The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Hays, Vice Chair

MEETING DATE: Thursday, March 21, 2013
TIME: 10:00 a.m.—12:00 noon
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bean, Benacquisto, Bradley, Hukill, Montford, Simmons, and Smith

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.		
	Secretary of State		
1	Detzner, Kenneth W. (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 9 Nays 0
	Secretary of Management Services		
2	Nichols, Craig J. (Weston)	Pleasure of Governor	Recommend Confirm Yeas 9 Nays 0
	Investment Advisory Council		
3	Cobb, Charles E. (Coral Gables)	12/12/2015	Recommend Confirm Yeas 9 Nays 0
4	Wendt, Gary C. (Ft. Lauderdale)	12/12/2015	Recommend Confirm Yeas 9 Nays 0
5	Price, Michael F. (New York)	12/12/2014	Recommend Confirm Yeas 9 Nays 0
6	Harrell, William H., Jr. (Tampa)	02/01/2016	Recommend Confirm Yeas 9 Nays 0
7	Daniels, Leslie B. (Palm Beach)	12/12/2014	Recommend Confirm Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Consideration of proposed committee bill:		
8	**SPB 7122**	Florida Retirement System; Revising the employer contribution rates for the retiree health insurance subsidy; revising the required employer retirement contribution rates for members of each membership class and subclass of the Florida Retirement System, etc.	Submitted as Committee Bill
	Consideration of proposed committee bill:		

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SPB 7120**	State Employee Health Insurance; Modifying the terms "full-time state employee" and "part-time state employee" for the purposes of expressly excluding persons paid from other-personal-services funds who work less than a certain number of hours per week from the state group insurance program; applying certain hourly limitations on the calculation of the state's contribution for the health insurance coverage of part-time permanent employees; revising provisions relating to employer contributions to employee health savings accounts, etc.	Submitted as Committee Bill
10	**SB 1142** Gibson (Similar H 985)	Small Business Participation in State Contracting; Defining the terms "contract bundling" and "small business"; directing that agencies avoid contract bundling under certain circumstances; requiring agencies to conduct market research and include written summaries and analyses of such research in solicitations for bundled contracts; requiring agencies to award a specified percentage of contracts to small businesses; prohibiting agencies, general contractors, or prime contractors from requiring certain bonds or other sureties for certain contracts, etc. GO 03/14/2013 Temporarily Postponed GO 03/21/2013 Temporarily Postponed CM AGG AP	Temporarily Postponed
11	**CS/SB 134** Education / Ring (Identical CS/H 127)	Meetings of District School Boards; Requiring district school boards to convene at least one regular meeting each quarter during a school year during the evening hours and to create written criteria for convening such a meeting, etc. ED 02/19/2013 Fav/CS GO 03/14/2013 GO 03/21/2013 Fav/CS	Fav/CS Yeas 9 Nays 0

Consideration of proposed committee bill:

12	**SPB 7124**	OGSR/Employment Discrimination Complaints; Amending provisions relating to a public records exemption for agency records concerning complaints of employment discrimination; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc.	Submitted as Committee Bill

A proposed committee substitute for the following bill (SB 474) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 474** Military and Veterans Affairs, Space, and Domestic Security	OGSR/Department of Veterans' Affairs/Direct-support Organization/Donor Information; Providing an exemption from public records requirements for all identifying information of a donor or prospective donor to the direct-support organization of the Department of Veterans' Affairs, and an exemption from public meetings requirements for portions of meetings of the direct-support organization at which identifying information of a donor or prospective donor is discussed; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions, etc. GO 03/21/2013 Fav/CS RC	Fav/CS Yeas 9 Nays 0
	A proposed committee substitute for the following bill (SB 1768) is available:		
14	**SB 1768** Transportation (Similar H 7107)	OGSR/Personal Information/Paratransit Services; Deleting provisions relating to the future repeal of an exemption from public records requirements for certain personal identifying information of persons using paratransit services; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 03/21/2013 Fav/CS RC	Fav/CS Yeas 9 Nays 0
15	**SB 376** Hays (Similar CS/H 731)	Public Records/Children and Spouses of Law Enforcement Personnel; Creating an exemption from public records requirements for the names of the spouses and children of active or former sworn or civilian law enforcement personnel, including children and spouses of correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement, etc. CJ 02/19/2013 Fav/1 Amendment GO 03/21/2013 Favorable RC	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	**SB 1074** Hays (Similar H 1145)	State-owned or State-leased Space; Revising provisions relating to the update of an inventory of certain facilities needing repairs or innovation maintained by the Department of Management Services; revising provisions relating to decisions by the Board of Trustees of the Internal Improvement Trust Fund to surplus lands; prohibiting a state agency from leasing space in a private building under certain circumstances; specifying that a vendor for certain energy efficiency contracts must be selected in accordance with state procurement requirements, etc. GO 03/21/2013 Favorable EP AP	Favorable Yeas 9 Nays 0
17	**CS/SB 434** Education / Altman (Similar H 627)	Brevard Community College; Renaming Brevard Community College as "Eastern Florida State College," etc. ED 03/06/2013 Fav/CS GO 03/21/2013 Favorable	Favorable Yeas 9 Nays 0
18	**SB 1188** Hays (Identical H 975)	Archeological Sites and Specimens; Authorizing the Division of Historical Resources of the Department of State to issue permits for excavation, surface reconnaissance, and archaeological activities on land owned by a water authority; providing that specified activities relating to archaeological sites and specimens located upon land owned by a water authority are prohibited and subject to penalties; authorizing the division to impose an administrative fine on and seek injunctive relief against certain entities, etc. GO 03/21/2013 Fav/CS ATD AP	Fav/CS Yeas 9 Nays 0
19	**SB 832** Joyner (Similar CS/H 841)	Powers of Attorney; Authorizing a notary public to sign the principal's name to the power of attorney under certain circumstances; providing that an original power of attorney, rather than a photocopy or electronic copy, may be required under certain circumstances; providing that an original power of attorney may be presented for recording in the official records for a fee; adding exceptions to a provision that prohibits an agent who has accepted appointment from delegating authority to a third person, etc. JU 03/06/2013 Favorable GO 03/21/2013 Favorable RC	Favorable Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	**CS/SB 556** Judiciary / Ring (Similar CS/H 643)	Clerks of the Court; Providing requirements for the storage of papers and electronic filings and requiring that they be stamped with the date and time of submission; authorizing the clerk to remove certain court records from the Official Records; requiring that the clerk provide access to public records without charge to certain persons, subject to a limitation and an exception; providing that the state is not required to pay fees to enforce judgment for costs and fines, etc. JU 03/06/2013 Fav/CS GO 03/21/2013 Fav/CS AFT AP	Fav/CS Yeas 9 Nays 0
21	**CS/SB 58** Judiciary / Hays (Similar CS/H 351)	Application of Foreign Law in Certain Cases; Clarifying that the public policies expressed in the act apply to violations of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; providing that the act does not apply to a corporation, partnership, or other form of business association, except when necessary to provide effective relief in proceedings under or relating to chapters 61 and 88, F.S., etc. JU 03/06/2013 Fav/CS GO 03/21/2013 Fav/CS CF RC	Fav/CS Yeas 6 Nays 3
	Other Related Meeting Documents		

