

CS/SB 646 by **BI, Benacquisto**; (Similar to H 0939) Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE program

SB 7008 by **BI**; OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services

SB 7010 by **BI**; OGSR/Examination Techniques or Procedures/Office of Financial Regulation

SB 590 by **Altman (CO-INTRODUCERS) Bradley**; (Identical to H 0225) Flags

CS/SB 296 by **HP, Garcia (CO-INTRODUCERS) Joyner**; (Similar to H 0043) Diabetes Advisory Council

882004 A S RCS GO, Legg Delete L.61 - 74: 03/04 02:17 PM

CS/SB 216 by **CA, Bradley**; (Similar to CS/H 0105) Publicly Funded Retirement Programs

SB 508 by **Bullard**; (Similar to H 0253) Small Business Participation in State Contracting

CS/SB 182 by **HE, Hays**; (Similar to H 0223) Public Records and Meetings/Postsecondary Education Executive Search

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SB 694 by **Ring**; (Identical to H 0719) Florida State Employees' Charitable Campaign

SPB 7038 by **GO**; Employer Contributions to Fund Retiree Benefits

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

MEETING DATE: Wednesday, March 4, 2015

TIME: 1:00 —3:00 p.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bullard, Latvala, and Legg

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 646 Banking and Insurance / Benacquisto (Similar H 939, Compare H 935, Link CS/S 642)	Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE program; Providing an exemption from public records requirements for certain personal financial and health information held by the Florida Prepaid College Board, Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider thereof; authorizing the release of such information under specified circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 02/17/2015 Fav/CS GO 03/04/2015 Favorable AP	Favorable Yeas 4 Nays 0
2	SB 7008 Banking and Insurance	OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services; Amending provisions relating to an exemption from public meeting requirements for portions of meetings of the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services at which licensure examination questions or answers are discussed; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 03/04/2015 Favorable RC	Favorable Yeas 4 Nays 0
3	SB 7010 Banking and Insurance	OGSR/Examination Techniques or Procedures/Office of Financial Regulation; Amending provisions relating to an exemption from public records requirements for information that would reveal examination techniques or procedures used by the Office of Financial Regulation under the Florida Securities and Investor Protection Act; saving the exemption from repeal under the Open Government Sunshine Act, etc. GO 03/04/2015 Favorable RC	Favorable Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 4, 2015, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 590 Altman (Identical H 225)	Flags; Citing this act as the "All-American Flag Act"; requiring a United States flag or a state flag that is purchased on or after a specified date by the state, a county, or a municipality for public use to be made in the United States, etc. CA 02/17/2015 Favorable GO 03/04/2015 Favorable FP	Favorable Yeas 4 Nays 0
5	CS/SB 296 Health Policy / Garcia (Similar H 43)	Diabetes Advisory Council; Requiring the council, in conjunction with the Department of Health, the Agency for Health Care Administration, and the Department of Management Services, to develop plans to manage, treat, and prevent diabetes; requiring a report to the Governor and Legislature; providing that the council membership may be, rather than must be, representative of certain areas of specialization or certain institutions, organizations, and industries; adding an organization from which a representative may be selected to serve as a council member, etc. HP 02/17/2015 Fav/CS GO 03/04/2015 Fav/CS AHS FP	Fav/CS Yeas 4 Nays 0
6	CS/SB 216 Community Affairs / Bradley (Similar H 105, Compare H 1279, H 1309, S 242)	Publicly Funded Retirement Programs; Requiring that actuarial reports for certain retirement systems or plans include mortality tables; revising applicability of the Marvin B. Clayton Firefighters Pension Trust Fund Act; authorizing a municipal services taxing unit that enters into an interlocal agreement for fire protection services with another municipality to impose an excise tax on property insurance premiums, etc. CA 02/03/2015 Fav/CS GO 03/04/2015 Not Considered AP	Not Considered
7	SB 508 Bullard (Similar H 253)	Small Business Participation in State Contracting; Directing that agencies avoid contract bundling under certain circumstances; requiring certain agencies to award a percentage of contracts to small businesses; prohibiting agencies, general contractors, or prime contractors from requiring certain bonds or other sureties for certain contracts, etc. GO 03/04/2015 Favorable AGG AP	Favorable Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Wednesday, March 4, 2015, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 182 Higher Education / Hays (Similar H 223)	Public Records and Meetings/Postsecondary Education Executive Search; Providing an exemption from public records requirements for any personal identifying information, including the name, of an applicant for president, provost, or dean of a state university or Florida College System institution; providing an exemption from public meeting requirements for any portion of a meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of a state university or Florida College System institution; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. HE 02/16/2015 Fav/CS GO 03/04/2015 Fav/CS RC	Fav/CS Yeas 4 Nays 1
9	SB 694 Ring (Identical H 719)	Florida State Employees' Charitable Campaign; Providing an exception to the requirement that state officers and employees designate a charitable organization to receive their contributions from the Florida State Employees' Charitable Campaign; requiring the fiscal agent selected by the Department of Management Services to distribute undesignated funds in a specified manner, etc. GO 03/04/2015 Favorable AGG FP	Favorable Yeas 4 Nays 0
Consideration of proposed bill:			
10	SPB 7038	Employer Contributions to Fund Retiree Benefits; Revising the employer contribution rates for the retiree health insurance subsidy; revising the required employer retirement contribution rates for members of each membership class and subclass of the Florida Retirement System, etc.	Submitted as Committee Bill Yeas 4 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 646

INTRODUCER: Banking and Insurance Committee and Senator Benacquisto

SUBJECT: Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE program

DATE: March 4, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 646 creates a public records exemption for specified personal financial and health information of a consumer relating to an ABLE account or a participation agreement or any information that would identify a consumer held by the Florida Prepaid College Board, Florida ABLE Inc., Florida ABLE program, or an agent or service provider of these entities. The bill defines a consumer as a party to a participation agreement, which would be under the Florida ABLE Program.

A related bill, SB 642, requires the Florida Prepaid College Board to create Florida ABLE, Inc., as a direct support organization, to administer the Florida ABLE program. The Florida ABLE program, pursuant to federal law,¹ allows individuals with disabilities to save money without losing their eligibility for state and federal benefits and use such funds for qualified disability expenses.

Because this bill creates a public-records exemption, it contains a public necessity statement and requires a two-thirds vote of each house of the Legislature for passage.

¹ H.R. 5771, Division B, Title I. Public Law 113-295.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.³ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.⁴

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 Act⁵ guarantees every person's right to inspect and copy any state or local government 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

The Legislature may create an exemption to public records or open meetings requirements.⁹ An exemption must specifically state the public necessity justifying the exemption¹⁰ and must be tailored to accomplish the stated purpose of the law.¹¹

² FLA. CONST., art. I, s. 24(a).

³ FLA. CONST., art. I, s. 24(b).

⁴ FLA. CONST., art. I, s. 24(b).

⁵ Chapter 119, F.S.

⁶ Section 119.011(12), F.S., defines "public record" 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. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, 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 the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹² The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹³

The OGSR 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 necessary.¹⁴ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁵
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁶ or
- It protects trade or business secrets.¹⁷

In addition, the Legislature must find that the purpose of the exemption overrides the Florida’s public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.¹⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁰

¹² Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹³ Section 119.15(3), F.S.

¹⁴ Section 119.15(6)(b), F.S.

¹⁵ Section 119.15(6)(b)1., F.S.

¹⁶ Section 119.15(6)(b)2., F.S.

¹⁷ Section 119.15(6)(b)3., F.S.

¹⁸ 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?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

Federal ABLE Act

The federal ABLE Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014. The purpose of the ABLE Act is to encourage individuals and families to save money to support individuals with disabilities. The ABLE Act permits a state to implement a qualified ABLE program and establish ABLE accounts for individuals with disabilities that meet certain criteria and are deemed “eligible individuals.” A designated beneficiary of an ABLE account is an eligible individual who establishes an ABLE account and is the owner of such of an account.²¹ The provisions of the ABLE Act are effective for taxable years beginning after December 31, 2014.

Florida ABLE Program

This bill is the public records exemption relating to the Florida ABLE program created in SB 642. SB 642 requires the Florida Prepaid College Board to create the Florida ABLE, Inc., as a direct support organization that is organized as a not-for-profit corporation. Florida ABLE, Inc., will establish and administer the Florida ABLE Program. Florida ABLE, Inc., will operate under a contract with the Florida Prepaid College Board.

Individuals who participate in the Florida ABLE Program must meet certain requirements. Under the provisions of SB 642, a designated beneficiary means the eligible individual who established an ABLE account or the eligible individual to whom an ABLE account was transferred. A designated beneficiary in the Florida ABLE program would be subject to the terms and conditions of the participation agreement.

An individual is an eligible individual for establishing an ABLE account for a taxable year if during such taxable year:

- The individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or
- A disability certification with respect to such individual is filed with the Secretary of the Department of Treasury for such taxable year.

Under the Florida ABLE Program, eligible individuals with disabilities, family members and others can contribute funds to an ABLE account without affecting the individual’s eligibility for state and federal benefits, such as SSI and Medicaid. Those funds can be used for qualified disability expenses relating to the individual’s blindness or disability. These expenses would include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations. Funds placed in the ABLE program would supplement rather than supplant benefits provided through state and federal programs, earnings, and other sources.

²¹ A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLE account, provided such new designated beneficiary is also an eligible individual.

III. Effect of Proposed Changes:

The bill provides that personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution.

For purposes of the bill, a “consumer” means a party to a participation agreement of the Florida ABLE program. The bill provides that “personal financial and health information” means:

- A consumer’s personal health condition, disease, injury, or medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer’s personal income or expenses;
- Records of or relating to a consumer’s personal financial transactions of any kind; or
- The existence, identification, nature, or value of a consumer’s assets, liabilities, or net worth.

The bill authorizes Florida Prepaid College Board or Florida ABLE, Inc., to disclose information made confidential and exempt to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or to verify the eligibility of an eligible individual or authorize the use of an ABLE account. The bill does not include a penalty for releasing confidential and exempt records for any other purpose.

The bill provides that this public records 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, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for this public records exemption. The public necessity statement provides that the Legislature finds that it is a public necessity to protect a consumer’s personal financial and health information. Disclosure of sensitive financial information held for a consumer under the Florida ABLE program would create the opportunity for theft, identity theft, fraud, and other illegal activity, thereby jeopardizing the financial security of the consumer and placing him or her at risk for substantial financial harm. Further, each person has a reasonable expectation of and a right to privacy in all matters concerning personal financial interests.

In addition, the statement provides that the Legislature finds that it is a public necessity to protect a consumer’s personal health information because such information is traditionally a private and confidential matter between the patient and health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors, and public disclosure of such personal health information held for a consumer under the Florida ABLE program could negatively affect a person’s business and personal relationships and cause detrimental financial consequences.

The bill takes effect on the same date that SB 642 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

None.

B. Public Records/Open Meetings Issues:

This bill creates a public-records exemption. It complies with the requirements of s. 24(c), Art. I of the Florida Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

Because the bill creates an exemption, it contains a statement of public necessity and is subject to a two-thirds vote of each house of the Legislature for passage as required by s. 24(c), Art. I of the Florida Constitution.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill is intended to prevent the disclosure of specified personal financial and health information of a consumer that is held by the Florida Prepaid College Board, Florida ABLE Inc., Florida ABLE program, or an agent or service provider of these entities relating to an ABLE account or a participation agreement or any information held that could identify a consumer. The bill provides a limited exception for the release of such confidential and exempt information to governmental entities in furtherance of their duties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1009.987 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 Banking and Insurance on February 17, 2015:

The CS replaces the word, “board” with the term, “Florida Prepaid College Board.”

B. Amendments:

None.

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

By the Committee on Banking and Insurance; and Senator Benacquisto

597-01649-15

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1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 1009.987, F.S.; providing an exemption from public
 4 records requirements for certain personal financial
 5 and health information held by the Florida Prepaid
 6 College Board, Florida ABLE, Inc., the Florida ABLE
 7 program, or an agent or service provider thereof;
 8 authorizing the release of such information under
 9 specified circumstances; providing for future
 10 legislative review and repeal of the exemption;
 11 providing a statement of public necessity; providing a
 12 contingent effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Section 1009.987, Florida Statutes, is created
 17 to read:
 18 1009.987 Public records exemption.-
 19 (1) As used in this section, the term:
 20 (a) "Consumer" means a party to a participation agreement.
 21 (b) "Personal financial and health information" means:
 22 1. A consumer's personal health condition, disease, injury,
 23 or medical diagnosis or treatment;
 24 2. The existence, nature, source, or amount of a consumer's
 25 personal income or expenses;
 26 3. Records of or relating to a consumer's personal
 27 financial transactions of any kind; or
 28 4. The existence, identification, nature, or value of a
 29 consumer's assets, liabilities, or net worth.

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30 (2) The personal financial and health information of a
 31 consumer held by the Florida Prepaid College Board, Florida
 32 ABLE, Inc., or the Florida ABLE program, or an agent or service
 33 provider thereof, relating to an ABLE account or a participation
 34 agreement or any information that would identify a consumer is
 35 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 36 of the State Constitution.
 37 (3) The Florida Prepaid College Board or Florida ABLE,
 38 Inc., may authorize the disclosure of information made
 39 confidential and exempt under subsection (2) to another state or
 40 federal government entity if disclosure is necessary for the
 41 receiving entity to perform its duties or responsibilities or to
 42 verify the eligibility of an eligible individual or authorize
 43 the use of an ABLE account.
 44 (4) This section is subject to the Open Government Sunset
 45 Review Act in accordance with s. 119.15 and shall stand repealed
 46 on October 2, 2020, unless reviewed and saved from repeal
 47 through reenactment by the Legislature.
 48 Section 2. The Legislature finds that it is a public
 49 necessity to protect a consumer's personal financial and health
 50 information. Disclosure of sensitive financial information held
 51 for a consumer under the Florida ABLE program would create the
 52 opportunity for theft, identity theft, fraud, and other illegal
 53 activity, thereby jeopardizing the financial security of the
 54 consumer and placing him or her at risk for substantial
 55 financial harm. Further, each person has a reasonable
 56 expectation of and a right to privacy in all matters concerning
 57 personal financial interests. The Legislature further finds that
 58 it is a public necessity to protect a consumer's personal health

Page 2 of 3

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59 information because such information is traditionally a private
60 and confidential matter between the patient and health care
61 provider. The private and confidential nature of personal health
62 matters pervades both the public and private health care
63 sectors, and public disclosure of such personal health
64 information held for a consumer under the Florida ABLE program
65 could negatively affect a person's business and personal
66 relationships and cause detrimental financial consequences.

67 Section 3. This act shall take effect on the same date that
68 SB 642 or similar legislation takes effect, if such legislation
69 is adopted in the same legislative session or an extension
70 thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

February 25, 2015

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

RE: CS/SB 646 – Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE Program

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda CS/SB 646, relating to the Florida ABLE program, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 3, 2015

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

RE: CS/SB 646 – Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE Program

RE: SB 7008 – OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services

RE: SB 7010 – OGSR/Examination Techniques or Procedures/Office of Financial Regulation

Dear Mr. Chair:

Please allow my legislative aide Dane Bennett to present CS/SB 646, SB 7008, and SB 7010 on my behalf. As I will be Chairing the Banking & Insurance Committee.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
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 7008

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Billmeier</u>	<u>Knudson</u>		BI Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7008 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee professional staff of the public-meeting exemption for portions of meetings of the Board of Funeral, Cemetery, and Consumer Services (“board”) at which licensure examination questions or answers are discussed. The exemption also includes the recording of the portion of the meeting that is closed for discussion of licensure examination questions or answers.

The board enforces provisions of Chapter 497, F.S., relating to funeral and cemetery services. It also has broad authority over licensure and examination of applicants for various licenses. That authority includes specifying the content of examinations for licensure, striking any examination question determined before or after an examination to be inappropriate, and specifying which national examinations shall or shall not be required or accepted in Florida.

Current law provides that those portions of meetings of the board at which licensure examination questions or answers are discussed are exempt from public meetings requirements. The closed meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the board. The recording of a closed portion of a meeting is exempt from public record requirements. These exemptions will expire on October 2, 2015, unless reenacted. This bill repeals the scheduled expiration of the public meetings exemption and takes effect on October 1, 2015.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.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 record.⁵ The Sunshine Law⁶ 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.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" 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. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ 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 the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, 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.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR 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.¹³ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida’s open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

The OGSR also requires specific questions to be considered during the review process.¹⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁰

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ 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?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

Board of Funeral, Cemetery, and Consumer Services

Current law creates the Board of Funeral, Cemetery, and Consumer Services.²¹ The board enforces provisions of Chapter 497, F.S., relating to funeral and cemetery services. The board has broad authority over licensure and examination of applicants for various licenses including:

- Authority to determine any and all criteria for licensure;
- Authority to specify who may conduct practical examination;
- Authority to specify the content of examinations for licensure, both written and practical, and the relative weighting of areas examined, and grading criteria, and determination of what constitutes a passing grade;
- Authority to strike any examination question determined before or after an examination to be inappropriate for any reason;
- Authority to specify which national examinations or parts thereof shall or shall not be required or accepted regarding Florida licensure;
- Authority to determine time limits and substantive requirements regarding reexamination of applicants who fail any portion of a licensing examination; and
- Authority to determine substantive requirements and conditions relating to apprenticeships and internships, and temporary licensure pending examination.²²

Current law provides that those portions of meetings of the board at which licensure examination questions or answers are discussed are exempt from the public meetings requirements of s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. The closed meeting must be recorded, and no portion of the closed meeting may be off the record. The recording shall be maintained by the board. The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. In 2010, the Legislature made the following findings when it created the public record exemption for portions of the meeting that are closed:

The Legislature finds that it is a public necessity to make exempt from public records requirements the recording generated during those portions of meetings of the Board of Funeral, Cemetery, and Consumer Services at which licensure examination questions or answers are discussed. The release of such recordings would compromise those discussions of the board which took place during a closed meeting and would negate the public meeting exemption. Further, current law already provides a public record exemption for licensure examination questions and answers. As such, release of the recording generated during those closed portions of meetings would compromise the current protections already afforded such questions and answers. Thus, the effective and efficient administration of the licensure examination process would be compromised without this exemption.²³

²¹ Section 497.101(1), F.S.

²² Section 497.103(1)(a)-(g), F.S.

²³ Chapter 2010-76, Laws of Florida, section 2.

The Department of Financial Services (Department) reports that it has never closed a meeting to discuss licensure examination questions and answers,²⁴ however, the Department plans to revise its examination in 2015, and it will be necessary to close one or more board meetings to discuss those changes. The Department recommends continuing the exemption so that applicants will not have advance notice of what will be included on the licensing examination.²⁵

The OGSR provides that an exemption may only be maintained if it serves an identifiable public purpose and is no broader than necessary to serve that purpose. The exemptions maintained in this bill could be found to allow the state “to effectively and efficiently administer a governmental program” and administration of the program “would be significantly impaired without the exemption.”²⁶ The examination and licensing functions of the Board of Funeral, Cemetery, and Consumer Services would be significantly impaired if this exemption is not continued.

III. Effect of Proposed Changes:

This bill continues the public-meeting exemption for portions of the board meetings at which licensure examination questions or answers are discussed by repealing the scheduled expiration of the exemption. The board continues to be required to record the closed meeting and maintain the recording. This bill also continues the public record exemption for the recording of the portion of the meeting that is closed for discussion of licensure examination questions or answers.

This bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

²⁴ Open Government Sunset Review Questionnaire completed by the Department of Financial Services (on file with the Banking and Insurance Committee).

²⁵ Bill Analysis from Department of Financial Services, dated February 11, 2015.

²⁶ Section 119.15(6)(b)1., F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 497.172 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.

By the Committee on Banking and Insurance

597-01474-15

20157008__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 497.172, F.S., relating
 4 to an exemption from public meeting requirements for
 5 portions of meetings of the Board of Funeral,
 6 Cemetery, and Consumer Services within the Department
 7 of Financial Services at which licensure examination
 8 questions or answers are discussed; saving the
 9 exemption from repeal under the Open Government Sunset
 10 Review Act; providing an effective date.

