

<b>Tab 1 SB 478 by Joyner; (Similar to H 0213) State Employee Salaries</b>						
308680	A	S		GO, Bullard	Delete L.15:	01/25 09:52 AM
<b>Tab 2 SB 708 by Joyner; (Similar to H 0533) Arthur G. Dozier School for Boys</b>						
918106	A	S	RCS	GO, Bullard	Delete L.52 - 87:	01/26 11:49 AM
<b>Tab 3 SB 1150 by Bean; (Similar to CS/H 0953) Legislative Reauthorization of Agency Rulemaking Authority</b>						
535736	A	S		GO, Hays	btw L.52 - 53:	01/25 08:53 AM
<b>Tab 4 SB 1200 by Bean; (Compare to H 1049) Pay-for-Success Contract Program</b>						
697668	D	S	RCS	GO, Hays	Delete everything after	01/26 11:49 AM
405304	AA	S	RCS	GO, Hays	Delete L.25 - 27:	01/26 11:49 AM
<b>Tab 5 SB 1220 by Garcia; (Similar to H 1021) Public Records</b>						
723616	D	S	RS	GO, Hays	Delete everything after	01/26 11:49 AM
909808	SD	S	RCS	GO, Hays	Delete everything after	01/26 11:49 AM
<b>Tab 6 SB 1326 by Soto; (Identical to H 1011) Retirement</b>						
<b>Tab 7 SB 1356 by Brandes; (Compare to CS/H 1003) Employment After Retirement of School District Personnel</b>						
<b>Tab 8 SB 598 by Brandes; (Similar to CS/CS/H 0181) Public Works Projects</b>						
846642	D	S	FAV	GO, Hays	Delete everything after	01/26 11:49 AM
<b>Tab 9 SB 1226 by Ring; (Identical to H 0981) Administrative Procedures</b>						

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

**MEETING DATE:** Tuesday, January 26, 2016

**TIME:** 9:00—11:00 a.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	<b>SB 478</b> Joyner (Similar H 213, H 1239)	State Employee Salaries; Defining the term "state employee"; requiring a competitive pay adjustment for state employees as of a specified date, etc.  GO 01/26/2016 Not Considered AGG AP	Not Considered
2	<b>SB 708</b> Joyner (Similar H 533)	Arthur G. Dozier School for Boys; Directing the Department of State to preserve historical resources, records, archives, and artifacts, to create and maintain a memorial to victims, and to continue the department's research and development of evidence; authorizing the department to reimburse the next of kin of children whose bodies are buried and exhumed at the Dozier School for the costs associated with funeral services and reinterment; requiring that the costs for which the next of kin is reimbursed be documented, etc.  GO 01/26/2016 Fav/CS ATD AP	Fav/CS Yeas 5 Nays 0
3	<b>SB 1150</b> Bean (Similar CS/H 953)	Legislative Reauthorization of Agency Rulemaking Authority; Providing for suspension of certain rulemaking authority after a specified period, until reauthorized by general law; providing for expiration of such reauthorization after a specified period; providing for suspension of rulemaking authority upon expiration of its reauthorization, until reauthorized by general law; authorizing the Governor to delay suspension of rulemaking authority for a specified period upon declaration of a public necessity; providing exceptions, etc.  GO 01/26/2016 Not Considered AGG AP	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Tuesday, January 26, 2016, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1200</b> Bean (Compare H 1049)	Pay-for-Success Contract Program; Requiring the Department of Management Services to oversee a Pay-for-Success Contract Program; authorizing the department, contingent upon funding, to negotiate and enter into contracts with private entities to fund high-quality programs; requiring an independent evaluator to determine whether the performance outcome measures in a contract have been met, etc.  GO 01/26/2016 Fav/CS AGG AP	Fav/CS Yeas 4 Nays 0
5	<b>SB 1220</b> Garcia (Similar H 1021)	Public Records; Revising the circumstances under which a court may assess and award the reasonable costs of enforcement against an agency in a civil action to enforce ch. 119, etc.  GO 01/26/2016 Fav/CS JU FP	Fav/CS Yeas 3 Nays 0
6	<b>SB 1326</b> Soto (Identical H 1011)	Retirement; Revising the method for determining the cost-of-living adjustment of benefits for retirees and annuitants of the Florida Retirement System on and after a specified date, etc.  GO 01/26/2016 Not Considered AP	Not Considered
7	<b>SB 1356</b> Brandes (Similar H 1003)	Employment After Retirement of School District Personnel; Revising provisions relating to reemployment of retirees as instructional personnel on a contract basis; providing legislative intent and findings to clarify authorization to award contracts; providing requirements for a judgment in certain civil actions or administrative proceedings, etc.  GO 01/26/2016 Favorable AED AP	Favorable Yeas 4 Nays 0
8	<b>SB 598</b> Brandes (Similar CS/CS/H 181)	Public Works Projects; Prohibiting the state and political subdivisions that contract for the construction, maintenance, repair, or improvement of public works from imposing restrictive conditions on contractors, subcontractors, or material suppliers or carriers; prohibiting the state and political subdivisions from restricting qualified bidders from submitting bids, etc.  GO 01/19/2016 Not Considered GO 01/26/2016 Unfavorable CA AP	Unfavorable Yeas 2 Nays 3

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability  
 Tuesday, January 26, 2016, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>SB 1226</b> Ring (Identical H 981)	Administrative Procedures; Providing additional requirements for the calculation of estimated adverse impacts and regulatory costs, etc.  GO 01/26/2016 Favorable AGG FP	Favorable Yeas 5 Nays 0

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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**Senate Confirmation Hearing:** A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.

**Investment Advisory Council**

10	Daniels, Leslie B. (Palm Beach)	12/12/2018	Recommend Confirm Yeas 5 Nays 0
	Price, Michael F. (New York)	12/12/2018	Recommend Confirm Yeas 5 Nays 0
	Olmstead, Vinny (Vero Beach)	02/01/2019	Recommend Confirm Yeas 5 Nays 0
	Jones, J. Robert, Jr. (Winter Park)	02/01/2019	Recommend Confirm Yeas 5 Nays 0

**Secretary of State**

11	Detzner, Kenneth W. (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 5 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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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.)

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

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BILL: SB 478

INTRODUCER: Senator Joyner

SUBJECT: State Employee Salaries

DATE: January 25, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	<b>Pre-meeting</b>
2.			AGG	
3.			AP	

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**I. Summary:**

SB 478 authorizes, effective July 1, 2016, a three percent increase on each state employee's base rate of pay as of June 30, 2016.

To be eligible for the pay increase, the "state employee" must:

- Hold a salaried position and work at least 30 hours per week; or
- Be paid from regular salary appropriations for 8 months' employment.

State officers, including the Governor and Cabinet, judges, and various other positions whose annual salaries are fixed by law, are not eligible for the pay increase. Employees paid from the other-personal-services appropriations category (typically referred to as OPS employees) are not eligible for the pay increase.

The bill directs the Legislature to appropriate funds necessary to implement the pay increase.

The fiscal impact of this pay increase is estimated to be, on an annual basis, roughly \$172 million from the General Revenue Fund and \$91 million from various trust funds.

**II. Present Situation:**

As of June 30, 2014, the state workforce had approximately 159,300 positions. These positions participate in various pay plans. The table below shows the pay plans, the established positions, and the reported average salaries.<sup>1</sup> For the most part, these employees are paid from the salaries and benefits appropriation categories in the General Appropriations Act.

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<sup>1</sup> Fiscal Year 2013-14 Annual Workforce Report, pp.15 and 18. <http://www.dms.myflorida.com/content/download/113500/629140/file/FY%202013-14%20Annual%20Workforce%20Report.pdf> (last visited on January 20, 2016).

<b>Pay Plan</b>	<b>Positions</b>	<b>Average Salary</b>
Career Service	80,564	\$35,564
Selected Exempt Service	17,007	\$55,098
Senior Management Service	582	\$110,853
Lottery	421	
Justice Administration System	10,245	
State Courts System	3,209	
Legislative Staff	1,543	
Executive Office of the Governor	286	
Florida School for the Deaf and Blind	231	
Florida National Guard	47	
State Universities	44,126	
<b>TOTAL</b>	<b>159,360</b>	

“Base rate of pay” is an employee’s salary excluding any approved pay additive, incentive pay, discretionary or non-discretionary bonus payment, and other legislatively approved agency specific pay additive.<sup>2</sup>

Employees paid from the “other personal services” appropriation categories are referred to as OPS employees. These employees typically are temporary employees. These employees are paid on an hourly basis and participate in Medicare and a FICA Alternative Plan in lieu of social security.<sup>3</sup> During the 2013-14 fiscal year, there were approximately 8,900 individuals employed as OPS each month by state agencies<sup>4</sup> (not including the judicial and legislative branches, the universities, the Department of Lottery and Executive Office of the Governor, the Justice Administration Commission, the Florida School for the Deaf and Blind, and the Florida National Guard).

### III. Effect of Proposed Changes:

This bill authorizes, effective July 1, 2016, a three percent increase on each state employee’s base rate of pay as of June 30, 2016.

The term “state employee” is defined to mean an employee of any branch of state government who holds a salaried position and who is expected to work at least 30 hours per week. This definition does not appear to include state officers, including the Governor and Cabinet, judges, and various other positions whose annual salaries are fixed by law.

“State employee” also includes employees paid from regular salary appropriations for 8 months’ employment. This cohort of employees are not required to work 30 hours per week to be eligible for the pay increase.

<sup>2</sup> Ch. 60L-32.0001(1), F.A.C.

<sup>3</sup> Fiscal Year 2013-14 Annual Workforce Report, p 17. <http://www.dms.myflorida.com/content/download/113500/629140/file/FY%2013-14%20Annual%20Workforce%20Report.pdf> (last visited on January 20, 2016).

<sup>4</sup> Id.

The term “state employees” does not include employees paid from the other-personal-services appropriations category.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with 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:

The annual costs associated with a three percent increase for employees within the various pay plans are noted in the table below. These costs include both the increase to the employees’ salaries as well as the other employer-paid contributions associated with federal employment taxes, FRS contributions, and contributions for disability insurance. These amounts noted in the table below may overstate the fiscal impact of the legislation because the amounts include pay adjustments for vacant positions as well as positions filled by employees working less than 30 hours per week

<b>Pay Plans</b>	<b>General Revenue</b>	<b>Trust Funds</b>	<b>Total</b>
Career Service	\$54,552,011	\$60,661,462	\$115,213,473
Selected Exempt Service	9,953,522	23,416,331	33,369,853
Senior Management Service	877,927	1,637,118	2,515,045
Lottery	0	629,194	629,194
Justice Administration System	15,381,558	2,990,051	18,371,609
State Courts System	4,092,836	1,401,554	5,494,390
Legislative Staff	3,010,872	0	3,010,872
Executive Office of the Governor	301,468	158,007	459,475

Florida School for the Deaf and Blind	403,439	22,399	425,838
Florida National Guard	44,279	37,838	82,117
State Universities	82,968,933	91,369	83,060,302
<b>TOTAL</b>	<b>\$171,586,845</b>	<b>\$91,045,323</b>	<b>\$262,632,168</b>

**VI. Technical Deficiencies:**

There are two definitions for state employee. The first definition requires the employee to hold a salaried position in state government and work (or be expected to work) at least 30 hours per week to be eligible. This definition covers those employees in state agencies, the universities and the Florida School for the Deaf and Blind who work at least 30 hours per week.

The second definition only requires the employee to be paid from “regular salary appropriations for 8 months’ employment.” Eligibility under this definition is not limited to salaried position or by a threshold work requirement. It is unclear what cohort of employees this definition is intended to make eligible for the pay increase.

If this definition is intended to expand the pool of eligible employees to include those who do not work at least 30 hours per work but are paid from “regular salary appropriations”, part-time employees (working less than 30 hours of work) could be eligible. If this is the intent, a modification to the first definition to remove or reduce the threshold work requirement of 30 hours per week may be appropriate to clarify the eligibility of part-time employees.

If this definition is intended to expand the pool of eligible employees to include certain university personnel who work under 8 month contracts, this definition needs to be revised because the funding for universities in the General Appropriations Act is typically not made from “regular salary appropriations” but rather from an “Aid to Local Governments –Grants and Aids – Education and General Activities” category.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of Florida law.

**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.



308680

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment**

Delete line 15  
and insert:  
at least 20 hours per week or employees paid from regular salary

By Senator Joyner

19-00350-16

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A bill to be entitled

An act relating to state employee salaries; defining the term "state employee"; requiring a competitive pay adjustment for state employees as of a specified date; requiring an appropriation; providing an effective date.

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

Section 1. Competitive pay adjustment for state employees.-

(1) For purposes of this section, the term "state employee" means employees of all branches or agencies of state government holding salaried positions who are paid by state warrant or from agency funds and who work or are expected to work an average of at least 30 hours per week or employees paid from regular salary appropriations for 8 months' employment. The term does not include employees who are paid from other-personal-services funds.

(2) Effective July 1, 2016, each state employee shall receive a competitive pay adjustment increase of 3 percent on the employee's June 30, 2016, base rate of pay.

(3) The Legislature shall appropriate funds necessary to implement this section.

Section 2. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Criminal and  
Civil Justice, *Vice Chair*  
Appropriations  
Health Policy  
Higher Education  
Judiciary  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

### SENATOR ARTHENIA L. JOYNER

*Democratic Leader*  
19th District

October 21, 2015

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

Dear Mr. Chair:

This is to request that Senate Bill 478, State Employee Salaries, be placed on the agenda for the Committee on Governmental Oversight and Accountability. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

Arthenia L. Joyner  
State Senator, District 19

#### REPLY TO:

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/16

Meeting Date

478

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Rich Templin

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

Address 135 S. Monroe  
Street

Phone 850 - 224 - 6926

Tallahassee FL 32304  
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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB 478

Bill Number (if applicable)

Meeting Date

Topic State employees Pay Raise

Amendment Barcode (if applicable)

Name Buddy IVORS

Job Title General Counsel Fla. Prosecuting Attys Assoc.

Address 96687 Gateway Blvd.

Phone

Street

Fernandine Bch

FL

32034

Email

City

State

Zip

Speaking:  For  Against  Information

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

Representing State Attorneys of Fla.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1.26.16  
Meeting Date

0478  
Bill Number (if applicable)

Topic State Employees Salaries

Amendment Barcode (if applicable)

Name Ken Williams

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

Address 7411 Meadow Drive  
Street

Phone 813.493.7685

Tampa FL 33634  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16

Meeting Date

0478

Bill Number (if applicable)

Topic STATE EMPLOYEES SALARIES

Amendment Barcode (if applicable)

Name LARRY DUPREE

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

Address 8301 N. RIVER HIGHLANDS PL

Phone \_\_\_\_\_

Street

TAMPA FL 33617

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/19  
Meeting Date

SB 0478  
Bill Number (if applicable)

Topic STATE EMPLOYEES SALARIES

Amendment Barcode (if applicable)

Name LES CANTRELL

Job Title STATE WIDE COORDINATOR TEAMSTERS

Address 200 RIVERBEND RD.

Phone 386-679-9272

Street

ORMOND BEACH FL 32124

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing FLORIDA CORRECTIONAL OFFICERS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/29/16

Meeting Date

SB 0478

Bill Number (if applicable)

Topic STATE EMPLOYEE SALARIES

Amendment Barcode (if applicable)

Name BOBBIE CAROL

Job Title CORRECTIONAL OFFICER

Address 2283 S JEFFERSON Street

Phone 850-321-2948

Monticello FL 32344

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 [x] No

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

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/26/2016

478

*Meeting Date*

*Bill Number (if applicable)*

Topic State Employee Salary

*Amendment Barcode (if applicable)*

Name Jim Purdy

Job Title Public Defender, 7th Circuit

Address 251 N. Ridgewood Ave

Phone 386.239.7730

*Street*

Daytona Beach

Florida

32114

Email purdy.james@pd7.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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)

1/20/2016

Meeting Date

SB 478

Bill Number (if applicable)

Topic State Employees' Salaries

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St

Phone \_\_\_\_\_

Street

Tallahassee

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Police Benevolent 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.

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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)

11 26 / 2016

Meeting Date

SB 0478

Bill Number (if applicable)

Topic State Employee salaries

Amendment Barcode (if applicable)

Name Andy madtas

Job Title Executive Director CN 979

Address 625 south east 4th court

Phone 786-213-3702

Street

Dania beach

City

Fla

State

33004

Zip

Email amadtas@afscme.org

Speaking:  For  Against  Information

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

Representing AFSCME CN 979

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.)

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

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BILL: CS/SB 708

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Joyner

SUBJECT: Arthur G. Dozier School for Boys

DATE: January 27, 2016      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	<b>Fav/CS</b>
2.			ATD	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 708 authorizes the Department of State (DOS) to spend up to \$7,500 for the cost of reinterring remains exhumed during the investigation of the cemetery located at the Arthur G. Dozier School for Boys (Dozier). The expenditures may take the form of reimbursements to the next of kin for the costs of re-burial or payments made directly to funeral homes.

The bill establishes a task force which will make recommendations about a memorial and where unclaimed remains should be reinterred. The bill requires historical resources and artifacts discovered at Dozier to be transferred to DOS.

The bill provides a nonrecurring appropriation of \$500,000 to the DOS from the General Revenue Fund for the 2016-2017 fiscal year (FY), and any remaining funds may be used in FY 2017-2018.

The bill takes effect upon becoming law.

## II. Present Situation:

### Dozier School for Boys

Dozier was a reform school located in Mariana, Florida and closed in 2011. Dozier was one of two training schools within the Department of Juvenile Justice.<sup>1</sup> The Department of Education administered the education program for the youths at Dozier.<sup>2</sup>

In 2008, Governor Charlie Christ directed the Florida Department of Law Enforcement (FDLE) to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at Dozier.<sup>3</sup> The former student had lived at Dozier during the 1950's and 1960's and alleged that students who died as a result of abuse were buried at the school cemetery.<sup>4</sup> FDLE identified 31 graves at Dozier but did not exhume any bodies.<sup>5</sup> The University of South Florida (USF) subsequently conducted research which included excavation and exhumation.<sup>6</sup> As of January 28, 2014, USF excavation and exhumation have resulted in 55 bodies being discovered.<sup>7</sup> There are no official records which account for 24 of the 55 bodies found.<sup>8</sup>

### Prompt Pay Law

Section 215.422, F.S., governs the processing times of invoices submitted by a state agency for payment to the Chief Financial Officer (CFO) with the Department of Financial Services (DFS). Invoices submitted by agencies are required to be filed with the CFO no later than 20 days after receipt of invoice and receipt, inspection, and approval of the goods or services.<sup>9</sup> DFS must make prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.<sup>10</sup> If a warrant in payment of an invoice is not made within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, the agency must pay the vendor interest<sup>11</sup> on the unpaid balance until payment is issued to the vendor.<sup>12</sup>

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<sup>1</sup> Section 985.03(56), F.S. (2010).

<sup>2</sup> Section 1003.52(20), F.S. (2013).

<sup>3</sup> *Arthur G. Dozier School for Boys, Case Number EI-04-00005 and EI-73-8455*, Dated December 18, 2012, Office of Executive Investigations, Florida Department of Law Enforcement available at [www.fdle.state.fl.us/Content/getattachment/7984bf67-8d1b-47f2-be9f-e1f9ab888874/FDLE-releases-response-regarding-Dozier-School.aspx](http://www.fdle.state.fl.us/Content/getattachment/7984bf67-8d1b-47f2-be9f-e1f9ab888874/FDLE-releases-response-regarding-Dozier-School.aspx). (last visited December 19, 2015)

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> Ben Montgomery, *More Bodies Found Than Expected at the Dozier School for Boys*, MIAMI HERALD, Jan. 4, 2015 <http://www.miamiherald.com/news/state/florida/article5427669.html> (last visited December 19, 2015).

<sup>8</sup> University of South Florida News, *USF Researchers Find Additional Bodies at Dozier School for Boys*, <http://news.usf.edu/article/templates/?a=5997> (last visited December 22, 2015).

<sup>9</sup> Section 215.422(1), F.S.

<sup>10</sup> Section 215.422(2), F.S.

<sup>11</sup> The CFO calculates the interest rate, which is based on the interest rates set by the Federal Reserve Bank. Sections 215.422(3)(b) and 55.03(1), F.S.

<sup>12</sup> Section 215.422(3)(b), F.S.

**III. Effect of Proposed Changes:**

The bill directs that historical resources and artifacts recovered from Dozier should be transferred to DOS for preservation. DOS is directed to identify and locate the next of kin of the exhumed children by December 31, 2017.

The bill authorizes DOS to spend up to \$7,500 for the costs of a funeral, a grave marker and reintering the exhumed remains. These expenditures may take the form of reimbursements to the next of kin or payments made directly to a funeral home, or other appropriate entity. The expenditures are to be made in accordance with current prompt pay laws. Charitable contributions made towards a burial cannot be reimbursed. DOS must submit a report on that status of its expenditures to the Legislature by February 1, 2018.

The bill establishes a task force under DOS which will make recommendations about the creation and maintenance of a memorial as well as make recommendations about where unidentified or unclaimed remains should be reinterred. The Secretary of the DOS will appoint the members of the task force. DOS must submit a report of the recommendation made by the task force by October 1, 2016, at which time the task force will be abolished. Task force members will not be paid, however, they may be reimbursed for per diem and travel expenses.

The bill provides DOS rulemaking authority to administer the bill.

The bill appropriates a nonrecurring sum of \$500,000 from the General Revenue Fund for the FY 2016-2017 to DOS for implementation purposes. Unused funds may be used in FY 2017-2018.

The bill takes effect upon becoming law.

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with 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:**

Indeterminate.

**C. Government Sector Impact:**

The bill appropriates \$500,000 from the General Revenue Fund for FY 2016-2017 to the DOS to administer the act. Unused funds will revert back to the General Revenue Fund on July 1, 2017, and will be appropriated for the same purpose in FY 2017-2018.