A black and white copy of this document is not official

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
Twenty-First day of March, A.D., 2012,
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 Third day of April, A.D., 2012.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8½ x 11" document.

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

RICK SCOTT
GOVERNOR

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DEPARTMENT OF STATE

2012 MAR 26 PM 12:49

DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 21, 2012

The Honorable Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made your reappointment under the provisions of Section 20.10, Florida Statutes:

The Honorable Kenneth W. Detzner
1317 Woodgate Way
Tallahassee, Florida 32308

as the Secretary of the Department of State, subject to confirmation by the Senate. This appointment is effective March 21, 2012 for a term ending at the pleasure of the Governor.

Sincerely,

Rick Scott
Governor

RS/vh

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272 • FAX (850) 922-4292

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QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.

Please type or print in blue or black ink.

3/27/12
Date Completed

1. Name: Mr (Mr./Mrs./Ms.) Detzner (Last) Kenneth (First) William (Middle/Maiden)

2. Business Address: 500 So Bronough St (Street) Office # Tallahassee (City)
Florida (State) 32399 (Zip Code) 850 245 6504 (Area Code/Phone Number)
Post Office Box

3. Residence Address: 1317 Woodgate Way (Street) Tallahassee (City) Leon (County)
Florida (State) 32308 (Zip Code) 850 980 6201 (Area Code/Phone Number)
Post Office Box

Specify the preferred mailing address: Business ☐ Residence ☒ Fax # _____ (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
Same as above			

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DEPARTMENT OF STATE
DIVISION OF ELECTIONS

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
None			

5. Date of Birth: 9/18/52 Place of Birth: Hammond, IN

6. Social Security Number: ____

7. Driver License Number: Florida

8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain

HAND DELIVERED

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1971

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Leon B. Current Party Affiliation: Republican

12. Education

A. High School: Munster HS, Munster, In (Name and Location) Year Graduated: 1971

B. List all postsecondary educational institutions attended:

Name & Location	Dates Attended	Certificates/Degrees Received
St Pete Jr College	08/71-05/73	AA
Florida State University	08/73-05/75	BA

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service:

B. Branch or Component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) Yes ☐ No ☐ If Yes" give details:

Date	Place	Nature	Disposition
2/2000	Volusia Co	Reckless Driving	No-contest

(Not sure if penalty was more than $150.00)

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

Employer's Name & Address	Type of Business	Occupation/Job Title	Period of Employment
Ken Detzner	Govt Affairs/Mgt consulting	Sole proprietor	2003-present

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment.

Position	Employing Agency	Period of Employment
Sec of State	State of Fl / DOS	01/07/03-03/03/03
Chief of Staff	State of Fl / DOS	08/05/02-01/06/03
Dir Leg/Policy Affairs	State of Fl / AG office	1979-1985

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

My previous experience in the office of Attorney General is director of Legislative Policy Affairs for 6 years. Followed by many years of working in the private sector and then returning to government first as Chief of Staff to SOS and subsequent Appointment by Governor Jeb Bush As Secretary of State

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒
If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

None

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?
Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

Office Title	Date of Election or Appointment	Term of Office	Level of Government
SOS	01/07/03	03/03/03	State of FL

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended	Meetings Missed	Reason for Absence

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

Date	Nature of Violation	Disposition

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☒ No ☐
If "Yes", list:

A. Title of Office: Secretary of State

B. Term of Appointment: 01/07/03 - 03/03/03

C. Confirmation results: Very expired prior to confirmation

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒
If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate Title & Number	Original Issue Date	Issuing Authority	Disciplinary Action/Date

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☐ If "Yes", explain:

Name of Business	Your Relationship to Business	Business' Relationship to Agency
Ken Detzner	Sole Proprietor	Consultant to Dept of Legal Affairs / Oil Spill

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business	Family Member's Relationship to You	Family Member's Relationship to Business	Business' Relationship to Agency

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☐

A. Did you receive any compensation other than reimbursement for expenses? Yes ☒ No ☐

B. Name of agency or entity you lobbied and the principal(s) you represented:

Agency Lobbied	Principal Represented
Fl. Legislature	Williams Family Interest
"	Career Edge Manatee/Sarasota
	Children Magic Inc

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

Name	Mailing Address	Zip Code	Area Code/Phone Number
Jim Smith			
Toni Jennings			
Lewis Bear			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

Name	Mailing Address	Office(s) Held & Term	Date(s) of Membership
Seminole RC Club	Apalachee Pkwy Tall. Fl		

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

DETZNER

CERTIFICATION

RECEIVED
DEPARTMENT OF STATE
2012 APR -3 AM 11:00
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

STATE OF FLORIDA, COUNTY OF LEON

Before me, the undersigned Notary Public of Florida, personally appeared

_____,

who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Ken Detzner

Signature of Applicant-Affiant

Sworn to and subscribed before me this 3rd day of April, 2012.