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

13
 14 Section 1. Subsection (1) of section 497.172, Florida
 15 Statutes, is amended to read:

16 497.172 Public records exemptions; public meetings
 17 exemptions.—

18 (1) EXAMINATION DEVELOPMENT MEETINGS.—

19 (a) Those portions of meetings of the board at which
 20 licensure examination questions or answers under this chapter
 21 are discussed are exempt from s. 286.011 and s. 24(b), Art. I of
 22 the State Constitution. The closed meeting must be recorded, and
 23 no portion of the closed meeting may be off the record. The
 24 recording shall be maintained by the board.

25 (b) The recording of a closed portion of a meeting is
 26 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 27 Constitution.

28 ~~(c) This subsection is subject to the Open Government~~
 29 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~

Page 1 of 2

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

597-01474-15

20157008__

30 ~~repealed on October 2, 2015, unless reviewed and saved from~~
 31 ~~repeal through reenactment by the Legislature.~~
 32 Section 2. This act shall take effect October 1, 2015.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 3, 2015

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

RE: CS/SB 646 – Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE Program

RE: SB 7008 – OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services

RE: SB 7010 – OGSR/Examination Techniques or Procedures/Office of Financial Regulation

Dear Mr. Chair:

Please allow my legislative aide Dane Bennett to present CS/SB 646, SB 7008, and SB 7010 on my behalf. As I will be Chairing the Banking & Insurance Committee.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
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 7010

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Examination Techniques or Procedures/Office of Financial Regulation

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Matiyow</u>	<u>Knudson</u>		BI Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7010 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee staff of a public records exemption in s. 517.2016, F.S., for certain information held by the Office of Financial Regulation (OFR).

In 2010, the Florida Legislature enacted s. 517.2016, F.S., to create a public records exemption relating to the regulation of Securities. The Florida Securities and Investor Protection Act (Act) governs the regulation of securities transactions in Florida. The State's Office of Financial Regulation (OFR) is designated as the regulator to enforce the Act in Florida. The OFR may make investigations and examinations within or outside of Florida as it deems necessary. Section 517.2016, F.S., protects information that would reveal examination techniques or procedures used by the OFR pursuant to the Act. Such Information may be provided by the OFR to another governmental entity having oversight or regulatory or law enforcement authority.

The exemption is scheduled to expire on October 2, 2015, unless reenacted by the Legislature. This bill continues the exemption by repealing the scheduled expiration. The bill does not expand the scope of the public records exemption.

The bill takes effect October 1, 2015.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.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 record.⁵ The Sunshine Law⁶ 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.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" 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. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ 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 the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, 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.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR 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.¹³ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

The OGSR also requires specific questions to be considered during the review process.¹⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁰

Regulation of Securities

The securities industry is subject to both federal and state laws and regulations. The primary federal regulator is the Securities and Exchange Commission (SEC), which oversees the key

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ 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?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

participants in the securities industry such as securities exchanges, securities brokers and dealers, investment advisors, and mutual funds.²¹ The SEC is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

The Financial Industry Regulatory Authority (FINRA), an independent, not-for-profit organization, also is an important regulatory body.²² FINRA performs a number of functions, including registering and educating securities industry participants. FINRA operates the Central Registration Depository and the Investment Adviser Registration Depository, which are central databases for registering, reporting, and disclosing information within the securities industry.

The state's Office of Financial Regulation (OFR), through the Division of Securities, regulates the sale of securities in, to, or from Florida by firms, branch offices and individuals affiliated with these firms to determine compliance with Florida law. A securities dealer or investment adviser is prohibited from conducting business from a branch office in Florida unless the branch office is registered with the OFR.²³ A "branch office" is "any location in this state of a dealer or investment adviser at which one or more associated persons regularly conduct the business of rendering investment advice or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security."²⁴ It also includes any location that is held out as a place where such actions occur is also a branch office.

Florida Securities and Investor Protection Act

The Florida Securities and Investor Protection Act (Act)²⁵ governs the regulation of securities transactions in Florida. The Office of Financial Regulation (OFR) is designated as the regulator to enforce the Act. The OFR may make investigations and examinations within or outside of Florida as it deems necessary to:

- determine whether a person has violated or is about to violate any provision of the Act or a rule or order under the Act; or
- aid in the enforcement of the Act.²⁶

Investigations and Examinations

Current law provides a public records exemption for information related to investigations and examinations conducted by the OFR pursuant to the Act.²⁷ Information relevant to an investigation or examination by the OFR, including any consumer complaint, is confidential and exempt from public records requirements until the investigation or examination is completed or ceases to be active.²⁸ However, the information remains confidential and exempt if the OFR submits it to any law enforcement or administrative agency or regulatory organization for further

²¹ See <http://www.sec.gov/about/whatwedo.shtml> (Accessed January 22, 2015).

²² See <http://www.finra.org/AboutFINRA/P125239> (Accessed January 22, 2015).

²³ Section 517.12(5), F.S.

²⁴ Section 517.021(4), F.S.

²⁵ Chapter 517, F.S.

²⁶ Section 517.201(1)(a), F.S.

²⁷ Section 517.2016, F.S.

²⁸ Section 517.2015(1)(a), F.S.

investigation.²⁹ In addition, certain information remains confidential and exempt after the investigation or examination is completed or ceases to be active,³⁰ including information that would disclose investigative techniques or procedures.

The OFR employs various methods, processes and guidelines to examine and evaluate regulatory compliance.³¹ According to the OFR, maintaining the confidentiality of examination techniques and procedures are essential for protecting the integrity of the examination programs that they use to regulate the securities industry. If these investigative tools are made public through open records requests or other means, the securities industry could use them to thwart effective examinations, cover up illegal conduct, and otherwise circumvent the law.³²

III. Effect of Proposed Changes:

This bill removes the scheduled repeal date of October 2, 2015, for s. 517.2016, F.S., the public records exemption for examination techniques and procedures used by the OFR.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²⁹ Section 517.2015(1)(a), F.S.

³⁰ For purposes of the exemption, an investigation or examination is considered “active” so long as OFR or any law enforcement or administrative agency or regulatory organization is proceeding with reasonable dispatch and has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of a license, registration, or permit. Section 517.2015(1)(a), F.S.

³¹ Section 517.2016(1) F.S.

³² Email from OFR staff received September 2, 2014 on file with Banking and Insurance staff.

C. Government Sector Impact:

According to the OFR being a member state of NASAA allows the OFR the ability to leverage its limited resources and save on regulatory costs.³³ In order for the OFR to remain a member of NASAA the public record exemption on examinations and techniques of securities may not be permitted to sunset.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 517.2016 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.

³³ Email from OFR staff received September 2, 2014 on file with Banking and Insurance staff.

By the Committee on Banking and Insurance

597-01475-15

20157010__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunshine Act; amending s. 517.2016, F.S., relating to
 4 an exemption from public records requirements for
 5 information that would reveal examination techniques
 6 or procedures used by the Office of Financial
 7 Regulation under the Florida Securities and Investor
 8 Protection Act; saving the exemption from repeal under
 9 the Open Government Sunshine Act; making technical
 10 changes; providing an effective date.
 11

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

14 Section 1. Section 517.2016, Florida Statutes, is amended
 15 to read:

16 517.2016 Public records exemption; examination techniques
 17 or and procedures.—

18 (1) As used in ~~For purposes of~~ this section, the term
 19 "examination techniques or and procedures" means are the
 20 methods, processes, and guidelines used to evaluate regulatory
 21 compliance and to collect and analyze data, records, and
 22 testimony for the purpose of documenting violations of this
 23 chapter and the rules adopted promulgated thereunder.

24 (2) Information that would reveal examination techniques or
 25 procedures used by the office pursuant to this chapter is
 26 confidential and exempt from s. 119.07(1) and s. 24(a), Art.I
 27 of the State Constitution. This exemption applies to such
 28 information held by the office before, on, or after the
 29 effective date of this exemption.

Page 1 of 2

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597-01475-15

20157010__

30 (3) Confidential and exempt information that would reveal
 31 examination techniques or procedures may be provided by the
 32 office to another governmental entity having oversight or
 33 regulatory or law enforcement authority.
 34 ~~(4) This section is subject to the Open Government Sunset~~
 35 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 36 ~~on October 2, 2015, unless reviewed and saved from repeal~~
 37 ~~through reenactment by the Legislature.~~
 38 Section 2. This act shall take effect October 1, 2015.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO

30th District

JOINT COMMITTEE:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

March 3, 2015

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

RE: CS/SB 646 – Public Records/Information Held by the Florida Prepaid College Board, Florida ABLE, Inc., and the Florida ABLE Program

RE: SB 7008 – OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services

RE: SB 7010 – OGSR/Examination Techniques or Procedures/Office of Financial Regulation

Dear Mr. Chair:

Please allow my legislative aide Dane Bennett to present CS/SB 646, SB 7008, and SB 7010 on my behalf. As I will be Chairing the Banking & Insurance Committee.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
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 590

INTRODUCER: Senator Altman

SUBJECT: Flags

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 590 requires all United States and state flags purchased on or after January 1, 2016, by the state, a county, or a municipality for public use to be made in the United States entirely from domestically grown, produced, and manufactured materials.

II. Present Situation:

Display of United States and State Flags

The United States and state flags must be displayed in certain venues under current law. The United States flag must be displayed at the state capitol¹ and at every county courthouse,² public auditorium,³ polling station on election days,⁴ and on the grounds and in the classrooms of public K-20 educational institutions.⁵ Display of the state flag is otherwise governed by protocols adopted by the Governor.⁶

Procurement of Flags

Purchases by the executive branch are regulated by the provisions of ch. 287, F.S. The Department of Management Services (DMS) is responsible for the procurement of goods and services for all state agencies.⁷ DMS employs state-wide purchasing rules to coordinate purchases across the various agencies of the state, utilizing the buying power of the state to

¹ Section 256.01, F.S.

² *Id.*

³ Section 256.11, F.S.

⁴ Section 256.011(1), F.S.

⁵ Section 1000.06, F.S.; also, see Section 256.032, F.S. (requiring state flag to be displayed on grounds of every elementary and secondary public school).

⁶ Section 256.015(1), F.S.

⁷ Section 287.042(1)(a), F.S.

promote efficiency and savings in the procurement process.⁸ Agencies are defined in ch. 287, F.S., as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government."⁹ State universities and colleges, including their boards of trustees, are specifically excluded from this definition of agency.¹⁰

Accounting requirements for purchases vary depending on the value of the services. Formal competitive bidding is required for all contracts in excess of \$35,000.¹¹ For contracts between \$2,500 and \$35,000, agencies should receive informal bids when practical, but may conform to "good purchasing practices," such as written quotations or written records of telephone quotations.¹² For contracts less than \$2,500, agencies are only required to conform to good purchasing practices.¹³

While there is currently no specific state law on flag procurement, most flags purchased by DMS are manufactured in the United States from domestically-sourced materials. Of the 772 flags purchased by agencies via MyFloridaMarketplace¹⁴ in fiscal year 2012-13, 682 were produced by RESPECT of Florida.¹⁵ RESPECT of Florida is a 501(c)(3)¹⁶ non-profit organization under contract with DMS¹⁷ to administer the State Use Program, designed to provide employment opportunities for handicapped individuals.¹⁸ All United States and state flags sold by RESPECT are assembled in the organization's Miami employment center from materials produced in the United States.¹⁹

The legislative and judicial branches have separate procurement processes. The purchase of flags for the House of Representatives and Senate are handled by each chamber's administrative offices. Procurement for the judicial branch falls under the control of the Office of the State Courts Administrator.²⁰

The procurement of goods and services by counties, municipalities, and school districts are not governed by the provisions of ch. 287, F.S.²¹ Generally, flags purchased by counties, municipalities, or school districts are subject only to local ordinance. However, current law authorizes the Department of State to provide state flags to schools, governmental agencies, and

⁸ Section 287.032(1), F.S.

⁹ Section 287.012(1), F.S.

¹⁰ *Id.* The Administrative Procedure Act defines the term "agency" differently. See Section 120.52(1), F.S.

¹¹ Section 287.057(1), F.S.

¹² Rule 60A-1.002(3), F.A.C.

¹³ Rule 60A-1.002(2), F.A.C.

¹⁴ The online procurement system operated by DMS through which agencies may make certain types of purchases, at http://www.dms.myflorida.com/business_operations/state_purchasing/myfloridamarketplace (last visited February 6, 2015).

¹⁵ HB 201 Bill Analysis, Department of Management Services, March 6, 2014.

¹⁶ 26 U.S.C. s. 501(c)(3).

¹⁷ See Rule 60E-1.003, F.A.C. (authorizing DMS to designate a "Central, Non-Profit Agency" to provide services specified in ss. 413.032-413.037, F.S.).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Fla. R. Jud. Admin. 2.205(e)(2).

²¹ *Cf.* Section 287.055(2)(b), F.S. (including "a municipality, a political subdivision, a school district, or a school board" in the definition of "agency" for the purposes of procuring architectural, engineering, and surveying services) in regards to acquisition of professional architectural, engineering, landscape architectural or surveying and mapping services.

other groups and organizations at no cost, up to an annual cost for the Department of \$15,000 per year.²²

While it is possible that some of the flags purchased by state and local governments are foreign-made, the quantity is likely to be small. The Flag Manufacturers Association of America estimates that 95 percent of United States flags are manufactured entirely in the United States.²³ According to the Census Bureau, \$302.7 million of “fabricated flags, banners, and similar emblems” were produced in the United States in 2007,²⁴ while \$4 million worth of flags were imported in 2013.²⁵

Procurement of Flags by the Federal Government and Other States

The federal government is required to purchase domestically manufactured goods if the contract amount exceeds a minimum threshold.²⁶ These requirements can be waived by the President of the United States under the Trade Agreements Act of 1979, if a waiver is necessary for the purpose of entering into trade agreements with other countries.²⁷ According to the Congressional Research Service, waivers under the Trade Agreement Act of 1979 are heavily used, resulting in little remaining scope for the Buy American Act provisions.²⁸

Other provisions of federal law, however, require domestically produced goods. The Berry Amendment²⁹ requires a “super percentage” of certain types of goods (including flags) to be wholly domestic in origin.³⁰ Another statute prohibits the Department of Veterans Affairs from procuring burial flags that were not domestically produced and manufactured.³¹

Several states have existing statutes requiring the use of domestically manufactured flags. Oklahoma requires all flags purchased by the state and all political subdivisions to be manufactured in the United States.³² Massachusetts has a similar law that applies to all public institutions.³³ Arizona requires a domestically-manufactured United States flag to be displayed in all public school classrooms.³⁴ Tennessee requires any United States or state flag purchased

²² Section 256.031(1)(a), F.S.

²³ Flag Manufacturers Association of America, FAQ’s, <http://fmaa-usa.com/info/FAQ.php> (last visited February 6, 2015).

²⁴ U.S. Census Bureau News, Profile America Facts for Features, The Fourth of July 2013, <http://www.census.gov/newsroom/facts-for-features/2013/cb13-ff14.html> (last visited February 6, 2015).

²⁵ U.S. Census Bureau News, Profile America Facts for Features, The Fourth of July 2014, <http://www.census.gov/newsroom/facts-for-features/2014/cb14-ff16.html> (last visited February 6, 2015).

²⁶ 41 U.S.C. s. 8301, et seq. (“Buy American Act of 1933”).

²⁷ 19 U.S.C. s. 2501, et seq.

²⁸ Domestic Content Restrictions: The Buy American Act and Complementary Provisions of Federal Law, Congressional Research Service, January 6, 2014, available at <http://www.hsdl.org/?view&did=749327>.

²⁹ 10 U.S.C. s. 2533a.

³⁰ Domestic Content Legislation: The Buy American Act and Complementary Little Buy American Provisions, Congressional Research Service, April 25, 2012, available at <http://fas.org/sgp/crs/misc/R42501.pdf>.

³¹ 38 U.S.C. s. 2301(h)(1).

³² Okla. Stat. tit. 25, s. 158.

³³ Mass. Gen. Laws ch. 2, s. 6.

³⁴ Ariz. Rev. Stat. s. 15-1626(A)(17).

under a state contract to be manufactured in the United States.³⁵ Minnesota prohibits the sale of a United States flag produced outside the United States.³⁶

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the “All-American Flag Act.”

Section 2 requires any United States or state flag purchased for public use by the state, a county, or a municipality, on or after January 1, 2016, to be wholly manufactured in the United States from materials grown and/or produced domestically.

Section 3 provides an effective date of July 1, 2015.

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:

Impairment of Contract

Both the United States³⁷ and Florida³⁸ constitutions prohibit the state from passing laws impairing existing contractual rights. Contractual rights are impaired to the extent the law changes the substantive rights of the parties in the existing contract.³⁹ For an impairment of contractual rights to be constitutionally valid, the law must balance the state’s objective against the harm to the contract, intruding on the contractual right no more than is necessary to achieve the public purpose of the law.⁴⁰ The ability of the state to modify contractual obligations is most limited when a final agreement has been reached between a party and the state.⁴¹

³⁵ Tenn. Code Ann. s. 4-1-301(d).

³⁶ Minn. Stat. s. 325E.65.

³⁷ U.S. Const. art. 1, § 10, cl. 8. (“No State shall . . . pass any . . . Law impairing the Obligation of Contracts.”).

³⁸ Fla. Const. art. I, s. 10. (“No . . . law impairing the obligation of contracts shall be passed.”)

³⁹ *Manning v. Travelers Ins. Co.*, 250 So. 2d 872, 874 (Fla. 1971).

⁴⁰ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779-80 (Fla. 1979).

⁴¹ *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 672 (Fla. 1993).

While the bill only applies to purchases of flags by state or local governments after January 1, 2016, it is possible the state or a local government may have existing contracts that are not compliant with the bill that extend beyond that date.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could have a positive economic impact on businesses selling United States and state flags that are domestically-produced and sourced. The bill could have a negative impact on businesses selling United States and state flags that are either imported or produced domestically from foreign materials.

C. Government Sector Impact:

This bill may have an indeterminate negative fiscal impact on state and local governments, depending on the extent to which state and local governments are currently purchasing flags produced outside of the United States or made from foreign materials and the cost difference between those flags and domestically-produced and sourced flags.

VI. Technical Deficiencies:

The bill does not contain a method of verification to ensure the flags purchased by state and local governments are manufactured in the United States from domestic materials.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 256.041 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.

By Senator Altman

16-00863-15

2015590__

1 A bill to be entitled

2 An act relating to flags; providing a short title;
3 creating s. 256.041, F.S.; requiring a United States
4 flag or a state flag that is purchased on or after a
5 specified date by the state, a county, or a
6 municipality for public use to be made in the United
7 States; providing an effective date.
8

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

10
11 Section 1. This act may be cited as the "All-American Flag
12 Act."

13 Section 2. Section 256.041, Florida Statutes, is created to
14 read:

15 256.041 Purchase of United States flag or state flag for
16 public use.—When the state, a county, or a municipality
17 purchases a United States flag or a state flag for public use,
18 the flag must be made in the United States from articles,
19 materials, or supplies, all of which are grown, produced, and
20 manufactured in the United States. This section applies to the
21 purchase of a flag on or after January 1, 2016.

22 Section 3. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

February 18, 2015

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

Dear Chairman Ring:

I respectfully request that SB 590, related to *Flags*, 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 blue ink that reads "Thad Altman".

Thad Altman

CC: Joe McVaney, Staff Director, 525 Knott Building
Allison Rudd, Committee Administrative Assistant

TA/svb

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

March 4, 2015

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

Dear Chairman Ring:

Senate Bill 590, related to *Flags* is on the Government Oversight and Accountability Committee agenda today, March 4, 2015. Since I will be chairing the Committee on Military and Veterans Affairs, Space and Domestic Defense meeting I will be unable to attend.

Please recognize my Legislative Assistant Devon West to present SB 590 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Thad Altman".

