145 written consent, the health care practitioner may place such

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146 information in the patient's medical record, including
 147 electronic medical records, and may disclose such information
 148 subject to the requirements of s. 456.057.

149 (e) A pharmacist who certifies that the requested
 150 information will be used to dispense controlled substances to a
 151 current patient in accordance with ss. 893.04 and 893.055.

152 (f) A patient or the legal guardian or designated health
 153 care surrogate for an incapacitated patient, if applicable,
 154 making a request as provided in s. 893.055(7)(c)4.

155 (g) The patient's pharmacy, prescriber, or dispenser who
 156 certifies that the information is necessary to provide medical
 157 treatment to his or her current patient in accordance with s.
 158 893.055.

159 (4) If the department determines that there exists a
 160 pattern of controlled substance abuse consistent with department
 161 rules for identifying indicators of such abuse, the department
 162 may provide:

163 (a) A patient advisory report to an appropriate health care
 164 practitioner; and

165 (b) Relevant information that does not contain personal
 166 identifying information to the applicable law enforcement
 167 agency. A law enforcement agency may use such information to
 168 support a court order pursuant to paragraph (3)(c) shall
 169 disclose such confidential and exempt information to the
 170 applicable law enforcement agency in accordance with s.
 171 893.055(7)(f). The law enforcement agency may disclose the
 172 confidential and exempt information received from the department
 173 to a criminal justice agency as defined in s. 119.011 as part of
 174 an active investigation that is specific to a violation of s.

Page 6 of 7

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

588-01652-14

2014866__

175 ~~§93.13(7)(a)8., s. 93.13(8)(a), or s. 93.13(8)(b).~~

176 (5) ~~An~~ Any agency or person who obtains any such
177 confidential and exempt information specified in pursuant to
178 this section must maintain the confidential and exempt status of
179 that information and may not disclose such information unless
180 authorized under this section.

181 (6) ~~A~~ Any person who willfully and knowingly violates this
182 section commits a felony of the third degree, punishable as
183 provided in s. 775.082, s. 775.083, or s. 775.084.

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

188 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)

3/3/14

Meeting Date

Topic PPMP

Bill Number 866

Name Electra Bustle

Amendment Barcode 202932
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Florida Seniors Assoc.

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)

3/3/14

Meeting Date

Topic PMMP

Bill Number 866
(if applicable)

Name Electra Bustle

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing Florida Sheriffs Assoc.

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

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

March 31, 2014

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

Dear Chairman Ring:

This letter is to request that *SB 866 relating to a review under the Open Government Sunshine Review Act* be placed on the agenda of the next possible committee meeting.

Thank you for your consideration of this request.

Respectfully,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Joe McVaney, Staff Director
Bethany Jones, Committee Administrative Assistant

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

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 1266

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Montford and Garcia

SUBJECT: State Employees' Prescription Drug Program

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1266 amends s. 110.12315(2), Florida Statutes, relating to the state employees' prescription drug program, to allow the Department of Management Services to negotiate a dispensing fee for 90-day maintenance drugs at retail, and to authorize a 90-day supply of maintenance prescriptions to be filled at retail. The bill also limits the reimbursement for retail and mail order purchases to the amount contracted by the department for prescriptions fulfilled by mail order.

The bill also repeals subsection (1) of section 54 of Chapter 2013-41, Laws of Florida, which, if not repealed, would revert the text of s. 110.12315, F.S., to the text as it existed on June 30, 2013.

The bill provides for an effective date of July 1, 2014.

II. Present Situation:

Under the authority of s. 110.123, Florida Statutes, the Department of Management Services (Department), through the Division of State Group Insurance, administers the state group insurance program providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with Section 125, Internal Revenue Code.

As part of the State Group Insurance Program, the Department contracts with a pharmacy benefits manager (PBM), Express Scripts, Inc., for the State Employees' Prescription Drug Plan. The Department is not a party to the private business contracts between the PBM and its retail pharmacies.

Section 110.12315, F.S., states: "The Department may implement a 90-day supply limit program for certain maintenance drugs as determined by the department at retail pharmacies participating in the program if the department determines it to be in the best financial interest of the state."

Members of the State Employees' Prescription Drug Plan may get up to a 90-day supply through mail order and specialty pharmacy and may get up to a 30-day supply through a retail pharmacy. The General Appropriations Act requires that PPO Plan members be limited to three retail pharmacy fills of certain maintenance drugs after which the prescription must be filled at mail order. Members of the HMO Plans are not required to use mail order for maintenance drug prescriptions but may choose to do so.

The dispensing fees for prescriptions filled at mail order and for prescriptions filled at retail pharmacies, \$4.22 and \$4.28 respectively, are specified in the contract with Express Scripts. Section 110.12315(1)(c), F.S., also states that "the current pharmacy dispensing fee remains in effect."

The contract with Express Scripts contains pricing provisions for discounts off AWP (average wholesale pricing) and quarterly minimum guarantee payments of earned rebates. Such pricing provisions are for current Plan designs (PPO and HMO) and include pricing adjustments for Plan design changes.

Chapter 2013-41, Laws of Florida, was the Implementing Bill for the General Appropriations Act for Fiscal Year 2013-14. Section 54(1), ch. 2013-41, provides:

"[t]he amendment to s. 110.12315(2)(b), Florida Statutes, as carried forward by this act from chapter 2012-119, Laws of Florida, expires July 1, 2014, and the text of that paragraph shall revert to that in existence on June 30, 2012, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section."

Effective July 1, 2014, s. 110.12315(2)(b), F.S., will read:

(b) There shall be a 30-day supply limit for prescription card purchases and 90-day supply limit for mail order or mail order prescription drug purchases.

III. Effect of Proposed Changes:

CS/SB 1266 amends section 110.12315, F.S., to set the pharmacy dispensing fee at the lesser of:

1. \$4.28 for each prescription filled at retail;
2. \$4.22 for each prescription filled at mail order; or
3. The amount negotiated by the department for a 90-day supply of a drug on the mandatory maintenance drug list which is filled at a retail pharmacy.

The bill removes the current limitation that allows a 90-day supply limit program for prescription drug purchase at retail pharmacies be implemented only if the department determines it is in the best financial interest of the state. The bill also limits the reimbursement for retail and mail order purchases to the amount contracted by the department for prescriptions fulfilled by mail order.

Per the proviso language in Section 8 of the 2013-14 General Appropriations Act, PPO Plan members are required to fill maintenance prescriptions at mail order after three fills at retail. It is unclear if PPO Plan members would be able to fill their maintenance prescriptions at retail instead of mail.

CS/SB 1266 repeals subsection (1) of s. 54 of ch. 2013-041, Laws of Florida. This allows the language of the bill to take effect without any attempt to harmonize any perceived inconsistencies between the bill and the law that was in effect on June 30, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Retail pharmacies may experience a greater volume of prescription refills as a result of this bill. On the other hand, mail order pharmacies will experience a similar reduction in volume in prescription refills.

C. Government Sector Impact:

Indeterminate. The State Employee Health Insurance Trust Fund may pay less in pharmacy dispensing fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 110.12315 of the Florida Statutes.

This bill repeals subsection (1) of section 54 of chapter 2013-41, Laws of Florida.

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 April 3, 2014:

The CS limits the reimbursement for retail and mail order purchases to the amount contracted by the department for prescriptions fulfilled by mail order.

- B. **Amendments:**

None.