Pearlie M. Williams Mathis

Signature of Notary Public-State of Florida

PEARLIE M. WILLIAMS-MATHIS
MY COMMISSION # DD 958450
EXPIRES: May 16, 2014
Bonded Thru Notary Public Underwriters

_____

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known ☒ **OR** Produced Identification ☐

Type of Identification Produced _____

(seal)

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☐ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.)_____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OFANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

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 Thursday, March 21, 2013, in the Pat Thomas Committee Room, 412 Knott Building, commencing at 10:00 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 14th day of March, 2013

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)

3/21/13
Meeting Date

Topic: Confirmation

Bill Number: _____ *(if applicable)*

Name: Ken Detzner

Amendment Barcode: _____ *(if applicable)*

Job Title: Secretary of State

Address: 500 S. Bronough St.
Street

Tallahassee FL 32399
City *State* *Zip*

Phone: 245-6520

E-mail: _____

Speaking: ☐ For ☐ Against ☑ Information

Representing: DOS

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE 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: Kenneth W. Detzner

ANSWER: Yes sir

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Governmental Oversight and Accountability

DATE: 3/21/13

File 1 copy with the Secretary of the Senate (303 Capitol)

S-002 (10/2004)

A black and white copy of this document is not official.

1425

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Craig J. Nichols

is duly appointed

Secretary,
Department of Management Services

for a term beginning on the
Ninth day of July, A.D., 2012,
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 Eleventh day of December, A.D., 2012.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8½ x 11" document.

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2012 JUL 17 AM 9:46
DIVISION OF ELECTIONS
TALLAHASSEE, FL

July 13, 2012

The Honorable Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment under the provisions of Section 20.22, Florida Statutes:

Mr. Craig J. Nichols
150 Dockside Circle
Weston, Florida 33327

as the Secretary of the Department of Management Services, succeeding Scott T. Stewart, subject to confirmation by the Senate. This appointment is effective July 9, 2012, for a term ending at the pleasure of the Governor.

Sincerely,

Rick Scott
Governor

RS/kb

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272 • FAX (850) 922-4292

102689

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation.
The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.
Please type or print in blue or black ink.

10/15/2012
Date Completed

1. Name: [redacted] NICHOLS CRAIG JOSEPH
Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 4050 ESPLANDE WAY TALLAHASSEE
Street Office # City

FLORIDA 32399 (850) 414-8941
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: 150 DOCKSIDE CIRCLE WESTON BROWARD
Street City County

FLORIDA 33327 (954) 552-9460
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business ☐ Residence ☑ Fax # _____ (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
I HAVED LIVED AT THE ABOVE LISTED ADDRESS SINCE			2000

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
7255 SR 48	SPRINGBORO, OH	APRIL 1996	JUNE 2000
4855 TERRACE LANE	STEVENSVILLE, MI	JUNE 1990	FEB 1994
136 RIDGEVIEW	CLYDE, OH	FEB. 1988	JUNE 1990

5. Date of Birth: 9/23/1958 Place of Birth: CEDAR FALLS, IA

6. Social Security Number: _____

7. Driver License Numb. ssuing State: FLORIDA

8. Have you ever used or been known by any other legal name? Yes ☐ No ☑ If "Yes" Explain

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DIVISION OF ELECTIONS

9. Are you a United States citizen? Yes ☑ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 2000

11. Are you a registered Florida voter? Yes ☑ No ☐ If "Yes" list:

A. County of Registration: BROWARD B. Current Party Affiliation: REPUBLICAN

12. Education

A. High School: CEDAR FALLS HIGH SCHOOL CEDAR FALLS, IOWA (Name and Location) Year Graduated: 1977

B. List all postsecondary educational institutions attended:

Name & Location	Dates Attended	Certificates/Degrees Received
UNIVERSITY OF NORTHERN IOWA CEDAR FALLS, IOWA	1977-1982	BA
THE UNIVERSITY OF IOWA IOWA CITY, IOWA	1982-1984	MA

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☑ If "Yes" list:

A. Dates of Service:

B. Branch or Component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) Yes ☐ No ☑ If Yes" give details:

Date	Place	Nature	Disposition

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

Employer's Name & Address	Type of Business	Occupation/Job Title	Period of Employment
RIGHT MANAGEMENT 1301 E. BROWARD	CONSULTING FORT LAUDERDALE, FL.	EXEC. CONSULTANT	JAN. 2011 – JULY 2012
REPUBLIC SERVICES 110 S.E. 6TH STREET	WASTE MGT FORT LAUDERDALE, FL.	VP HR	APR 2000 – APRIL 2009

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☐ No ☑
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

Position	Employing Agency	Period of Employment

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

BUSINESS EXECUTIVE WITH DIVERSE EXPERIENCE. I HAVE BEEN IN LEADERSHIP ROLES IN PAST ORGANIZATIONS THAT HAVE EXPERIENCED MAJOR CHANGE.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☐ If "Yes", list:

UNDERGRADUATE MINOR IN BUSINESS AND GRADUATE DEGREE IN BUSINESS.

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☑
If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

N/A

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?
Yes ☐ No ☑ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☑ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

Office Title	Date of Election or Appointment	Term of Office	Level of Government

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended	Meetings Missed	Reason for Absence

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☑ If "Yes", give details:

Date	Nature of Violation	Disposition

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☑ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☑ If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☑ If "Yes", explain:

_____

_____

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☑ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate Title & Number	Original Issue Date	Issuing Authority	Disciplinary Action/Date

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☑ If "Yes", explain:

Name of Business	Your Relationship to Business	Business' Relationship to Agency

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☑ If "Yes", explain:

Name of Business	Family Member's Relationship to You	Family Member's Relationship to Business	Business' Relationship to Agency

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☐ No ☑

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☐

B. Name of agency or entity you lobbied and the principal(s) you represented:

Agency Lobbied	Principal Represented

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

Name	Mailing Address	Zip Code	Area Code/Phone Number
DAVID BARCLAY			
TOM PITTS			
CECILIA ACEVEDO			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

Name	Mailing Address	Office(s) Held & Term	Date(s) of Membership
CENTER FOR HUMAN RESOURCE MANAGEMENT	FSU - COLLEGE OF BUSINESS P.O. BOX 3061110 TALLAHASSEE, FL 32306-1110	(CHAIRMAN 2003-2005)	(MEMBER 2000-PRESENT)

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☑ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☑ No ☐

CERTIFICATION

STATE OF FLORIDA
COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared Craig J. Nichols, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Craig Nichols
Signature of Applicant-Affiant

Sworn to and subscribed before me this 26th day of November, 2012.