Thad Altman

CC: Joe McVaney, Staff Director, 525 Knott Building
Allison Rudd, Committee Administrative Assistant

TA/svb

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
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 296

INTRODUCER: Governmental Oversight and Accountability, Health Policy Committee and Senator Garcia

SUBJECT: Diabetes Advisory Council

DATE: March 5, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 296 creates a process for ongoing assessment of the state's diabetes-related activities. Specifically, the bill directs the Diabetes Advisory Council, in conjunction with the Department of Health (DOH), the Agency for Health Care Administration (AHCA), and the Department of Management Services (DMS), to prepare a report regarding the impact of diabetes on state-funded or operated programs, including Medicaid, the State Group Insurance Program, and public health programs. Required components of the report include: the health consequences and financial impact of diabetes; the effectiveness of diabetes programs implemented by each agency; a description of the coordination among the agencies; and the development and ongoing revision of an action plan for reducing and controlling the incidence of diabetes.

The report is due to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 10 of each odd-numbered year.

CS/CS/SB 296 also modifies the composition of the Diabetes Advisory Council to include one member from at least three of the medical schools in the state., and adds a representative of the American Association of Diabetes Educators to the list of possible members.

The bill has an indeterminate fiscal impact.

The bill provides for an effective date of July 1, 2015.

II. Present Situation:

Diabetes is a group of diseases in which the body produces too little insulin,¹ is unable to use insulin efficiently, or both. When diabetes is not controlled, glucose and fats remain in the blood and eventually cause damage to vital organs.

The most common forms of diabetes are:

- **Type 1:** Sometimes known as juvenile diabetes, type 1 is usually first diagnosed in children and adolescents and accounts for about five percent of all diagnosed cases. Type 1 diabetes is an autoimmune disease in which the body's own immune system destroys cells in the pancreas that produce insulin. Type 1 may be caused by genetic, environmental, or other risk factors. At this time, there are no methods to prevent or cure type 1 diabetes, and treatment requires the use of insulin by injection or pump.
- **Type 2:** Sometimes known as adult-onset diabetes, type 2 accounts for about 95 percent of diagnosed diabetes in adults and is usually associated with older age, obesity, lack of physical activity, family history, or a personal history of gestational diabetes. Studies have shown that healthy eating, regular physical activity, and weight loss can prevent or delay the onset of type 2 diabetes or eliminate the symptoms and effects post-onset.
- **Gestational diabetes:** This type of diabetes develops and is diagnosed as a result of pregnancy in 2 to 10 percent of pregnant women. Gestational diabetes can cause health problems during pregnancy for both the child and mother. Children whose mothers have gestational diabetes have an increased risk of developing obesity and type 2 diabetes.²

Complications of diabetes include: heart disease, stroke, high blood pressure (hypertension), blindness and other eye problems, kidney disease, nervous system disease, vascular disorders, and amputations. Death rates for heart disease and the risk of stroke are about two to four times higher among adults with diabetes than among those without diabetes. Diabetes and its potential health consequences can be managed through physical activity, diet, self-management training, and, when necessary, medication.³

People with “pre-diabetes” are at high risk of developing type 2 diabetes, heart disease, and stroke. Their blood glucose levels are higher than normal, but not high enough to be classified as diabetes. Although an estimated 33 percent of adults in the United States have pre-diabetes, less than 10 percent of them report having been told they have the condition. Thus, awareness of the risk is low. People with pre-diabetes who lose five to seven percent of their body weight and get at least 150 minutes per week of moderate physical activity can reduce the risk of developing type 2 diabetes by 58 percent.⁴

¹ Insulin is a hormone that allows glucose (sugar) to enter cells and be converted to energy.

² U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Diabetes Report Card*, 1 (2012), available at <http://www.cdc.gov/diabetes/pubs/reportcard.htm> (last visited Jan. 20, 2015).

³ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Diabetes Latest* <http://www.cdc.gov/features/diabetesfactsheet/> (last visited Jan. 20, 2015).

⁴ *Supra* note 2, at 4.

Risk factors for diabetes include:⁵

- Being over the age of 45;
- Overweight;
- Having a parent or sibling with diabetes;
- Having a minority family background;
- Developing diabetes while pregnant, gave birth to a baby weighing 9 pounds or more; and
- Being physically active less than three times per week.

Persons with any of the above risk factors are also at risk of developing pre-diabetes. Individuals with pre-diabetes are five to 15 times more likely to develop type 2 diabetes, heart disease, and stroke.⁶ The Centers for Disease Control estimates that as many as one out of every three American adults has pre-diabetes and half of all Americans aged 65 years and older have pre-diabetes.⁷

Minorities have a higher prevalence of diabetes than whites, and some minorities have higher rates of diabetes-related complications and death. Non-Hispanic black, Hispanic, and American Indian/Alaska Native adults are about twice as likely to have diagnosed diabetes as non-Hispanic white adults.⁸

In 2013, the American Diabetes Association released a report updating its earlier studies (2002, 2007) estimating the economic burden of diagnosed diabetes. In 2012, the total estimated cost of diagnosed diabetes in the United States was \$245 billion, including \$176 billion in direct medical costs and \$69 billion in reduced productivity. This represents a 41 percent increase over the 2007 estimate. The largest components of these costs are hospital inpatient care (43 percent) and medications to treat complications (18 percent). People with diagnosed diabetes incur average medical costs of about \$13,700 per year, of which about \$7,900 is attributed to diabetes. Care for people with diagnosed diabetes accounts for more than one in five dollars spent on health care in the United States, and more than half of that is directly attributable to diabetes. Overall, average medical expenses for a person with diabetes are 2.3 times higher than they are for a person without diabetes.⁹

Diabetes in Florida

Diabetes was the sixth leading cause of death in 2012 in Florida.¹⁰ The prior year, diabetes had been the seventh leading cause of death. As a percent of total deaths in the state, diabetes

⁵ Florida Department of Health, *Diabetes, Warning Signs and Risk Factors* <http://www.floridahealth.gov/diseases-and-conditions/diabetes/warning-signs.html> (last visited Feb. 4, 2015).

⁶ Florida Department of Health, *Prediabetes, What is Prediabetes?*, <http://www.floridahealth.gov/diseases-and-conditions/diabetes/prediabetes.html> (last visited Feb. 4, 2015).

⁷ *Id.*

⁸ *Id.* at 1.

⁹ American Diabetes Association, *Economic Costs of Diabetes in the U.S. in 2012*, *Diabetes Care* 36: 1033 – 1046, 2013, available at, <http://care.diabetesjournals.org/content/36/4/1033.full.pdf+html> (last visited Jan. 20, 2015).

¹⁰ Florida Department of Health, *Florida Mortality Atlas: 2012 Major Causes of Death*, <http://www.floridacharts.com/charts/SpecReport.aspx?RepID=7226&tn=33> (last visited Feb. 4, 2015).

accounted for 2.9 percent of all deaths, and over a 3-year period (2011 - 2013), diabetes had an age adjusted death rate per 100,000 of 19.6 or 15,317 deaths.¹¹

Florida’s population base also includes large concentrations of groups that have been identified as at risk for diabetes. In 2013, only 35 percent of Floridians were at a healthy weight with 25 percent identified as overweight and the remaining 25 percent identified as obese.¹² If Floridians follow the current trend, by 2030, almost 60 percent of the population will be obese.¹³

Florida has a number of other demographic characteristics that match the high risk factors, such as:¹⁴

Risk Factor	Florida Population (2013)
Persons Over Age 65	18.7% of population
Black or African American	16.7% of population
Hispanic or Latino	23.6 % of population
Total FL Population:	19,552,860

Diabetes Advisory Council

The Diabetes Advisory Council (council) has been established to guide statewide policy on diabetes prevention, diagnosis, education, care, treatment, impact, and costs.¹⁵ It serves in an advisory capacity to the DOH, other agencies, and the public. The council consists of 26 members appointed by the Governor who have experience related to diabetes.¹⁶ Twenty-one of the members are representatives of a broad range of health and public health-related interests. Current law requires the Governor to appoint these 21 members based on specific requirements related to employer, education or professional relationships.¹⁷ The remaining five members are representatives of the general public, at least three of whom are affected by diabetes.¹⁸ The council meets annually with the State Surgeon General to make recommendations regarding the public health aspects of the prevention and control of diabetes.¹⁹

¹¹ Florida Department of Health, *Florida Charts: Diabetes Deaths - Three Year Trends* <http://www.floridacharts.com/charts/DataViewer/DeathViewer/DeathViewer.aspx?indNumber=0090> (last visited Feb. 4, 2015).

¹² Florida Department of Health, *Healthy Weight - Healthiest Weight Florida*, <http://www.floridahealth.gov/programs-and-services/prevention/healthy-weight/index.html> (last visited Feb. 4, 2015).

¹³ *Id.*

¹⁴ United States Census Bureau, *State and County Quick Facts: Florida*, <http://quickfacts.census.gov/qfd/states/12000.html> (last visited Feb. 4, 2015).

¹⁵ Ch. 1980-62, Laws of Fla. (reinstating the Diabetes Advisory Council into Chapter 381, F.S., pertaining to health.) The council had previously been located under ch. 241, F.S., relating to education and had been repealed by the 1979 Legislature. *See Florida Legislature - 1980 Summary of General Legislation*, p. 145, <http://www.law.fsu.edu/library/collection/FlSumGenLeg/FlSumGenLeg1980.pdf> (last visited Feb. 12, 2015).

¹⁶ Section 385.203(3), F.S.

¹⁷ Section 385.203(3)(b), F.S.

¹⁸ Section 385.203(3)(a), F.S.

¹⁹ Section 385.203(1)(c), F.S. The 2013 recommendations of the Council are on file with the Senate Health Policy Committee.

Florida Diabetes Prevention and Control

The Bureau of Chronic Disease Prevention and Health Promotion (bureau) within the DOH was established in 1998 to improve individual and community health by preventing and reducing the impact of chronic diseases and disabling conditions, including diabetes. Diabetes-related activities of the Bureau include:

- Providing support to the Diabetes Advisory Council and the Florida Alliance for Diabetes Prevention and Care;
- Compiling, analyzing, translating, and distributing diabetes data;
- Increasing access to diabetes self-management education;
- Increasing access to diabetes medical care by advocating for the use of community health workers;
- Preventing diabetes in populations disproportionately affected by diabetes;
- Increasing diagnosis and treatment for pre-diabetes; and
- Managing the Insulin Distribution Program.²⁰

The Office of Minority Health administers the Closing the Gap grant program, which seeks to improve health outcomes and eliminate racial and ethnic health disparities in Florida by providing grants to increase community-based health promotion and disease prevention activities, including diabetes prevention.²¹

Medicaid

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Over 3.7 million Floridians are currently enrolled in Medicaid and the program's estimated expenditures for Fiscal Year 2014-2015, are approximately \$23.3 billion.²² The statutory authority for the Medicaid program is contained in ch. 409, F.S.

Part IV of ch. 409, F.S., was created in 2011 by ch. 2011-134, L.O.F., and governs the Statewide Medicaid Managed Care program (SMMC). The AHCA competitively procured contracts with managed care plans in 11 regions of the state to provide comprehensive Medicaid coverage for most of the state's enrollees in the Medicaid program. Full implementation of the SMMC occurred in August 2014.

State Group Insurance Program

Section 110.123, F.S., creates the State Group Insurance Program. As implemented by the DMS, the program offers four types of health plans from which an eligible employee may choose: a standard statewide Preferred Provider Organization (PPO) Plan, a Health Investor PPO Plan, a standard Health Maintenance Organization (HMO) Plan, or a Health Investor HMO Plan. In

²⁰ Florida Department of Health, *Resource Manual for the Florida Department of Health* (Fiscal Year 2012-2013) (on file with the Senate Committee on Health Policy).

²¹ Sections 381.7353 – 381.7356, F.S.

²² Office of Economic and Demographic Research, *Social Services Estimating Conference, Medicaid Caseloads and Expenditures, June 27, July 22, and August 4, 2014, Executive Summary*, <http://edr.state.fl.us/Content/conferences/medicaid/medsummary.pdf> (last visited Jan., 2015).

Fiscal Year 2013-2014, the State Group Insurance Program covered 171,908 members at a cost of \$1.96 billion.²³

III. Effect of Proposed Changes:

The bill directs the Diabetes Advisory Council, in conjunction with the DOH, the AHCA, and the DMS, to submit a report by January 10 in each odd-numbered year to the Governor, the President of the Senate, and the Speaker of the House of Representatives, regarding the impact of diabetes on state funded or operated programs. Specifically, the report must include:

- Information on the public health consequences and financial impact of diabetes and its complications on the state, including the number of persons covered by Medicaid and the State Group Insurance Program, and the number of persons impacted by state diabetes programs and activities;
- A description and assessment of the effectiveness of diabetes programs and activities implemented by the agencies, the amount and sources of their funding, and the cost savings they achieve;
- A description of the coordination among the agencies of programs, activities, and communications related to diabetes prevention and treatment; and
- A detailed action plan for reducing and controlling the number of new cases of diabetes, including action steps to reduce its impact, expected outcomes of the plan, and benchmarks.

The Governor's authority to appoint members to the Diabetes Advisory Council is modified to require the Governor to appoint one member each from at least three of the medical schools in the state, and not more than 18 members and not more than one each from specific employer, education and professional relationships. In addition, the qualifying relationships for members of the council are expanded to include the American Association of Diabetes Educators.

The bill has an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ Florida Department of Management Services, Division of State Group Insurance, *State Employees' Group Health Self-Insurance Trust Fund, Report on the Financial Outlook* (January 14, 2015), <http://edr.state.fl.us/Content/conferences/healthinsurance/HealthInsuranceOutlook.pdf> (last visited February, 27 2015).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/CS/SB 296 will have no fiscal impact on the DOH in its capacity as staff to support to the Diabetes Advisory Council. While the creation of the biennial report may require significant DOH staff time to generate, the DOH reports that such time may be absorbed within existing resources.²⁴

The DMS reports an indeterminate fiscal impact.²⁵

VI. Technical Deficiencies:**VII. None.Related Issues:**

None.

VIII. Statutes Affected:

This bill substantially amends section 385.203 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 February 17, 2015:

The committee substitute identifies who *may* serve on the Diabetes Advisory Council rather than *must*, and adds a representative of the American Association of Diabetes Educators to the list of possible members.

CS by Governmental Oversight and Accountability on March 4, 2015:

The Governor's authority to appoint members to the Diabetes Advisory Council is modified to require the Governor to appoint one member each from at least three of the medical schools in the state and to appoint not more than 18 members and not more than one each from specific employer, education and professional relationships. In addition,

²⁴ Florida Department of Health, *Senate Bill 296 Analysis* (Jan. 12, 2015) (on file with the Senate Committee on Health Policy).

²⁵ Florida Department of Management Services, *Senate Bill 296 Analysis* (Jan. 9, 2015) (on file with the Senate Committee on Health Policy).

the qualifying relationships for members of the council are expanded to include the American Association of Diabetes Educators.

B. Amendments:

None.

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



882004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Delete lines 61 - 74

and insert:

(b) One member each from at least three of the medical
schools in the state.

(c) ~~(b)~~ Not more than 18 members and not more than one each
~~Twenty-one members, who must include one representative from~~
among each of the following areas: nursing with diabetes-
educator certification; dietary with diabetes educator



882004

11 certification; podiatry; ophthalmology or optometry; psychology;
12 pharmacy; adult endocrinology; pediatric endocrinology; the
13 American Diabetes Association (ADA); the American Association of
14 Diabetes Educators; the Juvenile Diabetes Foundation ~~(JDF)~~; the
15 Florida Academy of Family Physicians; a community health center;
16 a county health department; an ADA-recognized ~~American Diabetes~~
17 ~~Association-recognized~~ community education program; ~~each medical~~
18 ~~school in the state~~; an osteopathic medical school; the
19 insurance industry; a Children's Medical Services diabetes
20 regional program; and an employer.

21

22

23 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

24 And the directory clause is amended as follows:

25 Delete lines 21 - 22

26 and insert:

27 present paragraph (b) of subsection (3) of that section is
28 amended and redesignated as paragraph (c), and a new paragraph
29 (b) is added to that subsection, to read:

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 lines 9 - 12

34 and insert:

35 the report; adjusting the representation of certain
36 areas of specialization or institutions in the
37 membership of the council; adding an organization

By the Committee on Health Policy; and Senator Garcia

588-01662-15

2015296c1

A bill to be entitled

An act relating to the Diabetes Advisory Council; amending s. 385.203, F.S.; requiring the council, in conjunction with the Department of Health, the Agency for Health Care Administration, and the Department of Management Services, to develop plans to manage, treat, and prevent diabetes; requiring a report to the Governor and Legislature; specifying the contents of the report; providing that the council membership may be, rather than must be, representative of certain areas of specialization or certain institutions, organizations, and industries; adding an organization from which a representative may be selected to serve as a council member; providing an effective date.

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

Section 1. Present paragraph (c) of subsection (1) of section 385.203, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection, and paragraph (b) of subsection (3) of that section is amended, to read:

385.203 Diabetes Advisory Council; creation; function; membership.—

(1) To guide a statewide comprehensive approach to diabetes prevention, diagnosis, education, care, treatment, impact, and costs thereof, there is created a Diabetes Advisory Council that serves as the advisory unit to the Department of Health, other governmental agencies, professional and other organizations, and

Page 1 of 3

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

588-01662-15

2015296c1

the general public. The council shall:

(c) In conjunction with the department, the Agency for Health Care Administration, and the Department of Management Services, by January 10 of each odd-numbered year, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report containing the following information:

1. The public health consequences and financial impact on the state of all types of diabetes and resulting health complications, including the number of persons with diabetes covered by Medicaid, the number of persons with diabetes who are insured by the Division of State Group Insurance, and the number of persons with diabetes who are impacted by state agency diabetes programs and activities.

2. A description and an assessment of the effectiveness of the diabetes programs and activities implemented by each state agency, the amount and source of funding for such programs and activities, and the cost savings realized as a result of the implementation of such programs and activities.

3. A description of the coordination among state agencies of their respective programs, activities, and communications designed to manage, treat, and prevent all types of diabetes.

4. The development of and revisions to a detailed action plan for reducing and controlling the number of new cases of diabetes and identification of proposed action steps to reduce the impact of all types of diabetes, identification of expected outcomes if the plan is implemented, and the establishment of benchmarks for preventing and controlling diabetes.

(3) The council shall be composed of 26 citizens of the

Page 2 of 3

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

588-01662-15

2015296c1

59 state who have knowledge of, or work in, the area of diabetes
60 mellitus as follows:

61 (b) Twenty-one members, who ~~may must~~ include one
62 representative from any each of the following areas: nursing
63 with diabetes-educator certification; dietary with diabetes
64 educator certification; podiatry; ophthalmology or optometry;
65 psychology; pharmacy; adult endocrinology; pediatric
66 endocrinology; the American Diabetes Association (ADA); the
67 American Association of Diabetes Educators; the Juvenile
68 Diabetes Foundation (~~JDF~~); the Florida Academy of Family
69 Physicians; a community health center; a county health
70 department; an ADA-recognized ~~American Diabetes Association~~
71 ~~recognized~~ community education program; each medical school in
72 the state; an osteopathic medical school; the insurance
73 industry; a Children's Medical Services diabetes regional
74 program; and an employer.

75 Section 2. This act shall take effect July 1, 2015.

The Florida Senate
State Senator René García
38th District

Please reply to:

□ **District Office:**

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

February 17, 2015

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

Dear Chairman Ring:

This letter should serve as a request to have my bill *SB 296 Diabetes Advisory Council* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,



State Senator René García
District 38
RG:JT

CC: Joe McVaney, Staff Director

Chair: Appropriations Subcommittee on Health & Human Services
Committees: Appropriations, Children, Families, and Elderly Affairs, Health Policy, Agriculture, Education Pre-K – 12, Joint Legislative Budget Committee and Communications, Energy and Public Utilities.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/2015

Meeting Date

296

Bill Number (if applicable)

Topic Diabetes Advisory Council

Amendment Barcode (if applicable)

Name Melanie Bostick

Job Title VP, Liberty Partners of Tallahassee

Address P.O. Box 390

Phone (850) 688-3183

Tallahassee, FL 32327

Email melanie@libertypartnersfl.com

City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing American Association of Diabetes Educators (AADE)

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 (10/14/14)

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 216

INTRODUCER: Community Affairs Committee and Senator Bradley

SUBJECT: Publicly Funded Retirement Programs

DATE: March 3, 2015 **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>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 216 requires local government pension plans, in conducting the actuarial valuations of their pension plans, to use mortality table methodologies consistent with the methodologies used in the most recently published actuarial valuation report of the Florida Retirement System. In most instances, the mortality tables used will recognize longer lifetimes for annuitants and result in higher annual contributions being required to be paid into the pension funds in the near term.