298574

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 34 - 53

and insert:

(b) There is ~~shall be~~ a 30-day supply limit for
prescription card purchases and a 90-day supply limit for retail
and mail order ~~or~~ mail order prescription drug purchases for
maintenance drugs. Reimbursement shall be equal for
prescriptions fulfilled by retail and mail order ~~The Department~~
~~of Management Services may implement a 90-day supply limit~~



298574

11 ~~program for certain maintenance drugs as determined by the~~
12 ~~department at retail pharmacies participating in the program if~~
13 ~~the department determines it to be in the best financial~~
14 ~~interest of the state.~~

15 (c) The current pharmacy dispensing fee remains in effect.

16
17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete lines 5 - 11

20 and insert:

21 drug program; establishing a 90-day supply limit for
22 retail and mail order prescription drug purchases for
23 maintenance drugs; requiring equal reimbursement for
24 prescriptions fulfilled by retail and mail order;
25 removing a provision authorizing the Department of
26 Management Services to implement a 90-day supply limit
27 program under specified circumstances; repealing s.
28 54(1),



146720

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

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

1 **Senate Substitute for Amendment (298574) (with title**
2 **amendment)**

3
4 Delete lines 34 - 41
5 and insert:

6 (b) There is ~~shall be~~ a 30-day supply limit for
7 prescription card purchases and a 90-day supply limit for retail
8 and ~~mail order or~~ mail order prescription drug purchases for
9 maintenance drugs. Reimbursement for retail and mail order
10 purchases may not exceed the amount contracted by the department



146720

11 ~~for prescriptions fulfilled by mail order The Department of~~
12 ~~Management Services may implement a 90-day supply limit program~~
13 ~~for certain maintenance drugs as determined by the department at~~
14 ~~retail pharmacies participating in the program if the department~~
15 ~~determines it to be in the best financial interest of the state.~~

16
17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete lines 5 - 9

20 and insert:

21 drug program; establishing a 90-day supply limit for
22 retail and mail order prescription drug purchases for
23 maintenance drugs; specifying that reimbursement for
24 retail and mail orders may not exceed a certain
25 amount; removing a provision authorizing the
26 Department of Management Services to implement a 90-
27 day supply limit program under specified
28 circumstances; revising the pharmacy

By Senator Montford

3-00977A-14

20141266__

A bill to be entitled

An act relating to the state employees' prescription drug program; reenacting and amending s. 110.12315(2), F.S., relating to the state employees' prescription drug program; deleting a requirement that the Department of Management Services base its decision as to whether to implement a certain 90-day supply limit on a determination that it would be in the best financial interest of the state; revising the pharmacy dispensing fee; authorizing a retail pharmacy to fill a 90-day supply of certain drugs; repealing s. 54(1), ch. 2013-41, Laws of Florida, providing for the reversion of provisions relating to the state employees' prescription drug program; providing an effective date.

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

Section 1. Subsection (2) of section 110.12315, Florida Statutes, is reenacted and amended to read:

110.12315 Prescription drug program.—The state employees' prescription drug program is established. This program shall be administered by the Department of Management Services, according to the terms and conditions of the plan as established by the relevant provisions of the annual General Appropriations Act and implementing legislation, subject to the following conditions:

(2) In providing for reimbursement of pharmacies for prescription medicines dispensed to members of the state group health insurance plan and their dependents under the state

Page 1 of 2

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

3-00977A-14

20141266__

employees' prescription drug program:

(a) Retail pharmacies participating in the program must be reimbursed at a uniform rate and subject to uniform conditions, according to the terms and conditions of the plan.

(b) There ~~is shall be~~ a 30-day supply limit for prescription card purchases and a 90-day supply limit for mail order or mail order prescription drug purchases. The Department of Management Services may implement a 90-day supply limit ~~program~~ for certain maintenance drugs ~~as determined by the department~~ at retail pharmacies participating in the program ~~if the department determines it to be in the best financial interest of the state~~.

(c) The ~~current~~ pharmacy dispensing fee shall be the lesser of:

1. \$4.28 for each prescription filled at retail;

2. \$4.22 for each prescription filled at mail order or by a specialty pharmacy; or

3. The amount negotiated by the department for a 90-day supply of a prescription of a drug on the mandatory maintenance drug list which is filled at a retail pharmacy remains in effect.

(d) A retail pharmacy may fill a 90-day supply of a prescription of a drug on the mandatory maintenance drug list in accordance with subparagraph (c)3.

Section 2. Subsection (1) of section 54 of chapter 2013-41, Laws of Florida, is repealed.

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)

4/3/14
Meeting Date

Topic State Rx Program

Bill Number SB 1266
(if applicable)

Name Larry Gonzalez

Amendment Barcode _____
(if applicable)

Job Title General Counsel, FSKP*

Address 223 S. Gadsden St.
Street

Phone 850-570-6307

Tallahassee FL 32301
City State Zip

E-mail lwgonz@earthlink.net

Speaking: For Against Information

Representing *Florida Society of Health System Pharmacists

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)

4/3/2014

Meeting Date

Topic STATE EMPLOYEE PRESCRIPTION DRUG PROGRAM

Bill Number SB1266

(if applicable)

Name MICHAEL JACKSON

Amendment Barcode

(if applicable)

Job Title EXECUTIVE VICE PRESIDENT & CEO

Address 610 N. ADAM STREET

Street

Phone (850) 222-2400

TALLAHASSEE

FL

32301

City

State

Zip

E-mail MJACKSON@PHARMVIEW.COM

Speaking: For Against Information

Representing FLORIDA PHARMACY ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Education, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:

Select Committee on Indian River Lagoon
and Lake Okeechobee Basin, *Vice Chair*

SENATOR BILL MONTFORD

Democratic Policy Chair
3rd District

March 7, 2014

Senator Jeremy Ring, Chair
Senate Committee on Governmental Oversight & Accountability
525 Knott Building
Tallahassee, Florida 32399-1100

Dear Chairman Ring;

I respectfully request that the following bill be scheduled for a hearing before the Senate Committee on Governmental Oversight & Accountability:

SB 1266 State Employee's Drug Prescription Program

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

Cc: Joe McVaney, Staff Director

WM/md

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1442

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee and Senator Bradley

SUBJECT: Publicly Funded Retirement Programs

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1442 allows a municipality providing fire protection services to a Municipal Service Taxing Unit (MSTU) through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

The bill may have an indeterminate but negative fiscal impact on the state General Revenue Fund and an indeterminate but positive fiscal impact on local government revenues.

II. Present Situation:

The "Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund" Acts

The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts¹ declare a legitimate state purpose of providing a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.²

¹ See ch. 175 and 185, F.S.

² See ss. 175.021(1) and 185.01(1), F.S.

In 1939, the Legislature enacted ch. 175, F.S., thereby encouraging cities to establish firefighter retirement plans by providing cities with the incentive of access to premium tax revenues. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.

Participation in the trust fund is limited to incorporated municipalities and to special fire control districts. Single consolidated governments of a county and one or more municipalities are also allowed to participate in the trust fund. Currently, unincorporated areas of a county may not participate unless a special fire control district includes the unincorporated areas.

Administration of Retirement Plans

The Division of Retirement (division) in the Department of Management Services (DMS) administers benefits to firefighters under two types of plans, a chapter plan or a local plan. A chapter plan is a plan that adopts the provisions of either ch. 175 or 185, F.S., by reference. A local plan is a plan that is created by a special act of the Legislature, or by a local ordinance or resolution that meets the minimum statutory requirements. The division is responsible for overseeing and monitoring these plans, but day-to-day operational control rests with local boards of trustees subject to the regulatory authority of the division.³ If the division were to deem that a firefighter or police pension plan created pursuant to ch. 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

Funding Sources

Four sources provide funding for these pension plans: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”); employee contributions; other revenue sources; and mandatory payments by the city of the normal cost of the plan.⁴ To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175 and 185, F.S.

An excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district funds the Firefighters’ Pension Trust Fund of each municipality or special fire control district.⁵ The insurers pay the tax to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.⁶ For fiscal year 2014-15, premium tax collections are estimated to be \$804 million, and distributions to the Firefighters’ Pension Trust Fund are predicted to be \$179.5 million.⁷

A municipality that has entered into a one year or longer interlocal agreement to provide fire services to another incorporated municipality may receive its premium taxes.⁸ The municipality providing fire services must notify the division of the interlocal agreement. The division may

³ The division is responsible for administrative oversight of funds, including monitoring for actuarial soundness.

⁴ Sections 175.091(1)(a) and 185.07(1), F.S.

⁵ Section 175.101(1), F.S.

⁶ See s. 175.121, F.S.

⁷ Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014), at 110.

⁸ Although, the criteria in s. 175.041(3)(c), F.S., must be met.

then distribute any premium taxes reported for the other incorporated municipality to the municipality providing the fire services.⁹

Counties Furnishing Municipal Services

General law implements the constitutional provision authorizing a county furnishing municipal services to levy additional taxes within the limits fixed for municipal purposes via the establishment of MSTUs.¹⁰ The creation of a MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties are authorized to levy up to ten mills.¹¹

The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area, or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.¹²

III. Effect of Proposed Changes:

The bill allows a municipality providing fire protection services to a MSTU through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ See Chapter 2005-205, Laws of Fla. (HB 1159).

¹⁰ Section 125.01(1)(q), F.S.

¹¹ Section 200.071(3), F.S.

¹² Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Provisions of this bill will have an indeterminate but negative impact on the General Revenue Fund, because taxes imposed pursuant to ch. 175, F.S., are credited against insurance premium taxes paid to the state. The provisions of this bill have not been reviewed by the Revenue Estimating Conference.

Municipalities providing fire service to MSTUs will receive an indeterminate amount of additional revenue to fund firefighter pension plans.

The Department of Revenue notes that it may need to update forms and databases.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 175.041, 175.101, 175.111, 175.122, 175.351, and 175.411.

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

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

CS/CS by Government Oversight and Accountability on April 3, 2014:

Clarifies that the city operates the pension fund and provides the fire services while the MSTU imposes the insurance premium taxes and pays those taxes to the city.

CS by Community Affairs on March 19, 2014:

Makes technical changes.

¹³ Dep't of Revenue, Legislative Bill Analysis SB 1442 (Mar. 12, 2014).

B. Amendments:

None.

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



450644

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 74 - 195
and insert:
services taxing unit. The municipality or municipal services
taxing unit receiving the fire services may enact an ordinance
levying the tax as provided in s. 175.101. Upon being provided
copies of the interlocal agreement and the municipal ordinance
levying the tax, the division may distribute any premium taxes
reported for the municipality or municipal services taxing unit



450644

11 receiving the fire services to the participating municipality
12 providing the fire services as long as the interlocal agreement
13 is in effect.

14 Section 2. Subsections (1) and (3) of section 175.101,
15 Florida Statutes, are amended to read:

16 175.101 State excise tax on property insurance premiums
17 authorized; procedure.—For any municipality, special fire
18 control district, chapter plan, local law municipality, local
19 law special fire control district, or local law plan under this
20 chapter:

21 (1) Each municipality or special fire control district ~~in~~
22 ~~this state~~ described and classified in s. 175.041, having a
23 lawfully established firefighters' pension trust fund or
24 municipal fund or special fire control district fund, by
25 whatever name known, providing pension benefits to firefighters
26 as provided under this chapter, or each municipal services
27 taxing unit receiving fire protection services from a
28 municipality participating under this chapter, may assess and
29 impose on each ~~every~~ insurance company, corporation, or other
30 insurer now engaged in or carrying on, or who shall ~~hereinafter~~
31 engage in or carry on, the business of property insurance as
32 shown by the records of the Office of Insurance Regulation of
33 the Financial Services Commission, an excise tax in addition to
34 any lawful license or excise tax now levied by each of the
35 municipalities, ~~or~~ special fire control districts, or municipal
36 services taxing units, respectively, amounting to 1.85 percent
37 of the gross amount of receipts of premiums from policyholders
38 on all premiums collected on property insurance policies
39 covering property within the corporate limits of such



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40 municipalities or within the legally defined boundaries of
41 special fire control districts or municipal services taxing
42 units, respectively. ~~If whenever~~ the boundaries of a special
43 fire control district that has lawfully established a
44 firefighters' pension trust fund encompass a portion of the
45 corporate territory of a municipality that has also lawfully
46 established a firefighters' pension trust fund, or a municipal
47 services taxing unit receiving fire protection services from a
48 municipality participating under this chapter, that portion of
49 the tax receipts attributable to insurance policies covering
50 property situated both within the municipality or municipal
51 services taxing unit and the special fire control district shall
52 be given to the fire service provider. For the purpose of this
53 section, the boundaries of a special fire control district
54 include an area that has been annexed until the completion of
55 the 4-year period provided for in s. 171.093(4), or other
56 agreed-upon extension, or if a special fire control district is
57 providing services under an interlocal agreement executed in
58 accordance with s. 171.093(3). The agent shall identify the fire
59 service provider on the property owner's application for
60 insurance. Remaining revenues collected pursuant to this chapter
61 shall be distributed to the municipality, ~~or~~ special fire
62 control district, or municipal services taxing unit according to
63 the location of the insured property.

64 (3) This excise tax shall be payable annually on March 1 of
65 each year after the passage of an ordinance, in the case of a
66 municipality, or resolution, in the case of a special fire
67 control district or municipal services taxing unit, assessing
68 and imposing the tax authorized by this section. Installments of



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69 taxes shall be paid according to the provision of s.
70 624.5092(2)(a), (b), and (c).

71
72 This section also applies to any municipality consisting of a
73 single consolidated government which is made up of a former
74 county and one or more municipalities, consolidated pursuant to
75 the authority in s. 3 or s. 6(e), Art. VIII of the State
76 Constitution, and to property insurance policies covering
77 property within the boundaries of the consolidated government,
78 regardless of whether the properties are located within one or
79 more separately incorporated areas within the consolidated
80 government, provided the properties are being provided fire
81 protection services by the consolidated government. This section
82 also applies to any municipality, as provided in s.
83 175.041(3)(c), which has entered into an interlocal agreement to
84 receive fire protection services from another municipality
85 participating under this chapter. The excise tax may be levied
86 on all premiums collected on property insurance policies
87 covering property located within the corporate limits of the
88 municipality receiving the fire protection services, but will be
89 available for distribution to the municipality providing the
90 fire protection services.