Teresa A Barfield
Signature of Notary Public-State of Florida

Teresa A. Barfield
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: April 27, 2015

Personally Known ☑ **OR** Produced Identification ☐

Type of Identification Produced _____

TERESA A. BARFIELD
MY COMMISSION EXPIRES
April 27, 2015
#EE 051371
Bonded thru
Troy Fain Insurance
NOTARY PUBLIC, STATE OF FLORIDA

(seal)

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☐ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.)_____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OFANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

The Florida Senate

Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Craig J. Nichols

Secretary of Management Services

NOTICE OF HEARING

TO: Secretary Craig J. Nichols

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 Thursday, March 21, 2013, in the Pat Thomas Committee Room, 412 Knott Building, commencing at 10:00 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 14th day of March, 2013

Committee on Governmental Oversight and Accountability

Jeremy Ring

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)

3-21-13
Meeting Date

Topic: Confirmation

Bill Number: _____ (if applicable)

Name: Craig J Nichols

Amendment Barcode: _____ (if applicable)

Job Title: Agency Secretaries

Address: 4050 Esplanade Way
Street

Tallahassee FL 32399
City State Zip

Phone: 414-1159

E-mail: craig.nichols@dms.myflorida.com

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

Representing: Department of Management Services

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

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

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

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

S-001 (10/20/11)

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: Craig J. Nichols

ANSWER: Yes

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Governmental Oversight and Accountability

DATE: 3/21/13

File 1 copy with the Secretary of the Senate (303 Capitol) S-002 (10/2004)

A black and white copy of this document is not official

1280

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Charles E. Cobb

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the
Twentieth day of March, A.D., 2012,
until the Twelfth day of December, A.D., 2015
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 Twentieth day of April, A.D., 2012.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.
"State of Florida" appears in small letters across the face of this 8½ x 11" document.
The original document has a reflective line mark in paper. Hold at an angle to view when checking.

Cr 53

STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

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DIVISION OF ELECTIONS

RICK SCOTT
GOVERNOR
AS CHAIRMAN

JEFF ATWATER
CHIEF FINANCIAL OFFICER
AS TREASURER

PAM BONDI
ATTORNEY GENERAL
AS SECRETARY

ASH WILLIAMS
EXECUTIVE DIRECTOR &CIO

April 19, 2012

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 – Charles E. Cobb

Dear Ms. Williams:

Mr. Charles E. Cobb has been appointed by CFO Jeff Atwater to serve on the Investment Advisory Council for the State Board of Administration. Attached please find the appointment letter, copy of Questionnaire for Senate Confirmation, and the March 20, 2012 Cabinet Transcript reflecting approval of his appointment. Mr. Cobb will be filling the term vacated by Mr. John Hill, therefore, his term will be from March 20, 2012 through December 12, 2015.

Please let me know if additional information is required.

Sincerely,

Diane Bruce

Diane Bruce
Executive Assistant

Attachments
cc: Ash Williams w/o Attachments
Mr. Ron Poppell w/o Attachments

CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

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DIVISION OF ELECTIONS

March 9, 2012

Ambassador Chuck Cobb
Senior Managing Director and CEO of Cobb Partners
P. O. Box 14-4200
Coral Gables, FL 33114-4200

Dear Ambassador Cobb:

Pursuant to section 215.444, Florida Statutes, it is my pleasure to select you to serve on the State Board of Administration Investment Advisory Council. The Florida Cabinet will vote on your selection at the March 20 meeting. Once approved by the Cabinet, you term will begin immediately, and expire on December 12, 2015.

The Investment Advisory Council was created to review the investments made by the staff of the State Board of Administration and to make recommendations to the Board of Trustees. Your knowledge in identifying and evaluating investment opportunities will be an asset to the Council.

You will be contacted by Ash Williams, Executive Director of the State Board of Administration regarding your duties and responsibility as a member.

I appreciate your willingness to serve Florida and its' citizens in this role, and look forward to working with you.

Sincerely,

Jeff Atwater
Chief Financial Office

/sm
c: Ash Williams

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QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. **Please type or print in black ink.**

MARCH 16, 2012
Date Completed

1. Name: MR. (MR./MRS./MS.) COBB (LAST) CHARLES (FIRST) ELVAN (MIDDLE/MAIDEN)

2. Business Address: P.O. BOX 14-4200 (POST OFFICE BOX) FLORIDA (STREET) 33114-4200 (STATE) CORAL GABLES (CITY) 305-441-1700 (ZIP CODE) (AREA CODE/PHONE NUMBER)

3. Residence Address: 8 TAHITI BEACH ISLAND (STREET) CORAL GABLES (CITY) MIAMI-DADE (COUNTY)
FLORIDA (STATE) 33143 (ZIP CODE) 305-665-5519 (AREA CODE/PHONE NUMBER)
(POST OFFICE BOX)

Specify the preferred mailing address: Business ● Residence ○ Fax # _____ (optional)

4. A. List all your places of residence for the last ten (10) years.

ADDRESS	CITY & STATE	FROM	TO
SAME AS ABOVE			

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
SEE EXHIBIT 1			

5. Date of Birth: 05/09/1936 Place of Birth: FRESNO, CA
6. Social Security Number: _____
7. Driver License Number: _____ Issuing State: FLORIDA

Revised 11/2011

8. Have you ever used or been known by any other legal name? Yes ◯ No ◉ If "Yes" Explain

9. Are you a United States citizen? Yes ◉ No ◯ If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1972

11. Are you a registered Florida voter? Yes ◉ No ◯ If "Yes" list:

A. County of registration: MIAMI-DADE B. Current party affiliation: REPUBLICAN

12. Education

A. High School: FRESNO HIGH SCHOOL, FRESNO, CA Year Graduated: 1954

(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
STANFORD UNIVERSITY	1954-1958	BA
STANFORD UNIVERSITY	1960-1962	MBA

13. Are you or have you ever been a member of the armed forces of the United States? Yes ■ No ☐ If "Yes" list:

A. Dates of service: 1958-1960

B. Branch or component: U.S. NAVY (LTJG)

C. Date & type of discharge: 1960 - HONORABLE

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
NO			

15. Concerning your current employer and for all of your employment during the last ten years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
COBB PARTNERS LTD	PRIVATE EQUITY	CHAIRMAN	1992 - PRESENT