**VI. Technical Deficiencies:**

The bill does not identify who will be on the taskforce.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an unnumbered section of Florida law.

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

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

**CS by Governmental Oversight and Accountability on January 26, 2016:**

- Removes provisions requiring DOS to perform research and develop evidence taken from Dozier.
- Removes a requirement that DOS create a memorial and in its place creates a task force to make recommendations about the creation of a memorial and where unclaimed remains should be reinterred. The task force must produce a report by October 1, 2016.
- Removes the condition that payment be made to a funeral home only when the next of kin cannot pay for funeral and reinterment costs.
- Removes the requirement that DOS make payment to the next of kin within 14 days and replaces that requirement with the current prompt payment law.
- Provides that charitable donations made for the funeral and burial costs will not be reimbursed or paid by the state.
- Provides that DOS should locate the next of kin by December 31, 2017. More time was given so that DOS would have sufficient time to locate the next of kin.
- Provides that DOS should file a report with the Legislature on the status of payments made by February 1, 2018, so that the report will be available prior to the 2018 legislative session.
- Reduces funding to \$500,000 to be spent over FY 2016-2017 and FY 2017-2018.

B. Amendments:

None.

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

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918106

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2016	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 52 - 87  
and insert:

Section 1. (1) Any historical resource, record, archive, or artifact and any human remains that are recovered from the Arthur G. Dozier School for Boys must be transferred to the Department of State. The department shall retain and preserve such historical resources, records, archives, and artifacts.

(2) The Department of State shall reimburse the next of kin



918106

11 or pay directly to the provider up to \$7,500 for funeral,  
12 reinterment, and grave marker expenses for each child whose body  
13 was buried and exhumed at the Dozier School. The department  
14 shall identify and locate eligible next of kin of such children  
15 by December 31, 2017.

16 (a) To receive reimbursement, the next of kin must submit  
17 to the department receipts for or documentation of expenses.  
18 Reimbursement shall be made pursuant to s. 215.422.

19 (b) If expenses are to be paid directly to the provider,  
20 the funeral home or other similar entity shall submit an invoice  
21 to the department for the cost of the child's funeral,  
22 reinterment, and grave marker expenses. Payment shall be made  
23 pursuant to s. 215.422.

24 (c) A charitable donation made toward funeral, reinterment,  
25 and grave marker expenses is not eligible for reimbursement.

26 (3) By February 1, 2018, the Department of State shall  
27 report to the Legislature on the status of payments and  
28 reimbursements required by this act.

29 (4) (a) A task force, as defined in s. 20.03, is established  
30 adjunct to the Department of State to make recommendations to  
31 the department regarding the creation and maintenance of a  
32 memorial and the location of a site for the reinterment of  
33 unidentified or unclaimed remains.

34 (b) Task force members shall be appointed by the secretary  
35 of the Department of State and shall serve without compensation,  
36 but are entitled to reimbursement for per diem and travel  
37 expenses in accordance with s. 112.061.

38 (c) The recommendations of the task force must be submitted  
39 to the Department of State by October 1, 2016, at which time the



918106

40 task force is abolished.

41 (5) The department may adopt rules necessary to administer  
42 this section.

43 Section 2. For the 2016-2017 fiscal year, the sum of  
44 \$500,000 in nonrecurring funds is appropriated from the General  
45 Revenue Fund to the Department of State for the purpose of  
46 implementing this act. The unexpended balance of such funds  
47 shall revert immediately on July 1, 2017, and is appropriated  
48 for the 2017-2018 fiscal year for the same purpose.

49 Section 3. This act shall take effect upon becoming law.  
50

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

52 And the title is amended as follows:

53 Delete lines 5 - 36

54 and insert:

55 artifacts; directing the department to reimburse the  
56 next of kin of children whose bodies are buried and  
57 exhumed at the Dozier School or to pay directly to a  
58 provider for the costs associated with funeral  
59 services, reinterment, and grave marker expenses;  
60 providing a process for reimbursement by the  
61 department; providing that a charitable donation made  
62 toward funeral, reinterment, and grave marker expenses  
63 is not eligible for reimbursement; establishing a task  
64 force to make recommendations regarding a memorial and  
65 a location of a site for the reinterment of  
66 unidentified or unclaimed remains; providing that  
67 members of the task force shall serve without  
68 compensation but are entitled certain per diem and



918106

69 travel expenses; requiring the task for to submit its  
70 recommendation to the department by a certain date, at  
71 which time the task force is abolished; authorizing  
72 the department to adopt rules; providing  
73 appropriations; providing an effective date.  
74

75 WHEREAS, the Arthur G. Dozier School for Boys, or the  
76 Dozier School, operated from 1900 until it was closed in 2011  
77 after allegations of abuse were confirmed in separate  
78 investigations by the Department of Law Enforcement in 2010 and  
79 the Civil Rights Division of the United States Department of  
80 Justice in 2011, and

81 WHEREAS, official records indicated that 31 graves had been  
82 dug at the facility between 1914 and 1952, and

83 WHEREAS, a forensic investigation by the University of  
84 South Florida found that there are no records of where children  
85 who died at the Dozier School are buried and that a second  
86 cemetery is likely to exist, and

87 WHEREAS, exhumations of bodies began in August 2013, and  
88 the excavations yielded 55 burial sites, 24 more bodies

By Senator Joyner

19-00638B-16

2016708\_\_

1 A bill to be entitled  
 2 An act relating to the Arthur G. Dozier School for  
 3 Boys; directing the Department of State to preserve  
 4 historical resources, records, archives, and  
 5 artifacts, to create and maintain a memorial to  
 6 victims, and to continue the department's research and  
 7 development of evidence; authorizing the department to  
 8 reimburse the next of kin of children whose bodies are  
 9 buried and exhumed at the Dozier School for the costs  
 10 associated with funeral services and reinterment;  
 11 requiring the department to identify and locate such  
 12 next of kin within a specified timeframe; requiring  
 13 that the costs for which the next of kin is reimbursed  
 14 be documented; requiring that payment be made within a  
 15 specified timeframe; authorizing the department to  
 16 make direct payment to the provider for such services;  
 17 authorizing reimbursement if an exhumation occurs  
 18 after a specified date, subject to the availability of  
 19 funding; authorizing the department to adopt rules;  
 20 providing an appropriation; providing an effective  
 21 date.

22  
 23 WHEREAS, the Arthur G. Dozier School for Boys, or the  
 24 Dozier School, operated from 1900 until it was closed in 2011  
 25 after allegations of abuse were confirmed in separate  
 26 investigations by the Department of Law Enforcement in 2010 and  
 27 the Civil Rights Division of the United States Department of  
 28 Justice in 2011, and

29 WHEREAS, official records indicated that 31 graves had been

Page 1 of 3

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

19-00638B-16

2016708\_\_

30 dug at the facility between 1914 and 1952, and  
 31 WHEREAS, a forensic investigation by the University of  
 32 South Florida found that there are no records of where children  
 33 who died at the Dozier School are buried and that a second  
 34 cemetery is likely to exist, and  
 35 WHEREAS, exhumations of bodies began in August 2013, and  
 36 the excavations yielded remains of 55 bodies, 24 more bodies  
 37 than reported in official records, and  
 38 WHEREAS, one of the bodies exhumed during the forensic  
 39 investigation was of a child reported missing since 1940, and  
 40 WHEREAS, representatives of children formerly held at the  
 41 Dozier School have estimated that there could be 100 more bodies  
 42 buried on the grounds of the school, and  
 43 WHEREAS, many families of children whose bodies have been  
 44 exhumed lack the resources to properly reinter those children at  
 45 a suitable location, and  
 46 WHEREAS, the State of Florida recognizes an obligation to  
 47 help the families of children formerly buried at the Dozier  
 48 School reinter the bodies of those children, NOW, THEREFORE,  
 49  
 50 Be It Enacted by the Legislature of the State of Florida:

51  
 52 Section 1. (1) The Department of State is directed to  
 53 preserve historical resources, records, archives, and artifacts;  
 54 to create and maintain a memorial for victims; and to continue  
 55 its research and development of evidence at the Arthur G. Dozier  
 56 School for Boys.

57 (2) The department is authorized to reimburse up to \$7,500  
 58 for funeral, reinterment, and grave marker expenses to the next

Page 2 of 3

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

19-00638B-16

2016708

59 of kin of each child buried and exhumed at the Dozier School.  
60 The department shall identify and locate eligible families of  
61 exhumed children within 1 year after the effective date of this  
62 act and shall pay up to the maximum allowed to the next of kin  
63 no later than 6 months after locating the next of kin.

64 (a) The child's next of kin must submit receipts or  
65 documentation of the expenses to the department in order to  
66 receive reimbursement, which must be processed and remitted  
67 within 14 days of the department's receipt of the request for  
68 reimbursement and required documentation.

69 (b) If a family cannot pay the funeral, reinterment, or  
70 grave marker expenses, the department may, upon receipt of an  
71 invoice, pay such expenses directly to the funeral home or other  
72 appropriate entity.

73 (3) Subject to the appropriation of funds by the  
74 Legislature, if the remains of a child are found and exhumed at  
75 the Dozier School after June 30, 2017, the next of kin must be  
76 identified within a reasonable time and reimbursed up to \$7,500  
77 for funeral, reinterment, and grave marker expenses within 1  
78 year after the exhumation of the child. Reimbursement must be  
79 made subject to the requirements specified in paragraphs (2) (a)  
80 and (b).

81 (4) The department may adopt rules necessary to administer  
82 this section.

83 Section 2. For the 2016-2017 fiscal year, the sum of \$1.5  
84 million in nonrecurring funds is appropriated from the General  
85 Revenue Fund to the Department of State for the purpose of  
86 implementing this act.

87 Section 3. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Criminal and  
Civil Justice, *Vice Chair*  
Appropriations  
Health Policy  
Higher Education  
Judiciary  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

### SENATOR ARTHENIA L. JOYNER

*Democratic Leader*  
19th District

November 18, 2015

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

Dear Mr. Chair:

This is to request that Senate Bill 708, Arthur G. Dozier School for Boys, be placed on the agenda for the Committee on Governmental Oversight and Accountability. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

Arthenia L. Joyner  
State Senator, District 19

#### REPLY TO:

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/26/16

Meeting Date

708

Bill Number (if applicable)

Topic Dozier

Amendment Barcode (if applicable)

Name Bob Martinez

Job Title Senior Policy Advisor, Holland & Knight

Address 100 N. Tampa St.

Phone 813-227-6308

Street

Tampa

FL

33602

City

State

Zip

Email bob.martinez@hkla.com

Speaking:  For  Against  Information

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

Representing Holland & Knight

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)

1/26/2016

*Meeting Date*

708

*Bill Number (if applicable)*

Topic Dozier School for Boys

*Amendment Barcode (if applicable)*

Name Jim Purdy

Job Title Public Defender, 7th Circuit

Address 251 N. Ridgewood Ave

*Street*

Daytona Beach

*City*

Florida

*State*

32114

*Zip*

Phone 386.239.7730

Email purdy.james@pd7.org

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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.)

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

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BILL: SB 1150

INTRODUCER: Senator Bean

SUBJECT: Legislative Reauthorization of Agency Rulemaking Authority

DATE: January 25, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Pre-meeting</b>
2.			AGG	
3.			AP	

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**I. Summary:**

SB 1150 amends s. 120.536, F.S., to suspend any new rulemaking authority for 3 years after the effective date of the law authorizing rulemaking until reauthorized by general law. Any rulemaking authority effective on or before July 1, 2016, is suspended July 1, 2019, until reauthorized by general law.

The bill provides that reauthorization of rulemaking authority remains in effect for 3 years, after which the reauthorization expires and rulemaking authority is then suspended until reauthorized by general law.

Although the rulemaking authority is suspended, an agency may continue to use the rulemaking process to adopt rules. However, any rule adopted during this suspension of rulemaking authority must be ratified by the Legislature.

The bill allows the Governor to issue a one-time written declaration of public necessity delaying a suspension for 90 days, allowing the Legislature to convene and address the necessity.

SB 1150 makes exceptions for emergency rulemaking and rulemaking necessary to maintain financial or legal integrity of any financial obligation of the state, its agencies or political subdivisions.

The bill has an effective date of July 1, 2016.

## II. Present Situation:

### Administrative Procedure Act

Chapter 120, F.S., known as the Administrative Procedure Act (APA),<sup>1</sup> regulates administrative rulemaking, administrative enforcement and administrative resolution of disputes arising out of administrative actions of most state agencies and some subdivisions of state government. The term “agency” is defined in s. 120.52(1), F.S., as:

- Each state officer and state department, and departmental unit described in s. 20.04, F.S.<sup>2</sup>
- The Board of Governors of the State University System, the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- A regional water supply authority.
- A regional planning agency.
- A multicounty special district with a majority of its governing board comprised of non-elected persons.
- Educational units.
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.
- Other units of government in the state, including counties and municipalities, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.<sup>3</sup>

The definition of “agency” also includes the Governor<sup>4</sup> in the exercise of all executive powers other than those derived from the State Constitution.

Administrative actions authorized by law and regulated by the APA include adoption of a rule,<sup>5</sup> granting or denying a permit or license, an order enforcing a law or rule that assesses a fine or other discipline and final decisions in administrative disputes or other matters resulting in an agency decision. Such disputes include challenges to the validity of a rule or proposed rule or challenges to agency reliance on unadopted rules,<sup>6</sup> as well as challenges to other proposed agency actions which affect substantial interests of any party.<sup>7</sup> In addition to disputes, agency action occurs when the agency acts on a petition for a declaratory statement<sup>8</sup> or settles a dispute through mediation.<sup>9</sup>

---

<sup>1</sup> Section 120.51, F.S.

<sup>2</sup> Section 20.04, F.S., sets the structure of the executive branch of state government.

<sup>3</sup> The definition of agency expressly excludes certain legal entities or organizations found in chs. 343, 348, 349 and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

<sup>4</sup> Section 120.52(1)(a), F.S.

<sup>5</sup> Section 120.54, F.S.

<sup>6</sup> Section 120.56, F.S.

<sup>7</sup> Section 120.569, F.S.

<sup>8</sup> Section 120.565, F.S.

<sup>9</sup> Section 120.573, F.S.

## Administrative Rulemaking

The APA governs all rulemaking by state agencies except when specific legislation exempts its application. Rulemaking authority is delegated by the Legislature<sup>10</sup> authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>11</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>12</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>13</sup> The grant of rulemaking authority itself need not be detailed.<sup>14</sup> The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>15</sup> A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.<sup>16</sup> Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.<sup>17</sup>

In 1996 the Legislature extensively revised<sup>18</sup> agency rulemaking under the APA to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>19</sup> The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.<sup>20</sup> If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.<sup>21</sup>

---

<sup>10</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>11</sup> Section 120.52(17), F.S.

<sup>12</sup> Section 120.54(1)(a), F.S.

<sup>13</sup> Sections 120.52(8) & 120.536(1), F.S.

<sup>14</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>15</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>16</sup> *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

<sup>17</sup> *Sarasota County. v. Barg*, 302 So. 2d 737 (Fla. 1974).

<sup>18</sup> Ch. 96-159, LOF.

<sup>19</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>20</sup> *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1<sup>st</sup> DCA 1977).

<sup>21</sup> *McDonald v. Dep't of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1<sup>st</sup> DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1<sup>st</sup> DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1<sup>st</sup> DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977-978 (Fla. 1<sup>st</sup> DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5<sup>th</sup> DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1<sup>st</sup> DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5<sup>th</sup> DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5<sup>th</sup> DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1<sup>st</sup> DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1<sup>st</sup> DCA 2010).

A notice of rule development initiates public input on a rule proposal.<sup>22</sup> The process may be facilitated by conducting public workshops or engaging in negotiated rulemaking.<sup>23</sup> An agency begins the formal rulemaking by filing a notice of the proposed rule.<sup>24</sup> The notice is published by the Department of State in the Florida Administrative Register<sup>25</sup> and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared,<sup>26</sup> and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy, adverse impact on business competitiveness or increase in regulatory costs.<sup>27</sup>

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect.<sup>28</sup> First, is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.<sup>29</sup> Next, is the likely adverse impact on business competitiveness,<sup>30</sup> productivity, or innovation.<sup>31</sup> Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.<sup>32</sup> If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."<sup>33</sup> A rule must be filed for adoption before it may go into effect<sup>34</sup> and cannot be filed for adoption until completion of the rulemaking process.<sup>35</sup>

Proposed rules also must be formally reviewed by the Legislature's Joint Administrative Procedures Committee (JAPC)<sup>36</sup> which reviews rules to determine their validity, authority, sufficiency of form, consistency with legislative intent, reasonableness of regulatory cost

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<sup>22</sup> Section 120.54(2)(a), F.S.

<sup>23</sup> Section 120.54(2)(c)-(d), F.S.

<sup>24</sup> Section 120.54(3)(a)1., F.S..

<sup>25</sup> Section 120.54(3)(a)2., F.S.

<sup>26</sup> Section 120.541(1)(b), F.S., requires preparation of a SERC if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 within one year of implementation of the rule. Alternatively, s. 120.541(1)(a), F.S., provides that preparation of a SERC is triggered when a substantially affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented.

<sup>27</sup> Section 120.541(2)(a), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 120.541(2)(a)1., F.S.

<sup>30</sup> Section 120.541(2)(a)2., F.S., states that business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>31</sup> *Id.*

<sup>32</sup> Section 120.541(2)(a) 3., F.S.

<sup>33</sup> Section 120.54(3)(e)6., F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

<sup>34</sup> *Id.*

<sup>35</sup> Section 120.54(3)(e), F.S.

<sup>36</sup> Section 120.54(3)(a)4., F.S.

estimates and other matters.<sup>37</sup> An agency must formally respond to JAPC concerns or objections.<sup>38</sup>

### **Emergency Rulemaking**

Florida's APA provides for emergency rulemaking by any procedure which is fair under the circumstances when an immediate danger to the public health, safety, or welfare requires emergency action. Emergency rules may not be effective for more than 90 days but may be renewed if the agency has initiated rulemaking to adopt rules addressing the subject.<sup>39</sup>

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

**Section 1** amends s. 120.536, F.S., to suspend all existing rulemaking authority on July 1, 2019, and to suspend all new rulemaking authority three years after its enactment unless the Legislature reauthorizes the rulemaking authority by general law.

A reauthorization of rulemaking authority remains in effect for three years, unless another date is specified in the law reauthorizing rulemaking, after which the reauthorization expires and the rulemaking authority is suspended until reauthorized by general law.

The bill allows an agency to continue or initiate rulemaking proceedings during a suspension but no rule adopted during a suspension of authority may be effective unless ratified by the Legislature.

Also, the bill allows the Governor to issue a written declaration of public necessity delaying a suspension for 90 days, allowing the Legislature to convene and address the necessity. A declaration of public necessity may be issued only once in regards to any suspension of rulemaking authority.

The bill makes exception for any emergency rulemaking or any rulemaking necessary to maintain the financial or legal integrity of any financial obligation of the state, its agencies or political subdivisions.

The bill expressly provides that all rules lawfully adopted remain in effect during any suspension of rulemaking authority under the bill's provisions.

**Section 2** provides an effective date of July 1, 2016.

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<sup>37</sup> Section 120.545(1), F.S.

<sup>38</sup> Sections 120.54(3)(e)4. and 120.545(3), F.S.

<sup>39</sup> Section 120.54(4), F.S.

#### IV. Constitutional Issues:

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

It is unclear whether, under the State Constitution, an act of the legislature today can effectively suspend the rulemaking authority granted to the executive branch by a subsequent legislature. Lines 27-29 of the bill provide that "any new rulemaking authority is suspended 3 years after the effective date of the law authorizing rulemaking until reauthorized by general law." A subsequent act of the Legislature granting new rulemaking authority is most likely to take precedence over this act suspending all rulemaking authority generally. First, a new act granting new rulemaking authority is the later enacted legislation and typically supersedes prior laws. Secondly, the new act is more likely to relate to a specific grant of authority rather than a general "suspension." This issue relates to all grants of rulemaking authority enacted after the January 12, 2016 (the commencement of the Regular Session for 2016).

Lines 32-36 appear to place an additional burden on subsequent legislatures when enacting legislation granting rulemaking authority. Under this bill, if the subsequent legislature wants the grant of rulemaking authority to be permanent, the bill authorizing (or reauthorizing) the rulemaking authority must specifically state that it is of a permanent nature. Typically, when a law is enacted it is presumed to be of a permanent nature unless modified or repealed by a subsequent legislature. In a similar circumstance relating to the authorization and reauthorization of state trust funds, the State Constitution was amended to place the time limitation on the duration of the trust fund and require the legislature to reauthorize the trust fund beyond that time period.<sup>40</sup>

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<sup>40</sup> Article III, Section 19(f), Florida Constitution, adopted in 1992, stated:

(2) State trust funds in existence before the effective date of this subsection shall terminate not more than four years after the effective date of this subsection. State trust funds created after the effective date of this subsection shall terminate not more than four years after the effective date of the act authorizing the creation of the trust fund. By law the legislature may set a shorter time period for which any trust fund is authorized.

That provision was subsequently amended 2005, CS/SJR 2144) to read:

(2) State trust funds shall terminate not more than four years after the effective date of the act authorizing the **initial** creation of the trust fund. By law the legislature may set a shorter time period for which any trust fund is authorized. {emphasis added}

The overall impact of this legislation might be challenges as inconsistent with constitutional principles. If all rulemaking is suspended and a rule can only become effective if ratified by the Legislature, this legislation as applied might be challenged as unconstitutional. Depending upon how the ratification process is conducted, it may (a) be inadequate in terms of the constitutionally required notice for legislation; (b) lend itself to impermissible logrolling, or (c) violate the principles of separation of powers.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Indeterminate. For some rules, suspension may create uncertainty for individuals and businesses concerning the legal requirements for certain actions.

**C. Government Sector Impact:**

Indeterminate. There may be fewer rule challenges during the period when rulemaking has been suspended, but then a sharp increase in challenges when rulemaking is reauthorized.