91 Section 3. Section 175.111, Florida Statutes, is amended to
92 read:

93 175.111 Certified copy of ordinance or resolution filed;
94 insurance companies' annual report of premiums; duplicate files;
95 book of accounts.—For any municipality, municipal services
96 taxing unit, special fire control district, chapter plan, local
97 law municipality, local law special fire control district, or



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98 local law plan under this chapter, whenever any municipality
99 passes an ordinance or whenever any special fire control
100 district passes a resolution establishing a chapter plan or
101 local law plan assessing and imposing the taxes authorized in s.
102 175.101, a certified copy of such ordinance or resolution shall
103 be deposited with the division. Thereafter every insurance
104 company, association, corporation, or other insurer carrying on
105 the business of property insurance on real or personal property,
106 on or before the succeeding March 1 after date of the passage of
107 the ordinance or resolution, shall report fully in writing and
108 under oath to the division and the Department of Revenue a just
109 and true account of all premiums by such insurer received for
110 property insurance policies covering or insuring any real or
111 personal property located within the corporate limits of each
112 such municipality, municipal services taxing unit, or special
113 fire control district during the period of time elapsing between
114 the date of the passage of the ordinance or resolution and the
115 end of the calendar year. The report shall include the code
116 designation as prescribed by the division for each piece of
117 insured property, real or personal, located within the corporate
118 limits of each municipality and within the legally defined
119 boundaries of each special fire control district and municipal
120 services taxing unit. The aforesaid insurer shall annually
121 thereafter, on March 1, file with the Department of Revenue a
122 similar report covering the preceding year's premium receipts,
123 and every such insurer at the same time of making such reports
124 shall pay to the Department of Revenue the amount of the tax
125 hereinbefore mentioned. Every insurer engaged in carrying on
126 such insurance business in the state shall keep accurate books



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127 of accounts of all such business done by it within the corporate
128 limits of each such municipality and within the legally defined
129 boundaries of each such special fire control district and
130 municipal services taxing unit, and in such manner as to be able

By the Committee on Community Affairs; and Senator Bradley

578-02836-14

20141442c1

1 A bill to be entitled
 2 An act relating to publicly funded retirement
 3 programs; amending s. 175.041, F.S.; revising
 4 applicability of the Marvin B. Clayton Firefighters
 5 Pension Trust Fund Act; providing that any
 6 municipality that provides fire protection services to
 7 a municipal services taxing unit under an interlocal
 8 agreement is eligible to receive property insurance
 9 premium taxes; amending s. 175.101, F.S.; authorizing
 10 a municipal services taxing unit that enters into an
 11 interlocal agreement for fire protection services with
 12 another municipality to impose an excise tax on
 13 property insurance premiums; amending s. 175.111,
 14 F.S.; requiring municipal services taxing units to
 15 provide the Division of Retirement of the Department
 16 of Management Services with a certified copy of the
 17 ordinance assessing and imposing certain taxes;
 18 amending ss. 175.122 and 175.351, F.S.; revising
 19 provisions relating to the limitation of disbursement
 20 to conform to changes made by the act; amending s.
 21 175.411, F.S.; authorizing a municipal services taxing
 22 unit, under certain conditions, to revoke its
 23 participation and cease to receive property insurance
 24 premium taxes; providing an effective date.

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

27
 28 Section 1. Subsection (3) of section 175.041, Florida
 29 Statutes, is amended to read:

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30 175.041 Firefighters' Pension Trust Fund created;
 31 applicability of provisions.—For any municipality, special fire
 32 control district, chapter plan, local law municipality, local
 33 law special fire control district, or local law plan under this
 34 chapter:

35 (3) ~~The provisions of~~ This chapter applies ~~shall apply~~ only
 36 to municipalities organized and established pursuant to the laws
 37 of the state and to special fire control districts. This chapter
 38 ~~does, and said provisions shall~~ not apply to the unincorporated
 39 areas of any county or counties except with respect to municipal
 40 services taxing units established in unincorporated areas for
 41 the purpose of receiving fire protection service from a
 42 municipality and special fire control districts that include
 43 unincorporated areas. This chapter also does not, ~~nor shall the~~
 44 ~~provisions hereof~~ apply to any governmental entity whose
 45 firefighters are eligible to participate in the Florida
 46 Retirement System.

47 (a) Special fire control districts that include, or consist
 48 exclusively of, unincorporated areas of one or more counties may
 49 levy and impose the tax and participate in the retirement
 50 programs enabled by this chapter.

51 (b) With respect to the distribution of premium taxes, a
 52 single consolidated government consisting of a former county and
 53 one or more municipalities, consolidated pursuant to s. 3 or s.
 54 6(e), Art. VIII of the State Constitution, is also eligible to
 55 participate under this chapter. The consolidated government
 56 shall notify the division when it has entered into an interlocal
 57 agreement to provide fire services to a municipality within its
 58 boundaries. The municipality may enact an ordinance levying the

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59 tax as provided in s. 175.101. Upon being provided copies of the
60 interlocal agreement and the municipal ordinance levying the
61 tax, the division may distribute any premium taxes reported for
62 the municipality to the consolidated government as long as the
63 interlocal agreement is in effect.

64 (c) Any municipality that has entered into an interlocal
65 agreement to provide fire protection services to any other
66 incorporated municipality or a municipal services taxing unit in
67 an unincorporated area, in its entirety, for a period of 12
68 months or more may be eligible to receive the premium taxes
69 reported for such other municipality or municipal services
70 taxing unit. In order to be eligible for such premium taxes, the
71 municipality providing the fire services must notify the
72 division that it has entered into an interlocal agreement with
73 another municipality or a county on behalf of a municipal
74 services taxing unit. The municipality receiving the fire
75 services may enact an ordinance levying the tax as provided in
76 s. 175.101. Upon being provided copies of the interlocal
77 agreement and the municipal ordinance levying the tax, the
78 division may distribute any premium taxes reported for the
79 municipality or municipal services taxing unit receiving the
80 fire services to the participating municipality providing the
81 fire services as long as the interlocal agreement is in effect.

82 Section 2. Subsections (1) and (3) of section 175.101,
83 Florida Statutes, are amended to read:

84 175.101 State excise tax on property insurance premiums
85 authorized; procedure.—For any municipality, special fire
86 control district, chapter plan, local law municipality, local
87 law special fire control district, or local law plan under this

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88 chapter:

89 (1) Each municipality, ~~or~~ special fire control district, or
90 municipal services taxing unit in this state described and
91 classified in s. 175.041, having a lawfully established
92 firefighters' pension trust fund or municipal fund or special
93 fire control district fund, by whatever name known, providing
94 pension benefits to firefighters as provided under this chapter,
95 may assess and impose on every insurance company, corporation,
96 or other insurer now engaged in or carrying on, or who shall
97 hereinafter engage in or carry on, the business of property
98 insurance as shown by the records of the Office of Insurance
99 Regulation of the Financial Services Commission, an excise tax
100 in addition to any lawful license or excise tax now levied by
101 each of the municipalities, ~~or~~ special fire control districts,
102 or municipal services taxing units, respectively, amounting to
103 1.85 percent of the gross amount of receipts of premiums from
104 policyholders on all premiums collected on property insurance
105 policies covering property within the corporate limits of such
106 municipalities or within the legally defined boundaries of
107 special fire control districts or municipal services taxing
108 units, respectively. Whenever the boundaries of a special fire
109 control district or municipal services taxing unit that has
110 lawfully established a firefighters' pension trust fund
111 encompass a portion of the corporate territory of a municipality
112 that has also lawfully established a firefighters' pension trust
113 fund, that portion of the tax receipts attributable to insurance
114 policies covering property situated both within the municipality
115 and the special fire control district or municipal services
116 taxing unit shall be given to the fire service provider. For the

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117 purpose of this section, the boundaries of a special fire
 118 control district or municipal services taxing unit include an
 119 area that has been annexed until the completion of the 4-year
 120 period provided for in s. 171.093(4), or other agreed-upon
 121 extension, or if a special fire control district or municipal
 122 services taxing unit is providing services under an interlocal
 123 agreement executed in accordance with s. 171.093(3). The agent
 124 shall identify the fire service provider on the property owner's
 125 application for insurance. Remaining revenues collected pursuant
 126 to this chapter shall be distributed to the municipality, ~~or~~
 127 special fire control district, or municipal services taxing unit
 128 according to the location of the insured property.