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☐ No ■
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.
SEE EXHIBIT 2

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ◉ No ◯ If "Yes", list:
STANFORD UNIVERSITY SCHOOL OF BUSINESS - MBA

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ■ No ☐
If "Yes", list:
SEE EXHIBIT 3

D. Identify all association memberships and association offices held by you that relate to this appointment:

SEE EXHIBIT 4

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?
Yes ☐ No ■ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ■ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
SEE EXHIBIT 5			

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, F.S.? Yes ◯ No ◉ If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ■ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ◯ Removed ◯ Resigned ◯

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ◯ No ◯
If "Yes", list:

A. Title of Office: IT IS POSSIBLE THAT ONE OR MORE OF THE COMMITTEES ON EXHIBIT 5

B. Term of Appointment: REQUIRED SENATE CONFIRMATION, BUT I DO NOT BELIEVE ANY OF THEM DID.

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ◯ No ◉ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ◯ No ◉
If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ◉ No ◯ If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
FOR THE PAST FOUR YEARS, I HAVE BEEN THE CHAIRMAN OF GATEWAY FLORIDA, WHICH HAS RECEIVED STATE APPROPRIATIONS AND HAS RESPONDED TO DIRECTIONS FROM THE GOVERNOR, OTTED AND ENTERPRISE FLORIDA		

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ◯ No ◉ If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ◯ No ◉

A. Did you receive any compensation other than reimbursement for expenses? Yes ◯ No ◉

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
GOVERNOR JEB BUSH,			
GOVERNOR RICK SCOTT,			
GOVERNOR REUBIN ASKEW,			
GOVERNOR BOB GRAHAM,			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
SEE EXHIBIT 4			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ■ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ◉ No ◯

I am prepared to file the type of financial statement that I have previously released to be the U.S. ambassador to Iceland, undersecretary of Commerce and Assistant Secretary of Commerce by federal rules, but not a detailed financial statement.

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DEPARTMENT OF STATE
DIVISION OF ELECTIONS

CERTIFICATION

STATE OF FLORIDA, COUNTY OF

Before me, the undersigned Notary Public of Florida, personally appeared Charles E. Cobb, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Signature of Applicant-Affiant

Sworn to and subscribed before me
this 16 day of March, 20 12

Signature of Notary Public-State of Florida

Notary Public State of Florida
Mercedes Perdomo
My Commission DD907769
Expires 09/07/2013

Mercedes Perdomo

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 9/7/2013

Personally Known ☑ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

Revised 11/2011

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DIVISION OF ELECTIONS

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☑

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

_____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0158

EXHIBIT 1

CHARLES E. COBB
FORMER RESIDENCES OUTSIDE OF FLORIDA

Address	City & State	From	To
47 Upper Happy Valley Road	Lafayette, CA	10/70	0472
404 Emerald Bay	Laguna Beach, CA	10/68	10/70
75 Orchard Road	Orinda, CA 94563	04/67	10/68
2826 Lyon Street	San Francisco, CA 94123	12/62	04/67
333 East 55th Street	New York, NY	09/62	12/62
2649 Alpine Road	Menlo Park, CA	09/61	09/62
Riverside Dr. at W. 10th Street	New York, NY	06/61	09/61
838 Roble Avenue	Menlo Park, CA	08/60	06/61
665 Roble Avenue	Menlo Park, CA	03/60	08/60
Bay Head, Rural Route One	Annapolis, MD	01/60	03/60
727 Menlo Avenue	Menlo Park, CA	06/59	12/59
47 Ringwood Avenue	Atherton, CA	02/59	06/59
U.S.S. Lexington (CVA-16)		06/58	02/59
Stanford University–Phi Delta Theta Fraternity House	Palo Alto, CA	09/54	06/58
447 Terrace St.	Fresno, CA	05/36	09/54

EXHIBIT 2

Charles E. Cobb

P.O. Box 14-4200
Coral Gables, FL 33114-4200

305-441-1700 t / 305-445-5674 f

Corporate Career: Chuck Cobb is the CEO and Senior Managing Director of Cobb Partners, Ltd., an investment firm. He was the Chairman and Chief Executive Officer of Arvida Corporation and Disney Development Company during the 1970s and 1980s. Arvida was a public company and then a subsidiary of Penn Central and later of Walt Disney Company. He also served as a member of the Walt Disney Board of Directors and the Executive Committee of the Disney Board. Earlier he was the Chief Operating Officer and a Director of Penn Central Corporation, a multi-industry company that had approximately 40,000 employees. He led a leveraged buy-out of Arvida Corporation from Penn Central with the Bass family in Texas and subsequently merged Arvida with Walt Disney. Earlier he was an investment manager with Dodge & Cox and the CEO of subsidiaries of Kaiser Aluminum.

Government Career: Ambassador Cobb was the U.S. Ambassador to Iceland during the GHW Bush Administration. During the Reagan Administration, he served as Under Secretary and Assistant Secretary at the U. S. Department of Commerce. In the 1950s he served as an Officer in the United States Navy. Florida Governors, Jeb Bush and Charlie Crist, appointed Ambassador Cobb as Chairman of Florida FTAA and Gateway Florida which have the responsibility for Florida's international trade agenda. Ambassador Cobb created the Cobb Award for Export Advocacy within the U.S. Department of State that is awarded annually to the career ambassador who best leads U.S. trade policy.

Community Development Career: In his 40 years as the CEO of Arvida Corporation, Disney Development, Kaiser Community Development, and Cobb Partners, Cobb has had the responsibility for the development of more than 30 new towns and master-planned communities.

Education Involvement: Cobb was educated at Stanford University where he received a BA and MBA. He is the past Chairman of the Board of Trustees of the University of Miami, having been the Chairman, Vice Chairman or past Chairman of the Trustees for over 35 years. He is a former Trustee of the Stanford Business School Trust Fund, a member of the Advisory Council for the Stanford Business School, and the past President of two Stanford alumni organizations. He was the Chairman of the Board of the Florida Business/Higher Education Partnership, the Co-Founder and Trustee of the Barry University Charter School, a Director of the South Florida Annenberg Challenge, a Director of the Council for Educational Change and a former member of the Florida Governor's Commission on Education.