**VI. Technical Deficiencies:**

Lines 37-40 may create confusion. While lines 26-36 of the bill suspend existing and new grants of rulemaking authority, lines 37-40 appear to allow the rulemaking process to continue through the adoption process but prevent the rule from becoming effective. Then, if the Legislature has not reauthorized the suspended rulemaking authority, the rule must be ratified by the Legislature to become effective.

Lines 40-45 permit the Governor to delay the suspension of the rulemaking authority for up to 90 days upon a written declaration of a public necessity. The term “public necessity” is not defined. This delay allows rules to become effective rather than subjected to the legislative ratification process. Since no clear standards are provided to the Governor for declaring a public necessity, the legal status of the rules becoming effective during the delay period become unclear. An opponent of such a rule would presumably have the ability to challenge the “public necessity.”

Lines 46-50 of the bill exempt from the suspension provisions “rulemaking necessary to maintain the financial or legal integrity of any financial obligation of the state or its agencies, or political subdivisions.” It is unclear as to what this exemption is intended to preserve. If this language is intended to exempt rulemaking authority associated with programs related to the flow of federal dollars, the language is ambiguous and may be inadequate. It is unclear whether a rule setting a fee that is used to support appropriations might be deemed as necessary to maintain a financial obligation.

Lines 51-52 provides that “rules lawfully adopted remain in effect during any suspension of rulemaking authority under this subsection.” If an agency determines a rule is no longer necessary, or the underlying legal authority has changed without a subsequent grant of rulemaking authority, the agency will not be permitted to modify the rule, and the taxpayers affected by the rule may be negatively impacted.

## **VII. Related Issues:**

In practical terms this bill may have significant impacts on state agencies, the Executive Office of the Governor, and the Legislature. This bill suspends all agencies’ rulemaking authority on July 1, 2019. This suspension takes place shortly after the 2018 General Election at which the Governor, 120 members of the Florida House of Representatives and at least 20 members of the Florida Senate will be elected. Because of a transitioning executive branch leadership in most agencies, it is unclear whether the state agencies will be positioned adequately to make recommendations as to the rulemaking authority that should be reauthorized. With the legislative elections, it is unclear whether the legislation necessary to reauthorize rulemaking authority will be ready for consideration by the new legislative members. In combination, rulemaking authority may be suspend until the 2020 Regular Session or later leading to significant issues for agencies and potentially frustration of the legislature regarding the inability of agencies to implement timely those newly enacted laws that rely on existing (but suspended) rulemaking authority.

## **VIII. Statutes Affected:**

This bill substantially amends section 120.536 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.



535736

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment (with title amendment)**

Between lines 52 and 53

insert:

Section 2. Paragraph (c) of subsection (4) of section  
120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(4) EMERGENCY RULES.—

(c) An emergency rule adopted under this subsection shall  
not be effective for a period longer than 90 days and shall not



535736

11 be renewable, except when the agency finds that the immediate  
12 danger remains and continues to require emergency action, the  
13 agency has initiated rulemaking to adopt rules addressing the  
14 subject of the emergency rule, and one of the following  
15 conditions has delayed implementation of the rules either:

16 1. A challenge to the proposed rules has been filed and  
17 remains pending; or

18 2. The proposed rules have been filed for adoption and are  
19 awaiting ratification by the Legislature pursuant to any law  
20 requiring ratification for the rules to be effective s.  
21 ~~120.541(3).~~

22  
23 Nothing in this paragraph prohibits the agency from adopting a  
24 rule or rules identical to the emergency rule through the  
25 rulemaking procedures specified in subsection (3).  
26

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

28 And the title is amended as follows:

29 Delete line 15

30 and insert:

31 exceptions; providing applicability; amending s.  
32 120.54, F.S.; revising circumstances under which  
33 emergency rules may be renewed; providing an

By Senator Bean

4-01313-16

20161150\_\_

A bill to be entitled

An act relating to legislative reauthorization of agency rulemaking authority; amending s. 120.536, F.S.; providing for suspension of certain rulemaking authority after a specified period, until reauthorized by general law; providing for expiration of such reauthorization after a specified period; providing for suspension of rulemaking authority upon expiration of its reauthorization, until reauthorized by general law; requiring legislative ratification of rules adopted while rulemaking authority is suspended; authorizing the Governor to delay suspension of rulemaking authority for a specified period upon declaration of a public necessity; providing exceptions; providing applicability; providing an effective date.

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

Section 1. Subsections (2) through (4) of section 120.536, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

120.536 Rulemaking authority; reauthorization; repeal; challenge.—

(2) (a) Notwithstanding any other provision of law, and except as provided in paragraph (d), any new rulemaking authority is suspended 3 years after the effective date of the law authorizing rulemaking until reauthorized by general law. Any rulemaking authority effective on or before July 1, 2016, is suspended July 1, 2019, until reauthorized by general law.

(b) A reauthorization of rulemaking authority remains in

Page 1 of 2

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

4-01313-16

20161150\_\_

effect for 3 years, unless another date is specified in the law reauthorizing rulemaking, after which the reauthorization expires and the rulemaking authority is suspended until reauthorized by general law.

(c) During the suspension of any rulemaking authority under this subsection, a rule may be adopted pursuant to such rulemaking authority but does not take effect unless ratified by the Legislature. Upon written declaration by the Governor of a public necessity, suspension of any rulemaking authority may be delayed for up to 90 days, allowing the Legislature an opportunity to reauthorize the rulemaking authority. A declaration of public necessity may be issued only once with respect to any suspension of rulemaking authority.

(d) This subsection does not apply to:

1. Emergency rulemaking pursuant to s. 120.54(4).

2. Rulemaking necessary to maintain the financial or legal integrity of any financial obligation of the state or its agencies or political subdivisions.

(e) Rules lawfully adopted remain in effect during any suspension of rulemaking authority under this subsection.

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Health Policy, *Chair*  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Fiscal Policy  
Judiciary  
Regulated Industries

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

**SENATOR AARON BEAN**

4th District

# MEMORANDUM

**To:** Chairman Ring  
**From:** Senator Bean  
**Subject:** SB 1150 Presentation  
**Date:** January 25, 2016

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Dear Chairman Ring:

This letter is to let you know that Representative, Eric Eisnaugle, will be presenting my bill SB 1150 relating to Legislative Reauthorization of Agency Rulemaking Authority at tomorrow's meeting in my absence. Meeting Date: 1/26/2016

Thanks for your review.

Sincerely,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean  
State Senator | 4<sup>th</sup> District

/JE

Cc: Joe McVaney, Staff Director

### REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

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

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

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BILL: CS/SB 1200

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Pay-for-Success Contract Program

DATE: January 27, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Fav/CS</b>
2.			AGG	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1200 authorizes a state agency, contingent upon authorization in the General Appropriations Act, to negotiate and enter into a pay-for-success contract with a private entity. The bill defines the terms “pay-for-success contract”, “private entity”, and “success payment.”

The bill specifies the duties of the state agency for a pay-for-success contract.

An independent evaluator must determine whether the outcome measures have been met under the contract.

The private entity must report annually to the state. Funding obtained under this program is not considered a procurement item under s. 287.057, F.S.

By December 1, 2015, the Department of Management Services must prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Pay-for-Success Contract Program

A pay-for-success program allows the state to enter into contracts with private non-profit organizations to provide targeted services.<sup>1</sup> The non-profits will provide initial funding for the services provided under the contract. If the private entity achieves the performance measure outcomes identified in the contract, the entity will have earned the ‘success payment’ from DMS. This success payment is presumably the costs of the services plus some level of profit or incentive for achieving the contracted outcomes.

### Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency<sup>2</sup> procurement of personal property and services.<sup>3</sup> 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;
- "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.<sup>4</sup>

Contracts for commodities or contractual services in excess of \$35,000 must be procured using a competitive solicitation process.<sup>5</sup> However, some specified contractual services and commodities are not subject to competitive-solicitation requirements.<sup>6</sup>

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<sup>1</sup> See <http://www.sayfiereview.com/page/Lawmakers%20seek%20pay%20for%20success%20program> (last visited on January 20, 2016).

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> See ss. 287.012(6) and 287.057, F.S.

<sup>5</sup> 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.

<sup>6</sup> See s. 287.057(3)(e), F.S.

The Department of Management Services (DMS) assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.<sup>7</sup>

### III. Effect of Proposed Changes:

**Section 1** provides numerous definitions necessary to implement the pay-for-success contracts. The term “pay-for-success contract” is defined as a contract entered into between a state agency and a private entity to fund a high-quality program specified in the General Appropriations Act to address a critical public problem with historically poor outcomes. The term “private entity” is defined as a private, not-for-profit organization exempt from federal income taxation pursuant to s. 501(c)3 of the Internal Revenue Code of 1986 which enters into a pay-for-success contract with a state agency and subcontracts with one or more entities to provide the actual services. The term “success payment” is defined as the amount paid to a private entity that meets the performance outcome measures established in a pay-for-success contract.

Under the pay-for-success concept, the private entity must secure initial funding for the services provided under the contract from private-sector investors and enter into separate subcontracts with entities providing the services for the identified program.

Contingent upon authorization in the General Appropriations Act, a state agency may negotiate and enter into a pay-for-success contract with a private entity. This contract may be initiated in one fiscal year and continue into subsequent fiscal years and may be paid from the appropriations authorized in any of those fiscal years.

The state agency is required to:

- Determine performance outcome measures to be included in the contract. Determine the data to be included in an annual report filed by a private entity pursuant to subsection (4) of this section.
- Select an independent, nationally recognized evaluator through a request for proposals process to annually evaluate the performance outcome measures specified in the contract.
- Ensure that participants of the program or their guardians have given permission to share participate data and signed an acknowledgment that data may be shared with an independent evaluator for research and evaluation purposes, and maintain documentation of the required acknowledgements.

A pay-for-success contract must:

- Be limited to quality programs specified in the General Appropriations Act.
- Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, or businesses, to fund the services provided under the subcontracts.
- Require an independent evaluator to determine whether the specified performance outcomes have been achieved.
- Require a success payment, consistent with the General Appropriations Act, only if the specified performance outcome measures are achieved.

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<sup>7</sup> Section 287.032(2), F.S.

- Prohibit the private entity from receiving or viewing any personally identifiable participant information.

The private entity shall annually report to the state for the duration of the contract period.

This section specifies that funding for a high-quality program under this bill is not considered a procurement item under s. 287.057, F.S.

By December 1, 2016, the DMS shall prescribe the procedures to be used by state agencies in connection with pay-for-success contracts which are consistent with this section.

**Section 2** provides that the bill takes effect upon becoming a law.

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

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with 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:**

Indeterminate. Investors who fund the private providers of services could potentially lose their investments if the service provider did not meet the outcome measures whereby the state would not be required to make payment for the services provided.

##### **C. Government Sector Impact:**

Indeterminate.

#### **VI. Technical Deficiencies:**

Lines 67-68 of the bill provide "Funding obtained for a high-quality program under this section is not a procurement item under s. 287.057, Florida Statutes." It is unclear whether this provision

is intended to deem the private entity's efforts to obtain private investment not to be subject to the competitive procurement process. If this is the intent, the provision is most likely unnecessary.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 287.05715 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on January 26, 2016:**

- Revises the definition of “pay-for-success contract;”
- Revises the definition of “private entity;”
- Deletes provisions of the original bill regarding the DMS’s oversight of a pay-for-success contract program;
- Deletes provisions of the original bill regarding the Office of Economic and Demographic Research’s provision of information to state agencies;
- Authorizes a state agency to negotiate or enter into a pay-for-success contract with a private entity, contingent upon authorization in the General Appropriations Act;
- Provides that a pay-for-success contract initiated in one fiscal year may continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years;
- Specifies the duties of a state agency for a pay-for-success contract; and
- Requires DMS to prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2016	.	
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The Committee on Governmental Oversight and Accountability  
(Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 287.05715, Florida Statutes, is created  
to read:

287.05715 Pay-for-success contracts.-

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

(a) "Pay-for-success contract" or "contract" means a  
contract between a state agency and a private entity to fund a



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11 high-quality program, as specified in the General Appropriations  
12 Act, to address a critical public problem with historically poor  
13 outcomes.

14 (b) "Private entity" means a private, not-for-profit  
15 organization exempt from federal income taxation pursuant to s.  
16 501(c)3 of the Internal Revenue Code of 1986 which enters into a  
17 pay-for-success contract with a state agency and subcontracts  
18 with one or more entities to provide the actual services.

19 (c) "Success payment" means the amount paid to a private  
20 entity that meets the performance outcome measures established  
21 in the pay-for-success contract.

22 (2) Contingent upon authorization in the General  
23 Appropriations Act, a state agency may negotiate and enter into  
24 a pay-for-success contract with a private entity. The contract  
25 may be initiated in 1 fiscal year and continue into the next  
26 fiscal year and may be paid from appropriations in 1 or both  
27 fiscal years. The state agency shall:

28 (a) Determine performance outcome measures to be included  
29 in the contract.

30 (b) Determine the data to be included in an annual report  
31 filed by a private entity pursuant to subsection (4).

32 (c) Select an independent, nationally recognized evaluator  
33 through a request for proposals process to annually evaluate the  
34 performance outcome measures specified in the contract.

35 (d) Ensure that participants in the program or their  
36 guardians have given permission to share participant data and  
37 signed an acknowledgment that the data may be shared with an  
38 independent evaluator for research and evaluation purposes, and  
39 maintain documentation of the required acknowledgements.



697668

- 40           (3) A pay-for-success contract must:  
41           (a) Be limited to programs specified in the General  
42 Appropriations Act.  
43           (b) Require the private entity to underwrite or secure  
44 upfront capital from private funders, such as foundations,  
45 banks, or businesses, to fund the services provided under the  
46 subcontracts.  
47           (c) Require an independent evaluator to determine whether  
48 the specified performance outcomes have been achieved.  
49           (d) Require a success payment, consistent with the General  
50 Appropriations Act, only if the specified performance outcome  
51 measures are achieved.  
52           (e) Prohibit the private entity from receiving or viewing  
53 any personally identifiable participant information.  
54           (4) The private entity shall annually report to the state  
55 agency for the duration of the contract period.  
56           (5) Funding obtained for a high-quality program under this  
57 section is not a procurement item under s. 287.057.  
58           (6) By December 1, 2016, the department shall prescribe  
59 procedures to be used by state agencies in connection with pay-  
60 for-success contracts which are consistent with this section.

61           Section 2. This act shall take effect upon becoming law.

62  
63 ===== T I T L E   A M E N D M E N T =====

64 And the title is amended as follows:

65           Delete everything before the enacting clause  
66 and insert:

67   A bill to be entitled  
68           An act relating to the Pay-for-Success Contract



697668

69 Program; creating s. 287.05715, F.S.; defining terms;  
70 authorizing a state agency to enter into a pay-for-  
71 success contract with a private entity under certain  
72 circumstances; specifying the duties of the state  
73 agency; providing contract requirements; requiring the  
74 private entity to annually report to the state agency;  
75 providing that a high-quality program is not a  
76 procurement item; requiring the Department of  
77 Management Services to prescribe certain procedures by  
78 a specified date; providing an effective date.



405304

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2016	.	
	.	
	.	
	.	

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

**Senate Amendment to Amendment (697668)**

Delete lines 25 - 27  
and insert:  
may be initiated in 1 fiscal year, may continue into subsequent  
fiscal years, and may be paid from appropriations authorized in  
any of those fiscal years. The state agency shall:

By Senator Bean

4-00841A-16

20161200\_\_

1 A bill to be entitled

2 An act relating to the Pay-for-Success Contract  
 3 Program; defining terms; requiring the Department of  
 4 Management Services to oversee a Pay-for-Success  
 5 Contract Program; authorizing the department,  
 6 contingent upon funding, to negotiate and enter into  
 7 contracts with private entities to fund high-quality  
 8 programs; specifying the duties of the department;  
 9 requiring the Office of Economic and Demographic  
 10 Research to provide information to the department to  
 11 assist in determining performance outcome measures;  
 12 specifying contract requirements; requiring an  
 13 independent evaluator to determine whether the  
 14 performance outcome measures in a contract have been  
 15 met; requiring the private entity to annually report  
 16 to the department; requiring the office to estimate  
 17 cost savings at the request of the department;  
 18 providing that a high-quality program is not a  
 19 procurement item; providing an effective date.

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

22  
 23 Section 1. Pay for success.—

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

25 (a) "Pay-for-success contract" or "contract" means a  
 26 contract entered into between the Department of Management  
 27 Services and a private entity to fund a high-quality program  
 28 specified in the General Appropriations Act. Under the contract,  
 29 the private entity shall secure private-sector funding for the  
 30 implementation of the program and shall enter into separate  
 31 contracts with private providers to implement the identified  
 32 program.

Page 1 of 4

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

4-00841A-16

20161200\_\_

33 (b) "Private entity" means a private, not-for-profit  
 34 organization that enters into a pay-for-success contract with a  
 35 service provider.

36 (c) "Success payment" means the amount paid to a private  
 37 entity that meets the performance outcome measures established  
 38 in a pay-for-success contract.

39 (2) The Department of Management Services shall oversee a  
 40 Pay-for-Success Contract Program. The department may, contingent  
 41 upon authorization in the General Appropriations Act, negotiate  
 42 and enter into a pay-for-success contract with a private entity  
 43 that is selected through a competitive process. The contract may  
 44 be initiated in one fiscal year and continue into the next  
 45 fiscal year and may be paid from the appropriations of one or  
 46 both fiscal years. The department shall:

47 (a) Determine performance outcome measures that must be  
 48 included in the contract. The Office of Economic and Demographic  
 49 Research and the appropriate state agency shall provide  
 50 information to the department to assist in the determination of  
 51 these measures.

52 (b) Determine the data to be included in an annual report  
 53 filed by a private entity pursuant to subsection (5).

54 (c) Select an independent, nationally recognized evaluator  
 55 through a request for proposals process to annually evaluate the  
 56 performance outcome measures specified in the contract.

57 (d) Ensure that participants of the high-quality program or  
 58 their guardians have given permission and signed an  
 59 acknowledgment that participant data may be shared with an  
 60 independent evaluator for research and evaluation purposes and  
 61 maintain documentation of the required acknowledgements.

Page 2 of 4

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

4-00841A-16

20161200\_\_

- 62 (3) A pay-for-success contract must:  
 63 (a) Be limited to high-quality programs specified in the  
 64 General Appropriations Act.  
 65 (b) Require that funding for implementation is provided by  
 66 the private sector.  
 67 (c) Require an independent evaluator to determine whether  
 68 the specified performance outcomes have been achieved.  
 69 (d) Require a success payment, consistent with the General  
 70 Appropriations Act, only if the specified performance outcome  
 71 measures are achieved.  
 72 (e) Prohibit the private entity from receiving or viewing  
 73 any personally identifiable participant information.  
 74 (4) At the direction of the Department of Management  
 75 Services, an independent evaluator shall determine whether the  
 76 performance outcome measures specified in the contract have been  
 77 met. If the performance outcome measures have been met, the  
 78 department may authorize a success payment to the private  
 79 entity.  
 80 (5) A private entity that receives a repayment of an  
 81 investment or a success payment pursuant to a contract entered  
 82 into under this section shall annually report to the Department  
 83 of Management Services for the duration of the contract period.  
 84 (6) At the request of the Department of Management  
 85 Services, the Office of Economic and Demographic Research shall  
 86 estimate the total cost savings related to the high-quality  
 87 program.  
 88 (7) Funding obtained for a high-quality program under this  
 89 section is not a procurement item under s. 287.057, Florida  
 90 Statutes.

Page 3 of 4

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

4-00841A-16

20161200\_\_

- 91 Section 2. This act shall take effect upon becoming a law.

Page 4 of 4

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



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** January 12, 2016

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I respectfully request that **Senate Bill #1200**, relating to the Pay-for-Success Contract Program, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean".

---

Senator Aaron Bean  
Florida Senate, District 4

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/24/16  
Meeting Date

SB 1200  
Bill Number (if applicable)

Topic Pay-for-Success

Amendment Barcode (if applicable)

Name Shan Goff

Job Title Policy Director

Address 215 South Monroe St  
Street  
Tall Fla  
City State Zip

Phone 391-0329

Email Shan@AForidaPromise

Speaking:  For  Against  Information

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

Representing Foundation for Florida's Future

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

1/26/14

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

SB 1200

Meeting Date

Bill Number (if applicable)

Topic Pay For Success

Amendment Barcode (if applicable)

Name Summer Pfeiffer

Job Title Vice President of Govt Relations

Address 1801 Micoosukkee Commons Dr.

Phone 850-339-5463

Street

Tallahassee FL 32308

Email Summer.Pfeiffer@chshq.org

City

State

Zip

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

(The Chair will read this information into the record.)

Representing Children's Home Society 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.



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-  
Meeting Date

1200  
Bill Number (if applicable)

Topic PAY FOR SUCCESS

Amendment Barcode (if applicable)

Name TED GRANER

Job Title PREZENT

Address 307-E 7<sup>th</sup> AVE

Phone 850-488-8276

TALLAHASSEE, FL 32303  
City State Zip

Email TGRANER@UNOF.ORG

Speaking:  For  Against  Information

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

Representing UNITED WAY 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.

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

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

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

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BILL: CS/SB 1220

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Garcia

SUBJECT: Public Records

DATE: January 27, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	Fav/CS
2.			JU	
3.			FP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 1220 grants discretion to courts to award attorney fees and costs relating to public records enforcement actions when a court has determined that a public records request was unlawfully refused and has determined that the plaintiff provided written notice of the public records request to the agency's public record custodian at least five business days before filing the public records lawsuit. The bill also provides that a court may not award costs or attorney fees if the plaintiff made the public request in bad faith or the request was frivolous.

The bill will take effect upon becoming law.