Similarly, the bill revises the mortality tables to be used in the actuarial disclosures in financial statements submitted to the Department of Management Services. This modification does not impact the actuarial funding of the various pension plans but does provide some information that may be useful when comparing local pension plans and the Florida Retirement System.

To the extent the use of the updated mortality tables result in increases to the normal costs or unfunded liabilities of local government pension plans, this bill will result in higher contributions being paid into the local government pension plans in the near term.

In addition, the bill allows a municipality providing fire protection services to a Municipal Services 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.

This bill will have an indeterminate but negative impact on the General Revenue Fund because insurance premium taxes imposed pursuant to ch. 175, F.S., are credited against insurance premium taxes paid to the state.

II. Present Situation:

Florida Local Retirement Systems and Plans

The Division of Retirement of the Department of Management Services (DMS) reports¹ that as of September 30, 2014, there are 491 defined benefit plans sponsored by 249 local governments in Florida. The vast majority of the plans, 486, are local government defined benefit systems that provide benefits to 87,097 retirees, with 97,677 active employees, and total plan assets of \$30.5 billion.² The average annual pension in these local defined benefit plans is \$25,252, and the average annual required contribution rate as a percentage of payroll is 31.96 percent. The total unfunded actuarial accrued liability for all the defined benefit plans as of September 30, 2014, was \$10.5 billion.

Actuarial Reporting for Local Government Pension Plans

Public pension plans, including the municipal police and firefighter pension plans, are required to have regularly scheduled actuarial reports prepared and certified by an enrolled actuary, at least every three years. The actuarial reports must include at least the following information:

- Adequacy of employer and employee contributions;
- A plan to amortize any unfunded liability, and a description of actions taken to reduce the unfunded liability;
- A description and explanation of actuarial assumptions;
- A schedule illustrating the amortization of unfunded liabilities, if any;
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports;
- A disclosure of the present value of the plan's accrued vested, nonvested, and total benefits, as adopted by the Financial Accounting Standards Board, using the Florida Retirement System's assumed rate of return; and
- A statement by the enrolled actuary that the report is complete and accurate and that the techniques and assumptions used are reasonable and meet the requirements of state law.

The actuarial cost methods used to establish the annual normal costs of the plans must be those methods approved in the Employee Retirement Income Security Act of 1974.³

The actuarial reports must be submitted to the DMS. DMS is required to review each report to determine whether the actuarial valuation is complete, accurate, and based on reasonable assumptions.⁴

¹ Division of Management Services, *Florida Local Government Retirement Systems*, 2014 Annual Report, available online at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last visited on February 12, 2015).

² The other 6 plans are school board early retirement programs that provide benefits to 1,686 retirees, with active plan membership of 4,506, and total plan assets of \$64.8 million.

³ Section 112.63(1)(f), F.S.

⁴ Section 112.63(4)(a), F.S.

The board of trustees for a local government pension plan, with guidance from its professional advisors, is permitted to choose the mortality table to be used in the actuarial valuation report in the determination of actuarially required contributions for the plan. The table below shows the various mortality tables used by local government retirement plans and the frequency of use among the plans.

Mortality Table	Number of local government plans using this table
1983 Group Annuity Mortality (GAM 83)	20
1994 Group Annuity Mortality (GAM 94)	10
1994 Group Annuity Mortality with Scale AA (GAR 94)	7
Uninsured Population 1994 (UP 94)	4
Retirement Plans 2000 (RP 2000)	437
Internal Revenue Service Prescribed	8
Other	3
Total	489

Section 112.664, F.S., requires additional reporting requirements for all publicly-funded defined benefit retirement plans, other than FRS. The following information must be provided to DMS annually, within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends after June 30, 2014, and thereafter in each year in which an actuarial valuation of the plan is done:

- Annual financial statements in compliance with the requirements of the Government Accounting Standards Board’s Statement No. 67, Financial Reporting for Pension Plans and Statement No. 68 Accounting and Financial Reporting for Pensions using RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA.
- Annual financial statements similar to GASB, but which use an assumed rate of return and assumed discount rate 200 basis points less than a plan’s assumed rate of return.
- The number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits.
- The recommended contributions to the plan based on financial statements stated as an annual dollar value and a percentage of valuation payroll.

Plans that fail to submit timely the required information within 60 days after receipt of the plan’s actuarial report will be deemed to be in noncompliance. DMS may notify the Department of Revenue (DOR) and Department of Financial Services (DFS) of the noncompliance, and DOR and DFS must withhold funds payable to the plan sponsor, which are not pledged towards bond debt service. The bill gives plan sponsors administrative rights if these actions are taken.

Mortality Tables

Section 430 of the Internal Revenue Code (IRC) outlines minimum funding standards for single-employer defined benefit pension plans. Section 430(h)(3) of the IRC provides that the Secretary of the Treasury must by regulation prescribe mortality tables to be used in determining any

present value or making any computation under section 430 of the Code, implemented as the RP-2000 Mortality Tables.⁵

The FRS uses different mortality tables for its general employee and special risk classes for non-disability retirement. The 2014 FRS Valuation used the RP 2000 mortality table with Scale BB with varying mixes of white collar and blue collar; non-disability retirement retirements have a separate mortality basis for Special Risk Class members compared to all other membership classes. Disability retirements have a common mortality basis for all classes. The disability requirement for FRS members is total and permanent from all forms of employment as certified by two licensed physicians.

Required Minimum Funding Standards for Public Pensions

Under current law, total contributions to a public sector retirement plan must be sufficient to fund the normal cost of the retirement plan and to amortize the unfunded actuarial liability over a period not to exceed 40 years.⁶ If an unfunded liability arises from a plan amendment, changes in actuarial assumptions, changes in funding methods or actuarial gains or losses, the liability must be amortized within 30 plan years.⁷ The laws establishing the municipal police⁸ and firefighter⁹ pension plans have similar provisions.

Actuarial Soundness of Retirement Plans

The Florida Constitution requires benefit improvements under public pension plans in the State of Florida to be concurrently funded on a sound actuarial basis.¹⁰ The “Florida Protection of Public Employee Retirement Benefits Act,” (Act)¹¹ establishes the minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The Act states the legislative intent to “prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”¹²

Enrolled actuaries prepare and certify actuarial reports for each retirement plan subject to the Act, at regular intervals of at least three years.¹³ When determining the actuarially required contributions for a pension plan, the pension plan board of trustees, with guidance from its professional advisors, chooses the mortality table to be applied in the valuation report.¹⁴ In addition to the valuation report, s. 112.664, F.S., requires certain actuarial disclosures used to determine required funding. These additional actuarial disclosures mandate the use of the “RP-

⁵ RP-2000 Mortality Tables are available at http://www.pensionsoft.com/references_mort_other.html (last visited on March 20, 2013).

⁶ Section 112.64(2), F.S.

⁷ Section 112.64(4), F.S.

⁸ Section 185.07, F.S.

⁹ Section 175.091, F.S.

¹⁰ FLA. CONST. art. X, s. 14 (1976).

¹¹ Part VII of Ch. 112, F.S., implements Article X, Section 14, of the Florida Constitution.

¹² Section 112.61, F.S.

¹³ Section 112.63, F.S.

¹⁴ Dep’t of Management Services, *2015 Legislative Bill Analysis: SB 242*, at 2 (Jan. 20, 2015).

2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA.”¹⁵

The “Marvin B. Clayton Firefighters and Police Officers’ Pension Trust Fund” Acts

The Marvin B. Clayton Firefighters’ and Police Officers’ Pension Trust Fund Acts¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹ To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175 and 185, F.S.

¹⁵ Section 112.664(1)(a), F.S.

¹⁶ See ch. 175 and 185, F.S.

¹⁷ See ss. 175.021(1) and 185.01(1), F.S.

¹⁸ The division is responsible for administrative oversight of funds, including monitoring for actuarial soundness.

¹⁹ Sections 175.091(1)(a) and 185.07(1), 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.²⁰ The insurers pay the tax to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.²¹ 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.²²

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.²³ The municipality providing fire services must notify the division of the interlocal agreement. The division may then distribute any premium taxes reported for the other incorporated municipality to the municipality providing the fire services.²⁴

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.²⁵ 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.²⁶

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.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 112.63, F.S., to require the actuarial valuations of local government pension plans to use mortality table methodology consistent with the most recently published actuarial valuation report of the FRS. The RP-2000 mortality table with Scale BB was used for the 2014 Actuarial Valuation of the Florida Retirement System.

While the FRS uses RP-2000 mortality table with Scale BB, additional adjustments are made based on gender, membership class, and varying mixes of white collar and blue collar work. For example, different mortality bases are used for non-disability retirements in the Special Risk

²⁰ Section 175.101(1), F.S.

²¹ See s. 175.121, F.S.

²² Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014), at 110.

²³ Although, the criteria in s. 175.041(3)(c), F.S., must be met.

²⁴ See Chapter 2005-205, Laws of Fla. (HB 1159).

²⁵ Section 125.01(1)(q), F.S.

²⁶ Section 200.071(3), F.S.

²⁷ Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014).

Class compared to the mortality bases used for non-disability retirements in other membership classes. At first glance, one would assume that the mortality assumptions used for FRS Special Risk Class would be an acceptable assumption to use for the police and firefighter pension plans. However, the FRS Special Risk Class has a broader membership than those local pension plans.²⁸ This broader membership base may result in a different mix of white collar and blue collar jobs.

Section 2 amends s. 112.664, F.S., to revise the information included in a defined benefit retirement system or plan's annual report to DMS to include financial statements that use mortality table methodology consistent with the most recently published actuarial valuation report of the FRS. In general, this change will require local plans to use Scale BB rather than Scale AA with the RP-2000 mortality table.

Sections 3, 4, 5, 6, 7 and 8 amend ss. 175.041, 175.101, 175.111, 175.122, 175.351, and 175.411, F.S., respectively, to allow 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.

Section 8 provides the bill will take effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Since this bill requires all public sector pension plans to use the same mortality methodologies, it appears the bill applies to all persons similarly situated (state, municipalities and special districts sponsoring pension plans). The bill does not contain a finding that the bill fulfills an important state interest. Thus, the bill may not be binding upon cities and counties that sponsor retirement plans in terms of the use of the mortality methodologies.

B. Public Records/Open Meetings Issues:

None.

²⁸ Section 121.0515, F.S., defines membership in the FRS Special Risk Class also to include correctional officers, certain emergency medical technicians and paramedics, certain nurses and other health professionals, certain forensic laboratory technicians, and certain employees of a medical examiner's office.

C. Trust Funds Restrictions:

None.

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.²⁹ The provisions of this bill have not been reviewed by the Revenue Estimating Conference.

Municipalities providing fire services to MSTUs will receive an indeterminate amount of additional revenue to fund firefighter pension plans.

The pension plan board of trustees, and its professional advisors, will be required to use the FRS mortality tables in their actuarial valuations, which may result in different contribution requirements from prior plans' valuation reports.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether the information required under s. 112.644 (1)(a), F.S., to be reported by each public sector plan will differ from the information contained in the plan's actuarial valuation under the provisions of this legislation. Under current law, the actuarial valuation could use any mortality table the plan sponsor deemed appropriate and the information reported pursuant to s. 112.644, F.S., requires the use of RP-2000 with Scale AA. Under the bill, the mortality tables used in the valuation and the information reported pursuant to s. 112.644, F.S., will be the same – those that are consistent with the mortality table methodologies used by the FRS.

²⁹ Section 175.141, F.S., allows for the Firefighters' Pension credit, by which a payor of the insurance premium tax is authorized a credit on their state excise or license tax, but must pay the balance of state excise or license tax to the Dep't of Revenue. For the order in which credits and deductions against the insurance premium tax are to be taken, see s. 624.509(7), F.S. See also, The Florida Senate Committee on Finance and Tax, *An Overview of Florida's Insurance Premium Tax*, Report No. 2007-122, at 10 (Oct. 2006).

³⁰ Dep't of Management Services, *2015 Legislative Bill Analysis: SB 242*, at 5 (Jan. 20, 2015).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 175.041, 175.101, 175.111, 175.122, 175.351, 175.411, 112.63, and 112.664.

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 February 3, 2015:

Requires local government pension plan actuarial valuations, and the additional actuarial disclosures required under s. 112.664, F.S., to use a mortality table methodology for funding purposes that is consistent with the most recent actuarial report issued by the FRS.

- B. **Amendments:**

None.

By the Committee on Community Affairs; and Senator Bradley

578-01469-15

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1 A bill to be entitled
 2 An act relating to publicly funded retirement
 3 programs; amending s. 112.63, F.S.; requiring that
 4 actuarial reports for certain retirement systems or
 5 plans include mortality tables; amending s. 112.664,
 6 F.S.; revising information to be included in the
 7 annual report of a defined benefit system or plan to
 8 the Department of Management Services; amending s.
 9 175.041, F.S.; revising applicability of the Marvin B.
 10 Clayton Firefighters Pension Trust Fund Act; providing
 11 that any municipality that provides fire protection
 12 services to a municipal service taxing unit under an
 13 interlocal agreement is eligible to receive property
 14 insurance premium taxes; amending s. 175.101, F.S.;
 15 authorizing a municipal service taxing unit that
 16 enters into an interlocal agreement for fire
 17 protection services with another municipality to
 18 impose an excise tax on property insurance premiums;
 19 amending s. 175.111, F.S.; requiring municipal service
 20 taxing units to provide the Division of Retirement of
 21 the Department of Management Services with a certified
 22 copy of the ordinance assessing and imposing certain
 23 taxes; amending ss. 175.122 and 175.351, F.S.;
 24 revising provisions relating to the limitation of
 25 disbursement to conform to changes made by the act;
 26 amending s. 175.411, F.S.; authorizing a municipal
 27 service taxing unit, under certain conditions, to
 28 revoke its participation and cease to receive property
 29 insurance premium taxes; providing an effective date.

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Subsection (1) of section 112.63, Florida
 34 Statutes, is amended to read:
 35 112.63 Actuarial reports and statements of actuarial
 36 impact; review.—
 37 (1) Each retirement system or plan subject to the
 38 provisions of this act shall have regularly scheduled actuarial
 39 reports prepared and certified by an enrolled actuary. The
 40 actuarial report shall consist of, but need ~~shall~~ not be limited
 41 to, ~~the following~~:
 42 (a) Adequacy of employer and employee contribution rates in
 43 meeting levels of employee benefits provided in the system and
 44 changes, if any, needed in such rates to achieve or preserve a
 45 level of funding deemed adequate to enable payment through the
 46 indefinite future of the benefit amounts prescribed by the
 47 system, which shall include a valuation of present assets, based
 48 on statement value, and prospective assets and liabilities of
 49 the system and the extent of unfunded accrued liabilities, if
 50 any.
 51 (b) A plan to amortize any unfunded liability pursuant to
 52 s. 112.64 and a description of actions taken to reduce the
 53 unfunded liability.
 54 (c) A description and explanation of actuarial assumptions.
 55 (d) A schedule illustrating the amortization of unfunded
 56 liabilities, if any.
 57 (e) A comparative review illustrating the actual salary
 58 increases granted and the rate of investment return realized

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59 over the 3-year period preceding the actuarial report with the
60 assumptions used in both the preceding and current actuarial
61 reports.

62 (f) Mortality tables that use mortality methodology
63 consistent with the most recently published actuarial valuation
64 report of the Florida Retirement System.

65 ~~(g)(f)~~ A statement by the enrolled actuary that the report
66 is complete and accurate and that in his or her opinion the
67 techniques and assumptions used are reasonable and meet the
68 requirements and intent of this act.

69
70 The actuarial cost methods utilized for establishing the amount
71 of the annual actuarial normal cost to support the promised
72 benefits shall only be those methods approved in the Employee
73 Retirement Income Security Act of 1974 and as permitted under
74 regulations prescribed by the Secretary of the Treasury.

75 Section 2. Subsection (1) of section 112.664, Florida
76 Statutes, is amended to read:

77 112.664 Reporting standards for defined benefit retirement
78 plans or systems.—

79 (1) In addition to the other reporting requirements of this
80 part, within 60 days after receipt of the certified actuarial
81 report submitted after the close of the plan year that ends on
82 or after June 30, 2014, and thereafter in each year required
83 under s. 112.63(2), each defined benefit retirement system or
84 plan, excluding the Florida Retirement System, shall prepare and
85 electronically report the following information to the
86 Department of Management Services in a format prescribed by the
87 department:

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88 (a) Annual financial statements that comply are in
89 ~~compliance~~ with the requirements of the Governmental Accounting
90 ~~Standards Government Accounting and Standard Board's Statement~~
91 No. 67, titled "Financial Reporting for Pension Plans," and
92 Statement No. 68, titled "Accounting and Financial Reporting for
93 Pensions," using mortality tables that use mortality methodology
94 consistent with the most recently published actuarial valuation
95 report of the Florida Retirement System ~~RP-2000 Combined Healthy~~
96 ~~Participant Mortality Tables, by gender, with generational~~
97 ~~projection by Scale AA.~~

98 (b) Annual financial statements similar to those required
99 under paragraph (a), but which use an assumed rate of return on
100 investments and an assumed discount rate that are equal to 200
101 basis points less than the plan's assumed rate of return.

102 (c) Information indicating the number of months or years
103 for which the current market value of assets are adequate to
104 sustain the payment of expected retirement benefits as
105 determined in the plan's latest valuation and under the
106 financial statements prepared pursuant to paragraphs (a) and
107 (b).

108 (d) Information indicating the recommended contributions to
109 the plan based on the plan's latest valuation, and the
110 contributions necessary to fund the plan based on financial
111 statements prepared pursuant to paragraphs (a) and (b), stated
112 as an annual dollar value and a percentage of valuation payroll.

113 Section 3. Subsection (3) of section 175.041, Florida
114 Statutes, is amended to read:

115 175.041 Firefighters' Pension Trust Fund created;
116 applicability of provisions.—For any municipality, special fire

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117 control district, chapter plan, local law municipality, local
118 law special fire control district, or local law plan under this
119 chapter:

120 (3) ~~The provisions of This chapter applies shall apply~~ only
121 to municipalities organized and established pursuant to the laws
122 of the state and to special fire control districts. This chapter
123 ~~does, and said provisions shall~~ not apply to the unincorporated
124 areas of any county or counties except with respect to municipal
125 service taxing units established in unincorporated areas for the
126 purpose of receiving fire protection service from a municipality
127 and special fire control districts that include unincorporated
128 areas. This chapter also does not, nor shall the provisions
129 hereof apply to any governmental entity whose firefighters are
130 eligible to participate in the Florida Retirement System.

131 (a) Special fire control districts that include, or consist
132 exclusively of, unincorporated areas of one or more counties may
133 levy and impose the tax and participate in the retirement
134 programs enabled by this chapter.

135 (b) With respect to the distribution of premium taxes, a
136 single consolidated government consisting of a former county and
137 one or more municipalities, consolidated pursuant to s. 3 or s.
138 6(e), Art. VIII of the State Constitution, is also eligible to
139 participate under this chapter. The consolidated government
140 shall notify the division when it has entered into an interlocal
141 agreement to provide fire services to a municipality within its
142 boundaries. The municipality may enact an ordinance levying the
143 tax as provided in s. 175.101. Upon being provided copies of the
144 interlocal agreement and the municipal ordinance levying the
145 tax, the division may distribute any premium taxes reported for

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146 the municipality to the consolidated government as long as the
147 interlocal agreement is in effect.