Directorships and Civic Affairs: Cobb has served on the Boards of nine publicly-traded corporations (Arvida, Penn Central, Walt Disney, LNR Property Corporation, WCI Communities, Ameritas, Pan Am Corporation, CLC of America, and Southeast Banking) and many private corporate boards (Florida Savings, Kirkwood, Durango, Telluride, Tubac, and Observer Group). Cobb has been an officer and/or member of the Executive Committee of The Florida Council of 100 (Chairman 2000-2002), Florida Chamber of Commerce, the South Florida Coordinating Council, the Greater Miami Chamber of Commerce and several other economic development organizations. Cobb also serves on the Board and the Investment Committee for the University of Miami, Woodrow Wilson International Center for Scholars, Eisenhower Fellowships, Orange Bowl Committee, Council of American Ambassadors and Cobb Family Foundation. He was the Co-Chairman of the committee that secured $9 billion of federal funds for South Florida after Hurricane Andrew. Other civic boards and memberships include Plymouth Congregational Church, The American-Scandinavian Foundation, the Icelandic-American Chamber of Commerce, Orange Bowl Committee, Council on Foreign Relations, the Urban Land Institute, and the Lincoln Institute of Land Policy.

Honors: Cobb has received the Order of the Falcon Grand Cross Star from the Nation of Iceland (Iceland's highest honor to a non-Icelandic citizen), The Florida Council of 100 Governor's Award, the NCCJ Silver Medallion Award, South Florida Achievement of the Decade Award, Junior Achievement Hall of Fame, Harvard Business Club of South Florida Business Statesman of the Year, Chief Executive Officer Annual Award for the Hotel and Real Estate Industry, Honorary Doctorate from Barry University, Liberty Bell Award for Florida Higher Education and was a member of the U.S. Olympic Team as an alternate in the 110m high hurdles in 1960.

Family: Cobb has been married for 53 years to Ambassador Sue McCourt Cobb, former U.S. Ambassador to Jamaica and Secretary of State of Florida. Ambassador Sue Cobb is a lawyer, sportswoman, and author who chronicled her 1988 attempt to be the first woman from the United States to reach the summit of Mount Everest with a book entitled, *The Edge of Everest*. They have two sons, Christian (architect and Harvard MBA) and Tobin (investment banker and NYU MBA), and seven grandchildren.

Exhibit 3

Charles E. Cobb
Honors and Awards

- Honorary Doctorate Degree, Barry University, 1999
- James W. McLamore Outstanding Service Award, University of Miami , 1997
- Outstanding Philanthropist of the Year Award, 1997
- Liberty Bell Award for Florida Higher Education
- Republic of Iceland, Order of the Falcon, Grand Cross Star (nation's highest honor), 1992
- South Florida Achiever of the Decade, Royal Palm Foundation, 1987
- Junior Achievement Hall of Fame, 1987
- Harvard Business School Club of South Florida - Business Statesman of the Year, 1986
- National Conference of Christians and Jews Silver Medallion Award for Protestants, Florida Chapter, 1981
- Business Leader of the Year for Greater Miami, election sponsored by *The Miami News*, 1978
- Man of the Year, Florida Real Estate Sales Directors, 1978
- Selected as one of the three top chief executive officers in the nation in the hotel and real estate industry by *Financial World*, 1975
- Recipient of Floyd L. McElroy Scholarship, Stanford Business School, 1960 – 1962
- Member of U.S. Olympic Team, alternate in the 110m high hurdles, 1960
- Various national and international titles, records, and honors while competing in high hurdles, 1953

EXHIBIT 4

Charles E. Cobb, Jr.

Organizational Affiliations

ORGANIZATION	DATES	OFFICE HELD
University of Miami Board of Trustees	1973 - Present	Former Chairman, Life Trustee
Gateway Florida, Inc.	2003 - Present	Chairman
Florida FTAA, Inc.	2003 - Present	Chairman
The Davis Productivity Awards Foundation, Inc.	2001 - 2004	Trustee
Florida Savings Bancorp, Inc.	1997 - 2006	Director
Miami Shores/Barry University "Connected Learning Community" (CLC), Inc., a Charter School	1997 - 2006	Past Chairman, Trustee
The Florida Business/Higher Education Partnership, Inc.	1995 - Present	Director
South Florida Annenberg Challenge, Inc. Council for Educational Change	1996 - Present	Director, Life Trustee
Council of American Ambassadors	1992 - Present	Member
Eisenhower Fellowships	2005 - Present	Trustee
Governor's Commission on Education (FL)	1996 - 1998	Member
Council on Foreign Relations	1994 - Present	Member
Bohemian Club	1994 - Present	Member
Deering Bay Yacht & Country Club	1993 - 2000	Member
American Scandinavian Foundation	1993 - Present	Director
Icelandic/American Chamber of Commerce	1992 - Present	Director
Icelandic American Society	1992 - Present	Member
U.S. State Department Selection Committee, Charles E. Cobb, Jr. Award for Initiative and Success in Trade Development	1991 - Present	Member
Metropolitan Club, Washington, D.C.	1989 - Present	Member
Cat Cay, Ltd.	1988 - Present	Member
Chief Executive Organization	1986 - Present	Member
The Beacon Council	1986 - Present	Member
Indian Creek Country Club	1980 - Present	Member
Orange Bowl Committee	1979 - Present	Member
Florida Council of 100	1975 - Present	Chairman / Vice Chairman
Greater Miami Chamber of Commerce	1973 - Present	Member
Royal Palm Tennis Club	1972 - Present	Member
The Olympic Club	1957 - Present	Member
Urban Land Institute	1973 - Present	Trustee
Council on Foreign Relations/Brookings Institute Task Force (study committee for reorganization of State Department)	1996 - 1997	Member
Stanford University Business School Advisory Committee	1986 - 1992	Member
Florida Sales Tax Exemption Study Commission	1987 - 1987	Commissioner
Columbus Hemispheric Trade Commission	1987 - 1987	Commissioner
South Florida Coordinating Council	1975 - 1987	Past Chairman / President
Stanford University Business School Trust	1975 - 1983	Trustee
Young Presidents Organization	1970 - 1986	Member
Phi Delta Theta Fraternity of Stanford	1954 - 1958	President