129 (3) This excise tax shall be payable annually on March 1 of
 130 each year after the passage of an ordinance, in the case of a
 131 municipality, or resolution, in the case of a special fire
 132 control district or municipal services taxing unit, assessing
 133 and imposing the tax authorized by this section. Installments of
 134 taxes shall be paid according to the provision of s.
 135 624.5092(2) (a), (b), and (c).

136
 137 This section also applies to any municipality consisting of a
 138 single consolidated government which is made up of a former
 139 county and one or more municipalities, consolidated pursuant to
 140 the authority in s. 3 or s. 6(e), Art. VIII of the State
 141 Constitution, and to property insurance policies covering
 142 property within the boundaries of the consolidated government,
 143 regardless of whether the properties are located within one or
 144 more separately incorporated areas within the consolidated
 145 government, provided the properties are being provided fire

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146 protection services by the consolidated government. This section
 147 also applies to any municipality, as provided in s.
 148 175.041(3) (c), which has entered into an interlocal agreement to
 149 receive fire protection services from another municipality
 150 participating under this chapter. The excise tax may be levied
 151 on all premiums collected on property insurance policies
 152 covering property located within the corporate limits of the
 153 municipality receiving the fire protection services, but will be
 154 available for distribution to the municipality providing the
 155 fire protection services.

156 Section 3. Section 175.111, Florida Statutes, is amended to
 157 read:

158 175.111 Certified copy of ordinance or resolution filed;
 159 insurance companies' annual report of premiums; duplicate files;
 160 book of accounts.—For any municipality, municipal services
 161 taxing unit, special fire control district, chapter plan, local
 162 law municipality, local law special fire control district, or
 163 local law plan under this chapter, whenever any municipality
 164 passes an ordinance or whenever any special fire control
 165 district passes a resolution establishing a chapter plan or
 166 local law plan assessing and imposing the taxes authorized in s.
 167 175.101, a certified copy of such ordinance or resolution shall
 168 be deposited with the division. Thereafter every insurance
 169 company, association, corporation, or other insurer carrying on
 170 the business of property insurance on real or personal property,
 171 on or before the succeeding March 1 after date of the passage of
 172 the ordinance or resolution, shall report fully in writing and
 173 under oath to the division and the Department of Revenue a just
 174 and true account of all premiums by such insurer received for

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175 property insurance policies covering or insuring any real or
 176 personal property located within the corporate limits of each
 177 such municipality, municipal services taxing unit, or special
 178 fire control district during the period of time elapsing between
 179 the date of the passage of the ordinance or resolution and the
 180 end of the calendar year. The report shall include the code
 181 designation as prescribed by the division for each piece of
 182 insured property, real or personal, located within the corporate
 183 limits of each municipality and municipal services taxing unit,
 184 and within the legally defined boundaries of each special fire
 185 control district. The aforesaid insurer shall annually
 186 thereafter, on March 1, file with the Department of Revenue a
 187 similar report covering the preceding year's premium receipts,
 188 and every such insurer at the same time of making such reports
 189 shall pay to the Department of Revenue the amount of the tax
 190 hereinbefore mentioned. Every insurer engaged in carrying on
 191 such insurance business in the state shall keep accurate books
 192 of accounts of all such business done by it within the corporate
 193 limits of each such municipality and municipal services taxing
 194 unit and within the legally defined boundaries of each such
 195 special fire control district, and in such manner as to be able
 196 to comply with the provisions of this chapter. Based on the
 197 insurers' reports of premium receipts, the division shall
 198 prepare a consolidated premium report and shall furnish to any
 199 municipality, municipal services taxing unit, or special fire
 200 control district requesting the same a copy of the relevant
 201 section of that report.

202 Section 4. Section 175.122, Florida Statutes, is amended to
 203 read:

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204 175.122 Limitation of disbursement.—For any municipality,
 205 municipal services taxing unit, special fire control district,
 206 chapter plan, local law municipality, local law special fire
 207 control district, or local law plan under this chapter, any
 208 municipality, municipal services taxing unit, or special fire
 209 control district participating in the firefighters' pension
 210 trust fund pursuant to the provisions of this chapter, whether
 211 under a chapter plan or local law plan, shall be limited to
 212 receiving any moneys from such fund in excess of that produced
 213 by one-half of the excise tax, as provided for in s. 175.101;
 214 however, any such municipality, municipal services taxing unit,
 215 or special fire control district receiving less than 6 percent
 216 of its fire department payroll from such fund shall be entitled
 217 to receive from such fund the amount determined under s.
 218 175.121, in excess of one-half of the excise tax, not to exceed
 219 6 percent of its fire department payroll. Payroll amounts of
 220 members included in the Florida Retirement System shall not be
 221 included.

222 Section 5. Subsection (1) of section 175.351, Florida
 223 Statutes, is amended to read:

224 175.351 Municipalities, municipal services taxing units,
 225 and special fire control districts having their own pension
 226 plans for firefighters.—For any municipality, municipal services
 227 taxing unit, special fire control district, local law
 228 municipality, local law special fire control district, or local
 229 law plan under this chapter, in order for municipalities,
 230 municipal services taxing units, and special fire control
 231 districts with their own pension plans for firefighters, or for
 232 firefighters and police officers if included, to participate in

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233 the distribution of the tax fund established pursuant to s.
 234 175.101, local law plans must meet the minimum benefits and
 235 minimum standards set forth in this chapter.

236 (1) If a municipality has a pension plan for firefighters,
 237 or a pension plan for firefighters and police officers if
 238 included, which in the opinion of the division meets the minimum
 239 benefits and minimum standards set forth in this chapter, the
 240 board of trustees of the pension plan, as approved by a majority
 241 of firefighters of the municipality, may:

242 (a) Place the income from the premium tax in s. 175.101 in
 243 such pension plan for the sole and exclusive use of its
 244 firefighters, or for firefighters and police officers if
 245 included, where it shall become an integral part of that pension
 246 plan and shall be used to pay extra benefits to the firefighters
 247 included in that pension plan; or

248 (b) Place the income from the premium tax in s. 175.101 in
 249 a separate supplemental plan to pay extra benefits to
 250 firefighters, or to firefighters and police officers if
 251 included, participating in such separate supplemental plan.

252 Section 6. Section 175.411, Florida Statutes, is amended to
 253 read:

254 175.411 Optional participation.—A municipality, municipal
 255 services taxing unit, or special fire control district may
 256 revoke its participation under this chapter by rescinding the
 257 legislative act, ordinance, or resolution which assesses and
 258 imposes the taxes authorized in s. 175.101, and by furnishing a
 259 certified copy of such legislative act, ordinance, or resolution
 260 to the division. Thereafter, the municipality, municipal
 261 services taxing unit, or special fire control district shall be

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262 prohibited from participating under this chapter, and shall not
 263 be eligible for future premium tax moneys. Premium tax moneys
 264 previously received shall continue to be used for the sole and
 265 exclusive benefit of firefighters, or firefighters and police
 266 officers where included, and no amendment, legislative act,
 267 ordinance, or resolution shall be adopted which shall have the
 268 effect of reducing the then-vested accrued benefits of the
 269 firefighters, retirees, or their beneficiaries. The
 270 municipality, municipal services taxing unit, or special fire
 271 control district shall continue to furnish an annual report to
 272 the division as provided in s. 175.261. If the municipality,
 273 municipal services taxing unit, or special fire control district
 274 subsequently terminates the defined benefit plan, they shall do
 275 so in compliance with the provisions of s. 175.361.