148 (c) Any municipality that has entered into an interlocal
149 agreement to provide fire protection services to any other
150 incorporated municipality or a municipal service taxing unit in
151 an unincorporated area, in its entirety, for a period of 12
152 months or more may be eligible to receive the premium taxes
153 reported for such other municipality or municipal service taxing
154 unit. In order to be eligible for such premium taxes, the
155 municipality providing the fire services must notify the
156 division that it has entered into an interlocal agreement with
157 another municipality or a county on behalf of a municipal
158 service taxing unit. The municipality receiving the fire
159 services, or a county on behalf of the municipal service taxing
160 unit receiving the fire services, may enact an ordinance levying
161 the tax as provided in s. 175.101. Upon being provided copies of
162 the interlocal agreement and the ~~municipal~~ ordinance levying the
163 tax, the division may distribute any premium taxes reported for
164 the municipality or municipal service taxing unit receiving the
165 fire services to the participating municipality providing the
166 fire services as long as the interlocal agreement is in effect.

167 Section 4. Subsections (1) and (3) of section 175.101,
168 Florida Statutes, are amended to read:

169 175.101 State excise tax on property insurance premiums
170 authorized; procedure.—For any municipality, special fire
171 control district, chapter plan, local law municipality, local
172 law special fire control district, or local law plan under this
173 chapter:

174 (1) Each municipality, municipal service taxing unit, or

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175 special fire control district in this state described and
 176 classified in s. 175.041, having a lawfully established
 177 firefighters' pension trust fund or municipal fund or special
 178 fire control district fund, by whatever name known, providing
 179 pension benefits to firefighters as provided under this chapter,
 180 or receiving fire protection services from a municipality
 181 participating under this chapter, may assess and impose on every
 182 insurance company, corporation, or other insurer now engaged in
 183 or carrying on, or who shall hereinafter engage in or carry on,
 184 the business of property insurance as shown by the records of
 185 the Office of Insurance Regulation of the Financial Services
 186 Commission, an excise tax in addition to any lawful license or
 187 excise tax now levied by each of the municipalities, municipal
 188 service taxing units, or special fire control districts,
 189 respectively, amounting to 1.85 percent of the gross amount of
 190 receipts of premiums from policyholders on all premiums
 191 collected on property insurance policies covering property
 192 within the corporate limits of such municipalities or within the
 193 legally defined boundaries of municipal service taxing units or
 194 special fire control districts, respectively. Whenever the
 195 boundaries of a special fire control district that has lawfully
 196 established a firefighters' pension trust fund encompass a
 197 portion of the corporate territory of a municipality that has
 198 also lawfully established a firefighters' pension trust fund, or
 199 a municipal service taxing unit receiving fire protection
 200 services from a municipality participating under this chapter,
 201 that portion of the tax receipts attributable to insurance
 202 policies covering property situated both within the municipality
 203 or municipal service taxing unit, and the special fire control

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204 district shall be given to the fire service provider. For the
 205 purpose of this section, the boundaries of a special fire
 206 control district include an area that has been annexed until the
 207 completion of the 4-year period provided for in s. 171.093(4),
 208 or other agreed-upon extension, or if a special fire control
 209 district is providing services under an interlocal agreement
 210 executed in accordance with s. 171.093(3). The agent shall
 211 identify the fire service provider on the property owner's
 212 application for insurance. Remaining revenues collected pursuant
 213 to this chapter shall be distributed to the municipality or
 214 special fire control district according to the location of the
 215 insured property.

216 (3) This excise tax shall be payable annually on March 1 of
 217 each year after the passage of an ordinance, in the case of a
 218 municipality or municipal service taxing unit, or resolution, in
 219 the case of a special fire control district, assessing and
 220 imposing the tax authorized by this section. Installments of
 221 taxes shall be paid according to the provision of s.
 222 624.5092(2) (a), (b), and (c).
 223

224 This section also applies to any municipality consisting of a
 225 single consolidated government which is made up of a former
 226 county and one or more municipalities, consolidated pursuant to
 227 the authority in s. 3 or s. 6(e), Art. VIII of the State
 228 Constitution, and to property insurance policies covering
 229 property within the boundaries of the consolidated government,
 230 regardless of whether the properties are located within one or
 231 more separately incorporated areas within the consolidated
 232 government, provided the properties are being provided fire

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 233 protection services by the consolidated government. This section
 234 also applies to any municipality, as provided in s.
 235 175.041(3)(c), which has entered into an interlocal agreement to
 236 receive fire protection services from another municipality
 237 participating under this chapter. The excise tax may be levied
 238 on all premiums collected on property insurance policies
 239 covering property located within the corporate limits of the
 240 municipality receiving the fire protection services, but will be
 241 available for distribution to the municipality providing the
 242 fire protection services.

243 Section 5. Section 175.111, Florida Statutes, is amended to
 244 read:

245 175.111 Certified copy of ordinance or resolution filed;
 246 insurance companies' annual report of premiums; duplicate files;
 247 book of accounts.—For any municipality, municipal service taxing
 248 unit, special fire control district, chapter plan, local law
 249 municipality, local law special fire control district, or local
 250 law plan under this chapter, whenever any municipality, or any
 251 county on behalf of a municipal service taxing unit, passes an
 252 ordinance or whenever any special fire control district passes a
 253 resolution establishing a chapter plan or local law plan
 254 assessing and imposing the taxes authorized in s. 175.101, a
 255 certified copy of such ordinance or resolution shall be
 256 deposited with the division. Thereafter every insurance company,
 257 association, corporation, or other insurer carrying on the
 258 business of property insurance on real or personal property, on
 259 or before the succeeding March 1 after date of the passage of
 260 the ordinance or resolution, shall report fully in writing and
 261 under oath to the division and the Department of Revenue a just

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 262 and true account of all premiums by such insurer received for
 263 property insurance policies covering or insuring any real or
 264 personal property located within the corporate limits of each
 265 such municipality, municipal service taxing unit, or special
 266 fire control district during the period of time elapsing between
 267 the date of the passage of the ordinance or resolution and the
 268 end of the calendar year. The report shall include the code
 269 designation as prescribed by the division for each piece of
 270 insured property, real or personal, located within the corporate
 271 limits of each municipality and within the legally defined
 272 boundaries of each special fire control district and municipal
 273 service taxing unit. The aforesaid insurer shall annually
 274 thereafter, on March 1, file with the Department of Revenue a
 275 similar report covering the preceding year's premium receipts,
 276 and every such insurer at the same time of making such reports
 277 shall pay to the Department of Revenue the amount of the tax
 278 hereinbefore mentioned. Every insurer engaged in carrying on
 279 such insurance business in the state shall keep accurate books
 280 of accounts of all such business done by it within the corporate
 281 limits of each such municipality and within the legally defined
 282 boundaries of each such special fire control district and
 283 municipal service taxing unit, and in such manner as to be able
 284 to comply with the provisions of this chapter. Based on the
 285 insurers' reports of premium receipts, the division shall
 286 prepare a consolidated premium report and shall furnish to any
 287 municipality, municipal service taxing unit, or special fire
 288 control district requesting the same a copy of the relevant
 289 section of that report.

290 Section 6. Section 175.122, Florida Statutes, is amended to

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291 read:

292 175.122 Limitation of disbursement.—For any municipality,
 293 municipal service taxing unit, special fire control district,
 294 chapter plan, local law municipality, local law special fire
 295 control district, or local law plan under this chapter, any
 296 municipality, municipal service taxing unit, or special fire
 297 control district participating in the firefighters' pension
 298 trust fund pursuant to the provisions of this chapter, whether
 299 under a chapter plan or local law plan, shall be limited to
 300 receiving any moneys from such fund in excess of that produced
 301 by one-half of the excise tax, as provided for in s. 175.101;
 302 however, any such municipality, municipal service taxing unit,
 303 or special fire control district receiving less than 6 percent
 304 of its fire department payroll from such fund shall be entitled
 305 to receive from such fund the amount determined under s.
 306 175.121, in excess of one-half of the excise tax, not to exceed
 307 6 percent of its fire department payroll. Payroll amounts of
 308 members included in the Florida Retirement System shall not be
 309 included.

310 Section 7. Section 175.351, Florida Statutes, is amended to
 311 read:

312 175.351 Municipalities, municipal service taxing units, and
 313 special fire control districts having their own pension plans
 314 for firefighters.—For any municipality, municipal service taxing
 315 unit, special fire control district, local law municipality,
 316 local law special fire control district, or local law plan under
 317 this chapter, in order for municipalities, municipal service
 318 taxing units, and special fire control districts with their own
 319 pension plans for firefighters, or for firefighters and police

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320 officers if included, to participate in the distribution of the
 321 tax fund established pursuant to s. 175.101, local law plans
 322 must meet the minimum benefits and minimum standards set forth
 323 in this chapter.

324 (1) If a municipality has a pension plan for firefighters,
 325 or a pension plan for firefighters and police officers if
 326 included, which in the opinion of the division meets the minimum
 327 benefits and minimum standards set forth in this chapter, the
 328 board of trustees of the pension plan, as approved by a majority
 329 of firefighters of the municipality, may:

330 (a) Place the income from the premium tax in s. 175.101 in
 331 such pension plan for the sole and exclusive use of its
 332 firefighters, or for firefighters and police officers if
 333 included, where it shall become an integral part of that pension
 334 plan and shall be used to pay extra benefits to the firefighters
 335 included in that pension plan; or

336 (b) Place the income from the premium tax in s. 175.101 in
 337 a separate supplemental plan to pay extra benefits to
 338 firefighters, or to firefighters and police officers if
 339 included, participating in such separate supplemental plan.

340 (2) The premium tax provided by this chapter shall in all
 341 cases be used in its entirety to provide extra benefits to
 342 firefighters, or to firefighters and police officers if
 343 included. However, local law plans in effect on October 1, 1998,
 344 must comply with the minimum benefit provisions of this chapter
 345 only to the extent that additional premium tax revenues become
 346 available to incrementally fund the cost of such compliance as
 347 provided in s. 175.162(2)(a). If a plan is in compliance with
 348 such minimum benefit provisions, as subsequent additional

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349 premium tax revenues become available, they must be used to
 350 provide extra benefits. Local law plans created by special act
 351 before May 27, 1939, are deemed to comply with this chapter. For
 352 the purpose of this chapter, the term:

353 (a) "Additional premium tax revenues" means revenues
 354 received by a municipality or special fire control district
 355 pursuant to s. 175.121 which exceed that amount received for
 356 calendar year 1997.

357 (b) "Extra benefits" means benefits in addition to or
 358 greater than those provided to general employees of the
 359 municipality and in addition to those in existence for
 360 firefighters on March 12, 1999.

361 (3) A retirement plan or amendment to a retirement plan may
 362 not be proposed for adoption unless the proposed plan or
 363 amendment contains an actuarial estimate of the costs involved.
 364 Such proposed plan or proposed plan change may not be adopted
 365 without the approval of the municipality, special fire control
 366 district, or, where permitted, the Legislature. Copies of the
 367 proposed plan or proposed plan change and the actuarial impact
 368 statement of the proposed plan or proposed plan change shall be
 369 furnished to the division before the last public hearing
 370 thereon. Such statement must also indicate whether the proposed
 371 plan or proposed plan change is in compliance with s. 14, Art. X
 372 of the State Constitution and those provisions of part VII of
 373 chapter 112 which are not expressly provided in this chapter.
 374 Notwithstanding any other provision, only those local law plans
 375 created by special act of legislation before May 27, 1939, are
 376 deemed to meet the minimum benefits and minimum standards only
 377 in this chapter.

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378 (4) Notwithstanding any other provision, with respect to
 379 any supplemental plan municipality:

380 (a) A local law plan and a supplemental plan may continue
 381 to use their definition of compensation or salary in existence
 382 on March 12, 1999.

383 (b) Section 175.061(1)(b) does not apply, and a local law
 384 plan and a supplemental plan shall continue to be administered
 385 by a board or boards of trustees numbered, constituted, and
 386 selected as the board or boards were numbered, constituted, and
 387 selected on December 1, 2000.

388 (c) The election set forth in paragraph (1)(b) is deemed to
 389 have been made.

390 (5) The retirement plan setting forth the benefits and the
 391 trust agreement, if any, covering the duties and
 392 responsibilities of the trustees and the regulations of the
 393 investment of funds must be in writing, and copies made
 394 available to the participants and to the general public.

395 Section 8. Section 175.411, Florida Statutes, is amended to
 396 read:

397 175.411 Optional participation.—A municipality, municipal
 398 service taxing unit, or special fire control district may revoke
 399 its participation under this chapter by rescinding the
 400 legislative act, ordinance, or resolution which assesses and
 401 imposes the taxes authorized in s. 175.101, and by furnishing a
 402 certified copy of such legislative act, ordinance, or resolution
 403 to the division. Thereafter, the municipality, municipal service
 404 taxing unit, or special fire control district shall be
 405 prohibited from participating under this chapter, and shall not
 406 be eligible for future premium tax moneys. Premium tax moneys

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407 previously received shall continue to be used for the sole and
408 exclusive benefit of firefighters, or firefighters and police
409 officers where included, and no amendment, legislative act,
410 ordinance, or resolution shall be adopted which shall have the
411 effect of reducing the then-vested accrued benefits of the
412 firefighters, retirees, or their beneficiaries. The
413 municipality, municipal service taxing unit, or special fire
414 control district shall continue to furnish an annual report to
415 the division as provided in s. 175.261. If the municipality,
416 municipal service taxing unit, or special fire control district
417 subsequently terminates the defined benefit plan, they shall do
418 so in compliance with the provisions of s. 175.361.

419 Section 9. This act shall take effect July 1, 2015.

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 508

INTRODUCER: Senator Bullard

SUBJECT: Small Business Participation in State Contracting

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 508 requires each agency of the executive branch to award 35 percent of its annual contracting dollars to small businesses either directly or as subcontractors. The bill requires a vendor awarded a contract pursuant to s. 287.057, F.S., relating to the purchase of commodities or contractual services, to use small businesses as subcontractors or subvendors. Executive branch agencies must take reasonable measures to avoid unnecessary contract bundling. The bill provides relevant definitions, and creates reporting requirements.

The bill may result in an indeterminate increase in expenditures by state agencies.

II. Present Situation:

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services.² Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;

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

² Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.³

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁴ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.⁵

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.⁶

Existing Small Business Efforts

Part IV of Chapter 288, F.S., specifies a number of efforts directed towards helping the success of small businesses. The rules ombudsmen in the Executive Office of the Governor is tasked in s. 288.7015, F.S., with reviewing state agency administrative rules that disproportionately impact small and minority businesses.

Section 288.705, F.S., requires all state agencies to provide the Florida Small Business Development Center Procurement System with all formal solicitations for contractual services, supplies, and commodities. The Small Business Development Center must coordinate with Minority Business Development Centers to compile and distribute this information to small and minority businesses requesting such service for the period of time necessary to familiarize the business with the market represented by state agencies. Each year, the Small Business Development Center must report certain information to the Department of Economic Opportunity on the use of the statewide contracts register.

Section 287.0947, F.S., specifies that the Secretary of DMS may create the Florida Advisory Council on Small and Minority Business Development (Council) with the purpose of advising and assisting the secretary in carrying out the secretary's duties with respect to minority businesses and economic and business development. The Council must meet at the call of its chair, at the request of a majority of its membership, at the request of the commission or its executive administrator, or at such times as may be prescribed by rule, but not less than once a

³ See ss. 287.012(6) and 287.057, F.S.

⁴ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁵ See s. 287.057(3)(e), F.S.

⁶ See ss. 287.042(2)(c) and 120.57(3), F.S.

year, to offer its views on issues related to small and minority business development of concern to this state.⁷

The powers and duties of the Council include, but are not limited to: researching and reviewing the role of small and minority businesses in the state's economy; reviewing issues and emerging topics relating to small and minority business economic development; studying the ability of financial markets and institutions to meet small business credit needs and determining the impact of government demands on credit for small businesses; assessing the implementation of a state economic development comprehensive plan, as it relates to small and minority businesses; assessing the reasonableness and effectiveness of efforts by any state agency or by all state agencies collectively to assist minority business enterprises; and advising the Governor, the secretary, and the Legislature on matters relating to small and minority business development which are of importance to the international strategic planning and activities of this state.⁸

The Council must also present an annual report⁹ to the secretary that sets forth in appropriate detail the business transacted by the Council during the year and any recommendations to the secretary, including those to improve business opportunities for small and minority business enterprises.

Some of the duties of the Office of Supplier Diversity of DMS, established in s. 287.09451, F.S., include communicating on a monthly basis with the Small and Minority Business Advisory Council to keep the council informed on issues relating to minority enterprise procurement, serving as an advocate for minority business enterprises, and coordinating with the small and minority business ombudsman, as defined in s. 288.703, F.S.

Performance Bond Requirements

Section 255.05, F.S., requires that any person entering into a formal contract with the state or any county, city, or political subdivision thereof, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. The statute specifies some exceptions and the form for the bond.

Section 24.111(2)(i), F.S., specifies that the Department of the Lottery must require performance bonds for the duration of contracts with its vendors.

Section 153.10(4), F.S., specifies that counties must require a performance bond of 2.5 percent of the amount of bids for the construction of water system improvements or sewer improvements. Sewer system improvement contracts bid pursuant to s. 153.79, F.S., also require a performance bond.

⁷ Section 287.0947(4), F.S.

⁸ Section 287.0947(5), F.S.

⁹ The annual reports are available on the world-wide web at:

http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/small_and_minority_business_council/annual_report

Section 337.18, F.S., requires surety bonds from successful bidders for certain Department of Transportation contracts, though the department may waive the requirement for contracts under \$250,000, if certain conditions are met.

Role of Rules Ombudsman in the Executive Office of the Governor

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman¹⁰ in the Executive Office of the Governor, for considering the impact of agency rules on the state's citizens and businesses. In carrying out duties as provided by law, the ombudsman must consult with Enterprise Florida, Inc., at which point this office may recommend to improve the regulatory environment of this state. The duties of the rules ombudsman are to:

- Carry out the responsibility related to rule adoption procedures with respect to small businesses;
- Review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and
- Make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to businesses.

Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

III. Effect of Proposed Changes:

Section 1 creates section 287.0577, F.S., to address small business participation in state contracting, contract bundling, set-asides for small businesses, and bonding and reporting requirements.

Definitions

The bill creates definitions for “contract bundling” and “small business.” The term “small business” means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

- Currently is, and for at least the previous 3 years has been, domiciled in the state.
- Has a workforce of 50 or fewer permanent full-time positions, whether employees, independent contractors, or other contract personnel.
- Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:
 - For a contractor licensed under chapter 489, F.S., \$5 million per year.
 - For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, \$500,000 per year.
 - For any other business entity, \$1 million per year.

¹⁰ The ombudsman is defined in s. 288.703(5), F.S., as an office or individual whose responsibilities include coordinating with the Office of Supplier Diversity for the interests of and providing assistance to small and minority business enterprises in dealing with governmental agencies and in developing proposals for changes in state agency rules.

- Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed \$5 million. For a sole proprietorship, the net worth limit of \$5 million includes both personal and business investments but does not include the proprietor's primary residence.

Also, the term "small business" includes any such business entity organized as any legal entity.

Bundling

Description of Statutory Change

The bill requires agencies, to the maximum extent practicable, to structure agency contracts to facilitate competition by Florida small businesses, taking steps to eliminate obstacles to their participation and avoiding unnecessary contract bundling that may preclude small businesses' participation as prime contractors. Before issuing a solicitation for a bundled contract, an agency must conduct market research to determine whether contract bundling is necessary. If the agency determines that contract bundling is necessary, the agency must include in the solicitation a written summary of the agency's market research and a written analysis of the research that explains why contract bundling is necessary.

Implication of Statutory Change

State agencies will be required to conduct market research to determine whether bundling is necessary and justified. More than likely, this market research will increase costs associated with the overall procurement process. In addition, it is not clear whether small businesses will have an opportunity to protest a procurement that includes bundling. If this new claim of protest is ripe under this legislation, then agency costs will increase to defend the procurement process.

Some phrases in the bill, such as "not appropriate for award to a small business" in lines 35-36, "prime contractor" in lines 36-37, and "not dominant within the business entity's industry" on lines 39-40, are not defined, which could lead to uncertainty in applying the definition of "contract bundling." The bill does not provide for a specified entity to determine if a business entity is dominant within that business's industry.

It is unclear whether an agency determination on contract bundling might constitute an agency action that would give rise to administrative rights for those affected by that determination, either as a protest of a contract solicitation or award, or as a decision which affects the substantial interests of a party.