EXHIBIT 5
Charles E. Cobb

NAME OF BOARD	APPOINTING AUTHORITY	DATES OF SERVICE
GATEWAY FLORIDA / FLORIDA FTAA	GOVERNORS BUSH, CRIST AND SCOTT	2003-PRESENT
GOVERNOR'S COMMISSION ON EDUCATION	GOVERNOR CHILES	1996-1998
FL SALES TAX EXEMPTION STUDY COMMISSION	GOVERNOR MARTINEZ	1987
FL COLUMBUS HEMISPHERIC TRADE COMMISSION	GOVERNOR GRAHAM	1986-1987
FL DEPT OF COMMERICE ECON DEVELOP ADVSRY COUNCIL	GOVERNORS ASKEW AND GRAHAM	1978-1982
GOVERNOR'S RESOURCE MGMT TASK FORCE	GOVERNOR ASKEW	1979
GOVERNOR'S ECONOMIC POLICY TASK FORCE	GOVERNOR ASKEW	1978

A black and white copy of this document is not official.

1280

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Gary C. Wendt

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the
Twentieth day of March, A.D., 2012,
until the Twelfth day of December, A.D., 2015
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 Sixth day of July, A.D., 2012.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.
"State of Florida" appears in small letters across the face of this 8½ x 11" document.
The original document has a reflective line mark in paper. Hold at an angle to view when checking.

100 ... 1

STATE BOARD OF ADMINISTRATION
OF FLORIDA
1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

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DEPARTMENT OF STATE
DIVISION OF ELECTIONS

RICK SCOTT
GOVERNOR
AS CHAIRMAN

JEFF ATWATER
CHIEF FINANCIAL OFFICER
AS TREASURER

PAM BONDI
ATTORNEY GENERAL
AS SECRETARY

ASH WILLIAMS
EXECUTIVE DIRECTOR &CIO

July 2, 2012

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 – Gary Wendt

Dear Ms. Williams:

Attached please find the Questionnaire for Senate Confirmation, copy of the SBA agenda, and transcript of the March 20, 2012, Cabinet Meeting reappointing him to the SBA's Investment Advisory Council. His term will be March 20, 2012, through December 12, 2015.

As you know, he did not get confirmed by the Senate last session and will need to be confirmed in the 2013 legislative session.

Please let me know if additional information is required.

Sincerely,

Diane Bruce

Diane Bruce
Executive Assistant

Attachments
cc: Ash Williams w/o Attachments
Mr. Ron Poppell w/o Attachments

100951

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2012 JUL 5 PM 3:21
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. **Please type or print in black ink.**

Date Completed _____

1. Name: MR. (MR./MRS./MS.) WENDT (LAST) GARY (FIRST) CARL (MIDDLE/MAIDEN)

2. Business Address: 3055 HARBOR DRIVE (STREET) FT. LAUDERDALE (CITY)
   (POST OFFICE BOX) FLA (STATE) 33316 (ZIP CODE) 954-523-2945 (AREA CODE/PHONE NUMBER)

3. Residence Address: 3055 HARBOR DRIVE (STREET) FT LAUDERDALE (CITY) BROWARD (COUNTY)
   (POST OFFICE BOX) FLA. (STATE) 33316 (ZIP CODE) 954 523-2945 (AREA CODE/PHONE NUMBER)

Specify the preferred mailing address: Business [✓] Residence [ ] Fax # 954-527-0952 (optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
3055 Harbor Drive	Ft Lauderdale, Fla	2010	Present
39 Wilshire Rd	Greenwich, Ct.	2002 -	2010

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.
* Also see other side

ADDRESS	CITY & STATE	FROM	TO
39 Wilshire Rd.	Greenwich, Ct	2002 -	2010
		1997 -	2000
	Indianapolis Ind.	2000 -	2002
Erskine Road	Stamford Ct	1975 -	1997

5. Date of Birth: March 13, 1942 Place of Birth: Portage, Wisconsin
6. Social Security Number: _____
7. Driver License Number: _____ Issuing State: FLA
8. Have you ever used or been known by any other legal name? Yes [ ] No [✓] If "Yes" Explain

Revised 1/2011

9. Are you a United States citizen? Yes [✓] No [ ] If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 2010

11. Are you a registered Florida voter? Yes [✓] No [ ] If "Yes" list:

A. County of registration: Broward B. Current party affiliation: Republican

12. Education

A. High School: Rio High, Rio Wisconsin Year Graduated: 1960
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
Univ of Wisc. - Madison, Wisc.	1960-1965	BS-Civ. Eng
Harvard Grad School of Business, Cambridge, Mass	1965-1967	MBA

13. Are you or have you ever been a member of the armed forces of the United States? Yes [ ] No [✓] If "Yes" list:

A. Dates of service:

B. Branch or component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
NO			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
~~GE Capital~~	~~Financial Services~~	~~Partner/CEO~~	~~1995-1999~~
Self Employed since 2002			

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes [ ] No [✓]
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Thirty five years in financial services including REITS, consumer & commercial finance, leasing, investment banking & insurance. CEO of major financial services and publically held lending & insurance Co (Fortune 500 size). Chmn. of finance committee of public company. Creater of Private Equity and SBIC lending companies

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☑ No ☐ If "Yes", list:

MBA - Harvard Graduate School of Business

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☐
If "Yes", list:

Multiple major magazine and newspaper articles during late 1980's and 1990's.

D. Identify all association memberships and association offices held by you that relate to this appointment:

NONE

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?
Yes ☐ No ☑ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☑ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☑ If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☑ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ◯ Removed ◯ Resigned ◯

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☑ If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☑ If "Yes", explain:

_____

_____

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☑ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☑ If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes [ ] No [✓] If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes [ ] No [✓]

A. Did you receive any compensation other than reimbursement for expenses? Yes [ ] No [ ]

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	AREA CODE/PHONE NUMBER
Abigail Thierman		
Gobings, Rick		
Julian Elfenbien		

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
NONE			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes [ ] No [✓] If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes [✓] No [ ]

CERTIFICATION

STATE OF FLORIDA, COUNTY OF BROWARD

Before me, the undersigned Notary Public of Florida, personally appeared Gary C. Wendt, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

G C Wendt

Signature of Applicant-Affiant

Sworn to and subscribed before me this 26TH day of JUNE, 2012.