**II. Present Situation:**

**Public Records Requirements**

The Florida Constitution provides that every individual has a right of access to public records, unless exempted, which are made or received in connection with official public business.<sup>1</sup> This right applies to records of the legislative, executive, and judicial branches.<sup>2</sup>

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

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

The Public Records Act, codified in chapter 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record<sup>3</sup> at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.<sup>4</sup> The Public Records Act also applies to private contractor if that private business acts on behalf of a governmental entity.<sup>5</sup>

An agency, as defined by Ch. 119, may not impose greater conditions on responding to a public records request than that required by law. For example, an agency may not require a person seeking a public record to disclose his or her background.<sup>6</sup> Nor may an agency require an individual to put his or her request in writing as a condition of production.<sup>7</sup> An agency must honor a request whether a person requests records by phone, in writing, or in person, provided that the request is sufficient to identify the records sought.<sup>8</sup>

### **Custodian of Public Records**

Pursuant to s. 119.011(5), F.S., a custodian of public records is “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.”

A custodian of public records is required to perform statutorily required duties such as maintaining records in fireproof vaults, repairing records and comply with retention schedules set by the Department of State.<sup>9</sup> In addition, s. 119.07, F.S., provides that public records custodian has additional duties which include:

- Acknowledging a public records request and responding to those requests in good faith;<sup>10</sup>
- Producing records after redacting exempt information or provide the statutory citation for an exemption if the entire document is exempt;<sup>11</sup>
- Maintaining records which are the subject of public records litigation;<sup>12</sup>
- If public records are provided by remote electronic means, a records custodian must ensure that those records are secure;<sup>13</sup>

---

<sup>3</sup> Section 119.011(12), F.S., defines “public record” as “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.” 32, 36-37 (Fla. 1992).

<sup>4</sup> Section 119.07(1)(a), F.S.

<sup>5</sup> Section 119.011(2), F.S., defines “agency” 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

<sup>6</sup> *Bevan v. Wanichka*, 505 So. 2d 1116, 1118 (Fla. 2d DCA Fla. 1987).

<sup>7</sup> *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, n.1 (Fla. 3d DCA 2001); Op. Att’y Gen. Informal Opinion (Dec. 16, 2003).

<sup>8</sup> Op. Att’y Gen. Fla. 80-57, pg. 3 (1980).

<sup>9</sup> Section 119.021, F.S.

<sup>10</sup> Section 119.07(1)(c), F.S.

<sup>11</sup> Section 119.07(1)(d)-(f), F.S.

<sup>12</sup> Section 119.07(1)(g)-(i), F.S.

<sup>13</sup> Section 119.07(2), F.S.

- Provide supervision if someone wishes to photograph records;<sup>14</sup> and
- Provide certified copies of public records upon payment of a fee.<sup>15</sup>

Public records custodians are also responsible for supervising the production of records by all agency personnel. Section 119.07(1)(a), F.S., provides that that “[e]very person who has custody of a public record shall permit the record to be inspected and copied . . . at any reasonable time, under reasonable conditions, and under reasonable supervision by the custodian of the public records.”

### **Enforcing Public Records Laws and Attorney Fees**

Article I, Section 24(c), Florida Constitution, requires the Legislature to enact laws governing the enforcement of public records requirements, including the “maintenance, control, destruction, disposal, and disposition of records.”

Under s. 119.11, F.S., a person may enforce the right to a public record by a lawsuit against an agency. In those lawsuits, the court must set an immediate hearing, giving the case priority over other cases.<sup>16</sup> If a court orders an agency to open its records for inspection, the agency must comply within 48 hours.<sup>17</sup>

Section 119.12, F.S. provides that if a court finds that an agency unlawfully refused access to a public record, the court will order the public agency to pay costs and attorney fees related to the enforcement lawsuit.<sup>18</sup> An unjustified delay in turning over public records is considered an unlawful refusal, and a court will award attorney fees even if the delay was not willful or if the delay was due to incompetence.<sup>19</sup>

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.<sup>20</sup> Once an enforcement action is filed, the court will require a public agency to pay the requestor’s attorney fees even after the agency has produced the records.<sup>21</sup>

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<sup>14</sup> Section 119.07(3), F.S.

<sup>15</sup> Section 119.07(4), F.S.

<sup>16</sup> Section 119.11(1), F.S.

<sup>17</sup> Section 119.11(2), F.S.

<sup>18</sup> Section 119.12, F.S. In 1984, the Legislature amended the public records attorney fee provision, deleting language which would permit attorney fees to be awarded only when records are “unreasonably” refused and replaced it with “unlawfully” refused. Ch. 84-298, s. 7, Laws of Fla. Based on the Legislature’s removal of the word “unreasonably,” a court concluded that good faith or honest mistakes do not excuse a defendant from being assessed attorney fees.” *News and Sun-Sentinel Co. v. Palm Beach County*, 517 So.2d 743, 744 (Fla. 4th DCA 1987), partially disapproved of in *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27, 30 (Fla. 1993). *Lilker v. Suwannee Valley Transit Authority*, 133 So.3d 654 (Fla. 1st DCA 2014). *Office of the State Attorney for the Thirteenth Judicial Circuit of Florida v. Gonzalez*, 953 So.2d 759, 765 (Fla. 2nd DCA 2007).

<sup>19</sup> *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655-656 (Fla. 1st DCA 2014); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

<sup>20</sup> *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002).

<sup>21</sup> *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5th DCA 1996); *Althouse v. Palm Beach County Sheriff’s Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.<sup>22</sup> In addition, granting attorney fees makes it more likely that public agencies will comply with public records laws.<sup>23</sup>

The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.<sup>24</sup> Open meetings laws also include an attorney fee provision. Section 286.0114(7)(a), F.S., provides:

- (a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.
- (b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

### **Public Records Requests, Settlements and Attorney Fees**

Over the past few years, governmental entities have been sued based on their failure to provide public records for what appear to be less about private citizens getting access to public records than generating settlements or attorney fees. Cities often settle the matters because settlements are less costly than litigation. For example, the City of Dunedin settled a matter for \$2,500 rather than spending \$10,000 to fight the public records request lawsuit.<sup>25</sup>

Some public records lawsuits are filed by individuals, and some are filed by organizations which appear to be working in concert. Two Gulf Stream residents allegedly filed 1,700 public records requests with the Town of Gulf Stream over two years; when the Town of Gulf Stream did not fulfil the requests, one of the residents then sued the city for failure to meet the requests.<sup>26</sup> The Town of Gulf Stream has allegedly spend more than \$1 million fielding public records requests and on legal fees, including a class action racketeering suit it filed against several residents and

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<sup>22</sup> *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

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

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

<sup>25</sup> Mike Brassfield, Lawsuits from public records group are a nuisance, Florida cities say, Tampa Bay Times, <http://www.tampabay.com/news/humaninterest/lawsuits-from-public-records-group-are-a-nuisance-florida-cities-say/2236362> (last viewed January 16, 2016).

<sup>26</sup> John Kennedy and Joan Musgrave, *Florida bill targets type of suit used by Gulf Stream resident O'Boyle*, Palm Beach Post <http://www.mypalmbeachpost.com/news/news/state-regional-govt-politics/florida-bill-targets-type-of-suit-used-by-gulf-str/nns5L/> (last viewed January 16, 2016).

companies related to the residents' actions.<sup>27</sup> The Town of Gulf Stream filed the federal lawsuit against a resident, the Citizen's Awareness Foundation, Inc., Our Public Records LLC, and other defendants based on their use of public records laws. The case was dismissed by the federal judge, who stated:

To the extent Defendants are abusing the rights affording them by the Florida public records laws, those abuses must be addressed in the individual lawsuits filed, or through a change in the laws by the Florida Legislature.<sup>28</sup>

Citizen's Awareness Foundation and its sister group, Our Public Records, LLC, have filed more than 140 lawsuits across 27 counties.<sup>29</sup> The lawsuits are filed against government contractors as well as government entities.

Consumer Rights, LLC., filed a public records lawsuit against Union County, which was ultimately appealed when the trial court refused to grant attorney fees to Consumer Rights, LLC. The First District Court found:

The plaintiff made the request in suspicious email that could not be easily verified, directed it to a general email account that might not be checked by the person having anything to do with the records at issue, waited four months without saying anything and the sued the county, claiming a right to attorney fees.<sup>30</sup>

In this case, the First District Court of Appeal affirmed the lower court's decision to deny attorney fees to the plaintiff. The First District Court found that the manner in which the public records request was made, as well as the fact that the County ultimately provided the requested record when became apparent that the email was not spam, indicated that there was no refusal to provide the requested records.<sup>31</sup>

### **Public Records and Private Contractors**

Public agencies, including local and statewide governmental entities and municipal officers may hire contractors to provide services or act on behalf of the public agency.<sup>32</sup> Contractors can be individuals or business entities.<sup>33</sup> Private contractors who act on behalf of a public agency are

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<sup>27</sup> Mike Brassfield, *Lawsuits from public records group are a nuisance, Florida cities say*, Tampa Bay Times, <http://www.tampabay.com/news/humaninterest/lawsuits-from-public-records-group-are-a-nuisance-florida-cities-say/2236362> (last viewed January 16, 2016).

<sup>28</sup> *Town of Gulf Stream v. O'Boyle, et al.*, Opinion and Order, Case No. 15-08182-CIV-MARRA, U.S. District Court, Southern District of Florida 2015. <http://law.justia.com/cases/federal/district-courts/florida/flsdce/9:2015cv80182/456973/47/> (last viewed January 18, 2016).

<sup>29</sup> Tristram Korten and Trevor Aaronson, *In Lawsuits Statewide, Questions of Profits and Public Records*, Florida Center for Investigative Reporting, <http://fcir.org/2014/11/09/in-lawsuits-statewide-questions-of-profits-and-public-records/> (last viewed January 20, 2016).

<sup>30</sup> *Consumer Rights, LLC., v. Union County, Fla.*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015). See also *State Dept. of Economic Opportunity v. Consumer Rights, LLC.*, No. 1D15-0383, 2015 WL 9258293 (Fla. 1st DCA 2015).

<sup>31</sup> *Consumer Rights, LLC.*, at 886-887.

<sup>32</sup> Section 119.0701(1)(b), *F.S. News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). Op. Att'y Gen. Fla. Informal Opinion dated December 31, 2014.

<sup>33</sup> Section 119.0701(1)(a), F.S.

required by law and the terms of their contracts to comply with public records laws in the same manner as a public agency.<sup>34</sup> These duties include keeping public records, providing the public an opportunity to inspect or copy a public record, and redacting exempt information.<sup>35</sup> A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.<sup>36</sup> This may include unilateral cancellation of the contract by a state agency if a contractor refuses to allow public access to materials the contractor receives in conjunction with the contract.<sup>37</sup>

If a contractor fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to the records.<sup>38</sup> If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor's attorney fees in the same manner that a public agency would be liable.<sup>39</sup> Therefore, once a lawsuit is filed, a contractor may also be held liable for attorney fees even after providing the requested records. The fees provision, however, "was not intended to force private entities to comply with the inspection requirements of [the Public Records Act] by threatening to award attorney's fees against them."<sup>40</sup>

### **When is a Private Contractor an Agency for Public Records Purposes?**

Pursuant to s. 119.011(2), F.S., the definition of 'agency' in the Public Records Act includes a "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." In addition, s. 119.0701(1)(a), F.S., defines a contractor as an "individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency." It is not always clear, however, when a private contractor is 'acting on behalf of' an agency and is subject to public records laws.

To determine when a contractor is acting on behalf of a public agency, a totality of factors test may be applied.<sup>41</sup> Some of the factors a court may consider include, but are not limited to:

- Whether the public agency created the contractor;
- How much public funding was involved;
- How much the public agency regulated the contractor;
- The comingling of decision making processes;
- Whether the contractor was performing a government function; and
- The goals of the contractor.<sup>42</sup>

<sup>34</sup> Section 119.0701, F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

<sup>35</sup> Section 119.0701(2), F.S.

<sup>36</sup> Section 119.0701(3), F.S.

<sup>37</sup> Section 287.058(1)(c), F.S., provides that state agency contracts which exceeding \$35,000.00 must include a provision that permits the state to unilaterally cancel the contract if the contractor refuses to permit access to public records. This does not apply to contracts related to certain state employee benefits. Section 287.058(1), F.S.

<sup>38</sup> See ss. 119.011(2), 119.0701(1), and 119.11, F.S..

<sup>39</sup> See ss. 119.011(2) and. 119.12, F.S. *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993).

<sup>40</sup> *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993).

<sup>41</sup> *News and Sun-Sentinel Co. v. Schawb, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

<sup>42</sup> *Id.* at 1032.

A contractor's uncertainty as to whether it is an agency for public records purposes may lead a contractor to believe it is not required to provide public access to its records. If a contractor fails to comply with public records laws because of its uncertainty, a court may not always require the contractor to pay the requestor's costs and attorney fees.<sup>43</sup>

### **Private Contractors and Public Records Lawsuits.**

Private contractors have also been subject to lawsuits which appear to be more about generating settlements and attorney fees than about the individuals exercising their right to copy and inspect public records. On December 1, 2014, a circuit court judge in Duval County denied relief to a plaintiff in a lawsuit to enforce a public records request and for assessment of attorney fees.<sup>44</sup> According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The contract manager refused to provide the documents because the contract manager believed the documents were not public records. The court found that the manner in which the plaintiff (and his companions) made the request ensured that "they obtained exactly what they wanted, namely an initial denial of an unreasonable and bogus request."<sup>45</sup>

The court found that the plaintiff's method of requesting public records was an abuse of the public records laws noting that the actions of the requester amounted to "nothing more than a scam."<sup>46</sup> The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had "a financial interest in assuring that his requests for public records [were] refused."<sup>47</sup> The court noted that in 2014, the plaintiff filed 18 public records lawsuits in Duval County, and that the attorney represented the plaintiff on approximately 13 of those cases; the court noted that all of the cases followed a similar pattern.

The court opined that:

If a private entity must pay an attorney's fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called "civil rights activists" or others who seek to abuse the [Public Records] Act for financial gain.<sup>48</sup>

The case was affirmed by the First District Court of Appeal on December 16, 2015.<sup>49</sup>

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<sup>43</sup> *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993). *Stanfield v. Salvation Army*, 695 So. 2d 501, 502 (Fla. 5th DCA 1997).

<sup>44</sup> *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, Final Order Denying Relief Under Public Records Act, No. 2014-CA-4647 (Fla. 4th Cir. Ct. Dec. 2, 2014).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, 2015 WL 9091680 (Fla. 1st DCA 2015).

### III. Effect of Proposed Changes:

The bill makes granting enforcement costs (including attorney fees) discretionary when the court determines:

- The plaintiff has provided written notice of the public records request to the agency's custodian of public records at least five days before filing the enforcement action; and
- A public entity has unlawfully refused to grant access to public records.

The court may not grant enforcement costs (including attorney fees) if the plaintiff's public records request was frivolous or was made in bad faith.

The bill will take effect upon becoming law.

### IV. Constitutional Issues:

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

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

#### B. Public Records/Open Meetings Issues:

The bill will require make grant greater discretion to judges on when they will award attorney fees in public records request lawsuits. This may have the effect of reducing the likelihood of an attorney accepting a public records lawsuit if he or she will not be guaranteed fees. This provision may also have the effect of essentially imposing a requirement on the public to make public records requests in writing because enforcement costs provision requires a written request for records be sent to the records custodian.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

#### B. Private Sector Impact:

Private contractor which are agencies under the public records laws may spend less in settlements and attorney fees related to public records requests.

Individuals and groups who file public records lawsuits may spend more money to send letters to public records custodians. There would be little or no costs to these people or groups if they sent an email instead of letter.

**C. Government Sector Impact:**

Governmental entities may spend less in settlements and enforcement costs related to public records requests.

**VI. Technical Deficiencies:**

Since private contractors who act on behalf of an agency are also subject to public records laws, and they would also have records custodians. It is not clear if this bill requires a citizen to send a notice to the contracting agency's public records custodian or to the business's records custodian.

**VII. Related Issues:**

**Notice period**

The five day window is not a cure period, as the bill does not foreclose a plaintiff from being awarded enforcement costs.

**Custodian of public records**

Private citizens who are unable to get a public agency to provide access to public records may find it more cumbersome to send a letter to the public records custodian if his or her identity is not readily apparent. It may be difficult for a citizen to identify the custodian of public records because he or she may be the agency head, another officer or a designee.

**VIII. Statutes Affected:**

This bill substantially amends section 119.12 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on January 26, 2016:**

The CS provides that the court may not award enforcement costs if the court determines that the plaintiff made his or her public records request frivolously or in bad faith.

**B. Amendments:**

None.



723616

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/26/2016	.	
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	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 119.12, Florida Statutes, is amended to  
read:

119.12 Attorney ~~Attorney's~~ fees.—If a civil action is filed  
against an agency to enforce the provisions of this chapter, and  
if the court determines that such agency unlawfully refused to  
permit a public record to be inspected or copied, the court may



723616

11 ~~shall~~ assess and award, ~~against the agency responsible,~~ the  
12 reasonable costs of enforcement, including reasonable attorney  
13 attorneys' fees, against the responsible agency. However, if the  
14 court determines that the request to inspect or copy a public  
15 record was made in bad faith or was frivolous, the court may not  
16 award any reasonable costs of enforcement, including reasonable  
17 attorney fees, against the responsible agency.

18 Section 2. This act shall take effect upon becoming a law.

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

21 And the title is amended as follows:

22 Delete everything before the enacting clause  
23 and insert:

24 A bill to be entitled  
25 An act relating to public records; amending s. 119.12,  
26 F.S.; specifying the circumstances under which a court  
27 may assess and award the reasonable costs of  
28 enforcement against an agency in a civil action to  
29 enforce ch. 119, F.S.; providing an effective date.



909808

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/26/2016	.	
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	.	
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The Committee on Governmental Oversight and Accountability  
(Hays) recommended the following:

1        **Senate Substitute for Amendment (723616) (with title**  
2 **amendment)**

3  
4        Delete everything after the enacting clause  
5 and insert:

6        Section 1. Section 119.12, Florida Statutes, is amended to  
7 read:

8        119.12 Attorney ~~Attorney's~~ fees.—If a civil action is filed  
9 against an agency to enforce the provisions of this chapter, and  
10 if the court determines that the complainant provided written



909808

11 notice of the public records request to the agency's custodian  
12 of public records at least 5 business days before filing the  
13 civil action and that such agency unlawfully refused to permit a  
14 public record to be inspected or copied, the court may ~~shall~~  
15 assess and award, ~~against the agency responsible,~~ the reasonable  
16 costs of enforcement, including reasonable attorney attorneys'  
17 fees, against the responsible agency. However, if the court  
18 determines that the request to inspect or copy a public record  
19 was made in bad faith or was frivolous, the court may not award  
20 any reasonable costs of enforcement, including reasonable  
21 attorney fees, against the responsible agency.

22 Section 2. This act shall take effect upon becoming a law.

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

25 And the title is amended as follows:

26 Delete everything before the enacting clause  
27 and insert:

28 A bill to be entitled

29 An act relating to public records; amending s. 119.12,  
30 F.S.; specifying the circumstances under which a court  
31 may assess and award the reasonable costs of  
32 enforcement against an agency in a civil action to  
33 enforce ch. 119, F.S.; providing an effective date.

By Senator Garcia

38-01069-16

20161220\_\_

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A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; revising the circumstances under which a court may assess and award the reasonable costs of enforcement against an agency in a civil action to enforce ch. 119, F.S.; providing an effective date.

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

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 ~~Attorney~~ Attorney's fees. ~~When if~~ a civil action is filed against an agency to enforce the provisions of this chapter, and ~~if~~ the court determines that the complainant provided written notice of the public records request to the agency's custodian of public records at least 5 business days before filing the civil action and that such agency unlawfully refused to permit a public record to be inspected or copied, the court may ~~shall~~ assess and award, ~~against the agency responsible,~~ the reasonable costs of enforcement, including reasonable attorney attorneys' fees, against the responsible agency.

Section 2. This act shall take effect upon becoming a law.