276 Section 7. 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)

4-3-14

Meeting Date

Topic Publicly Funded Retirement Programs

Bill Number 1442
(if applicable)

Name Yeline Goin → ye-llini

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 204 S. Monroe St

Phone 850 284-2460

Street

Tall

City

FL

State

32301

Zip

E-mail Ygoin@bplegal.com

Speaking: For Against Information

Representing City of Cape Coral

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: March 26, 2014

I respectfully request that **Senate Bill # 1442**, relating to Publicly Funded Retirement Programs, be placed on the:

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

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

Senator Rob Bradley
Florida Senate, District 7

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/SM 368

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Simpson

SUBJECT: Constitutional Convention/Single-Subject Requirement for Federal Legislation

DATE: April 3, 2014

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SM 368 is an application to the United States Congress urging Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution which will:

- Prohibit Congress from passing a bill that embraces more than one subject; and
- Require that the subject be clearly expressed in the bill's title.

The memorial also states that it is revoked and withdrawn if used for the purpose of calling a convention for any other purpose, and that it constitutes a continuing application until the legislatures of at least two-thirds of the states have made applications on the same subject.

If this memorial is passed by the Legislature and at least 33 other states pass a similar or identical memorial or resolution calling on Congress to call an amendments convention for the sole purpose of proposing a single subject amendment to the U.S. Constitution, then under Article V of the U.S. Constitution, Congress is obligated to call the convention.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law; they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

II. Present Situation:

Methods of Amending the U.S. Constitution

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states which are approved by two-thirds vote of both Houses of Congress.¹ Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.² Starting with the Bill of Rights in 1789, Congress has used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution have been approved by the states.³

The second method, which has never been used, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress to call an amendments convention.⁴ Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention.

Article V further provides that the amendments will become a part of the Constitution when ratified by the Legislatures of three-fourths of the states or by conventions in three-fourths of the states. This would require ratification by 38 states. Because Article V provides that the amendments become valid when ratified by three-fourths of the legislatures or conventions "as the one or the other Mode of Ratification may be proposed by the Congress," Congress may choose the method of ratification. With the exception of the 21st Amendment, which repealed the 18th Amendment and prohibition, Congress has sent all proposed amendments to the legislatures for ratification.⁵

It has become accepted procedure, although not stated in the Constitution, that Congress may set time limits on the ratification process and specify when an amendment must be ratified by the requisite number of states to become valid. With several amendments, Congress stated that ratification must occur within 7 years after their proposal to become effective.⁶ The U.S. Supreme Court, in *Dillon v. Gloss*, concluded that Congress does have the authority to determine what a reasonable time frame for ratification is, even though the Constitution is silent on the matter.⁷

Although no attempts to call an Article V Convention have ever been successful, two relatively recent attempts approached the requisite number of 34 applications to Congress. In 1969, a total of 33 states submitted applications for a convention to address U.S. Supreme Court decisions that dealt with voting districts and the apportionment of votes. The effort fell short of the total

¹ U.S. CONST. art. V.

² *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution> (last visited February 4, 2014).

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012) (on file with the Senate Committee on Judiciary).

⁴ U.S. CONST. art. V.

⁵ Neale, *supra*, note 3, at 22.

⁶ *Id.* at 2.

⁷ *Dillon v. Gloss*, 256 U.S. 368 (1921).

number required by one application. Several states later rescinded their applications and the call for a convention dissipated.⁸

In the second instance, and similar to this proposal, state legislatures made application to Congress to call an Article V Convention requesting a balanced budget amendment. North Dakota was the first state to make application to Congress in 1975, followed by a succession of 30 other states over the years, ending with Missouri's application in 1983 as the 32nd application. The effort fell short of the 34 applications to Congress by two states and again, interest in calling for a convention declined.⁹

Single Subject Requirements

State Provisions

The majority of states limit legislation to a single subject in their state constitutions. In Florida, the State Constitution provides that "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."¹⁰ According to the National Conference of State Legislatures, 41 states have similar single-subject requirements. Seven state constitutions contain no single-subject provisions, one state places the requirement in a joint rule, while one remaining state seems to imply in its constitution that that legislation should be limited to a single subject.¹¹

Federal Provisions

Currently, there is no federal constitutional or statutory requirement that legislation be limited to a single subject. However, legislation calling for a single subject requirement was introduced in both Houses of Congress during the current 113th Congress. Entitled the "One Subject at a Time Act," the legislation provides, in part, that "Each bill or joint resolution shall embrace no more than one subject."¹² The bills, H.R. 2113 and S. 1664, have each been referred to a committee but neither has been scheduled for a hearing at this time. Similar legislation died in committee last year.¹³

III. Effect of Proposed Changes:

Senate Memorial 368 is an application to Congress urging Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution which will:

- Prohibit Congress from passing a bill that embraces more than one subject; and

⁸ James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 1005, 1009-10 (2007).

⁹ *Id.* at 1010.

¹⁰ FLA. CONST. art. III, s. 6.

¹¹ National Conference of State Legislatures, "State Constitutional Provisions that Limit Bills to One Subject" (*Single Subject Requirement*). E-mail and attachment dated February 4, 2014, (on file with the Senate Committee on Judiciary).

¹² H.R. 2113 and S. 1664. H.R. 2113 is currently pending in the Constitution and Civil Justice Subcommittee in the House Judiciary Committee and S. 1664 has been referred to the Senate Committee on Rules and Administration. At this time, neither bill has received a committee hearing. Phone conversations conducted February 5, 2014, with the House Constitution Civil Justice Subcommittee and Senate Committee on Rules and Administration.

¹³ The Library of Congress website, Thomas. <http://thomas.loc.gov/cgi-bin/bdquery/D?d112:1:/temp/~bdTBk0:@@X/home/LegislativeData.php?n=BSS:c=112>; <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:SN03359:@@L&summ2=m&#status>. (last visited on February 5, 2014).

- Require that the subject be clearly expressed in the bill's title.

If the memorial is used for any purpose other than calling a convention to propose a single-subject amendment to the Constitution, the memorial is revoked and treated as though it was never passed. The memorial also provides that it is a continuing application in accordance with Article V until the legislatures of at least two-thirds of the states have made applications on the same subject.

If this memorial is passed by the Legislature and at least 33 other states pass a similar or identical memorial or resolution calling on Congress to call a single-subject amendments convention, then under Article V of the U.S. Constitution, Congress is obligated to call the convention.

While the constitutional amendment process involves two separate steps, the proposal and its ratification, this memorial only makes application for an amendments convention and has no control over the outcome of the convention. Therefore, there is no guarantee that the proposed language will eventually be agreed upon or ratified by the states. If the amendments convention is called and the language is later ratified by the requisite number of states, it will become an amendment to the U.S. Constitution. The amendment will state, "Congress shall pass no bill, and no bill shall become law, which embraces more than one subject, that subject to be clearly expressed in the bill's title."

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:

If an Article V amendments convention is called at some point in the future, the state may be responsible for the costs of sending delegates to the convention. Whether Congress or

the state would be responsible for related expenses for the convention is not a settled issue at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is not known.

Diverse scholars have raised, but have not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention is limited in its focus or may be expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether the role of Congress is to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.¹⁴

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, which endeavored to develop a procedural framework that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.¹⁵

VIII. Statutes Affected:

None.

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 April 3, 2014:

The CS deletes a provision that the memorial supersedes all previous single-subject memorials and resolutions, and adds a provision that the memorial constitutes a continuing application.