The phrase "to the maximum extent practicable" contained in the contract bundling requirement for a state agency may present unintended consequences. The term "practicable" is not always synonymous with the best choice for the situation. Florida's Attorney General has noted that the term "practicable" means "that which is performable, feasible, possible."¹¹ Florida courts have noted the terms "practicable" and "practical" do not have the same meaning.¹² The Florida 1st

¹¹ Op. Att'y Gen. Fla. 81-69 (1981).

¹² *Hoffman v. Laffitte*, 564 So.2d 170, 171 (Fla. 1st DCA 1990).

District Court of Appeal stated that “*practicable* means capable of being effected or accomplished, and *practical* means adapted to actual conditions”.¹³

Set-asides

Description of Statutory Change

The bill requires each agency to annually award to small businesses, either directly or indirectly as subcontractors, at least 35 percent of the total dollar amount of contracts awarded. Each contract awarded under s. 287.057, F.S. relating to procurement of commodities or contractual services, must require the vendor to use small businesses as subcontractors or subvendors. The percentage of funds, in terms of gross contract amount and revenues that must be expended for subcontracting with small businesses must be determined by the agency before the solicitation for the contract is issued; however, the contract may not allow a vendor to expend less than 35 percent of the gross contract amount for subcontracting with small businesses.

Each contract must include specific requirements for the timely payment of subcontractors by the prime contractor and specific terms and conditions applicable if a prime contractor does not pay a subcontractor within the time limits specified in the contract. The bill also requires that payment from the owner and general contractor to subcontractors be made within 14 calendar days after receipt of invoice or claim for payment.

Implication of Statutory Change

State agencies may be required to conduct more procurements or require contractors to engage small businesses as subcontractors. With an increase in the number of procurements, the state agencies will incur greater costs. If the set aside thresholds are met through subcontracting, the overall costs of the services procured may increase, along with the aggregated profits and administrative costs of the contractors. The bill also doesn’t provide for a single entity to confirm whether small businesses meet the definition supplied in the bill. As a result, individual agencies will need to make the determinations of whether a small business qualifies for the required set-asides. The Legislature may wish to consider whether it would be more efficient for a single entity to determine whether a business qualifies under the provisions of the bill, in order to avoid duplication of effort by businesses and agencies.

It is unclear whether lines 83-84 require the use of subvendors on all contracts, or only those contracts which would already use subcontractors.

The bill requires payment by the prime contractor to subcontractors within 14 calendar days of receipt of an invoice. Section 287.0585(1), F.S., however, requires a contractor to make payments to subcontractors and suppliers within 7 working days of receipt of payment from a state agency for contractual services. If timely payment is not made to the subcontractor, penalty provisions apply.¹⁴

¹³ *Id.* at 172.

¹⁴ Section 287.0585(1), F.S., provides for “a penalty in the amount of one-half of 1 percent of the amount due, per day, from the expiration of the period allowed . . . for payment.” The penalty cannot exceed 15 percent of the outstanding balance owed. This section also authorizes attorney’s fees and costs as ordered by the court for proceedings brought under this section.

Bonding

Description of Statutory Change

Notwithstanding any provision of law, an agency, general contractor, or prime contractor may not require a vendor to post a bid bond, performance bond, or other surety for a contract that does not exceed \$500,000. This subsection does not apply to any requirement for posting a bond pending the protest of a solicitation; the protest of a rejected bid, proposal, or reply; or the protest of a contract award.

This provision might act to override some of the performance bond requirements currently specified in Florida law.

Implications of Statutory Change

State agencies may bear greater risk for non-performance by the small businesses. Any uninsured default may increase the costs to the state agencies. This greater risk may be offset through the purchase of surety bonds by the state agencies on behalf of the small businesses. As a result, the state agency may have to choose between bearing the risk of default by the small business and incurring additional costs associated with contracting with the small business.

Reporting

The bill requires the rules ombudsman in the executive office of the Governor to establish a system to measure and report the use of small businesses in state contracting. This system must maintain information and statistics on small business participation, awards, dollar volume of expenditures, and other appropriate types of information to analyze progress in small businesses' access to state contracts and to monitor agency compliance with this section. An agency must report its compliance with the reporting system at least annually and at the request of the rules ombudsman. All agencies must cooperate with the rules ombudsman in establishing this reporting system. The rules ombudsman must also report agency compliance for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives by February 1 of each year.

Section 2 provides an effective date of July 1, 2015.

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:

The establishment of state preference laws may potentially implicate the Equal Protection Clause and the Commerce Clause of the U.S. Constitution.

The Equal Protection Clause

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”¹⁵ The in-state preference provisions in this bill may constitute an equal protection violation. If such legislation is challenged, the court would most likely use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.¹⁶ Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.¹⁷

The Commerce Clause

The United States Constitution provides that Congress shall have the power “to regulate commerce . . . among the states.”¹⁸ The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.¹⁹

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. “If a statute ‘directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,’ the court may declare it unconstitutional as applied, without further inquiry.”²⁰
2. “. . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state’s interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits.”²¹

¹⁵ U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

¹⁶ *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (stating that “unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification *rationaly* further a legitimate state interest.”).

¹⁷ *Id.*

¹⁸ U.S. CONST. art. I, s. 8, cl. 3.

¹⁹ *See Gibbons v. Ogden*, 22 U.S. 1 (1824).

²⁰ *National Collegiate Athletic Ass’n v. Associated Press*, 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579 (1986)).

²¹ *Id.* at 2011-2012 (citations omitted); *See Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109 (11th Cir. 2002).

However, when a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.²² A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.²³ Since the state is acting as a “market participant” under this bill, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could have the effect of shifting some contracting dollars towards smaller businesses.

C. Government Sector Impact:

This bill may increase the costs incurred by state agencies in contracting. State agencies may see costs increase in an indeterminate amount due to required market research and possible legal challenges to contract awards. State agencies may see costs increase in an indeterminate amount due to the increase in number of procurements. State agencies may see costs increase in an indeterminate amount for the purchase of surety bonds on behalf of the small business or the risk of default of the small business.

It is unclear whether the rules ombudsman will incur additional costs to create the reporting system required by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

For clarity, the existing duties of the rules ombudsman specified in s. 288.7015, F.S., could be cross referenced to the new duties specified by this bill.

Additionally, for agencies that use federal funding sources to pay for contracted services and goods, there may be requirements that do not permit subcontracting.

²² See *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects); *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 93 (1984) (stating that “[t]he precise contours of the market-participant doctrine have yet to be established.”); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *Reeves, Inc. v. Stake*, 447 U.S. 429 (1980).

²³ *Id.*

VIII. Statutes Affected:

This bill creates section 287.0577 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Bullard

39-00713-15

2015508__

A bill to be entitled

An act relating to small business participation in state contracting; creating s. 287.0577, F.S.; defining the terms "contract bundling" and "small business"; directing that agencies avoid contract bundling under certain circumstances; requiring agencies to conduct market research and include written summaries and analyses of such research in solicitations for bundled contracts; requiring certain agencies to award a percentage of contracts to small businesses; requiring contract vendors to use small businesses as subcontractors or subvendors; providing requirements with respect to payment of subcontractors; prohibiting agencies, general contractors, or prime contractors from requiring certain bonds or other sureties for certain contracts; requiring the rules ombudsman in the Executive Office of the Governor to establish a system for reporting small business participation in state contracting; requiring agencies to cooperate with such reporting; requiring specified annual reports; providing an effective date.

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

Section 1. Section 287.0577, Florida Statutes, is created to read:

287.0577 Small business participation in state contracting; contract bundling; set-asides for small businesses; bonding and

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

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reporting requirements.-

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

(a) "Contract bundling" means the consolidation of contracts for the procurement of commodities or contractual services, at least part of which may be provided or performed by one or more small businesses, into a single contract that is not appropriate for award to a small business as the prime contractor.

(b) "Small business" means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

1. Currently is, and for at least the previous 3 years has been, domiciled in the state.

2. Has a workforce of 50 or fewer permanent full-time positions, whether employees, independent contractors, or other contract personnel.

3. Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:

a. For a contractor licensed under chapter 489, \$5 million per year.

b. For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, \$500,000 per year.

c. For any other business entity, \$1 million per year.

4. Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed \$5 million. For a sole proprietorship, the net worth limit of \$5 million includes both personal and business investments but does not include the proprietor's primary

Page 2 of 5

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59 residence.

60
61 The term includes any such business entity organized as any form
62 of corporation, partnership, limited liability company, sole
63 proprietorship, joint venture, association, trust, cooperative,
64 or other legal entity.

65 (2) CONTRACT BUNDLING; SOLICITATION.—

66 (a) An agency, to the maximum extent practicable, shall
67 structure agency contracts to facilitate competition by and
68 among small businesses, taking all reasonable steps to eliminate
69 obstacles to participation and avoiding unnecessary contract
70 bundling that may preclude small businesses' participation as
71 prime contractors.

72 (b) Before issuing a solicitation for a bundled contract,
73 an agency must conduct market research to determine whether
74 contract bundling is necessary. If the agency determines that
75 contract bundling is necessary, the agency must include in the
76 solicitation a written summary of the agency's market research
77 and a written analysis of the research that explains why
78 contract bundling is necessary.

79 (3) SET-ASIDES FOR SMALL BUSINESSES.—

80 (a) An agency shall annually award to small businesses,
81 either directly or indirectly as subcontractors, at least 35
82 percent of the total dollar amount of contracts awarded.

83 (b) Each contract awarded under s. 287.057 must require the
84 vendor to use small businesses as subcontractors or subvendors.
85 The percentage of funds, in terms of gross contract amount and
86 revenues, that must be expended for subcontracting with small
87 businesses shall be determined by the agency before the

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88 solicitation for the contract is issued; however, the contract
89 may not allow a vendor to expend less than 35 percent of the
90 gross contract amount for subcontracting with small businesses.

91 (c) Each contract must include specific requirements for:

92 1. The timely payment of subcontractors by the prime
93 contractor and specific terms and conditions applicable if a
94 prime contractor does not pay a subcontractor within the time
95 limits specified in the contract.

96 2. Payment from the owner and general contractor to
97 subcontractors within 14 calendar days after receipt of an
98 invoice or other proper claim for payment.

99 (4) BONDING REQUIREMENTS.—Notwithstanding any other
100 provision of law, an agency, a general contractor, or a prime
101 contractor may not require a vendor to post a bid bond,
102 performance bond, or other surety for a contract that does not
103 exceed \$500,000. This subsection does not apply to any
104 requirement for posting a bond pending the protest of a
105 solicitation; the protest of a rejected bid, proposal, or reply;
106 or the protest of a contract award.

107 (5) REPORTING REQUIREMENTS.—The rules ombudsman in the
108 Executive Office of the Governor shall:

109 (a) Establish a system to measure and report the use of
110 small businesses in state contracting. This system shall
111 maintain information and statistics on small business
112 participation, awards, dollar volume of expenditures, and other
113 appropriate types of information to analyze progress in small
114 businesses access to state contracts and to monitor agency
115 compliance with this section. Such reporting must include, but
116 is not limited to, the identification of all subcontracts in

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117 this state by dollar amount and by number of subcontracts and
118 identification of the use of small businesses as prime
119 contractors and subcontractors by dollar amounts of contracts
120 and subcontracts, number of contracts and subcontracts,
121 industry, and any conditions or circumstances that significantly
122 affected the performance of subcontractors. An agency shall
123 report its compliance with the reporting system at least
124 annually and at the request of the rules ombudsman in the
125 Executive Office of the Governor. All agencies shall cooperate
126 with the rules ombudsman in the Executive Office of the Governor
127 in establishing this reporting system.

128 (b) Report agency compliance with paragraph (a) for the
129 preceding fiscal year to the Governor and Cabinet, the President
130 of the Senate, and the Speaker of the House of Representatives
131 by February 1 of each year. The report must contain, at a
132 minimum, the following:

- 133 1. Total expenditures of each agency by industry.
- 134 2. The dollar amount and percentage of contracts awarded to
135 small businesses by each agency.
- 136 3. The dollar amount and percentage of contracts awarded
137 indirectly to small businesses as subcontractors by each agency.
- 138 4. The total dollar amount and percentage of contracts
139 awarded to small businesses, whether directly or indirectly as
140 subcontractors.

141 Section 2. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 19, 2015

I respectfully request that **Senate Bill #508**, relating to Small Business Participation in State Contracting, be placed on the:

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



Senator Dwight Bullard
Florida Senate, District 39

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/15
Meeting Date

SB 508
Bill Number (if applicable)

Topic Small Business Contracting

Amendment Barcode (if applicable)

Name Deborah Lawson

Job Title _____

Address 4125 Pecan Br
Street
Tallahassee FL 32309
City State Zip

Phone 850-570-6033

Email lawsondeborah@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing NACM Improved Construction Practices Committee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

SB 508
Bill Number (if applicable)

Topic Small Business State Contracting

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title _____

Address 231 West Bay Ave.
Street

Phone 407 830 1882

Largo FL 32750
City State Zip

Email BKershner@att.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing National Utility Contractors Assn. 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)

3-4-2015

Meeting Date

SB 508

Bill Number (if applicable)

Topic SB 508

Amendment Barcode (if applicable)

Name DOROTHY BROWN-ALFARO

Job Title President & Small Business Advocate

Address 11820 MIRAMAR PARKWAY #227 Phone 786-486-2377

Street

MIRAMAR

FL

33025

City

State

Zip

Email DORCOR@Bellsouth.NET

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing NABWIC, CSBE Association, Inc, Florida Hispanic 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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/15
Meeting Date

508
Bill Number (if applicable)

Topic Small Business

Amendment Barcode (if applicable)

Name Richard Watson

Job Title Legislative Counsel

Address P.O. Box 10038

Phone 850 222-0000

Street Tallahassee FL 32302

Email rick@rwatsonandassociates.com

City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated FL Surety 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
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 182

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Public Records and Meetings/Postsecondary Education Executive Search

DATE: March 5, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Scott</u>	<u>Klebacha</u>	<u>HE</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 182 creates exemptions from Florida's public records and open meetings laws for any identifying information of an applicant for state university or Florida College System (FCS) institution president, provost, or dean. The bill provides that identifying information of an applicant is exempt from public records requirements. The bill also closes meetings where applicants and potential applicants are discussed. Meetings held for the purpose of establishing the qualifications of potential applicants or formulating the compensation framework to be offered to applicants will continue to be public. No later than 30 days before a final action or vote is taken on hiring finalists, information and meetings related to the finalists will be subject to public records and open meetings laws.

As required by the Open Government Sunset Review Act, the bill provides for repeal of the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. The bill also includes a statement of public necessity as required by the State Constitution.

The bill provides an effective date of October 1, 2015.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.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 record.⁵ The Sunshine Law⁶ 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.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" 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. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ 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 the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, 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.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR 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 necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the purpose of the exemption overrides the Florida’s public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

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 FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

State University and Florida College Systems

Board of Governors and State University Boards of Trustees

The Board of Governors (BOG) has the authority to regulate the State University System pursuant to s. 7(d), Article IX of the State Constitution and the Florida Statutes.²⁰ The BOG may develop procedures for adopting regulations to implement its constitutional duties.²¹

Each state university is administered by a board of trustees, which is subject to public record and open meetings laws.²² The BOG establishes the powers and duties of the boards of trustees and may delegate its constitutional or statutory powers and duties to the boards of trustees as its designee.²³ The BOG establishes the personnel system for all state university employees and confirms the selection and reappointment of presidents by state university boards of trustees.²⁴

State Board of Education and Florida College System Institution Boards of Trustees

The Legislature created the Florida College System consisting of institutions²⁵ governed by boards of trustees.²⁶ The State Board of Education establishes the standards and guidelines for Florida College System (FCS) institutions.²⁷

Each board of trustees is authorized to establish the personnel program for all employees of an FCS institution, including the president.²⁸ The established guidelines for the personnel program may include the recruitment, selection, or reappointment of personnel.²⁹ An FCS institution's board of trustees is authorized to appoint, suspend, or remove the president and may also appoint a search committee for the purpose of filling positions.³⁰

FSC institutions normally establish search committees for filling vacant president, provost and dean positions.³¹ The search committees may also utilize consultants to aid them in their search. Documentation held by a search committee or its consultants are public records, and all meetings of the search committee are open and noticed to the public.

²⁰ Sections 20.155 and 1001.70-1001.706, F.S. See s. 1001.705(a) and (d), F.S., defining the terms "Board of Governors" and "state universities" as used in the Florida K-20 Education Code.

²¹ Section 1001.706(2), F.S.

²² FLA. CONST. art. IX, s. 7(b) and (c); s. 1001.72(2), F.S.

²³ FLA. CONST. art. IX, s. 7(c); s. 1001.706(2)(b), F.S.

²⁴ Sections 1001.705(2)(k) and 1001.706(6)(a), F.S.

²⁵ See s. 1000.21(3), F.S., for a definition and list of each "Florida College System institution." Such institutions constitute political subdivisions of the state operated by boards of trustees. See s. 1004.67 and ss. 1001.61-1001.64, F.S.

²⁶ Sections 1001.60, 1001.61(1) and (2), and 1001.64(2), F.S.; See Ch. 2008-52, s. 2, Laws of Fla.; See also, s. 20.15(7), F.S.

²⁷ FLA. CONST. art. IX, s. 2; ss. 20.15(1), (2), and (5); and ss. 1001.02(1) and (6), F.S.

²⁸ Section 1001.64(18), F.S.; See s. 1001.02(6)(a), F.S.

²⁹ Section 1001.64(18), F.S.

³⁰ Section 1001.64(19), F.S.

³¹ 2015 Legislative Bill Analysis from the State University System of Florida, Board of Governors for Bill Number SB 182, on file with the Committee on Education Pre-K-12.

III. Effect of Proposed Changes:

CS/CS/SB 182 creates exemptions from Florida's public records and open meetings laws for the identifying information of any individual who applies for president, provost, or dean at a state university or Florida College System (FCS) institution.

The bill makes the identities of applicants for president, provost, or dean at a state university or FCS exempt from public records and open meetings laws. Identifying information of an applicant contained in records are exempt from public disclosure. Any portion of a meeting at which potential applicants are identified or vetted are closed to the public. Any portion of a meeting which would disclose the identity of an applicant are also closed to the public. All closed meetings must be noticed to the public and recorded. No portion of the closed meeting may be off the record and the recording of a closed meeting is exempt from public disclosure. The bill provides that all records and recordings are exempt (and not confidential and exempt)³², the records custodian will have the discretion to release protected information if necessary.

The bill provides that if the purpose of a meeting is to discuss the qualifications or compensation framework for potential applicants, the meeting will be noticed and open to the public.

Once a group of finalists is established, the identifying information of the finalists will be subject to public disclosure 30 days before the final action or vote is taken. Likewise, 30 days before a final action or vote is taken, all meetings must be noticed and open to the public. The identities of anyone who was not a finalist will remain exempt from public disclosure.

As required by the State Constitution, the bill provides a statement of public necessity stating that protecting the names and other personal information of applicants for state university and FCS institution president, provost, or dean will encourage qualified candidates to apply without the fear of reprisal from their current employers. The public necessity statement provides that the Legislature finds that the failure to have these exemptions in place could have a chilling effect on the number and quality of the pool of candidates for president, provost or dean.

Also, as required by the Open Government Sunset Review Act, the bill provides for the repeal of the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill provides an effective date of October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members of each house of the Legislature for final passage of a bill that creates an exemption for

³² See footnote 8.

public records or open meetings. The bill creates exemptions; thus, a two-thirds vote of the members of each house of the Legislature is required for final passage of the bill.

Article I, s. 24(c) of the State Constitution requires that a bill creating an exemption for public records or open meetings contain a public necessity statement justifying the exemption. The bill contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1004.097 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 Higher Education on February 16, 2015:

The committee substitute maintains the original substance of SB 182 with the following modifications:

- Clarifies that personal identifying information includes the name of any applicant for president, provost, or dean of a state university or Florida College System institution.

- Clarifies that any portion of a meeting held for the purpose of identifying and vetting applicants is exempt from Article I, s. 24(b) of the State Constitution and s. 286.011(1), F.S.
- Adds a provision requiring that reasonable notice be provided for any portion of a meeting that is otherwise exempt from Article I, s. 24(b) of the State Constitution and s. 286.011(1), F.S.