**The Florida Senate**  
State Senator René García  
38<sup>th</sup> District

**Please reply to:**

□ **District Office:**

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

January 13<sup>th</sup>, 2016

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

Dear Senator Ring,

Please have this letter serve as my formal request to have **SB 1220: Public Records**, be heard in the next possible Governmental Oversight and Accountability Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García  
District 38  
RG:AD

CC: Joe McVaney, Allison Rudd,

**Committees:** Appropriations Subcommittee on Health & Human Services, Chairman, 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)

1-26-15

Meeting Date

1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name James Ingle

Job Title Electrician

Address 3509 NW 22nd Dr

Phone 901-483-4800

Street

Gainesville

FL

32605

City

State

Zip

Email JWCI@Yahoo.com

Speaking:  For  Against  Information

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

Representing myself

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)

1-26-16  
Meeting Date

1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Theresa King

Job Title President

Address PO Box 10888  
Street

Phone 850-228-8940

Tallahassee FL 32302  
City State Zip

Email fbt.tking@gmail.com

Speaking:  For  Against  Information

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

Representing Florida Building and Construction Trades

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/2016

Meeting Date

SB 1220

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name ERIK W JONES

Job Title COMMUNICATIONS TECHNICIAN

Address 515 75TH ST NW

Street

Phone 941-720-3563

BRADENTON

City

FL

State

34209

Zip

Email ejones@ibew824.org

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/-16  
Meeting Date

SB 1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name DAVIA VUCIC

Job Title Bus DRIVER

Address 4256 Houston Ln.  
Street

Phone 941-888-2555

North Port FL 34287  
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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Alan Harris

Job Title Bus driver

Address 5827 22nd street west

Phone 941-518-6894

Bradenton FL 34207

Email Alan.h@verizon.net

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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01/26/2016  
Meeting Date

SB 1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Tammi King

Job Title Bus Operator

Address 436A Creekside Boulevard  
Street

Phone (407) 283-5548

Kissimmee, Florida 34746  
City State Zip

Email Tammi King 41@yahoo.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.*

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-26-16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic PUBLIC RECORDS

Name ANTHONY MARCIANO

Job Title SERGEANT BROWARD SHERIFF

Address 10221 DORCHESTER DR

Street

Phone 954-632-6878

BOCA RATON FL 33428

City

State

Zip

Email AKTOM@ATT.NET

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/2016  
Meeting Date

1220  
Bill Number (if applicable)

Topic Public Records

909808  
Amendment Barcode (if applicable)

Name KEITH RIZZARDI

Job Title Asst. Prof. of Law

Address 16401 NW 37th Ave  
Street

Phone

Miami Gardens FL 33054  
City State Zip

Email krizzardi@stu.edu

Speaking:  For  Against  Information

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

Representing N/A - scholar - self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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1/26/16  
Meeting Date

1220  
Bill Number (if applicable)

909808  
Amendment Barcode (if applicable)

Topic SB 1220

Name Casey Cook

Job Title Senior Legislative Advocate

Address PO Box 1757  
Street

Phone 850 701 3701

Tallahassee FL 32302  
City State Zip

Email ccook@flcities.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/16  
Meeting Date

1220  
Bill Number (if applicable)

909 808  
Amendment Barcode (if applicable)

Topic SB 1220 - PUBLIC RECORDS

Name ROBERT GANGAR

Job Title Vice Mayor - TOWN OF GULF STREAM

Address 100 SEA BOND  
Street

Phone 561-276-5116

GULF STREAM, FL  
City State Zip

Email ruyangar@b-kash.net

Speaking:  For  Against  Information

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

Representing TOWN OF GULF STREAM

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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4

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-26-16  
Meeting Date

SB 1220  
Bill Number (if applicable)

723616  
Amendment Barcode (if applicable)

Topic Attorney's Fees

Name Stewart Lilker

Job Title publisher

Address 247 SW Lander Ct  
Street

Phone 352-215-4500

Fort White  
City State Zip

Email stewlilker@columbiacountyobserver.com

Speaking:  For  Against  Information

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

Representing self / Columbia County Observer

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

1-26-16

Meeting Date

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

SB 1220

Bill Number (if applicable)

723616

Amendment Barcode (if applicable)

Topic Public Record Attorney Fees

Name Barbara Jeffords Lemley

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

Address 393 NW Fairway Lane

Street

Phone 386 755-0753

Lake City FL 32055

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing myself 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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16  
Meeting Date

SB 1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retiree

Address 1130 Crestview Ave.  
Street

Phone (850) 322-7599

Tallahassee, FL 32303  
City State Zip

Email Amaliedatz@mac.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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

01-26-16  
Meeting Date

1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Jesse Bremer

Job Title Electrician

Address 7533 SW 85th Drive  
Street

Phone 352-525-0158

Gainesville Fl. 32608  
City State Zip

Email csrx5@AOL.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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

1-26-2016

Meeting Date

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

1220

Bill Number (if applicable)

Topic public Records

Amendment Barcode (if applicable)

Name Thomas N. Gibson

Job Title Retired

Address 7782 Melvin Road

Phone (904) 236-0358

Street

Jacksonville

City

FL

State

32210

Zip

Email Tnathangibson@gmail.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16  
Meeting Date

SB 1220  
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name GLENDA ABICENT

Job Title SERVICES TECHNICIAN

Address 4305 SW 98 AV  
Street

Phone 786-376-1181

MIAMI FL 33165  
City State Zip

Email GLENDA.ABICENT@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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16  
Meeting Date

1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name John Parker

Job Title Sheet Metal Worker

Address 9158 Heckseher DR  
Street

Phone 904-613-1623

Jacksonville FL 32226  
City State Zip

Email JCPARKER1217@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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

12-26-16  
Meeting Date

364  
1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Bobbie Carroll

Job Title Doc

Address 2783 S. Jefferson  
Street

Phone 850-321-2928

Monticello FL 32344  
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.

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1.26.16  
Meeting Date

SB# 1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Ken Williams

Job Title UPS Employee

Address 7411 Meadow Dr  
Street

Phone 813-493-7685

Tampa Fl 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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic PUBLIC RECORD

Amendment Barcode (if applicable)

Name LARRY DUPREE

Job Title UPS Employee

Address 8301 N RIVER HIGHLANDS PLS

Phone 813-494-7070

City TAMPA State FL Zip 33617

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16  
Meeting Date

1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Rich Templin

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

Address 135 S. Manroe  
Street

Phone 850 - 224 - 6926

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

①

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

1-26-16  
Meeting Date

SB 1220  
Bill Number (if applicable)

Topic Legal fees concerning Public Records violations

Name Ralph P. Kitchens Jr

Amendment Barcode (if applicable)

Job Title Retired Truck Driver

Address 181 SW Greenbrier Ct  
Street

Phone 386 438 5943

Lake City FL 32024  
City State Zip

Email Bkbirdmon@yahoo.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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

26 Jan 2016  
Meeting Date

1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Barbara Petersen

Job Title President

Address 336 E College Ave #101

Phone 224 4555

Tallahassee FL 32301  
Street City State Zip

Email sunshine@floridafaf.org

Speaking:  For  Against  Information

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

Representing First Amendment Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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2

THE FLORIDA SENATE

APPEARANCE RECORD

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

JAN 26, 2016

Meeting Date

SB 1220

Bill Number (if applicable)

Topic PUBLIC RECORDS LITIGATION

Amendment Barcode (if applicable)

Name SANDRA E. BUCK

Job Title FLORIDA PHARMACIST

Address (MAILING) P.O. BOX 3667

Home Phone 386-755-8546

Street

WAKE CITY

FL

32056-3667

Email ALORIP@aol.com

City

State

Zip

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

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

Representing MYSELF

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

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

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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)

01/26/16

*Meeting Date*

SB1220

*Bill Number (if applicable)*

Topic Public records and SB 1220

*Amendment Barcode (if applicable)*

Name Sam Morley

Job Title General Counsel, Florida Press Association

Address 336 E. College Ave., Suite 201

Phone 850-212-4395

*Street*

Tallahassee

FL

32301

Email smorley@flpress.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Press Association (daily and weekly newspapers of Florida)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

01/26/16

Meeting Date

SB1220

Bill Number (if applicable)

Topic Public records and SB 1220

Name Skip Foster

Amendment Barcode (if applicable)

Job Title Publisher & President, Tallahassee Democrat

Address 277 N. Magnolia Dr

Street

Phone 850-599-2126

Tallahassee

FL

32302

City

State

Zip

Email sfoster@tallahassee.com

Speaking:  For  Against  Information

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

Representing Tallahassee Democrat

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16

Meeting Date

SB 1220

Bill Number (if applicable)

Topic Public Records and SB 1220

Amendment Barcode (if applicable)

Name Gina Edwards

Job Title reporter and founder Watchdog City

Address 8141 Las Palmas Way

Phone 239-293-3640

Naples Fla. 34109

City

State

Zip

Email gina@watchdogcity.com

Speaking:  For  Against  Information

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

Representing Watchdog City

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

1220  
Bill Number (if applicable)

Topic SB 1220

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

Name Frank Denton

Job Title editor, The Florida Times - Union

Address 1 Riverside Ave  
Street

Phone 904-359-4197

Jacksonville FL 32202  
City State Zip

Email Frank.denton@jacksonville.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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/12  
Meeting Date

SB 1270  
Bill Number (if applicable)

Topic Public records & SB 1270

Amendment Barcode (if applicable)

Name Bob Shaw

Job Title Retired editor

Address 546 S Hyper Ave  
Street

Phone 321-287-4687

Orlando FL 32801  
City State Zip

Email rdshaw99@gmail.com

Speaking:  For  Against  Information

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

Representing First Amendment Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/16  
~~1/22/16~~

Meeting Date

1220  
Bill Number (if applicable)

Topic OPEN SUNSHINE

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR

Address PO BOX 1766  
Street

Phone 954 950-4255

POMPANNO BEACH FLORIDA 33061  
City State Zip

Email worshipfolk@hotmail.com

Speaking:  For  Against  Information

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

Representing COMMUNICATIONS WORKERS of AMERICA COUNCIL of FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16  
Meeting Date

SB 1220  
Bill Number (if applicable)

Topic Public Records & SB 1220

Amendment Barcode (if applicable)

Name Carol Lolicero

Job Title Partner, Thomas & Lolicero law firm

Address 601 S. Boulevard

Phone 813/984-3060

Tampa FL 33606  
City State Zip

Email carol.lolicero@tlolawfirm.com

Speaking:  For  Against  Information

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

Representing Myself & the firm

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/2016  
Meeting Date

1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Tommy Ruzzano

Job Title Mayor

Address 5970 Margate Blvd  
Street Margate FL  
City State Zip

Phone 954 972-6454

Email

Speaking:  For  Against  Information

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

Representing City of Margate

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16

Meeting Date

1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Gil Ziffer

Job Title Tallahassee City Commissioner

Address 301 S. Adams St.  
Street

Phone 850-891-8027

TALL  
City

FL  
State

32301  
Zip

Email g.ziffer@talpan.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

01/26/16

Meeting Date

SB1220

Bill Number (if applicable)

Topic Public records and SB 1220

Amendment Barcode (if applicable)

Name Dean Ridings

Job Title President & CEO, Florida Press Association

Address 336 E. College Ave., Suite 201

Phone 850-212-8895

Street

Tallahassee

FL

32301

City

State

Zip

Email dridings@flpress.com

Speaking:  For  Against  Information

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

Representing Florida Press Association (daily and weekly newspapers of Florida)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

1/26/2016

Meeting Date

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

1220

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name KEITH RIZZARDI

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

Address 16401 NW 37th Ave

Street

Phone \_\_\_\_\_

Miami Gardens FL 33054

City

State

Zip

Email krizzardi@slu.edu

Speaking:  For  Against  Information

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

Representing N/A - scholar on issue - self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

1220  
Bill Number (if applicable)

Topic SB 1220

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Senior Legislative Advocate

Address Po Box 1757  
Street

Phone 850 701 3701

Tallahassee FL 32302  
City State Zip

Email ccook@fluties.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16  
Meeting Date

1220  
Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name ROBERT GANGER

Job Title VICE MAYOR - TOWN OF GULF STREAM

Address 1443 N. Ocean Blvd  
Street

Phone (361-276-5116)

Gulf Stream  
City State Zip

Email rwganger@bellsouth.net

Speaking:  For  Against  Information

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

Representing TOWN OF GULF STREAM - FL LEAGUE OF CITIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16

Meeting Date

1220

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name LAURA YOU MANS

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

1/26/16  
Meeting Date

1220  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Doug Bell

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

Address 101 N. Monroe St  
Street

Phone 681-3241

Tall. FL  
City State Zip

Email douglas.belle@bipr.com

Speaking:  For  Against  Information

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

Representing City of Palm Coast / City of South Daytona

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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BILL: SB 1326

INTRODUCER: Senator Soto

SUBJECT: Retirement

DATE: January 25, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1328 amends s. 121.101, F.S., to set the level of the annual cost of living adjustment for all FRS pension plan retirees and annuitants beginning July 1, 2016. The annual cost of living adjustment will be the greater of 3% or the percentage change in the Consumer Price Index for the Elderly as determined by the Bureau of Labor Statistics within the federal Department of Labor each year.

The system-wide cost of the benefit enhancements provided in this bill are roughly \$1.1 billion annually. State agencies, universities and colleges, school districts, counties and various other local governments participating in the Florida Retirement System will bear the cost.

**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 added to the FRS, and in 2007, the membership of the Institute of Food and Agricultural Sciences Supplemental Retirement Program was included in the Regular Class of the FRS as a closed group.<sup>1</sup> The FRS is a contributory system, with most members contributing three percent of their salaries.<sup>2</sup>

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<sup>1</sup> 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](https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf).

<sup>2</sup> Prior to 1975, members of the FRS were required to make employee contributions of either four percent for Regular Class employees or six 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 Ch. 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).<sup>3</sup> As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for the employees and officers of state and county government agencies, district school boards, Florida College institutions, and state universities, as well as the employees and officers of the 186 cities and 262 special districts that have elected to join the system.<sup>4</sup>

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

- The Regular Class<sup>5</sup> consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class<sup>6</sup> includes 68,593 active members;
- The Special Risk Administrative Support Class<sup>7</sup> has 84 active members;
- The Elected Officers' Class<sup>8</sup> has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,607 members, plus 184 in renewed membership.<sup>10</sup>

### ***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 investment 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.<sup>11</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>12</sup> Vested benefits are payable upon termination or death as a

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

<sup>4</sup> *Id.*, at 146.

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

<sup>6</sup> 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.)

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.)

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

<sup>11</sup> Section 121.4501(6)(a), F.S.

<sup>12</sup> 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

lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>13</sup> The investment plan also provides disability coverage for both in the line of duty and regular disability retirement benefits.<sup>14</sup> 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.<sup>15</sup>

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

### ***Pension Plan***

#### **General Background**

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>18</sup> Investment management of the pension plan assets 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.<sup>19</sup> For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>20</sup> 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.<sup>21</sup> For most members of the pension plan, normal retirement occurs at 30 years of service or age 62.<sup>22</sup> For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement occurs at 25 years of service or age 55.<sup>23</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For unreduced benefits for members initially enrolled after that date, most members 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.<sup>24</sup>

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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.)

<sup>13</sup> Section 121.591, F.S.

<sup>14</sup> Section 121.4501(16), F.S.

<sup>15</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in the 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.

<sup>16</sup> Section 121.4501(8), F.S.

<sup>17</sup> FLA.CONST. art. IV, s. 4.

<sup>18</sup> Section 121.025, F.S.

<sup>19</sup> Section 121.021(45)(a), F.S.

<sup>20</sup> Section 121.021(45)(b), F.S.

<sup>21</sup> Section 121.091, F.S.

<sup>22</sup> Section 121.021(29)(a)1., F.S.

<sup>23</sup> Section 121.021(29)(b)1., F.S.

<sup>24</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

### Cost of Living Adjustments

For members whose effective retirement date was before July 1, 2011, the member's monthly retirement benefit is increased by 3% each July 1.

For members who retire on or after July 1, 2011, the member's monthly retirement benefit is increased on July 1 of each year by 3%, prorated by the member's service credit earned prior to July 1, 2011 divided by the member's total service credit earned.

Members who initially enroll in the FRS on or after July 1, 2011, receive no cost of living adjustment during retirement. This is because the member's total service will be post-2011, resulting in the 3% adjustment prorated to 0%.

### Reinstatement of Cost of Living Adjustments

At the time the COLA was modified in 2011, the Legislature included a provision that allowed the 3% COLA to be reinstated contingent the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the 3% COLA. If the legislature provides such funding and enacts sufficient employer contributions, the provision regarding the prorated COLA expires and the COLA reverts to 3% annually.

### **Consumer Price Indices**

The Bureau of Labor Statistics (BLS) within the federal Department of Labor models an experimental consumer price index (CPI) for Americans 62 years of age and older. This index is referred to as Consumer Price Index for the Elderly or CPI-E. The fixed market basket of goods and services used for this index is different from the fixed market basket used for the Consumer Price Index for All Urban Consumers (CPI-U).

The annual percentage change in the CPI-U for the period December 1982 through December 2011 was 2.9%. The annual percentage change in the CPI-E for the same period was 3.1%.<sup>25</sup> The BLS does not forecast the CPI-E.

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

**Section 1** amends s. 121.101, F.S., to set the level of the annual cost of living adjustment for all FRS pension plan retirees and annuitants beginning July 1, 2016. The annual cost of living adjustment will be the greater of 3% or the percentage change in the CPI-E for the year.

**Section 2** provides that the Legislature finds that this act fulfills an important state interest.

Section 3 provides that the act takes effect on July 1, 2016.

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<sup>25</sup> [http://www.bls.gov/opub/ted/2012/ted\\_20120302.htm](http://www.bls.gov/opub/ted/2012/ted_20120302.htm) (last viewed January 22, 2016).

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

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides in pertinent part 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 (see section 9), and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, universities, community colleges, counties, and municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article X, section 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

An actuarial study has been completed to comply with Article X, section 14 of the Florida Constitution.<sup>26</sup> However, the bill does not provide the adjustments to contribution rates necessary to fund the cost of the retirement benefit enhancements.

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

None.

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<sup>26</sup> *Re: Actuarial Study – Prospective Reinstatement of 3 Percent COLA*, from Milliman, Inc., to Dan Drake, State Retirement Director, dated December 15, 2015. (on file with the Senate Committee on Governmental Oversight and Accountability).

**B. Private Sector Impact:**

Members and annuitants of the FRS who retire on or after July 1, 2011, will receive greater COLAs each year during retirement. Members and annuitants of the FRS who retired before July 1, 2011, may receive greater COLAs in any year for which the percentage change in the CPI-E is greater than 3%.

**C. Government Sector Impact:**

The bill does not provide the funding necessary to implement the benefit enhancement. The new contributions that will be required on an annual basis to implement the benefit enhancement are noted in the table below. However, the amounts are understated because the special actuarial study completed to determine the actuarial costs assumed that the prospective COLA would be only 3% rather than the greater of 3% or the percentage change in the CPI-E.

<b>Employer Group</b>	<b>Impact on Contributions</b>
<b>State Agencies</b>	\$181.5 m
<b>Universities</b>	\$73.0 m
<b>Colleges</b>	\$31.9 m
<b>School Boards</b>	\$380.7 m
<b>Counties</b>	\$367.7 m
<b>Other</b>	\$56.3 m
<b>Total</b>	\$1,091.1 m

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 121.031, F.S., directs the DMS to complete an annual actuarial valuation of the FRS pension plan based on the benefits authorized at the time. The benefits to be included in the actuarial analysis includes the implementation of the annual COLA. If this bill is enacted, the COLA will be the greater of 3% or the percentage increase in the CPI-E. However, at this time, there is no forecast of the CPI-E. Thus, the state actuary will have to choose a presumed COLA for the actuarial model which may overstate or understate the actuarial costs of the FRS pension plan.

**VIII. Statutes Affected:**

This bill substantially amends section 121.101 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Soto

14-01565-16

20161326\_\_

A bill to be entitled

An act relating to retirement; amending s. 121.101, F.S.; revising the method for determining the cost-of-living adjustment of benefits for retirees and annuitants of the Florida Retirement System on and after a specified date; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (3) of section 121.101, Florida Statutes, is amended, and subsections (4) and (5) of that section are republished, to read:

121.101 Cost-of-living adjustment of benefits.—

(3) Commencing July 1, 1987, the benefit of each retiree and annuitant whose effective retirement date is before July 1, 2011, shall be adjusted annually on July 1 as follows:

(a) For those retirees and annuitants who have never received a cost-of-living adjustment under this section, the amount of the monthly benefit payable for the 12-month period commencing on the adjustment date shall be the amount of the member's initial benefit plus an amount equal to a percentage of the member's initial benefit; this percentage is derived by dividing the number of months the member has received an initial benefit by 12, and multiplying the result by 3.

(b) For those retirees and annuitants who have received a cost-of-living adjustment under this subsection:

1. The adjusted monthly benefit shall be the amount of the monthly benefit being received on June 30 immediately preceding the adjustment date plus an amount equal to 3 percent of this benefit.

2. Beginning July 1, 2016, the adjusted monthly benefit

Page 1 of 3

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

14-01565-16

20161326\_\_

shall be the amount of the monthly benefit being received on June 30 immediately preceding the adjustment date plus an amount equal to 3 percent of this benefit or the percentage change in the Experimental Consumer Price Index for Americans 62 years of age and older, commonly known as the CPI-E, issued by the Bureau of Labor Statistics of the United States Department of Labor, whichever amount is greater.

(4) For members whose effective retirement date is on or after July 1, 2011, the benefit of each retiree and annuitant shall be adjusted annually on July 1 as follows:

(a) For those retirees and annuitants who have never received a cost-of-living adjustment under this subsection, the amount of the monthly benefit payable for the 12-month period commencing on the adjustment date shall be the amount of the member's initial benefit plus an amount equal to a percentage of the member's initial benefit. This percentage is derived by dividing the number of months the member has received an initial benefit by 12, and multiplying the result by the factor calculated pursuant to paragraph (c).

(b) For those retirees and annuitants who have received a cost-of-living adjustment under this subsection, the adjusted monthly benefit shall be the amount of the monthly benefit being received on June 30 immediately preceding the adjustment date plus an amount determined by multiplying the benefit by the factor calculated pursuant to paragraph (c).

(c) The department shall calculate a cost-of-living factor for each retiree and beneficiary retiring on or after July 1, 2011. This factor shall equal the product of 3 percent multiplied by the quotient of the sum of the member's service

Page 2 of 3

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

14-01565-16

20161326\_\_

62 credit earned for service before July 1, 2011, divided by the  
63 sum of the member's total service credit earned.

64 (5) Subject to the availability of funding and the  
65 Legislature enacting sufficient employer contributions  
66 specifically for the purpose of funding the expiration of the  
67 cost-of-living adjustment specified in subsection (4), in  
68 accordance with s. 14, Art. X of the State Constitution, the  
69 cost-of-living adjustment formula provided for in subsection (4)  
70 shall expire effective June 30, 2016, and the benefit of each  
71 retiree and annuitant shall be adjusted on each July 1  
72 thereafter, as provided in subsection (3).

73 Section 2. The Legislature finds that a proper and  
74 legitimate state interest is served when employees, officers,  
75 and retirees of the state and its political subdivisions, and  
76 the dependents, survivors, and beneficiaries of such employees,  
77 officers, and retirees, are extended the basic protections  
78 afforded by governmental retirement systems. These persons must  
79 be provided benefits that are fair and adequate and that are  
80 managed, administered, and funded in an actuarially sound  
81 manner, as required by s. 14, Article X of the State  
82 Constitution and part VII of chapter 112, Florida Statutes.  
83 Therefore, the Legislature determines and declares that this act  
84 fulfills an important state interest.