¹⁴ See the sources cited in footnotes 3 and 8 for an in-depth analysis of the issues.

¹⁵ Neale, *supra* note 3, at 26.

B. Amendments:

None.

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



323564

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the resolving clause
and insert:

(1) That the Legislature of the State of Florida, with all
due respect, does hereby make application to the Congress of the
United States pursuant to Article V of the Constitution of the
United States to call a convention for the sole purpose of
proposing an amendment to the Constitution of the United States
to provide that Congress shall pass no bill, and no bill shall



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11 become law, which embraces more than one subject, that subject
12 to be clearly expressed in the bill's title.

13 (2) That this memorial is revoked and withdrawn, nullified,
14 and superseded to the same effect as if it had never been
15 passed, and be retroactive to the date of passage, if it is used
16 for the purpose of calling a convention or used in support of
17 conducting a convention to amend the Constitution of the United
18 States for any purpose other than requiring that every law
19 enacted by Congress embrace only one subject, which shall be
20 clearly expressed in the title.

21 (3) That this application constitutes a continuing
22 application in accordance with Article V of the Constitution of
23 the United States until the legislatures of at least two-thirds
24 of the states have made applications on the same subject.

25 BE IT FURTHER RESOLVED that copies of this memorial be
26 dispatched to the President of the United States, to the
27 President of the United States Senate, to the Speaker of the
28 United States House of Representatives, and to each member of
29 the Florida delegation to the United States Congress.

30
31 ===== T I T L E A M E N D M E N T =====

32 And the title is amended as follows:

33 Delete everything before the resolving clause
34 and insert:

35 Senate Memorial
36 A memorial to the Congress of the United States,
37 applying to Congress to call a convention for the
38 purpose of proposing an amendment to the Constitution
39 of the United States to provide that every law enacted



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40 by Congress shall embrace only one subject, which
41 shall be clearly expressed in its title.

42

43 WHEREAS, each measure before a legislative body should pass
44 on its own merits without depending on legislative support for
45 other unrelated measures to achieve the required number of votes
46 for passage, and

47 WHEREAS, a single-subject constitutional provision
48 addresses this concern by prohibiting a legislative body from
49 enacting a law that embraces more than one subject, and

50 WHEREAS, 41 of the 50 states, including Florida, have a
51 single-subject provision in their respective state
52 constitutions, and the legislatures and citizens of these states
53 have benefited from a single-subject requirement, and

54 WHEREAS, the Constitution of the United States is the
55 supreme law of the United States of America, touching the lives
56 of every citizen in the several states, but is missing this
57 important provision, and

58 WHEREAS, our great country is deep in debt and Congress is
59 currently searching for a solution, and

60 WHEREAS, a federal single-subject amendment would provide
61 the means to limit pork barrel spending, control the phenomenon
62 of legislating through riders, limit omnibus legislation
63 produced by logrolling, prevent public surprise, and increase
64 the institutional accountability of Congress and its members,
65 and

66 WHEREAS, it is Florida's hope and desire that Congress will
67 be able to conduct its business in a more productive, efficient,
68 transparent, and less acrimonious way with a single-subject



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69 requirement, and

70 WHEREAS, Article V of the Constitution of the United States
71 makes provision for amending the Constitution on the application
72 of the legislatures of two-thirds of the several states, calling
73 a convention for proposing amendments that shall be valid to all
74 intents and purposes if ratified by the legislatures of three-
75 fourths of the several states or by conventions in three-fourths
76 thereof, as the one or the other mode of ratification may be
77 proposed by Congress, NOW, THEREFORE,

By Senator Simpson

18-00478-14

2014368__

Senate Memorial

A memorial to the Congress of the United States, urging Congress to call a convention for the purpose of proposing an amendment to the Constitution of the United States to provide that every law enacted by Congress shall embrace only one subject, which shall be clearly expressed in its title.

WHEREAS, each measure before a legislative body should pass on its own merits without depending on legislative support for other unrelated measures to achieve the required number of votes for passage, and

WHEREAS, a single-subject constitutional provision addresses this concern by prohibiting a legislative body from enacting a law that embraces more than one subject, and

WHEREAS, 41 of the 50 states, including Florida, have a single-subject provision in their respective state constitutions, and the legislatures and citizens of these states have benefited from a single-subject requirement, and

WHEREAS, the United States Constitution is the supreme law of the United States of America, touching the lives of every citizen in the several states, but is missing this important provision, and

WHEREAS, our great country is deep in debt and Congress is currently searching for a solution, and

WHEREAS, a federal single-subject amendment would provide the means to limit pork barrel spending, control the phenomenon of legislating through riders, limit omnibus legislation produced by logrolling, prevent public surprise, and increase

Page 1 of 3

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

18-00478-14

2014368__

the institutional accountability of Congress and its members, and

WHEREAS, it is Florida's hope and desire that Congress will be able to conduct its business in a more productive, efficient, transparent, and less acrimonious way with a single-subject requirement, and

WHEREAS, Article V of the United States Constitution makes provision for amending the Constitution on the application of the legislatures of two-thirds of the several states, calling a convention for proposing amendments that shall be valid to all intents and purposes if ratified by the legislatures of three-fourths of the several states or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress, NOW, THEREFORE,

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

That the Legislature of the State of Florida, with all due respect, does hereby make application to the Congress of the United States pursuant to Article V of the Constitution of the United States to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to provide:

Congress shall pass no bill, and no bill shall become law, which embraces more than one subject, that subject to be clearly expressed in the bill's title.

BE IT FURTHER RESOLVED that this memorial supersedes all previous memorials and concurrent resolutions applying to the Congress of the United States to call a convention for the

Page 2 of 3

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

18-00478-14

2014368__

59 purpose of proposing a single-subject amendment to the
60 Constitution of the United States and that such previous
61 memorials and resolutions be hereby revoked and withdrawn,
62 nullified, and superseded to the same effect as if they had
63 never been passed.

64 BE IT FURTHER RESOLVED that this memorial is revoked and
65 withdrawn, nullified, and superseded to the same effect as if it
66 had never been passed, and be retroactive to the date of
67 passage, if it is used for the purpose of calling a convention
68 or used in support of conducting a convention to amend the
69 Constitution of the United States for any purpose other than
70 requiring that every law enacted by Congress embrace only one
71 subject, which shall be clearly expressed in the title.

72 BE IT FURTHER RESOLVED that copies of this memorial be
73 dispatched to the President of the United States, to the
74 President of the United States Senate, to the Speaker of the
75 United States House of Representatives, and to each member of
76 the Florida delegation to the United States Congress.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/3/14
Meeting Date

Topic article V convention - Single Subject

Bill Number SM 368
(if applicable)

Name W Spider Webb Jr

Amendment Barcode _____
(if applicable)

Job Title CEO & founder

Address 267 John Knox Rd Suite 100
Street

Phone 850.694.2607

Tallahassee FL 32303
City State Zip

E-mail SpiderW@SingleSubjectAmendment.com

Speaking: For Against Information

Representing Single Subject amendment

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)

4/3/2014

Meeting Date

Topic _____

Bill Number 368
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR WILTON SIMPSON

18th District

COMMITTEES:

Community Affairs, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

February 6, 2014

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

Senator Ring,

Please place Senate Memorial 368, relating to a Single-Subject Requirement for Federal Legislation, on the Committee on Governmental Oversight and Accountability agenda if received prior to the releasing of the notice for the February 20th committee hearing.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
Senator, 18th District

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412
Caption: Senate Governmental Oversight and Accountability

Case:

Type:
Judge:

Started: 4/3/2014 9:02:48 AM

Ends: 4/3/2014 10:28:54 AM

Length: 01:26:07

9:02:51 AM Meeting called to order - Roll Call
9:03:33 AM Tab 8 - CS/SB 730 by Senator Galvano—Municipal Governing Body Meetings
9:04:28 AM Amendment Barcode 446386 by Senator Bradley
9:04:44 AM Roll Call
9:05:04 AM CS/CS/SB 730 reported favorably
9:05:16 AM Tab 9 - SB 1046 by Senator Galvano—Public Records/Motor Vehicle Crash Reports
9:06:11 AM Sam Morley, Florida Press Assn.
9:06:34 AM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL
9:08:46 AM Roll Call
9:09:06 AM SB 1046 reported favorably
9:09:07 AM Tab 7 - CS/SB 692 by Senator Stargel—Engineers
9:09:47 AM Roll Call
9:10:06 AM CS/SB 692 reported favorably
9:10:14 AM Tab 6 - SB 726 by Senator Detert- Reemployment Assistance Appeals Commission
9:11:18 AM Amendment Barcode 593544
9:11:56 AM Roll Call
9:12:15 AM CS/SB 726 reported favorably
9:12:37 AM Tab 2 - CS/SB 286 by Senator Richter—Concrete Masonry Education
9:12:58 AM Amendment Barcode 458180 by Senator Benacquisto
9:14:21 AM Individuals waive time
9:14:39 AM John Parker, President, Florida Building Trades
9:17:03 AM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL
9:18:54 AM Senator Richter closes on bill
9:19:07 AM Roll Call
9:19:26 AM CS/CS/SB 286 reported favorably
9:20:12 AM Tab 3 - CS/SB 872 by Senator Richter—Alzheimer's Disease
9:21:14 AM Eric Poole, Florida Assoc. Counties, Tallahassee, FL
9:22:56 AM Sally Heyman, Emergency Management, Miami-Dade County
9:26:01 AM Sen. Bean
9:26:23 AM Roll call
9:27:16 AM CS/SB 872 reported favorably
9:27:41 AM Tab 4- CS/SB 840 by Senator Richter- Public Records and Meetings/Alzheimer's Disease Research Grant Advisory Board
9:27:45 AM Roll Call
9:27:55 AM CS/SB 840 reported favorably
9:28:19 AM Tab 11 - CS/SB 414 by Senator Dean—Public Records/Animal Researchers
9:28:59 AM Individuals waive time
9:29:13 AM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL
9:31:04 AM Roll Call
9:31:23 AM CS/SB 414 reported favorably
9:31:42 AM Tab 10 - CS/SB 350 by Senator Abruzzo—Public Records/Yellow Dot Critical Motorist Medical Information Program
9:32:02 AM Amendment Barcode 424570 by Senator Smith
9:32:23 AM Roll Call
9:32:45 AM CS/CS/SB 350 reported favorably
9:33:03 AM Tab 1 - SB 1328 by Senator Latvala—Inspectors General
9:34:05 AM Tracy Caddell, aide to Sen. Latvala, presents bill
9:34:18 AM Amendment Barcode 881588 by Senator Hays
9:34:31 AM Amendment Barcode 377732 by Senator Hays
9:34:43 AM Roll Call
9:35:10 AM CS/SB 1328 reported favorably
9:35:21 AM Tab 5 - CS/SB 1318 by Senator Evers—Public Records and Meetings/Public-private Partnerships

9:35:30 AM Dave Murzin, aide to Sen, Evers, presents the bill
9:36:09 AM Roll Call
9:36:26 AM CS/SB 1318 reported favorably
9:36:40 AM Tab 18 - SM 368 by Senator Simpson—Constitutional Convention/Single-Subject Requirement for Federal Legislation
9:36:52 AM Patrick Weightman, aide to Sen. Simpson, presents the bill
9:37:34 AM Amendment Barcode 323564 by Senator Bean
9:37:52 AM Senator Smith
9:38:09 AM Mr. Weightman
9:38:29 AM Senator Smith
9:38:50 AM Mr. Weightman refers to Mr. Webb
9:39:09 AM W. Spider Webb, CEO and Founder, Single Subject Amendment
9:40:18 AM Senator Hukill
9:41:06 AM Mr. Webb
9:43:26 AM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL
9:44:32 AM Chair Ring
9:44:41 AM Mr. Pitts
9:45:32 AM Chair Ring
9:45:39 AM Mr. Pitts
9:45:56 AM Roll Call
9:46:24 AM CS/SM 368 reported favorably
9:46:45 AM Senator Bradley moves to vote after on missed votes
9:47:08 AM Tab 14 - SB 1628 by Senator Bean—Government Accountability
9:47:24 AM Switch to Tab 15
9:48:20 AM Tab 15 - SB 866 by Health Policy—OGSR/Department of Health
9:48:31 AM Late-filed Amendment Barcode 282932 by Senator Bean
9:49:12 AM Senator Hukill
9:49:29 AM Senator Bean
9:50:04 AM Senator Hukill
9:50:11 AM Senator Bean
9:50:26 AM Senator Hukill with a follow-up
9:50:36 AM Senator Bean
9:51:39 AM Roll Call
9:52:02 AM CS/SB 866 reported favorably
9:52:11 AM Tab 14 - SB 1628 by Senator Bean—Government Accountability
9:52:39 AM Amendment Barcode 645110 by Senator Bean
9:53:20 AM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL
9:55:11 AM Roll Call
9:55:46 AM CS/SB 1628 reported favorably
9:55:55 AM Tab 16 - SB 1266 by Senator Montford—State Employees' Prescription Drug Program
9:56:21 AM Amendment Barcode 298574 by Senator Montford
9:56:22 AM Substitute amendment 146720 by Senator Montford
9:57:48 AM Roll Call
9:58:05 AM CS/SB 1266 reported favorably
9:58:27 AM Tab 17 - CS/SB 1442 by Senator Bradley—Publicly Funded Retirement Programs
10:00:13 AM Amendment Barcode 450644 by Senator Bradley
10:00:40 AM Roll Call
10:01:01 AM CS/CS/SB 1442 reported favorably
10:01:16 AM Tab 12 - CS/SB 1140 by Senator Hays—Public Records/Division of Emergency Management/Emergency Planning
10:02:16 AM Roll Call
10:02:36 AM CS/SB 1140 reported favorably
10:02:58 AM Tab 13 - SB 386 by Senator Hays—Application of Foreign Law in Certain Cases
10:04:37 AM Amendment Barcode 375592 by Senator Simmons
10:14:24 AM Barcode 375592 withdrawn
10:14:33 AM Amendment to the AM barcode 256170 withdrawn
10:15:03 AM Chari Ring asks a question
10:15:22 AM Senator Hays answers
10:16:24 AM Chair Ring
10:16:39 AM Senator Hays
10:17:45 AM Chair Ring
10:17:54 AM Senator Simmons

10:18:47 AM Chair Ring
10:19:17 AM Senator Hukill asks a question about amendment barcode 375592
10:19:33 AM Chair Ring
10:19:46 AM Senator Simmons
10:20:27 AM Senator Hays moves for a time-certain vote at 10:28am
10:21:07 AM Mark Schlakman, FSU Center for Advancement of Human Rights
10:25:49 AM Carolyn Johnson, Florida Chamber of Commerce
10:26:47 AM Mark Flynn, Emerge USA
10:28:00 AM Chair Ring
10:28:19 AM Senator Hays
10:28:22 AM Roll Call
10:28:41 AM CS/SB 386 reported favorably
10:28:44 AM Meeting Adjourned