CS/CS by Governmental Oversight and Accountability on March 4, 2015:

The CS/CS makes the following changes:

- Reorganizes the bill for clarity.
- Replaces “personal identifying information” with identifying information.
- Provides that records are exempt and not confidential and exempt.
- Provides that closed meetings must be recorded and makes the recording exempt from public records.
- Clarifies that the records of finalists and meetings regarding finalists must be open to the public 30 days before a final vote or action is taken.
- Conforms the public necessity statement to the rest of the bill.

B. Amendments:

None.



291638

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 31 - 83
and insert:

(1) Any identifying information of an applicant for president, provost, or dean of a state university or Florida College System institution is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) (a) Any portion of a meeting held for the purpose of identifying or vetting a potential applicant for president,



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11 provost, or dean of a state university or Florida College System
12 institution is exempt from s. 286.011 and s. 24(b), Art. I of
13 the State Constitution.

14 (b) Any portion of a meeting that would disclose
15 identifying information of an applicant for president, provost,
16 or dean of a state university or Florida College System
17 institution is exempt from s. 286.011 and s. 24(b), Art. I of
18 the State Constitution.

19 (c) Any portion of a meeting that is closed pursuant to
20 paragraph (a) or paragraph (b) must be reasonably noticed. A
21 complete recording must be made of any closed portion of a
22 meeting, and a closed portion of a meeting may not be held off
23 the record. The recording of the closed portion of a meeting is
24 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution.

26 (d) Any portion of a meeting held for the purposes of
27 establishing the qualifications of potential applicants or
28 establishing the compensation framework to be offered to
29 potential applicants must be open to the public and is subject
30 to s. 286.011 and s. 24(b), Art. I of the State Constitution.

31 (3) No later than 30 days before the date of the meeting at
32 which a final action or vote is to be taken regarding the
33 employment of an applicant, identifying information of the
34 applicants on whom a final action or vote is to be taken is no
35 longer exempt as provided under subsection (2).

36 (4) This section is subject to the Open Government Sunset
37 Review Act in accordance with s. 119.15 and shall stand repealed
38 on October 2, 2020, unless reviewed and saved from repeal
39 through reenactment by the Legislature.



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40 Section 2. The Legislature finds that it is a public
41 necessity that any identifying information of an applicant for
42 president, provost, or dean of a state university or Florida
43 College System institution be exempt from s. 119.07(1), Florida
44 Statutes, and s. 24(a), Article I of the State Constitution. The
45 Legislature also finds that any portion of any meeting which is
46 held for the purpose of identifying or vetting applicants for
47 president, provost, or dean of a state university or Florida
48 College System institution or which would disclose identifying
49 information of an applicant be exempt from s. 286.011, Florida
50 Statutes, and s. 24(b), Article I of the State Constitution.
51 Identifying information of finalists is no longer exempt from
52 public records and public meetings requirements 30 days before
53 the date of the meeting at which a final action or vote occurs
54 regarding the hiring of a president, provost, or dean. The task
55 of

56
57 ===== T I T L E A M E N D M E N T =====

58 And the title is amended as follows:

59 Delete lines 4 - 19

60 and insert:

61 from public records requirements for identifying
62 information of an applicant for president, provost, or
63 dean of a state university or Florida College System
64 institution; providing an exemption from public
65 meeting requirements for any portion of a meeting
66 which is held for the purpose of identifying or
67 vetting, or which would otherwise disclose identifying
68 information of, potential applicants for president,



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69 provost, or dean; requiring that closed meetings be
70 reasonably noticed and be recorded; providing that the
71 recordings of closed portions of a meeting are exempt
72 from public records requirements; specifying that any
73 portion of a meeting held for the purpose of
74 establishing the qualifications of, or any
75 compensation framework to be offered to, potential
76 applicants are subject to public meetings
77 requirements; specifying that the identifying
78 information of final applicants is no longer exempt
79 from public records and public meetings requirements
80 for a minimum period before a final decision or vote;
81 providing for future legislative review and

By the Committee on Higher Education; and Senator Hays

589-01633A-15

2015182c1

A bill to be entitled

An act relating to public records and meetings; creating s. 1004.097, F.S.; providing an exemption from public records requirements for any personal identifying information, including the name, of an applicant for president, provost, or dean of a state university or Florida College System institution; providing an exemption from public meeting requirements for any portion of a meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of a state university or Florida College System institution; providing an exception for any portion of a meeting held for the purpose of establishing the qualifications of, or any compensation framework to be offered to, potential applicants; providing applicability; requiring reasonable notice of meetings; requiring release of the names of specified applicants within a certain timeframe; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 1004.097, Florida Statutes, is created to read:

1004.097 Information identifying applicants for president, provost, or dean at state universities or Florida College System institutions; public records exemption; public meetings

Page 1 of 4

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

589-01633A-15

2015182c1

exemption.-

(1) Any personal identifying information, including, but not limited to, the name, of an applicant for president, provost, or dean of a state university or Florida College System institution is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Any portion of a meeting held for the purpose of identifying or vetting applicants for president, provost, or dean of a state university or Florida College System institution is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This exemption does not apply to a meeting held for the purpose of establishing the qualifications of potential applicants or any compensation framework to be offered to potential applicants. However, any portion of such a meeting that would disclose personal identifying information of an applicant or potential applicant is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. Notwithstanding this subsection, any portion of a meeting must be reasonably noticed.

(3) Any meeting or interview held after a final group of applicants has been established for the purpose of making a final selection to fill the position of president, provost, or dean of a state university or Florida College System institution is subject to s. 286.011 and s. 24(b), Art. I of the State Constitution.

(4) The names of those included in the final group of applicants pursuant to subsection (3) must be released by the state university or Florida College System institution no later than 10 days before the date of the meeting at which a final action or vote is to be taken on the employment of the

Page 2 of 4

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59 applicants.

60 (5) Any personal identifying information of those included
 61 in the final group of applicants pursuant to subsection (3)
 62 becomes subject to s. 119.07(1) and s. 24(a), Art. I of the
 63 State Constitution when the names of such applicants are
 64 released pursuant to subsection (4).

65 (6) This section is subject to the Open Government Sunset
 66 Review Act in accordance with s. 119.15 and shall stand repealed
 67 on October 2, 2020, unless reviewed and saved from repeal
 68 through reenactment by the Legislature.

69 Section 2. The Legislature finds that it is a public
 70 necessity that any personal identifying information, including
 71 the name, of an applicant for president, provost, or dean of a
 72 state university or Florida College System institution be made
 73 confidential and exempt from s. 119.07(1), Florida Statutes, and
 74 s. 24(a), Article I of the State Constitution. The Legislature
 75 also finds that any portion of any meeting held for the purpose
 76 of identifying or vetting applicants for president, provost, or
 77 dean of a state university or Florida College System institution
 78 and any portion of a meeting held for the purpose of
 79 establishing qualifications of, or any compensation framework to
 80 be offered to, such potential applicants which would disclose
 81 personal identifying information of an applicant or potential
 82 applicant be made exempt from s. 286.011, Florida Statutes, and
 83 s. 24(b), Article I of the State Constitution. The task of
 84 filling the position of president, provost, or dean of a state
 85 university or Florida College System institution is often
 86 conducted by an executive search committee. Many, if not most,
 87 applicants for such a position are currently employed at another

Page 3 of 4

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2015182c1

88 job at the time they apply and disclosure of their applications
 89 could jeopardize their current positions. These exemptions from
 90 public records and public meeting requirements are needed to
 91 ensure that the executive search committee can avail itself of
 92 the most experienced and desirable pool of qualified applicants
 93 from which to fill the position of president, provost, or dean
 94 of a state university or Florida College System institution. If
 95 potential applicants fear the possibility of losing their
 96 current employment as a consequence of attempting to progress
 97 along their chosen career path or seeking different and more
 98 rewarding employment, failure to have these exemptions in place
 99 could have a chilling effect on the number and quality of
 100 applicants available to fill the position of president, provost,
 101 or dean of a state university or Florida College System
 102 institution.

103 Section 3. This act shall take effect October 1, 2015.

Page 4 of 4

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15

Meeting Date

SB 182 (CS)

Bill Number (if applicable)

Topic Presidential/Provost/Dean search Sunshine exemption

Amendment Barcode (if applicable)

Name Ralph Wilson

Job Title FSU doctoral student

Address _____
Street

Phone 334 477 2749

City

State

Zip

Email ralph.wilson:ralph@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-15

Meeting Date

182

Bill Number (if applicable)

Topic Public Records and meeting exemptions

Amendment Barcode (if applicable)

Name DR. JENNIFER PROFFITT

Job Title President, United Faculty of Florida - FSU chapter

Address 307 Chestnut Dr

Phone 850 597 9615

Street

Tallahassee

FL

32301

City

State

Zip

Email jeanifer.proffitt@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/04/15

Meeting Date

182

Bill Number (if applicable)

Topic Sunshine Law Exemption

Amendment Barcode (if applicable)

Name Rid Temple

Job Title _____

Address 135 S. Monroe
Street

Phone 850-566-4348

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida AFL-CIO

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-4-15
Meeting Date

182
Bill Number (if applicable)

Topic Open Records Exemption

Amendment Barcode (if applicable)

Name Marshall Ogletree

Job Title Interim Exec Director

Address 306 E. Park Ave

Phone (850) 556-5239

Tallahassee FL 32301
City State Zip

Email marshall.ogletree@floridnea.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing United Faculty 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)

3.4.2015
Meeting Date

SB 182
Bill Number (if applicable)

Topic Public Records & Meetings

Amendment Barcode (if applicable)

Name Ken Williams

Job Title Driver

Address 7411 Meadow Drive
Street

Phone 813-886-1753

Tampa 71 33634
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/5/15
Meeting Date

SB 182
Bill Number (if applicable)

Topic Sunshine Law Exemption - Presidential Seal

Amendment Barcode (if applicable)

Name Lakyn

Job Title Graduate Teaching Assistant

Address 3816 Lost Lane #32
Street

Phone _____

Tallahassee FL 32309
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

SB 182
Bill Number (if applicable)

Topic Sunshine Law - Open Meetings for Amendment Barcode (if applicable)
Presidential Searches
Name Burt Altman
Job Title Retired Faculty (FSU)
Address 4191 Bradfordville Rd Phone (850) 668-2306
Tallahassee FL 32309 Email baltman@fsu.edu
City State Zip

Speaking: For Against Information
Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Retired faculty from FSU

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/3/15
Meeting Date

SB 182
Bill Number (if applicable)

Topic Post Sec Education Executive Search

Amendment Barcode (if applicable)

Name Ana Ciereszko

Job Title Legislative Director

Address 11450 N. Kendall Drive

Phone 305 279 0021

Miami FL 33176
City State Zip

Email aciereszko@yahoo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing United Faculty of Miami Dade College

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 (10/14/14)

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 694

INTRODUCER: Senator Ring

SUBJECT: Florida State Employees' Charitable Campaign

DATE: March 4, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Favorable
2.	_____	_____	AGG	_____
3.	_____	_____	FP	_____

I. Summary:

SB 694 allows state officers and employees to donate to the Florida State Employees' Charitable Campaign (FSECC) at agency fundraising events without designating specific organizations to receive the funds. The bill provides that the FSECC's fiscal agent must distribute these "undesignated" funds to participating charitable organizations in direct proportion to the percentage of designated funds or pledges received by the organization.

The bill removes additional eligibility requirements for independent unaffiliated agencies, international service agencies, and national agencies wanting to participate in the FSECC.

The bill removes the statutory requirement to establish a local steering committee in each fiscal agent area.

II. Present Situation:

The FSECC, maintained by the Department of Management Services (DMS), is the annual charitable drive funded by state employees.¹ State officers and employees may voluntarily donate moneys, including payroll deductions, to nonprofit charitable organizations participating in the FSECC.²

The FSECC Prior to 2012

Prior to 2012, state law did not require state officers and employees who contributed to the FSECC to designate a specific participating charitable organization to receive the donation. The method of distributing undesignated funds to participating charities required a separate application process. Local steering committees were established to direct the allocation of funds

¹ Section 110.181(1)(a), F.S.

² Section 110.181(1)(b), F.S.

that were not otherwise designated to a specific charitable organization. According to the DMS, this method for distributing “undesigned” funds was administratively complex and inefficient.³

The FSECC Presently

Section 110.181, F.S., was amended in 2012 to eliminate the ability of state officers and employees to contribute funds without designating a specific organization as the recipient. Beginning July 1, 2012, state officers and employees are required to designate a specific participating charitable organization to receive such contributions.⁴ No funds could be contributed unless the recipient organization has been designated. As a result, the process to distribute “undesigned” funds is no longer necessary.⁵

Requiring state officers and employees to designate a specific charitable organization as the recipient was expected to reduce litigation and state staff time involved in the process used to allocate “undesigned” funds.⁶ However, the DMS now believes that many of the efficiencies gained by this “designation” requirement have been replaced by the need to develop new processes to collect designated funds at agency FSECC fundraising events. At FSECC fundraising events, employees must designate a specific charitable organization as the recipient by filling out a separate form and contribute a minimum donation of five dollars in order to offset the administrative costs of processing the donation.⁷ Since many agency FSECC fundraising events are intended to accommodate the collection of small, one-time contributions, the DMS has determined it is not cost effective to individually track and process these designations.⁸

DMS is authorized to allow participation in the FSECC by various local, state, national and international charitable organizations. By administrative rule, each charitable organization must submit an application demonstrating it meets statutory requirements. However, the law creates differing eligibility criteria depending upon the type of organizations (e.g. independent unaffiliated agency⁹, international service agency¹⁰ and national agency¹¹). According to the DMS, these additional eligibility requirements add to the level of complexity involved in reviewing applications submitted by potential participating charities, resulting in increased costs associated with administering the FSECC.¹²

Current law also requires the creation of local steering committees composed of state employees in each fiscal agent area to assist in conducting the campaign.¹³ While the original role of the local steering committee was to determine how “undesigned” funds raised for the FSECC were

³ Department of Management Services, *Senate Bill 694 Agency Analysis* (Feb. 10, 2015) (on file with the Senate Committee on Governmental Oversight and Accountability).

⁴ *Id.*

⁵ See Chapter 2012-215, s. 9, Laws of Fla.

⁶ Florida House of Representatives, *CS/CS/CS/CS/HB 1261 Final Bill Analysis* (May 11, 2012).

⁷ Rule 60L-39.009, F.A.C.

⁸ DMS Analysis, *supra* note 3.

⁹ Section 110.181(1)(d), F.S.

¹⁰ Section 110.181(1)(e), F.S.

¹¹ Section 110.1181(1)(f), F.S.

¹² DMS Analysis, *supra* note 3.

¹³ Section 110.181(2)(d), F.S.

distributed, the current statutory role is limited to assisting the fiscal agent in conducting the campaign.¹⁴

III. Effect of Proposed Changes:

This bill allows state officers and employees to contribute undesignated funds to the FSECC at agency fundraising events. The bill amends section 110.181(2)(d), F.S., to specify that undesignated funds are to be distributed among the charitable organizations in direct proportion to the percentage of the designated funds pledged to those organizations. For example, if a charitable organization receives 15 percent of the designated funds to the FSECC, that charity will receive 15 percent of the undesignated funds.

The bill also deletes the additional eligibility requirements for independent unaffiliated agencies, international service agencies, and national agencies.

This bill deletes the requirement that local steering committees be created to assist the fiscal agent in conducting the FSECC.

The effective date of the bill is July 1, 2015.

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:

DMS may enjoy some reduced administrative costs associated with the FSECC.

¹⁴ DMS Analysis, *supra* note 3.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 110.181 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.

By Senator Ring

29-00940-15

2015694__

1 A bill to be entitled
 2 An act relating to the Florida State Employees'
 3 Charitable Campaign; amending s. 110.181, F.S.;
 4 providing an exception to the requirement that state
 5 officers and employees designate a charitable
 6 organization to receive their contributions from the
 7 Florida State Employees' Charitable Campaign; deleting
 8 requirements for independent unaffiliated agencies,
 9 international service agencies, and national agencies;
 10 requiring the fiscal agent selected by the Department
 11 of Management Services to distribute undesignated
 12 funds in a specified manner; deleting the requirement
 13 that a local steering committee be established in each
 14 fiscal agent area; providing an effective date.

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

17
 18 Section 1. Subsections (1) and (2) of section 110.181,
 19 Florida Statutes, are amended to read:

20 110.181 Florida State Employees' Charitable Campaign.—

21 (1) CREATION AND ORGANIZATION OF CAMPAIGN.—

22 (a) The Department of Management Services shall establish
 23 and maintain, in coordination with the payroll system of the
 24 Department of Financial Services, an annual Florida State
 25 Employees' Charitable Campaign. Except as provided in subsection
 26 (5), this annual fundraising drive is the only authorized
 27 charitable fundraising drive directed toward state employees
 28 within work areas during work hours, and for which the state
 29 will provide payroll deduction.

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

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30 (b) State officers' and employees' contributions toward the
 31 Florida State Employees' Charitable Campaign must be entirely
 32 voluntary. State officers and employees ~~shall~~ must designate a
 33 charitable organization to receive ~~their~~ such contributions
 34 unless such contributions are collected as part of a campaign
 35 event.

36 (c) Participation in the annual Florida State Employees'
 37 Charitable Campaign ~~is~~ must be limited to any nonprofit
 38 charitable organization ~~that~~ which has as its principal mission:

- 39 1. Public health and welfare;
- 40 2. Education;
- 41 3. Environmental restoration and conservation;
- 42 4. Civil and human rights; or
- 43 5. ~~Any nonprofit charitable organization engaged in~~ The
 44 relief of human suffering and poverty.

45 ~~(d) An independent unaffiliated agency must be a statewide~~
 46 ~~entity whose programs provide substantial, direct, hands-on~~
 47 ~~services that meet basic human or environmental needs and extend~~
 48 ~~throughout the year and throughout the state.~~

49 ~~(e) An international service agency must have well-defined~~
 50 ~~programs that meet basic human or environmental needs outside~~
 51 ~~the United States with no duplication of existing programs.~~

52 ~~(f) A national agency must demonstrate, through a well-~~
 53 ~~defined program, direct services meeting basic human or~~
 54 ~~environmental needs which are readily available, being~~
 55 ~~administered, or providing a substantial direct benefit to the~~
 56 ~~residents of this state.~~

57 (d)(g) The financial records of a Any nonprofit charitable
 58 organization participating in the Florida State Employees'

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59 Charitable Campaign must be ~~have its financial records~~ audited
60 annually by an independent public accountant whose examination
61 conforms to generally accepted accounting principles.

62 ~~(e)(4)~~ Organizations ineligible to participate in the
63 Florida State Employees' Charitable Campaign include, but are
64 not limited to, the following:

65 1. Organizations whose fundraising and administrative
66 expenses exceed 25 percent, unless extraordinary circumstances
67 can be demonstrated.

68 2. Organizations whose activities contain an element that
69 is more than incidentally political in nature or whose
70 activities are primarily political, religious, professional, or
71 fraternal in nature.

72 3. Organizations that ~~which~~ discriminate against any
73 individual or group on account of race, color, religion, sex,
74 national origin, age, handicap, or political affiliation.

75 4. Organizations not properly registered as a charitable
76 organization as required by the Solicitation of Contributions
77 Act, ss. 496.401-496.424.

78 5. Organizations that ~~which~~ have not received tax-exempt
79 status under s. 501(c)(3) ~~of the~~, Internal Revenue Code.

80 (2) SELECTION OF FISCAL AGENTS; COST.—

81 (a) The Department of Management Services shall select
82 through the competitive procurement process a fiscal agent or
83 agents to receive, account for, and distribute charitable
84 contributions among participating charitable organizations.

85 (b) The fiscal agent shall withhold the reasonable costs
86 for conducting the campaign and for accounting and distribution
87 to the participating organizations and shall reimburse the

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88 department the actual cost for coordinating the campaign in
89 accordance with the rules of the department. In any fiscal year
90 ~~that in which~~ the Legislature specifically appropriates to the
91 department its total costs for coordinating the campaign from
92 the General Revenue Fund, the fiscal agent is not required to
93 reimburse such costs to the department under this subsection.
94 Otherwise, reimbursement will be the difference between actual
95 costs and the amount appropriated.