85 Section 3. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Rules, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Environmental Preservation and Conservation  
Finance and Tax  
Judiciary

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR DARREN SOTO

*Minority Caucus Rules Chair*

14th District

January 14, 2016

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

Chair Ring,

I respectfully request that Senate Bill 1326, Retirement, be placed on the agenda as soon as possible. Senate Bill 1326 seeks to revise the method for determining cost-of-living adjustment of benefits for retirees and annuitants of the Florida Retirement System.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

Cc: Joe McVaney, Staff Director  
Allison Rudd, Committee Administrative Assistant

#### REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/2014  
Meeting Date

SB 1324  
Bill Number (if applicable)

Topic Retirement - FRS COLA

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St  
Street

Phone \_\_\_\_\_

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 Police Benevolent 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.)

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

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BILL: SB 1356

INTRODUCER: Senator Brandes

SUBJECT: Employment After Retirement of School District Personnel

DATE: January 25, 2016

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

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

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**I. Summary:**

SB 1356 amends s. 1012.33, F.S., to provide legislative intent and to revise provisions relating to reemployment of retirees by district school boards as instructional personnel on a contract basis.

The bill further provides legislative intent and clarification for purposes of pending civil and administrative proceedings for suits against district school boards for not awarding professional services contracts to retirees.

The bill may have a positive fiscal impact on local school districts.

SB 1356 takes effect upon becoming a law.

**II. Present Situation:**

**School District Instructional Personnel Contracts**

In 2011, the Legislature passed the Student Success Act (act),<sup>1</sup> to require, among other things, the use of performance evaluations to assess performance. The evaluation system for administrative and instructional personnel differentiates among four levels of performance: highly effective, effective, needs improvement,<sup>2</sup> or unsatisfactory.<sup>3</sup> The Commissioner of Education is required to consult with experts, instructional personnel, school administrators, and education stakeholders in developing the criteria for the performance levels.

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<sup>1</sup> Chapter 2011-1, L.O.F.

<sup>2</sup> Section 1012.34(2)(e)3., F.S., provides that for instructional personnel in the first three years of employment, the evaluation may designate the performance as developing.

<sup>3</sup> Section 1012.34(2)(e), F.S.

Prior to 2011, instructional personnel with as little as three years of service could be granted a professional service contract, which provided for automatic renewal of the contract unless the superintendent charged the employee with unsatisfactory performance.<sup>4</sup> For instructional personnel hired on or after July 1, 2011, the act, in effect, provides that professional service contracts and tenure may no longer be given to any instructional personnel who do not currently have a professional service contract.

Specifically, the act provides that employees hired on or after July 1, 2011, must be awarded probationary contracts for a period of one year upon initial employment in a school district.<sup>5</sup> Probationary contract employees may be dismissed without cause or may resign without breach of contract.<sup>6</sup> The district may not award a probationary contract more than once to the same employee;<sup>7</sup> after the initial year, the school district may award an annual contract upon the successful completion of a probationary contract.<sup>8</sup> An annual contract is an employment contract for a period of no longer than one school year, which the district school board may choose to award or not award at the end of the contract term without cause.<sup>9</sup> Instructional personnel with an annual contract may be suspended or dismissed at any time during the term of the contract for just cause.<sup>10</sup>

In addition, the act ties the renewal of a professional service contract, for those employees who have a professional service contract, to the employee's performance evaluation; the professional service contract is no longer automatically renewed.<sup>11</sup> If an employee who holds a professional service contract is not performing his or her duties in a satisfactory manner, the act requires such an employee to receive notice and be placed on probation.<sup>12</sup> If the employee receives two consecutive annual performance evaluations of unsatisfactory, two annual performance evaluations of unsatisfactory within a three-year period, or three consecutive annual performance evaluations of needs improvement or a combination of needs improvement and unsatisfactory, the district may terminate or not renew the employee's contract.<sup>13</sup>

### **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 added to the FRS, and in 2007, the membership of the Institute of Food and Agricultural Sciences Supplemental Retirement Program was included in the Regular Class of the FRS as a

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<sup>4</sup> See s. 1012.33(3)(e), F.S. (2010).

<sup>5</sup> Section 1012.335(2)(a), F.S.

<sup>6</sup> Section 1012.335(1)(c), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 1012.335(2)(a), F.S.

<sup>9</sup> Section 1012.335(1)(a), F.S.

<sup>10</sup> Section 1012.335(4), F.S.

<sup>11</sup> Section 1012.33(3), F.S.

<sup>12</sup> Section 1012.34(4)(b), F.S.

<sup>13</sup> See ss. 1012.33 and 1012.34, F.S.

closed group.<sup>14</sup> The FRS is a contributory system, with most members contributing three percent of their salaries.<sup>15</sup>

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Ch. 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).<sup>16</sup> As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for the employees and officers of state and county government agencies, district school boards, Florida College institutions, and state universities, as well as the employees and officers of the 186 cities and 262 special districts that have elected to join the system.<sup>17</sup>

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

- The Regular Class<sup>18</sup> consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class<sup>19</sup> includes 68,593 active members;
- The Special Risk Administrative Support Class<sup>20</sup> has 84 active members;
- The Elected Officers' Class<sup>21</sup> has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class<sup>22</sup> has 7,607 members, plus 184 in renewed membership.<sup>23</sup>

### ***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.

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<sup>14</sup> 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](https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf).

<sup>15</sup> Prior to 1975, members of the FRS were required to make employee contributions of either four percent for Regular Class employees or six 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.

<sup>16</sup> Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

<sup>17</sup> *Id.*, at 146.

<sup>18</sup> The Regular Class is for all members who are not assigned to another class. (Section 121.021(12), F.S.)

<sup>19</sup> 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.)

<sup>20</sup> 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.

<sup>21</sup> 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.

<sup>22</sup> 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.)

<sup>23</sup> All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment 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.<sup>24</sup> With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.<sup>25</sup> Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.<sup>26</sup> The investment plan also provides disability coverage for both in the line of duty and regular disability retirement benefits.<sup>27</sup> 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.<sup>28</sup>

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.<sup>29</sup> The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.<sup>30</sup>

### ***Pension Plan***

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.<sup>31</sup> Investment management of the pension plan assets 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.<sup>32</sup> For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>33</sup> 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.<sup>34</sup> For most members of the pension plan, normal retirement occurs at 30 years of service or age 62.<sup>35</sup> For members in the Special Risk and Special Risk Administrative Support

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<sup>24</sup> Section 121.4501(6)(a), F.S.

<sup>25</sup> 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.)

<sup>26</sup> Section 121.591, F.S.

<sup>27</sup> Section 121.4501(16), F.S.

<sup>28</sup> Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in the 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.

<sup>29</sup> Section 121.4501(8), F.S.

<sup>30</sup> FLA.CONST. art. IV, s. 4.

<sup>31</sup> Section 121.025, F.S.

<sup>32</sup> Section 121.021(45)(a), F.S.

<sup>33</sup> Section 121.021(45)(b), F.S.

<sup>34</sup> Section 121.091, F.S.

<sup>35</sup> Section 121.021(29)(a)1., F.S.

Classes, normal retirement occurs at 25 years of service or age 55.<sup>36</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For unreduced benefits for members initially enrolled after that date, most members 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.<sup>37</sup>

### ***Deferred Retirement Option Program***

All membership classes in the Pension Plan permit enrollment in a Deferred Retirement Option Program (DROP) under which a participant may extend employment for an additional five years and receive a lump sum benefit at a fixed rate of interest for that additional service.<sup>38</sup> Certain instructional personnel in district school boards may participate in DROP for an additional 36 months.<sup>39</sup> Enrollment in DROP requires the participant to serve the employer with a deferred resignation from employment at the end of the period. Current law provides that members who reach their normal retirement date based on service before they reach age 62, or age 55 for Special Risk members, may defer participation in DROP to the 12 months immediately following the attainment of age 57, or 52.<sup>40</sup>

### **Employment after Retirement**

#### Generally

Section 121.091, F.S., governs the payment of benefits under the FRS. For the purposes of the pension plan, a “retiree” means a former member of the FRS or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member.<sup>41</sup> For the purposes of the investment plan, a “retiree” means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided the Internal Revenue Code.<sup>42</sup>

After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting their FRS benefits.

However, there are certain termination requirements and reemployment limitations that affect retirement benefits **if a retiree is employed with an FRS-participating employer** during the first 12 calendar months after the effective retirement date without DROP participation or after the DROP termination date. If a retiree returns to work during the **first six calendar months** of retirement or after the member’s DROP termination date, then the member’s retirement application is voided and all retirement benefits, including any funds accumulated during DROP

<sup>36</sup> Section 121.021(29)(b)1., F.S.

<sup>37</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>38</sup> Section 121.021(13)(a), F.S.

<sup>39</sup> Section 121.021(13)(b), F.S.

<sup>40</sup> Section 121.091(13)(a)2., F.S.

<sup>41</sup> Section 121.021(60), F.S.

<sup>42</sup> Section 121.4501(2)(k), F.S.

participation, must be repaid to the FRS Trust Fund. This restriction applies even if the particular position held is not covered by the FRS. An FRS retiree cannot be reemployed by an FRS employer for a period of 6 months without voiding the member's retirement.

A retiree's benefit will be suspended if the retiree is hired an FRS during the **seventh through twelfth calendar months** of retirement or after the DROP termination date. Beginning the thirteenth calendar month, the benefits are reinstated and no employment restrictions exist.

Suspended retirement benefits for the months a reemployed retiree is employed by an FRS employer during the reemployment limitation period will be payable to the retiree. The reemployed retiree and the employing agency are jointly and severally liable for repaying any retirement benefits the employee receives while working during this period.

There are no limits on working for an FRS employer after a retiree has been retired for 12 calendar months. If a retiree is re-employed with an FRS participating employer, they will be required to sign a statement that their reemployment does not violate these provisions.<sup>43</sup>

Prior to July 1, 2010, there were various exceptions to employment with FRS-covered employers during the reemployment limitation period. All reemployment limitation exceptions that were not specific to educational institutions were closed by operation of Ch. 2009-209, Law of Fla., which also extended the termination period from 1 month to 6 months immediately after retirement during which a retiree could not be reemployed with any FRS employer without voiding his retirement.

#### Exception to the suspension of retirement benefits for Instructional Personnel

The exception to the suspension of retirement benefits relevant to this discussion is the authority of a district school board to reemploy as instructional personnel after 1 calendar month of retirement a retiree whose FRS retirement was effective before July 1, 2010. That retiree could be reemployed on an annual contractual basis after one calendar month of retirement without having her or his retirement benefits suspended.<sup>44</sup> This law does not address the employment relationship after the end of the first twelve months of retirement.

This exception does not apply to any retiree whose effective retirement date is on or after July 1, 2010.

#### **Legal Ambiguity for Reemployment of Instructional Personnel**

In 2011, two retired reemployed instructional personnel brought suit in Orange County, Florida to determine whether the county was required to issue professional service contracts after the employees' successfully completed three years of employment.<sup>45</sup> The Orange County Public

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<sup>43</sup> The information in this section of the bill analysis comes from the FRS Pension Plan: Deferred Retirement Option Program Handbook, 2014 edition, located at <https://www.rol.frs.state.fl.us/forms/drop-guide.pdf> and the FRS Pension Plan member Handbook, 2013 edition, located at [https://www.rol.frs.state.fl.us/forms/member\\_handbook.pdf](https://www.rol.frs.state.fl.us/forms/member_handbook.pdf). See also ss. 121.091(9), 121.122, and 1012.01(2), F.S.

<sup>44</sup> Section 121.091(9)(b)1.a., F.S.

<sup>45</sup> A copy of the circuit court decision is on file with the Government Oversight and Accountability committee.

Schools argued that s. 121.091, F.S., required the instructional personnel to be rehired on an annual contractual basis. The issue in the case centered on whether the FRS act required instructional personnel to be reemployed with an annual contract for the rest of the member's career, or whether the FRS act only pertained to the initial year of reemployment and such member may ultimately be given a professional service contract under s. 1012.33, F.S., which provided for such a contract after three years of service.

The circuit court found that the Legislature intended for retired teachers to be rehired on the same terms as newly hired teachers. At that time, newly hired teachers were placed on an initial annual contract and after serving three years in the district, received a professional service contract.

The Orange County School Board appealed the final judgment to the Fifth District Court of Appeal arguing that the trial court erred and that s. 121.091, F.S., precludes the school board from ever issuing a contract longer than an annual contract when employing retired instructional personnel.<sup>46</sup> The Fifth District Court of Appeal, however, agreed with the lower court and found that the limitations in s. 121.091, F.S., only apply at the time of the initial rehire.

### III. Effect of Proposed Changes:

**Section 1** amends s. 1012.33, F.S., to allow a district school board to reemploy a retiree as instructional personnel under a 1-year probationary contract. If the retiree successfully completes the probationary contract, such employee may receive an annual contract.

The bill states that neither this legislation nor any other previous law allows a retiree to be awarded a professional service contract.

This section further provides that the holding in *Orange County School Board v. Rachman and Shuman*<sup>47</sup> was contrary to legislative intent at the time the statutes were enacted and that retirees under s. 121.091(9), F.S., were never entitled to professional service contracts, regardless of the retiree's date of retirement. This section notes that retirees are not eligible, and were never eligible, to receive a professional services contract under s., F.S., or any statute.

The bill provides legislative intent directing the judge in a civil action or administrative proceeding to rule against a classroom teacher on any claim or cause of action against the district school board, district superintendent, or district school board employee for not awarding that teacher a professional service contract.

The bill provides that it does not void, is not intended to void, and does not in any way impair any professional service contract inadvertently awarded by a district school board to a retiree before the effective date of this act.

**Section 2** directs the Division of Law Revision and Information to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes law.

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<sup>46</sup> *Orange County School Board v. Rachman and Schuman*, 87 So.3d 48 (Fla. 5th DCA 2012).

<sup>47</sup> *Id.*

**Section 3** provides that this bill takes effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with 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:

Indeterminate.

C. Government Sector Impact:

Indeterminate. The bill may have an impact on school districts since districts will not be required to provide professional services contracts for instructional personnel who are rehired after retiring from the FRS.

**VI. Technical Deficiencies:**

This bill uses the term "retiree" but does not define the term. It is unclear whether retiree is intended to include all retirees (private and public sector), retirees of the FRS pension plan, retirees of the FRS investment plan, or retirees from the particular school district. The effects of this legislation could be significantly different based on this definition.

On lines 50-53 of the bill, the language states that this legislation does not void or impair in any way a professional service contract "inadvertently" awarded by a district school board to a retiree prior to the effective date of this act. It is unclear whether the implicit meaning is to void or impair a professional service contract that the school board intentionally awarded to a retiree.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1012.33 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Brandes

22-01074-16

20161356\_\_

A bill to be entitled

An act relating to employment after retirement of school district personnel; amending s. 1012.33, F.S.; revising provisions relating to reemployment of retirees as instructional personnel on a contract basis; providing legislative intent and findings to clarify authorization to award contracts; providing requirements for a judgment in certain civil actions or administrative proceedings; providing applicability; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Subsection (8) of section 1012.33, Florida Statutes, is amended to read:

1012.33 Contracts with instructional staff, supervisors, and school principals.—

(8) Notwithstanding any other provision of law, a district school board may reemploy a retiree as instructional personnel, as defined in s. 1012.01, under a 1-year probationary contract, as defined in s. 1012.335(1). If the retiree successfully completes the probationary contract, the district school board may reemploy the retiree under an annual contract, as defined in s. 1012.335(1).

(a) Neither this subsection nor any other law enacted before the effective date of this act allows, or was intended to allow, a retiree to be awarded a professional service contract. The Legislature finds that the holding in Orange County School Board v. Rachman and Schuman, 87 So. 3d 48 (Fla. 5th DCA 2012), which found that retirees under s. 121.091(9)(b)1.a. and this

Page 1 of 3

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

22-01074-16

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subsection as enacted before the effective date of this act were entitled to a professional service contract, was contrary to the legislative intent at the time the statutes were enacted. The Legislature finds that retirees under s. 121.091(9), regardless of the retiree's date of retirement, and under this subsection are not eligible, and were never eligible, to receive a professional service contract under this section or any other law. In a civil action or administrative proceeding, if a classroom teacher was formerly retired and then reemployed by the district school board pursuant to s. 121.091(9) and this section as enacted before the effective date of this act, the Legislature intends, in accordance with the findings expressed in this subsection, that a judgment be entered against that classroom teacher on any claim or cause of action against the district school board, the district school superintendent, or a district school board employee for not awarding that teacher a professional service contract.

(b) This subsection does not void, is not intended to void, and does not in any way impair any professional service contract inadvertently awarded by a district school board to a retiree before the effective date of this act ~~retired member may interrupt retirement and be reemployed in any public school. A member reemployed by the same district from which he or she retired may be employed on a probationary contractual basis as provided in subsection (1).~~

Section 2. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Page 2 of 3

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

22-01074-16

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62

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



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** January 11, 2016

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I respectfully request that **Senate Bill #1356**, relating to **Employment After Retirement of School District Personnel**, be placed on the:

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

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

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16

Meeting Date

1356

Bill Number (if applicable)

Topic Employment after Retirement

Amendment Barcode (if applicable)

Name Scott Howat

Job Title Sr. Exec. Dir., Gov Relations

Address 445 W. Amelia St

Phone 407-317-3200

Street

Orlando FL 32801

City

State

Zip

Email howat@ocps.net

Speaking:  For  Against  Information

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

Representing Orange County Public Schools

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)

1-26-16  
Meeting Date

1356  
Bill Number (if applicable)

Topic Employment after Retirement

Amendment Barcode (if applicable)

Name Connie Milito

Job Title Chief Gov. Relations Officer

Address 901 E. Kennedy Blvd  
Street

Phone 813-272-4519

Tampa, FL ( 33601 )  
City State Zip

Email cmilito@sdhc.us

Speaking:  For  Against  Information

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

Representing Hillsborough County Public Schools

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.)

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

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BILL: SB 598

INTRODUCER: Senator Brandes

SUBJECT: Public Works Projects

DATE: January 15, 2016      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	<b>Unfavorable</b>
2.			CA	
3.			AP	

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**I. Summary:**

SB 598 creates section 255.0992, F.S., relating to public works projects and prohibited governmental actions. The bill defines the terms “political subdivision” and “public works” or “public works project.” The bill prohibits the state and its political subdivisions that contract for construction, maintenance, repair, or improvement of public works from imposing certain conditions on contractors, subcontractors, or material suppliers or carriers, except as otherwise required by federal or state law.

CS/SB 598 also prohibits the state or a political subdivision from restricting a qualified contractor, subcontractor, or material supplier or carrier from submitting a bid on any public works project.

**II. Present Situation:**

**The Consultants’ Competitive Negotiation Act**

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted by the Legislature in 1973<sup>1</sup> to specify the procedures to be followed when procuring professional services by an agency.<sup>2</sup>

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process to be followed when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:<sup>3</sup>

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.<sup>4</sup> In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.<sup>5</sup>

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.<sup>6</sup> Section 287.055(2)(d), F.S., defines the term "compensation" to mean "the amount paid by the agency for professional services regardless of whether stated as compensation" or as other types of rates.

In the second phase, the "competitive negotiation," the agency negotiates compensation with the most qualified of the three selected firms for professional services at compensation which the agency determines is "fair, competitive, and reasonable."<sup>7</sup> If a satisfactory contract cannot be negotiated, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.<sup>8</sup> If a satisfactory contract cannot be negotiated with any of the three selected, the agency must select additional firms in order of their competence and qualifications

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<sup>1</sup> Chapter 73-19, L.O.F.

<sup>2</sup> Section 287.055(2)(b), F.S., defines "Agency" as "the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S."

<sup>3</sup> Section 287.055(3)(a)1., F.S.

<sup>4</sup> Sections 287.055(4) and (5), F.S.

<sup>5</sup> The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires agencies to consider: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

<sup>6</sup> Section 287.055(4)(b), F.S.

<sup>7</sup> Section 287.055(5)(a), F.S.

<sup>8</sup> Section 287.055(5)(b), F.S.

and continue negotiations until a contract is reached.<sup>9</sup> Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects but instead are limited to utilizing the statutorily defined procedures.<sup>10</sup>

### **Procurement of Construction Services for Public Property and Publicly Owned Buildings**

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the Department of Management Services (DMS) to establish, by rule,<sup>11</sup> the following construction contract procedures for:

- Determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- Awarding each state agency construction project to the lowest qualified bidder as well as procedures to be followed in cases in which DMS declares a valid emergency to exist which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- Governing negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the DMS secretary to be in the best interest of the state.
- Entering into performance-based contracts for the development of public facilities when DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:<sup>12</sup>

- Prequalification of bidders;
- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.<sup>13</sup> County, municipal, or other political subdivision contracts for construction

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<sup>9</sup> Section 287.055(5)(c), F.S.

<sup>10</sup> Op. Att'y Gen. Fla. 2011-21 (2011).

<sup>11</sup> Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F.S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

<sup>12</sup> Section 255.29(4)(a)-(d), F.S.

<sup>13</sup> Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

projects that are projected to cost in excess of \$200,000 must also be competitively bid.<sup>14</sup> Counties, municipalities, special districts,<sup>15</sup> or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.<sup>16</sup>

The solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 must be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.<sup>17</sup> If the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening.<sup>18</sup>

### **Department of Management Services Convicted Vendors and Discriminatory Vendor Lists**

DMS is required to keep a convicted vendor list<sup>19</sup> that identifies vendors who have committed a public entity crime.<sup>20</sup> If a vendor is included on the convicted vendor list, that vendor is barred from doing business with the state<sup>21</sup> in excess of \$35,000 as provided in s. 287.017(2), F.S., for a period of 36 months following placement on the list.

DMS also maintains a discriminatory vendor list that identifies vendors where a determination of liability by a state circuit court or a federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion.<sup>22</sup> Inclusion on the discriminatory vendor list bars a vendor from doing business with the state, and the state is prohibited from accepting any bids or proposals and transacting business with such vendor for a period of 36 months following placement on the list.<sup>23</sup>

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<sup>14</sup> Section 255.0525(2), F.S.

<sup>15</sup> Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.).

<sup>16</sup> *Id.* For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

<sup>17</sup> Section 255.0525(1), F.S.

<sup>18</sup> *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

<sup>19</sup> Section 287.133, F.S., and Rule 60A-1.006(5), F.A.C.

<sup>20</sup> Section 287.133(1)(g), F.S., defines “public entity crime” as a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

<sup>21</sup> Section 287.135(2)(a), F.S. A vendor placed on the list may not submit bids or proposals to a public entity on a contract to provide goods and services, a contract for construction or repair of a public building or work, leases of real property. The vendor may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant with a public entity, and may not transact business with any public entity.

<sup>22</sup> Section 287.134, F.S.

<sup>23</sup> Section 287.134(2), F.S.

## **Preference for Employment of State Residents in Construction Contracts Funded By State Funds**

Florida law provides a preference for the employment of state residents in construction contracts funded by state funds.<sup>24</sup> Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications<sup>25</sup> to those of non-residents.<sup>26</sup> If a construction contract is funded by local funds, the contract may contain such a provision.<sup>27</sup> In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.<sup>28</sup>

## **Department of Transportation Construction Projects**

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.<sup>29</sup> Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.<sup>30</sup> The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."<sup>31</sup>

Each application for certification of qualification must be accompanied by the latest annual financial statement of the applicant completed within the last 12 months.<sup>32</sup> If the application or the annual financial statement shows the financial condition of the applicant more than 4 months prior to the date on which the application is received by DOT, then an audited interim financial statement must be submitted and accompanied by an updated application.<sup>33</sup> If the applicant meets the qualifications, DOT issues a certificate of qualification that is valid for 18 months after the date of the applicant's financial statement, or shorter time period as DOT prescribes.<sup>34</sup> Such certificate of qualification may be revoked by DOT for a contractor who is deemed delinquent on a previously awarded contract.<sup>35</sup>

DOT does not prohibit a qualified, licensed or certified contractor from bidding; however, a contract may not be awarded if the bid is determined to be irregular or non-responsive. DOT

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<sup>24</sup> Section 255.099(1), F.S.

<sup>25</sup> Section 255.099(1)(a), F.S., defines "substantially equal qualifications" as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

<sup>26</sup> Section 255.099(1), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 255.099(1)(b), F.S.

<sup>29</sup> Section 337.14(1), F.S. and ch. 14-22, F.A.C.

<sup>30</sup> Section 337.14(2), F.S.

<sup>31</sup> Section 337.14(1), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Section 337.14(4), F.S.

<sup>35</sup> Section 337.16, F.S.

does require training for certain work categories, such as bridge work and other technical road and bridge areas.

### **Federal Labor and Wage Laws**

The National Labor Relations Act of 1935<sup>36</sup> and the Labor Management Relations Act of 1947<sup>37</sup> constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.<sup>38</sup> A state may set the rate higher than the federal minimum, but not lower.<sup>39</sup> It also requires employers to pay time and a half to its employees for overtime hours worked,<sup>40</sup> and establishes standards for recordkeeping<sup>41</sup> and child labor.<sup>42</sup> Over 135 million workers are covered under the act;<sup>43</sup> most jobs are covered by the FLSA, but not all jobs are covered. In addition, some jobs are covered, but are considered “exempt” from the FLSA overtime requirements.<sup>44</sup>

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.<sup>45</sup> The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning on January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”<sup>46</sup>

### **State Labor and Wage Regulations**

Article I, Section 6 of the State Constitution creates a constitutional right to collectively bargain for public sector employees. It provides, in pertinent part, that “[t]he right of persons to work

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<sup>36</sup> 29 U.S.C. ss. 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

<sup>37</sup> 29 U.S.C. ss. 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

<sup>38</sup> 29 U.S.C. s. 206.

<sup>39</sup> 29 U.S.C. s. 218(a).

<sup>40</sup> 29 U.S.C. s. 207.

<sup>41</sup> 29 U.S.C. s. 211.

<sup>42</sup> 29 U.S.C. s. 212.

<sup>43</sup> <http://www.dol.gov/whd/workers.htm> (last visited December 4, 2015).

<sup>44</sup> 29 U.S.C. s. 213; [http://www.dol.gov/whd/overtime\\_pay.htm](http://www.dol.gov/whd/overtime_pay.htm) (last visited December 4, 2015).

<sup>45</sup> A copy of the Executive Order can be found online at: <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited December 4, 2015).

<sup>46</sup> *Id.*

shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.<sup>47</sup>

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”<sup>48</sup> The State Constitution requires that employers pay employees no less than the minimum wage for all hours worked in Florida.<sup>49</sup> The current state minimum wage is \$8.05 per hour,<sup>50</sup> which is higher than the federal rate.<sup>51</sup>

### **Federal Project Labor Agreements**

In 2009, President Barack Obama signed Executive Order 13502 authorizing the use of project labor agreements for federal construction projects.<sup>52</sup> The Executive Order defines the term “project labor agreement” as “a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).” The Executive Order provides that executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where such an agreement will advance the federal government’s goal of achieving economy and efficiency in procurement, produce labor-management stability, and ensure compliance with laws and regulations concerning safety, health, equal employment opportunity, and labor and employment standards.

### **Federal Prevailing Wage Requirements**

The Davis-Bacon Act applies to contractors and subcontractors performing work on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public works projects or public buildings.<sup>53</sup> The United States Department of Labor, Wage and Hour Division, issues two types of wage determinations: general determinations (also known as area determinations) and project determinations. The wage and fringe benefits<sup>54</sup> in the applicable

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<sup>47</sup> See *Hillsborough Cnty. Gov’tl Emps. Ass’n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So.2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm’n*, 410 So.2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass’n v. Legislature of Fla.*, 269 So.2d 684 (Fla. 1972).

<sup>48</sup> Article X, s. 24(a), FLA. CONST. and s. 448.110, F.S.

<sup>49</sup> Article X, s. 24(c), FLA. CONST.

<sup>50</sup> <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices> (last visited December 4, 2015).

<sup>51</sup> The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited December 4, 2015).

<sup>52</sup> A copy of the Executive Order can be found online at:

[http://www.whitehouse.gov/the\\_press\\_office/ExecutiveOrderUseofProjectLaborAgreementsforFederalConstructionProjects](http://www.whitehouse.gov/the_press_office/ExecutiveOrderUseofProjectLaborAgreementsforFederalConstructionProjects) (last visited December 4, 2015); the Executive Order is codified in subpart 22.5 of the Federal Acquisition Regulation.

<sup>53</sup> 40 U.S.C. s. 3142(a).

<sup>54</sup> Examples of fringe benefits include life insurance, health insurance, pension, vacation, holidays, sick leave, and other “bona fide” fringe benefits. <http://www.dol.gov/whd/programs/dbra/faqs/fringes.htm#Fringe> (last visited December 4, 2015).

Davis-Bacon wage determination must be the minimum paid by contractors and subcontractors to laborers and mechanics.<sup>55</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 255.0992, F.S., relating to public works projects and prohibited governmental actions. The following terms are defined:

- “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof<sup>56</sup> and is authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- “Public works” or “public works project” means a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned, in whole or in part, by any political subdivision for which a project for construction, maintenance, repair, or improvement of public works is to be paid for, in whole or in part, with state funds.

Except as required by federal or state law, this section prohibits the state or any political subdivision from requiring a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works to:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

Also, the bill provides that the state or a political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier who is qualified, licensed, or certified as required by state law from submitting a bid on any public works project.

**Section 2** provides that this act shall take effect upon becoming a law.

### IV. Constitutional Issues:

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

---

<sup>55</sup> 40 U.S.C. s. 3142(b).

<sup>56</sup> The bill notes that the term “political subdivision” includes, but is not limited to, a county; municipality; or an authority, board, commission, department, institution of higher education, public corporation, school district, taxing district, water management district, or other public agency or body.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

Indeterminate.

**VI. Technical Deficiencies:**

The provision in the bill that prevents the state or a political subdivision from prohibiting qualified, licensed and certified vendors from submitting bids on public works projects may conflict with ss. 287.133 and 287.34, F.S., regarding the convicted vendor and discriminatory vendor lists maintained by DMS.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 255.0992 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.)

None.

**B. Amendments:**

None.



846642

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/26/2016	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 255.0992, Florida Statutes, is created  
to read:

255.0992 Public works projects; prohibited governmental  
actions.-

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

(a) "Political subdivision" means a separate agency or unit



846642

11 of local government created or established by law or ordinance  
12 and the officers thereof. The term includes, but is not limited  
13 to, a county; a city, town, or other municipality; or a  
14 department, commission, authority, school district, taxing  
15 district, water management district, board, public corporation,  
16 institution of higher education, or other public agency or body  
17 thereof authorized to expend public funds for construction,  
18 maintenance, repair, or improvement of public works.

19 (b) "Public works project" means an activity that is paid  
20 for in whole or in part with state funds and that consists of  
21 the construction, maintenance, repair, renovation, remodeling,  
22 or improvement of a building, road, street, sewer, storm drain,  
23 water system, site development, irrigation system, reclamation  
24 project, gas or electrical distribution system, gas or  
25 electrical substation, or other facility, project, or portion  
26 thereof that is owned in whole or in part by any political  
27 subdivision.

28 (2) (a) Except as required by federal or state law, the  
29 state or any political subdivision that contracts for a public  
30 works project may not require that a contractor, subcontractor,  
31 or material supplier or carrier engaged in such project:

32 1. Pay employees a predetermined amount of wages or  
33 prescribe any wage rate;

34 2. Provide employees a specified type, amount, or rate of  
35 employee benefits;

36 3. Control, limit, or expand staffing; or

37 4. Recruit, train, or hire employees from a designated,  
38 restricted, or single source.

39 (b) The state or any political subdivision that contracts



846642

40 for a public works project may not prohibit any contractor,  
41 subcontractor, or material supplier or carrier able to perform  
42 such work who is qualified, licensed, or certified as required  
43 by state law to perform such work from submitting a bid on the  
44 public works project or being awarded any contract, subcontract,  
45 material order, or carrying order.

46 (3) This section does not apply to contracts executed under  
47 chapter 337.

48 Section 2. This act shall take effect July 1, 2016.

49

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

51 And the title is amended as follows:

52 Delete everything before the enacting clause  
53 and insert:

54 A bill to be entitled

55 An act relating to public works projects; creating s.  
56 255.0992, F.S.; providing definitions; prohibiting the  
57 state and political subdivisions that contract for  
58 public works projects from imposing restrictive  
59 conditions on certain contractors, subcontractors, or  
60 material suppliers or carriers; prohibiting the state  
61 and political subdivisions from restricting qualified  
62 bidders from submitting bids or being awarded  
63 contracts; providing applicability; providing an  
64 effective date.

By Senator Brandes

22-00262A-16

2016598\_\_

A bill to be entitled

An act relating to public works projects; creating s. 255.0992, F.S.; providing definitions; prohibiting the state and political subdivisions that contract for the construction, maintenance, repair, or improvement of public works from imposing restrictive conditions on contractors, subcontractors, or material suppliers or carriers; prohibiting the state and political subdivisions from restricting qualified bidders from submitting bids; providing an effective date.

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

Section 1. Section 255.0992, Florida Statutes, is created to read:

255.0992 Public works projects; prohibited governmental actions.—

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

(a) "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a municipality; or an authority, board, commission, department, institution of higher education, public corporation, school district, taxing district, water management district, or other public agency or body authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

(b) "Public works" or "public works project" means a building, road, street, sewer, storm drain, water system, site

Page 1 of 2

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

22-00262A-16

2016598\_\_

development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned, in whole or in part, by any political subdivision for which a project for construction, maintenance, repair, or improvement of public works is to be paid for, in whole or in part, with state funds.

(2) Except as required by federal or state law, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require that a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works:

(a) Pay employees a predetermined amount of wages or prescribe any wage rate;

(b) Provide employees a specified type, amount, or rate of employee benefits;

(c) Control, limit, or expand staffing; or

(d) Recruit, train, or hire employees from a designated, restricted, or single source.

(3) The state or any political subdivision that contracts for any construction, maintenance, repair, or improvement of public works may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform construction, maintenance, repair, or improvement of public works who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on any public works project.

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** November 4, 2015

---

I respectfully request that **Senate Bill #598**, relating to **Public Works Projects**, be placed on the:

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

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

---

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16  
Meeting Date

598  
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3730 Coconut Creek Pkwy  
Street

Phone (954) 984-0095

Coconut Creek FL 33066  
City State Zip

Email cbowen@abcaastflorida.com

Speaking:  For  Against  Information

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

Representing Associated Builders and Contractors 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)

598

Bill Number (if applicable)

Meeting Date

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name JESS McCARTY

Job Title ASSY COUNTY ATTORNEY

Address 111 NW 12th St

Phone 305-979-7110

Street MIAMI

33128

Email JMM2@MIAMIPOD.FL.GOV

City State Zip

Speaking:  For  Against  Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

01/26/2016

*Meeting Date*

598

*Bill Number (if applicable)*

Topic Public Works Projects

*Amendment Barcode (if applicable)*

Name Warren Husband

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

Address PO Box 10909

Phone 8502059000

*Street*

Tallahassee

FL

32302

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Fla. Associated General Contractors Council

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

1/26/16

Meeting Date

598

Bill Number (if applicable)

Topic Preemption

Amendment Barcode (if applicable)

Name Rich Templin

Job Title

Address 133 S. Monroe Street

Phone 850-224-6926

Tallahassee FL 32301

Email

Speaking: [ ] For [X] 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 [X] No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16  
Meeting Date

598  
Bill Number (if applicable)

Topic TAX BREAK

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR

Address PO BOX 1766

Phone 954 850 4055

POMPANO BEACH FLA 33061  
City State Zip

Email worbingfolk@hotmail.com

Speaking:  For  Against  Information

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

Representing COMMUNICATIONS WORKERS of AMERICA COUNCIL of FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

11/26/16

Meeting Date

5B 598

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Bruce Kershner

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

Address 231 West Bay Ave

Phone 407 830 1882

Street

Longwood

City

FL

State

32750

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16  
Meeting Date

598  
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title Asst Leg Director

Address 100 Munroe  
Street

Phone 922 4300

Tallahassee FL  
City State Zip

Email

Speaking:  For  Against  Information

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

Representing Florida Association of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/16

Meeting Date

SB-598

Bill Number (if applicable)

Topic PUBLIC WORKS

Amendment Barcode (if applicable)

Name J.B. CLARK

Job Title LOBBYIST

Address 2011 CYNTHIA DRIVE

Phone 850-556-8143

TALL FL 32303

Email JBCCLARK5@EARTHWIRE.COM

Speaking: For Against Information

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

Representing FL. ELECTRICAL WORKERS ASSN.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-15

Meeting Date

598

Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name James Eagle

Job Title Electrician

Address 3509 NW 22nd Dr  
Street

Phone 901-483-4800

Gainesville FL 32605  
City State Zip

Email fwcwl@yahoo.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/26/16  
Meeting Date

598  
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Diana Arteaga

Job Title

Address 1700 Pan American Drive

Phone

Street

Miami

FL

Email dartega@miamigov.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing City of Miami

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/16  
Meeting Date

598  
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne Blvd

Phone 850-509-2085

Street

Miami  
City

FL  
State

33137  
Zip

Email arthur@floridalegal.org

Speaking:  For  Against  Information

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

Representing Florida Legal Services

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16

Meeting Date

SB 598

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name ANTHONY MARCIANO

Job Title SERGEANT BROWARD SHERIFF

Address 10221 DORCHESTER DR.

Phone 954 632 6878

Street

BOCA RATON FL 33428

City

State

Zip

Email AKTOM@ATT.NET

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

01/26/2016  
Meeting Date

SB 598  
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Tammi King

Job Title Bus Operator

Address 4369 Creekside Boulevard

Phone (407) 283-5548

Street

Kissimmee, Florida

Email Tammi King 412@yahoo.com

City

State

Zip

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.

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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)

1-26-16  
Meeting Date

SB 0598  
Bill Number (if applicable)

Topic Public works projects

Amendment Barcode (if applicable)

Name Alan HARRIS

Job Title Bus driver

Address 5027 22nd street west  
Street

Phone 941-518-6894

Bradenton FL 34207  
City State Zip

Email Alan.harris@verizon.net

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

1-20-16  
Meeting Date

SB 0598  
Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name DAVID VECCHI

Job Title Bus DRIVER

Address 7256 Houston Ln

Phone 941-888-2555

Street

NORTH PORT

City

FL

State

34287

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)

1/26/2016

Meeting Date

SB 598

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name ERIK W JONES

Job Title COMMUNICATIONS TECHNICIAN

Address 515 75TH ST NW

Phone 941-720-3563

Street

BRADENTON

City

FL

State

34209

Zip

Email ejones@ibew824.org

Speaking:  For  Against  Information

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

Representing MYSELF

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)

1-26-16  
Meeting Date

598  
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Theresa King

Job Title President

Address P.O. Box 10888  
Street

Phone 850-228-8940

Tallahassee FL 32302  
City State Zip

Email fbt.tking@gmail.com

Speaking:  For  Against  Information

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

Representing Florida Building and Construction Trades

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-2016

Meeting Date

0598

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Jesse Bremer

Job Title Electrician

Address 7533 SW 85th Drive  
Street

Phone 352-525-0158

Gainesville  
City

Fl.  
State

32608  
Zip

Email Cjbx5@AOL.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.**

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-2016

Meeting Date

598

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Thomas N. Gibson

Job Title Retired

Address 7782 Melvin Road

Phone (904) 236-0358

Street

Jacksonville FL 32210

City

State

Zip

Email Tnathangibson@gmail.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

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

1-26-16

Meeting Date

SB598

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retiree

Address 1130 Crestview Ave.

Phone (850) 372-7599

Street

Tallahassee FL 32303

Email amaliadatz@Mac.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing AFSCME Retiree

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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1/26/16

Meeting Date

SB 598

Bill Number (if applicable)

Topic preemption

Amendment Barcode (if applicable)

Name Matthew Land

Job Title Political Director

Address 14 NE 15<sup>th</sup> Avenue, Suite 1200

Street

Phone 850.445.3428

Miami

City

FL

State

33132

Zip

Email mland@selab.org

Speaking:  For  Against  Information

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

Representing Southeast Laborers District Council

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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1/26/16

Meeting Date

SB 598

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name GLENDA ARICHT

Job Title SERVICES TECHNICIAN

Address 4305 SW 98 AV

Phone 786-376-1181

Street

MIAMI

FL

33165

City

State

Zip

Email GLENDAARICHT@GMAIL.COM

Speaking: [ ] For [ ] Against [ ] Information

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

Representing SELF

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

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

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-26-16

Meeting Date

598

Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name John Parker

Job Title sheet metal worker

Address 9158 Heckscher dr

Phone 904-613-1623

Street

Jacksonville FL 32226

Email JCPARKER1217@gmail.com

City

State

Zip

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
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1/26/16

Meeting Date

SB 598

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Michael Cantens

Job Title Lobbyist

Address 2000 Ponce de Leon Blvd

Phone 813-527-0172

Street

Coral Gables FL 33143

Email mcantens@coralraff.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing City of Miami Beach

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 1226

INTRODUCER: Senator Ring

SUBJECT: Administrative Procedures

DATE: January 25, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	<b>Favorable</b>
2.			AGG	
3.			FP	

---

**I. Summary:**

SB 1226 requires a statement of estimated regulatory costs (SERC) to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must include the adverse impacts and regulatory costs expected to occur within the first five years after implementation of that portion of the rule.

With these changes to the SERC, more administrative rules are likely to exceed the cost thresholds (\$1 million within five years), thus requiring more rules to be subject to ratification by the legislature prior to taking effect.

The bill takes effect July 1, 2016.

**II. Present Situation:**

**Rulemaking Authority and Legislative Ratification**

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>1</sup> Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”<sup>2</sup> a rule. Agencies do not have discretion as to whether to engage in rulemaking.<sup>3</sup> To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>4</sup> The statutory authority for

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<sup>1</sup> Section 120.52(16), F.S.

<sup>2</sup> Section 120.52(17), F.S.

<sup>3</sup> Section 120.54(1)(a), F.S.

<sup>4</sup> Sections 120.52(8) & 120.536(1), F.S.

rule making must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.<sup>5</sup>

An agency begins the formal rulemaking process by filing a notice of the proposed rule,<sup>6</sup> which is published by the Department of State in the Florida Administrative Register.<sup>7</sup> The notice must provide certain information, including the text of the proposed rule, and a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared. The public may also provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.<sup>8</sup>

An agency is required to prepare a SERC if the proposed rule will have an adverse impact on small businesses or if it will increase regulatory costs more than \$200,000 (in aggregate) within one year after implementation.<sup>9</sup>

The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.<sup>10</sup> The economic analysis, mandated for each SERC, must analyze a rule's potential impact of over \$1 million over a five year period after the rule goes into effect. A SERC must provide one of the following analyses:

- The rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment;<sup>11</sup>
- The likely adverse impact on business competitiveness,<sup>12</sup> productivity, or innovation.<sup>13</sup>
- The analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.<sup>14</sup>

If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the five year period, the rule cannot go into effect until ratified by the Legislature.<sup>15</sup> Legislative ratification is not required for adoption of any of the following types of rules: federal standards, amendments to the Florida Building Code or amendments to the Florida Building Code.<sup>16</sup>

A SERC must also contain estimates of the number of people and entities effected by the proposed rule; cost to the agency and any other governmental entity for implementing the proposed rule; and transactional costs likely to be incurred by people, entities, and governmental

---

<sup>5</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008). *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla 1st DCA 2001).

<sup>6</sup> Section 120.54(3)(a)1, F.S.

<sup>7</sup> Section 120.55(1)(b)2, F.S.

<sup>8</sup> Sections 120.54(3)(a)1., and 120.541(1)(a), F.S.

<sup>9</sup> Section 120.541(1)(a), F.S.

<sup>10</sup> Section 120.541(2)(a), F.S.