96 (c) The fiscal agent shall furnish the department and
97 participating charitable organizations a report of the
98 accounting and distribution activities. Records relating to
99 these activities must ~~shall~~ be open for inspection upon
100 reasonable notice and request.

101 (d) The fiscal agent shall distribute undesignated funds to
102 each participating organization in direct proportion to the
103 percentage of designated funds pledged to the organization ~~A~~
104 ~~local steering committee shall be established in each fiscal~~
105 ~~agent area to assist in conducting the campaign. The committee~~
106 ~~shall be composed of state employees selected by the fiscal~~
107 ~~agent from among recommendations provided by interested~~
108 ~~participating organizations, if any, and approved by the~~
109 ~~Statewide Steering Committee.~~

110 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/15
Meeting Date

SB 694
Bill Number (if applicable)

Topic FSECC

Amendment Barcode (if applicable)

Name Cody Schwarz

Job Title Legislative Affairs Deputy

Address 4050 Esplanade Way
Street
Tallahassee FL 32399
City State Zip

Phone 850 694 3399

Email Cody.Schwarz@dms.mylflorida.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing DMS

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: SPB 7038

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Employer Paid Contributions for Retiree Benefits

DATE: March 5, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McVaney</u>	<u>McVaney</u>	_____	Go Submitted as Committee Bill

I. Summary:

SPB 7038 establishes the contribution rates paid by employers participating in the Florida Retirement System (FRS) beginning July 1, 2015. These rates are intended to fund the full normal cost and the amortization of the unfunded actuarial liability of the FRS. With these modifications to employer contribution rates, the FRS will receive roughly \$34.5 million less in revenue on an annual basis beginning July 1, 2015.

The bill also increases the contributions paid by employers participating in the retiree health insurance subsidy program. With the increased contribution rates, the Retiree Health Insurance Trust Fund will receive roughly \$96.8 million of additional revenues on an annual basis beginning July 1, 2015.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 186 cities and 262 special districts that have elected to join the system.⁴

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

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;
- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

⁴ *Id.*, at 146.

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ Section 4, Art. IV, Fla. Const.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;²⁶ and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.²⁷

Contribution Rates

FRS employers are responsible for contributing a specified percentage of the member’s monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.²⁸ The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2014, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan.

	Valuation Results (in \$ billions)			
	July 1, 2011	July 1, 2012	July 1, 2013	July 1, 2014
Actuarial Liability	\$144.1	\$147.2	\$153.3	\$160.1
Actuarial Value of Assets	\$126.1	\$127.9	\$131.7	\$138.6
Unfunded Actuarial Liability	\$ 18.0	\$ 19.3	\$ 21.6	\$21.5
Funded Percentage	87.5%	86.9%	85.9%	86.6%

The following are the current employer contribution rates for each class and the blended rates recommended by the state actuary beginning in July 2015:²⁹

²⁵ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

²⁶ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

²⁷ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

²⁸ Section 121.70(1), F.S.

²⁹ Section 121.71(4) and (5), F.S.

Membership Class	Current Rates Effective July 1, 2014		Recommended Rates to be effective July 1, 2015	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	3.53%	2.54%	2.91%	2.65%
Special Risk Class	11.01%	7.51%	11.35%	8.99%
Special Risk Administrative Support Class	4.18%	36.59%	3.71%	27.54%
Elected Officer’s Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.30%	38.66%	6.48%	37.62%
• Justices and Judges	10.10%	21.77%	11.39%	22.62%
• County Officers	8.36%	33.58%	8.48%	32.09%
Senior Management Service Class	4.80%	15.04%	4.32%	15.41%
Deferred Retirement Option Program	4.30%	6.72%	4.23%	7.12%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.³⁰

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee’s individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.³¹

Retiree Health Insurance Subsidy

Section 112.363, Florida Statutes, provides for a retiree health insurance subsidy. This subsidy is paid from the Retiree Health Insurance Subsidy Trust Fund to eligible retirees of the FRS. The amount of the monthly subsidy is \$5 for each year of service in the FRS, but not less than \$30 nor more than \$150.

The subsidy is funded through a contribution by employers participating in the FRS. The current contribution is 1.26 percent of the employer’s monthly payroll. The contribution is paid to the Department of Management Services for deposit in the Retiree Health Insurance Subsidy Trust Fund. This program is funded on a “pay-as-you-go” basis rather than on an actuarial basis. This means that the revenues and expenditures of the trust fund are designed to match each other on an annual basis, with minimal reserves accumulated.

Participants of the university, community college, and senior management service defined contribution retirement programs receive contributions directly into their retirement accounts during the years of employment; these participants will not receive the health insurance subsidy

³⁰ Section 121.71(3), F.S.

³¹ See sections 121.4503 and 121.72(1), F.S.

during retirement. Participants of the FRS investment plan will not receive the health insurance subsidy contributions directly but will be eligible to receive the health insurance subsidy upon retirement.

Sections 121.052, 121.055, and 121.071, F.S., also set forth the employer-paid contributions for the retiree health insurance trust fund for the various FRS membership classes.

A recent cash flow analysis of the Retiree Health Insurance Subsidy Trust Fund indicates the following key cash flow data for Fiscal Year 2010-2011 through Fiscal Year 2014-2015. Under current law and current administration and assuming only two percent payroll growth for Fiscal Year 2013-2014 and Fiscal Year 2014-2015, the trust fund is expected to deplete its reserves by September 2015. After that date, the trust fund may not have sufficient revenues to pay the full monthly benefits to retirees.

Retiree Health Insurance Subsidy Trust Fund				
Changes in Fund Balance (in \$ millions)				
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Fund Balance – beginning of Year	\$121.53	\$60.49	\$7.25	(\$59.20)
Revenues (employer contributions and	\$366.24	\$372.53	\$379.66	\$387.25
Expenditures	\$407.28	\$425.77	\$446.11	\$468.94
Excess of Revenues over Expenditures	(\$61.04)	(\$53.24)	(\$66.45)	(\$81.69)
Fund Balance – end of year	\$60.49	\$7.25	(\$59.20)	(\$140.89)
Reserves (balance / monthly expenses)	1.8 months	0.2 months	(1.6 months)	(3.6 months)

III. Effect of Proposed Changes:

The bill increases the employer-paid contributions for the retiree health insurance subsidy program. Also, the bill revises the employer-paid normal cost rates and unfunded actuarial liability (UAL) rates for the FRS, as determined by the July 1, 2013 Annual Valuation as necessary to adequately fund the costs of retirement benefits during Fiscal Year 2014-2015.

Section 1 amends s. 112.363, F.S., to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.26 percent of gross compensation to 1.58 percent of gross compensation for each member of the Florida Retirement System.

Section 2 amends s. 121.052, F.S., to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.26 percent of gross compensation to 1.58 percent of gross compensation for each member of the Elected Officers’ Class of Florida Retirement System.

Section 3 amends s. 121.055, F.S., to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.26 percent of gross compensation to 1.58 percent of gross compensation for each member of the Senior Management Service Class of Florida Retirement System.

Section 4 amends s. 121.071, F.S., to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.26 percent of gross compensation to 1.58 percent of gross compensation for each member of the Regular, Special Risk, and Special Risk Administrative Support classes of Florida Retirement System.

Section 5 amends s. 121.71, F.S., to set the employer-paid contributions to the Florida Retirement System Trust Fund for each membership class of the FRS.

Sections 6 and 7 provide findings that the bill fulfills important state interests.

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated . . .”.

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, community colleges, counties, and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Florida Retirement System

The aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2015-2016 will decrease by approximately \$34.4 million when compared to the employer contributions paid in Fiscal Year 2014-2015. However, the impacts on particular employer vary significantly based on whether the employers have members in the Special Risk Class or the Judicial Subclass. The impacts by employer group for Fiscal Year 2015-2016 are noted below.

Employer Group	Impact on Contributions
State Agencies	\$3.9 m
Universities	(\$2.7 m)
Colleges	(\$4.5 m)
School Boards	(\$60.5 m)
Counties	\$31.5 m
Other	(\$2.1 m)
Total	(\$34.5 m)

Retiree Health Insurance Trust Fund

With the enactment of this legislation, the revenues expected to flow into the Retiree Health Insurance Trust Fund will increase by approximately \$96.8 million annually. The increases by employer group for Fiscal Year 2015-2016 are noted below. With these increased contributions, the trust fund is not expected to deplete its reserves during the forecasted period.

Employer Group	New Contributions
State Agencies	\$14.8 m
Universities	\$4.3 m
Colleges	\$3.4 m
School Boards	\$43.3 m
Counties	\$25.8 m
Other	\$5.2 m
Total	\$96.8 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.363, 121.052, 121.055, 121.071, and 121.71.

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.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00447B-15 20157038pb

1 A bill to be entitled
 2 An act relating to employer contributions to fund
 3 retiree benefits; amending ss. 112.363, 121.052,
 4 121.055, and 121.071, F.S.; revising the employer
 5 contribution rates for the retiree health insurance
 6 subsidy; amending s. 121.71, F.S.; revising the
 7 required employer retirement contribution rates for
 8 members of each membership class and subclass of the
 9 Florida Retirement System; providing findings of an
 10 important state interest; providing an effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Paragraph (i) is added to subsection (8) of
 15 section 112.363, Florida Statutes, to read:
 16 112.363 Retiree health insurance subsidy.—
 17 (8) CONTRIBUTIONS.—For purposes of funding the insurance
 18 subsidy provided by this section:
 19 (i) Beginning July 1, 2015, the employer of each member of
 20 a state-administered retirement plan shall contribute 1.58
 21 percent of gross compensation each pay period.
 22
 23 Such contributions shall be submitted to the Department of
 24 Management Services and deposited in the Retiree Health
 25 Insurance Subsidy Trust Fund.
 26 Section 2. Paragraph (d) of subsection (7) of section
 27 121.052, Florida Statutes, is amended to read:
 28 121.052 Membership class of elected officers.—
 29 (7) CONTRIBUTIONS.—

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30 (d) The following table states the required employer
 31 contribution on behalf of each member of the Elected Officers'
 32 Class in terms of a percentage of the member's gross
 33 compensation. Such contribution constitutes the entire health
 34 insurance subsidy contribution with respect to each such member.
 35 A change in the contribution rate is effective with the first
 36 salary paid on or after the beginning date of the change. The
 37 retiree health insurance subsidy contribution rate is as
 38 follows:
 39

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
July 1, 2001, through June 30,	1.11%

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2013

July 1, 2013, through June 30,
2014

1.20%

~~Effective July 1, 2014,~~
through June 30, 2015

1.26%

Effective July 1, 2015

1.58%

Such contributions and accompanying payroll data are due and payable no later than the 5th working day of the month immediately following the month during which the payroll period ended and shall be deposited by the administrator in the Retiree Health Insurance Subsidy Trust Fund.

Section 3. Paragraph (d) of subsection (3) of section 121.055, Florida Statutes, is amended to read:

121.055 Senior Management Service Class.—There is hereby established a separate class of membership within the Florida Retirement System to be known as the “Senior Management Service Class,” which shall become effective February 1, 1987.

(3)

(d) The following table states the required employer contribution on behalf of each member of the Senior Management Service Class in terms of a percentage of the member’s gross compensation. Such contribution constitutes the entire health insurance subsidy contribution with respect to each such member. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. The

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retiree health insurance subsidy contribution rate is as follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
July 1, 2001, through June 30, 2013	1.11%
July 1, 2013, through June 30, 2014	1.20%
Effective July 1, 2014, <u>through June 30, 2015</u>	1.26%

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80 Effective July 1, 2015 1.58%

81

82 Such contributions and accompanying payroll data are due and

83 payable no later than the 5th working day of the month

84 immediately following the month during which the payroll period

85 ended and shall be deposited by the administrator in the Retiree

86 Health Insurance Subsidy Trust Fund.

87 Section 4. Subsection (4) of section 121.071, Florida

88 Statutes, is amended to read:

89 121.071 Contributions.—Contributions to the system shall be

90 made as follows:

91 (4) The following table states the required employer

92 contribution on behalf of each member of the Regular Class,

93 Special Risk Class, or Special Risk Administrative Support Class

94 in terms of a percentage of the member's gross compensation.

95 Such contribution constitutes the entire health insurance

96 subsidy contribution with respect to each such member. A change

97 in the contribution rate is effective with the first salary paid

98 on or after the beginning date of the change. The retiree health

99 insurance subsidy contribution rate is as follows:

100

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through	0.48%

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103 December 31, 1993

104 January 1, 1994, through
December 31, 1994 0.56%

105 January 1, 1995, through June
30, 1998 0.66%

106 July 1, 1998, through June 30,
2001 0.94%

107 July 1, 2001, through June 30,
2013 1.11%

108 July 1, 2013, through June 30,
2014 1.20%

109 ~~Effective July 1, 2014,~~
through June 30, 2015 1.26%

110 Effective July 1, 2015 1.58%

111 Such contributions shall be deposited by the administrator in

112 the Retiree Health Insurance Subsidy Trust Fund.

113 Section 5. Subsections (4) and (5) of section 121.71,

114 Florida Statutes, are amended to read:

115 121.71 Uniform rates; process; calculations; levy.—

116 (4) Required employer retirement contribution rates for

117 each membership class and subclass of the Florida Retirement

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118 System for both retirement plans are as follows:
 119
 Percentage of
 Gross
 Compensation,
 Effective
 Membership Class July 1, 2015 ~~2014~~
 120 Regular Class 2.91% ~~3.53%~~
 121 Special Risk Class 11.35% ~~11.01%~~
 122 Special Risk
 Administrative
 Support Class 3.71% ~~4.18%~~
 123 Elected Officers' Class-
 Legislators, Governor,
 Lt. Governor,
 Cabinet Officers,
 State Attorneys,
 Public Defenders 6.48% ~~6.30%~~
 124 Elected Officers' Class-
 Justices, Judges 11.39% ~~10.10%~~
 125 Elected Officers' Class-
 County Elected Officers 8.48% ~~8.36%~~
 126

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127 Senior Management Class 4.32% ~~4.80%~~
 128 DROP 4.10% ~~4.30%~~
 129 (5) In order to address unfunded actuarial liabilities of
 130 the system, the required employer retirement contribution rates
 131 for each membership class and subclass of the Florida Retirement
 132 System for both retirement plans are as follows:
 133
 134 Percentage of
 Gross
 Compensation,
 Effective
 Membership Class July 1, 2015 ~~2014~~
 135 Regular Class 2.65% ~~2.54%~~
 136 Special Risk Class 8.99% ~~7.51%~~
 137 Special Risk
 Administrative
 Support Class 27.54% ~~36.59%~~
 138 Elected Officers' Class-
 Legislators, Governor,
 Lt. Governor,
 Cabinet Officers,
 State Attorneys, 37.62% ~~38.66%~~

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	Public Defenders	
139	Elected Officers' Class-	
	Justices, Judges	<u>22.62%</u> 21.77%
140	Elected Officers' Class-	
	County Elected Officers	<u>32.09%</u> 33.58%
141	Senior Management Service	
	Class	<u>15.41%</u> 15.04%
142	DROP	<u>7.12%</u> 6.72%

143

144 Section 6. The Legislature finds that a proper and
 145 legitimate state purpose is served when employees, officers, and
 146 retirees of the state and its political subdivisions, and the
 147 dependents, survivors, and beneficiaries of such employees,
 148 officers, and retirees, are extended the basic protections
 149 afforded by governmental retirement systems. These persons must
 150 be provided benefits that are fair and adequate and that are
 151 managed, administered, and funded in an actuarially sound
 152 manner, as required by s. 14, Article X of the State
 153 Constitution and part VII of chapter 112, Florida Statutes.
 154 Therefore, the Legislature determines and declares that this act
 155 fulfills an important state interest.

156 Section 7. The Legislature finds that a proper and
 157 legitimate state purpose is served when employees, officers, and
 158 retirees of the state and of its political subdivisions, and the
 159 dependents, survivors, and beneficiaries of such employees,

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160	<u>officers, and retirees, are extended the basic protections</u>	
161	<u>afforded by governmental retirement systems that provide fair</u>	
162	<u>and adequate benefits, including health insurance subsidies, and</u>	
163	<u>that are managed, administered, and funded in a reasonable</u>	
164	<u>manner. Therefore, the Legislature determines and declares that</u>	
165	<u>this act fulfills an important state interest.</u>	
166	Section 8. This act shall take effect July 1, 2015.	

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/3/15
Meeting Date

SB 7038
Bill Number (if applicable)

Topic SB 7038

Amendment Barcode (if applicable)

Name Jim CIADELLA

Job Title DIRECTOR OF OPERATIONS

Address 3216 HEARTHSTONE CT

Phone

Street

HOLIDAY

FL

State

34691

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing MYSELF AS A CITIZEN

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 (10/14/14)

CourtSmart Tag Report

Room: SB 401

Case:

Type:

Caption: Governmental Oversight and Accountability

Judge:

Started: 3/4/2015 1:00:59 PM

Ends: 3/4/2015 1:54:16 PM **Length:** 00:53:18

1:01:01 PM Meeting to order, Roll Call
1:01:23 PM Tab 8 - CS/SB 182 Public Records and Meetings/Postsecondary Education Executive Search (Sen. Hays)
1:02:32 PM Amendment barcode 291638
1:03:37 PM Rich Templin, Florida AFL-CIO
1:07:08 PM Question Sen. Hays
1:07:15 PM Rich Templin
1:10:21 PM Dr. Jennifer Profitt, Pres. United Faculty of Florida-FSU Chapter
1:14:32 PM Ralph Wilson, FSU Doctoral Student
1:18:47 PM Ken Williams, representing himself
1:20:22 PM Lakey, Graduate Teaching Assistant
1:24:39 PM Senator Latvala comments
1:25:58 PM Burt Altman, Retired Faculty from FSU
1:26:22 PM Debate
1:27:21 PM Senator Latvala
1:27:45 PM Senator Bullard for question regarding what other states do
1:29:14 PM Senator Hays responds
1:30:15 PM Senator Ring
1:32:52 PM Senator Hays closes on the bill
1:33:07 PM Roll Call on CS/CS/SB 182
1:34:42 PM Tab 5 - CS/SB 296 - Diabetes Advisory Council (presented by leg. asst.)
1:35:30 PM Amendment barcode 882004
1:36:11 PM Roll call on CS/SB 296
1:36:43 PM Tab 1 - CS/SB 646 - Public Records/Information Held by the Florida Prepaid College Board, Florida A&M University, and the Florida Prepaid College Board, Inc., and the Florida Prepaid College Board, Inc.
1:37:04 PM Roll Call on CS/SB 646
1:37:37 PM Tab 2 - SB 7008 - OGSR/Licensure Examination Questions/Board of Funeral, Cemetery, and Consumer Services
1:38:04 PM Roll Call on SB 7008
1:38:37 PM Tab 3 - SB 7010 - OGSR/Examination Techniques or Procedures/Office of Financial Regulation
1:38:40 PM Senator Latvala for question
1:39:21 PM Roll call on SB 7010
1:39:34 PM Tab 4 - SB 590 - Flags
1:40:19 PM Senator Latvala questions
1:43:04 PM Roll Call on SB 590
1:43:11 PM Tab 7 - SB 508 - Small Business Participation in State Contracting
1:43:51 PM Deborah Lawson, NACM Improved Construction Practices Committee
1:46:31 PM Dorothy Brown-Alfaro, representing NABWIC, CSBE Assoc., Inc., Florida Hispanic Assoc.
1:49:54 PM Senator Bullard to close
1:50:10 PM Roll call on SB 508
1:51:00 PM Chair over to Sen. Legg
1:51:15 PM Tab 9 - SB 694 - Florida State Employees' Charitable Campaign
1:52:07 PM Roll call on SB 694
1:52:32 PM Tab 10 - SPB 7038 - Employer Contributions to Fund Retiree Benefits
1:53:41 PM Roll call on SPB 7038
1:53:57 PM Move to rise