<sup>11</sup> Section 120.541(2)(a)1., F.S.

<sup>12</sup> This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>13</sup> Section 120.541(2)(a)2., F.S.

<sup>14</sup> Section 120.541(2)(a)3., F.S.

<sup>15</sup> Section 120.541(3), F.S.

<sup>16</sup> Section 120.541(4), F.S.

agencies for compliance.<sup>17</sup> Finally, a SERC must also contain an analysis of the proposed rule's impact on small businesses and local governments.<sup>18</sup>

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

The bill requires a SERC to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must include the adverse impacts and regulatory costs expected to occur within the first five years after implementation of that portion of the rule.

With these changes to the SERC, more administrative rules are likely to exceed the cost thresholds (\$1 million within five years), thus requiring more rules to be subject to ratification by the legislature prior to taking effect.

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

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with 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:**

Indeterminate.

#### **C. Government Sector Impact:**

Indeterminate. Agencies may be required to complete more SERCs since this bill will probably increase the costs associated with a SERC. The recognition of additional costs in a SERC may increase the number of administrative rules subject to legislative ratification.

---

<sup>17</sup> Section 120.541(2)(b)-(d), F.S.

<sup>18</sup> Section 120.541(2)(e), F.S.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Agencies may experience some difficulty making estimates for projected costs associated with unimplemented portions of a rule.

Additional administrative rules will be subject to ratification by the Legislature prior to taking effect because the recognition of additional costs may result in rules exceeding the adverse impacts and regulatory cost thresholds. To the extent the ratification process delays the full implementation of a legislatively mandated policy or program, the intent of the Legislature regarding that particular policy or program may be frustrated. The delay may be upwards of 14 months (in the case of a rule that is identified in May of one year and not being ratified until the next legislative session). On the other hand, a better estimate of the full costs and impacts of the policy or program on the private sector will be available for review by the Legislature.

**VIII. Statutes Affected:**

This bill substantially amends section 120.541 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

29-01538-16

20161226\_\_

1 A bill to be entitled  
2 An act relating to administrative procedures; amending  
3 s. 120.541, F.S.; providing additional requirements  
4 for the calculation of estimated adverse impacts and  
5 regulatory costs; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9 Section 1. Subsection (5) is added to section 120.541,  
10 Florida Statutes, to read:

11 120.541 Statement of estimated regulatory costs.—

12 (5) For purposes of subsections (2) and (3), adverse  
13 impacts and regulatory costs likely to occur within 5 years  
14 after implementation of the rule include adverse impacts and  
15 regulatory costs estimated to occur within 5 years after the  
16 effective date of the rule. However, if any provision of the  
17 rule is not fully implemented upon the effective date of the  
18 rule, the adverse impacts and regulatory costs associated with  
19 such provision must be adjusted to include any additional  
20 adverse impacts and regulatory costs estimated to occur within 5  
21 years after implementation of such provision.

22 Section 2. This act shall take effect July 1, 2016.

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

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

***Leslie B. Daniels***

is duly appointed a member of the

**Investment Advisory Council**

for a term beginning on the  
Fifth day of May, A.D., 2015,  
until the Twelfth day of December, A.D., 2018  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Eighteenth day of September, A.D., 2015.*



*Ken Detzner*  
Secretary of State

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

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

*Amended*



STATE BOARD OF ADMINISTRATION  
OF FLORIDA

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TALLAHASSEE, FLORIDA 32308  
(850) 488-4406

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32317-3300

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

July 22, 2015

Inez Williams  
Division of Elections  
Department of State  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399

RE: Investment Advisory Council Reappointments – Les Daniels and Michael Price  
and Appointment – J. Robert Jones, Jr.

*28376*

*28946*

*32884*

Dear Ms. Williams:

Mr. Les Daniels and Mr. Michael Price have been reappointed by Governor Scott to serve on the Investment Advisory Council (IAC) for the State Board of Administration (SBA). I sent to you on June 4, 2015 their bios, completed Questionnaires for Senate Confirmation, along with the Oath of Office/Acceptance Forms, and the May 5, 2015 Cabinet transcript reflecting approval of their reappointments. Their terms will be May 5, 2015 through December 12, 2018.

Mr. J. Robert "Bobby" Jones, Jr. has been appointed by CFO Atwater to serve on the Investment Advisory Council for the SBA. On June 4, 2015, I sent you his appointment letter, bio, completed Questionnaire for Senate Confirmation, along with the Oath of Office/Acceptance Form, and the May 5, 2015 Cabinet transcript reflecting approval of his appointment. Mr. Jones' term will be May 5, 2015 through February 1, 2019.

Please let me know if additional information is required.

Sincerely,

*Diane Bruce*

Diane Bruce  
Executive Assistant

Attachments

cc: Ash Williams w/o Attachments

RECEIVED  
DEPARTMENT OF STATE  
2015 JUL 23 AM 10:41  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Leslie B. Daniels  
Investment Advisory Council

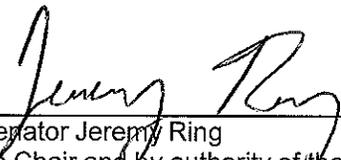
**NOTICE OF HEARING**

TO: Mr. Leslie B. Daniels

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, January 26, 2016, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 9:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 21st day of January, 2016

Committee on Governmental Oversight and  
Accountability

  
\_\_\_\_\_  
Senator Jeremy Ring  
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability  
Office of the Sergeant at Arms

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED  
2015 SEP 18 AM 10:07

STATE OF FLORIDA

County of Palm Beach

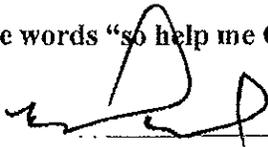
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Member of Investment Advisory Council

(Title of Office)

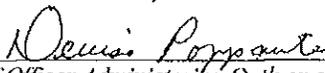
on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]



Signature

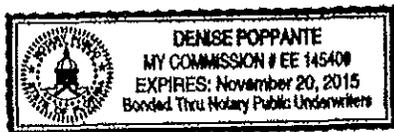
Sworn to and subscribed before me this 23 day of July, 2015



Signature of Officer Administering Oath or of Notary Public

Denise Poppante

Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known  OR Produced Identification

Type of Identification Produced Drivers License

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

100 Everglade Avenue

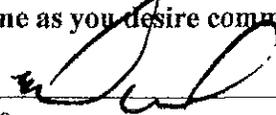
Street or Post Office Box

Palm Beach, FL 33480

City, State, Zip Code

Leslie B. Daniels

Print name as you desire commission issued



Signature

Amended

A black and white copy of this document is not official

**STATE OF FLORIDA  
DEPARTMENT OF STATE**

**Division of Elections**

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

***Michael F. Price***

is duly appointed a member of the  
**Investment Advisory Council**

for a term beginning on the  
Fifth day of May, A.D., 2015,  
until the Twelfth day of December, A.D., 2018  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-Third day of July, A.D., 2015.*

*Ken Detzner*

Secretary of State



DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

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

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

*Amended*



STATE BOARD OF ADMINISTRATION  
OF FLORIDA

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AS CHAIRMAN  
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CHIEF FINANCIAL OFFICER  
PAM BONDI  
ATTORNEY GENERAL  
ASH WILLIAMS  
EXECUTIVE DIRECTOR & CIO

July 22, 2015

Inez Williams  
Division of Elections  
Department of State  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399

RE: Investment Advisory Council Reappointments – Les Daniels and Michael Price  
and Appointment – J. Robert Jones, Jr.

*28376*

*28946*

*32884*

Dear Ms. Williams:

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Please let me know if additional information is required.

Sincerely,

*Diane Bruce*

Diane Bruce  
Executive Assistant

Attachments

cc: Ash Williams w/o Attachments

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The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Michael F. Price  
Investment Advisory Council

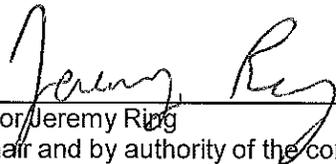
**NOTICE OF HEARING**

TO: Mr. Michael F. Price

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Please be present at the time of the hearing.  
DATED this the 21st day of January, 2016

Committee on Governmental Oversight and  
Accountability

  
\_\_\_\_\_  
Senator Jeremy Ring  
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability  
Office of the Sergeant at Arms

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF ~~FLORIDA~~ NEW YORK

County of NEW YORK

RECEIVED  
DEPARTMENT OF STATE  
2015 JUN -4 PM 4:06  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

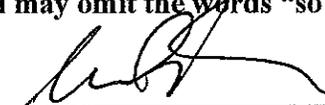
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

  
Signature

Sworn to and subscribed before me this 13<sup>th</sup> day of May, 2015.

  
Signature of Officer Administering Oath  
SUSAN D. THOMAS  
Notary Public, State of New York  
Qualified by New York County  
No. 01TH6291020  
My Commission Expires Oct. 15, 2017

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

MFP Investors LLC, 667 Madison Ave

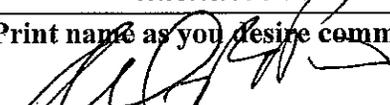
Street or Post Office Box

New York, NY 10065

City, State, Zip Code

Michael F. Price

Print name as you desire commission issued

  
Signature

1280

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

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

*Vinny Olmstead*

is duly appointed a member of the

**Investment Advisory Council**

for a term beginning on the  
First day of September, A.D., 2015,  
until the First day of February, A.D., 2019  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-First day of September, A.D., 2015.*



*Ken Detzner*

Secretary of State

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

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



STATE BOARD OF ADMINISTRATION  
OF FLORIDA

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

POST OFFICE BOX 13300  
32317-3300

RICK SCOTT  
GOVERNOR  
AS CHAIRMAN  
JEFF ATWATER  
CHIEF FINANCIAL OFFICER

PAM BONDI  
ATTORNEY GENERAL

ASH WILLIAMS  
EXECUTIVE DIRECTOR & CIO

September 21, 2015

Ms. Inez Williams  
Division of Elections  
Department of State  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399

RE: Investment Advisory Council Appointment – Robert Vincent “Vinny” Olmstead

Dear Ms. Williams:

Mr. Vinny Olmstead has been appointed by Attorney General Bondi to serve on the Investment Advisory Council for the State Board of Administration and approved by the Cabinet at the September 1, 2015 meeting. Attached please find:

- Cabinet Transcript of the September 1, 2015 Meeting.
- Bio for Mr. Olmstead.
- Original Questionnaire for Senate Confirmation, along with the Oath of Office/Acceptance Forms.
- FDLE Background Check.

Mr. Olmstead's term will be September 1, 2015 through February 1, 2019, he is replacing Mr. Martin Garcia.

Please let me know if additional information is required.

Sincerely,

Diane Bruce  
Executive Assistant

Attachments

cc: Ash Williams w/o Attachments  
Rob Johnson  
Andrew Fay

2015 SEP 21 PM 4:05  
COMMUNICATIONS SECTION

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Vinny Olmstead  
Investment Advisory Council

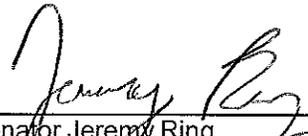
**NOTICE OF HEARING**

TO: Mr. Vinny Olmstead

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, January 26, 2016, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 9:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 21st day of January, 2016

Committee on Governmental Oversight and  
Accountability

  
\_\_\_\_\_  
Senator Jeremy Ring  
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability  
Office of the Sergeant at Arms

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Indian River

RECEIVED  
SEP 21 2015  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL  
2015 SEP 21 PM 4:05

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council

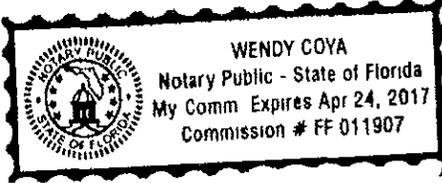
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]  
Signature

Sworn to and subscribed before me this 26 day of August, 2015



[Signature]  
Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

2770 Indian River Blvd, suite 501  
Street or Post Office Box

Vinny Olmstead  
Print name as you desire commission issued

Vero Beach, FL 32960  
City, State, Zip Code

[Signature]  
Signature

Amended

A black and white copy of this document is not official.

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

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

***J. Robert Jones, Jr.***

is duly appointed a member of the  
**Investment Advisory Council**

for a term beginning on the  
Fifth day of May, A.D., 2015,  
until the First day of February, A.D., 2019  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-Third day of July, A.D., 2015.*

*Ken Detzner*

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

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

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

*Amended*



STATE BOARD OF ADMINISTRATION  
OF FLORIDA

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

POST OFFICE BOX 13300  
32317-3300

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

July 22, 2015

Inez Williams  
Division of Elections  
Department of State  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399

RE: Investment Advisory Council Reappointments – Les Daniels and Michael Price  
and Appointment – J. Robert Jones, Jr.

*28376*

*28946*

*32884*

Dear Ms. Williams:

Mr. Les Daniels and Mr. Michael Price have been reappointed by Governor Scott to serve on the Investment Advisory Council (IAC) for the State Board of Administration (SBA). I sent to you on June 4, 2015 their bios, completed Questionnaires for Senate Confirmation, along with the Oath of Office/Acceptance Forms, and the May 5, 2015 Cabinet transcript reflecting approval of their reappointments. Their terms will be May 5, 2015 through December 12, 2018.

Mr. J. Robert "Bobby" Jones, Jr. has been appointed by CFO Atwater to serve on the Investment Advisory Council for the SBA. On June 4, 2015, I sent you his appointment letter, bio, completed Questionnaire for Senate Confirmation, along with the Oath of Office/Acceptance Form, and the May 5, 2015 Cabinet transcript reflecting approval of his appointment. Mr. Jones' term will be May 5, 2015 through February 1, 2019.

Please let me know if additional information is required.

Sincerely,

Diane Bruce  
Executive Assistant

Attachments

cc: Ash Williams w/o Attachments

RECEIVED  
DEPARTMENT OF STATE  
2015 JUL 23 AM 10:41  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
J. Robert Jones Jr.  
Investment Advisory Council

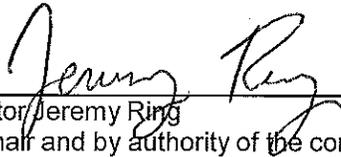
**NOTICE OF HEARING**

TO: Mr. J. Robert Jones Jr.

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, January 26, 2016, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 9:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 21st day of January, 2016

Committee on Governmental Oversight and  
Accountability

  
\_\_\_\_\_  
Senator Jeremy Ring  
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability  
Office of the Sergeant at Arms

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED  
DEPARTMENT OF STATE  
2015 JUN -4 PM 4:08  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

STATE OF FLORIDA

County of Orange

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

J Robert Jones Jr.  
Signature

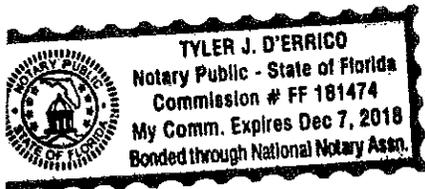
Sworn to and subscribed before me this 11<sup>th</sup> day of May, 2015.

Tyler J Derrico  
Signature of Officer Administering Oath or of Notary Public

Tyler J Derrico  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced FLDL



## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

1645 Chase Landing Way

Street or Post Office Box

Winter Park, Florida 32789

City, State, Zip Code

J. Robert Jones, Jr.

Print name as you desire commission issued

J Robert Jones Jr.  
Signature

2260

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

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

***Ken Detzner***

is duly appointed

**Secretary,  
Department of State**

for a term beginning on the  
Fourth day of May, A.D., 2015,  
to serve at the pleasure of the Governor  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Fifteenth day of May, A.D., 2015.*



*Ken Detzner*

Secretary of State

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

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



**RICK SCOTT**  
GOVERNOR

RECEIVED  
DEPARTMENT OF STATE  
2015 MAY -8 PM 4:16  
DIVISION OF ELECTIONS

May 4, 2015

Secretary Kenneth W. Detzner  
Department of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

This letter is to notify the Department of State of your amended reappointment as Secretary of the Department of State under the provisions of Section 20.10, Florida Statutes. This appointment is effective May 4, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/vh

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary of State  
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Ken Detzner  
Signature

Sworn to and subscribed before me this 13<sup>th</sup> day of May, 2015.

Brandy Hedges  
Signature of Officer Administering Oath or of Notary Public

BRANDY HEDGES

MY COMMISSION # FF 09006  
EXPIRES: March 6, 2018

Print, Type or Stamp Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

500 South Bronough St.  
Street or Post Office Box

Tallahassee, FL 32399  
City, State, Zip Code

Ken Detzner  
Print name as you desire commission issued

Ken Detzner  
Signature

The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Kenneth W. Detzner  
Secretary of State

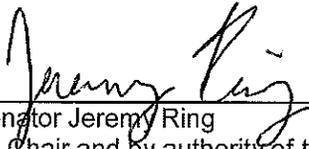
**NOTICE OF HEARING**

TO: Secretary Kenneth W. Detzner

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, January 26, 2016, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 9:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 21st day of January, 2016

Committee on Governmental Oversight and  
Accountability

  
\_\_\_\_\_  
Senator Jeremy Ring  
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability  
Office of the Sergeant at Arms

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/26/15  
Meeting Date

\_\_\_\_\_  
Bill Number (if applicable)

Topic Confirmation

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

Name Ken Detzner

Job Title Secretary of State

Address 500 S. Bronough St.  
Street

Phone \_\_\_\_\_

Tallahassee FL 32399  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Department of State

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

# COMMITTEE WITNESS OATH

---

**CHAIR:**

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

**WITNESS'S NAME:** Secretary Kenneth W. Detzner

**ANSWER:** "I DO"

Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

**COMMITTEE NAME:** Governmental oversight

**DATE:** January 26, 2016

# CourtSmart Tag Report

**Room:** SB 401  
**Caption:** Senate Governmental Oversight and Accountability Committee

**Case No.:**

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

**Started:** 1/26/2016 9:00:47 AM  
**Ends:** 1/26/2016 11:00:57 AM

**Length:** 02:00:11

9:00:58 AM Meeting called to order, Roll Call  
9:01:46 AM Tab 11 - Secretary of State: Detzner, Kenneth W. (Tallahassee), For term ending: Pleas  
9:09:50 AM Roll call for Kenneth Detzner  
9:10:26 AM Tab 10 - Senate Confirmation Hearing: Appointments - Investment Advisory Council  
9:11:12 AM Daniels, Leslie B. (Palm Beach) For term ending: 12/12/2018  
9:11:29 AM Price, Michael F. (New York) For term ending: 12/12/2018  
9:11:56 AM Olmstead, Vinny (Vero Beach) for term ending: 02/01/2019  
9:12:22 AM Jones, J. Robert, Jr. (Winter Park) For term ending: 02/01/2019  
9:12:23 AM Tab 4 - SB 1200 by Senator Bean - Pay-for-Success Contract Program  
9:13:43 AM Amendment Barcode 697668, Senator Hays  
9:14:18 AM Amendment Barcode 405304 Senator Hays  
9:15:21 AM Roll Call for SB 1200  
9:15:48 AM Tab 9 - SB 1226 by Senator Ring - Administrative Procedures  
9:16:22 AM Roll Call for SB 1226  
9:17:03 AM Tab 7 - SB 1356 by Senator Brandes - Employment After Retirement of School Distri  
9:25:55 AM Roll Call for SB 1356  
9:26:10 AM Tab 8 - SB 598 by Senator Brandes - Public Works Projects  
9:26:30 AM Amendment Barcode 846642, Senator Hays  
9:38:50 AM Carol Bowen, Associated Builders and Contractors of Florida  
9:43:50 AM Senator Latvala asks a question of Ms. Bowen  
9:45:42 AM Ms. Bowen responds to question.  
9:48:36 AM SB 598 temporarily tp'd  
9:49:07 AM Tab 2 - SB 708 by Senator Joyner - Arthur G. Dozier School for Boys  
9:51:16 AM Amendment Barcode 918106, Senator Bullard  
9:51:38 AM Governor Bob Martinez, Holland and Knight speaks on SB 708.  
9:55:30 AM Senator Joyner closes on SB 708  
9:57:18 AM Roll Call for SB 708  
9:57:43 AM Tab 8 - SB 598 by Senator Brandes - Public Works Projects  
9:58:03 AM Senator Bullard asks a question of Carol Bowen  
9:58:44 AM Ms. Bowen responds to Senator Bullard's question  
10:01:38 AM Rich Templin, Florida AFC-CIO  
10:04:15 AM Warren Husband, Florida Associated General Contractors Council  
10:07:09 AM Eric Poole, Florida Associations of Counties  
10:09:10 AM Senator Ring asks a question  
10:11:46 AM Senator Bullard asks a question of Senator Brandes.  
10:16:42 AM Senator Latvala makes a statement about SB 598  
10:17:49 AM Senator Brandes responds to Senator Latvala's statement  
10:20:44 AM Roll Call for SB 598  
10:22:09 AM Tab 5 - SB 1220 by Senator Garcia - Public Records  
10:28:03 AM Amendment Barcode 909808, Senator Hays  
10:29:23 AM First speaker (lady) ?  
10:33:26 AM Stewart Lilker, Publisher, Columbia County Observer  
10:36:24 AM Amendment Barcode 909808, Senator Hays  
10:37:12 AM Robert Ganger, Vice Mayor, Town of Gulf Stream  
10:38:31 AM Casey Cook, Florida League of Cities  
10:40:12 AM Keith Rizzardi, Miami Gardens, Florida  
10:42:52 AM Amendment Barcode 723616, Senator Hays  
10:45:25 AM Ralph Kitckens, Jr., Lake City, FL  
10:46:11 AM Sandra E. Buck, Pharmacist, Lake City, FL  
10:48:29 AM Rick Templin, Florida AFL-CIO  
10:49:46 AM Barbara Peterson, President, First Amendment Foundation  
10:52:49 AM

**10:54:06 AM** Skip Foster  
**10:54:46 AM** Gina Edwards, Reporter, Naples, FL  
**10:58:33 AM** Roll Call for SB 1220  
**10:59:48 AM** Meeting adjourned