Rose Ann Tarasuk

Signature of Notary Public-State of Florida

ROSE ANN TARASUK

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

ROSE ANN TARASUK
MY COMMISSION # DD 830397
EXPIRES: November 12, 2012
Bonded Thru Notary Public Underwriters

Personally Known ☑ **OR** Produced Identification ☐

Type of Identification Produced _____

(seal)

Revised 11/2011

Addendum to March 20, 2012 Transcript

The Board of Trustees unanimously approved Item 13 (See page 81, lines 11-16 of transcript), which reappoints the following individuals:

Investment Advisory Council

Les Daniels
Michael Price
Gary Wendt

Participant Local Government Advisory Council

Barbara Scott

ITEM 13. REQUEST APPROVAL OF THREE REAPPOINTMENTS TO THE INVESTMENT ADVISORY COUNCIL (IAC), LES DANIELS, MICHAEL PRICE, AND GARY WENDT, (S. 215.444, F.S.) AND ONE REAPPOINTMENT TO THE PARTICIPANT LOCAL GOVERNMENT ADVISORY COUNCIL (PLGAC), BARBARA SCOTT, (S.218.409(10)(A), F.S.).

Les Daniels, Michael Price, and Gary Wendt were previously appointed and approved by the Board of Trustees to serve on the Investment Advisory Council. Barbara Scott was appointed and approved by the Board of Trustees to serve on the Participant Local Government Advisory Council. Pursuant to Section 114.05(1)(e), F.S., they are submitted for reappointment.

ACTION REQUIRED

S T A T E O F F L O R I D A

JOINT MEETING OF THE

CABINET OF THE STATE OF FLORIDA

AND THE

STATE BOARD OF ADMINISTRATION

DATE:	March 20, 2012
LOCATION:	Cabinet Meeting Room, LL-03 The Capitol Tallahassee, Florida
TIME:	Commenced at 10:51 a.m. Concluded at 12:24 p.m.
REPORTED BY:	CAROLYN L. RANKINE Registered Professional Reporter and Notary Public

ACCURATE STENOTYPE REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
850.878.2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

* * *

1 CFO ATWATER: Second.
2 GOVERNOR SCOTT: Moved and seconded,
3 Item 12 is approved without objection.
4 EXECUTIVE DIRECTOR ASH: Thank you.
5 Item 13, request approval of three
6 reappointments to the Investment Advisory
7 Council: Les Daniels, Michael Price, and
8 Gary Wendt. This a consequence again of the
9 Senate confirmation process not being
10 completed.
11 GOVERNOR SCOTT: Is there a motion to
12 approve Item 13?
13 ATTORNEY GENERAL BONDI: So moved.
14 CFO ATWATER: Second.
15 GOVERNOR SCOTT: Moved and second, Item 13
16 is approved without objection.
17 EXECUTIVE DIRECTOR ASH: Thank you.
18 GOVERNOR SCOTT: All right. Thank you
19 very much, everyone, for -- for -- this
20 completes our Cabinet meeting. Our next
21 meeting will be Tuesday, April 4th at 9:00 a.m.
22 We are adjourned.
23 (State Board of Administration concluded at
24 12:24 p.m.)
25

A black and white copy of this document is not official

1280

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
Twentieth day of March, A.D., 2012,
until the Twelfth day of December, A.D., 2014
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 Second day of May, A.D., 2012.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.
"State of Florida" appears in small letters across the face of this 8½ x 11" document.
The original document has a reflective line mark in paper. Hold at an angle to view when checking.

RICK SCOTT
GOVERNOR

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DEPARTMENT OF STATE
2012 MAR 29 PM 4: 19
DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 26, 2012

The Honorable Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 215.444, Florida Statutes:

Mr. Michael F. Price
MFP Investors LLC
667 Madison Avenue
New York, Florida 10065

as a member of the Investment Advisory Council, subject to confirmation by the Senate. This appointment is effective March 20, 2012 for a term ending December 12, 2014.

Sincerely,

Rick Scott
Governor

RS/jrd

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272 • FAX (850) 922-4292

QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. **Please type or print in black ink.**

NOVEMBER 10, 2011
Date Completed

1. Name: PRICE, MICHAEL F.
   MR./MRS./MS — LAST — FIRST — MIDDLE/MAIDEN

2. Business Address: MFP INVESTORS LLC, 667 MADISON AVE, 25TH FL
   STREET — OFFICE # — CITY
   NEW YORK NY 10065 (212) 752-7280
   POST OFFICE BOX — STATE — ZIP CODE — AREA CODE/PHONE NUMBER

3. Residence Address: 20 EAST 78th STREET
   STREET — CITY — COUNTY
   NEW YORK, NY 10075 (212) 794-1239
   POST OFFICE BOX — STATE — ZIP CODE — AREA CODE/PHONE NUMBER

   Specify the preferred mailing address: Business [X] Residence [ ] Fax # (212) 752-7265 (optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
450+452 WORTH AVE	PALM BEACH FL	1992	PRESENT
20 E 78th St.	New York NY 10075	1996	Present
35 BAXTER RD	SIASCONET MA 02564	2005	PRESENT
2291 DAYBREAK RIDGE	AVON CO 81620	1996	PRESENT

   B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
20 E 78th ST	NEW YORK NY 10075	1996	PRESENT
35 BAXTER RD	SIASCONSET MA	2005	PRESENT
2291 DAYBREAK RIDGE	AVON CO 81620	1996	PRESENT
1180 LARGER CROSS RD	PAR HILLS NJ 07931	1994	PRESENT

5. Date of Birth: 07/03/51 Place of Birth: ROSLYN, NY
6. Social Security Number: _
7. Driver License Number: _ Issuing State: NEW YORK
8. Have you ever used or been known by any other legal name? Yes [ ] No [✓] If "Yes" Explain

Revised 1/2011

9. Are you a United States citizen? Yes [✓] No [ ] If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 2010

11. Are you a registered Florida voter? Yes [ ] No [✓] If "Yes" list:

A. County of registration: B. Current party affiliation:

12. Education

A. High School: Roslyn H.S. (NAME AND LOCATION) Year Graduated: 1969

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
Univ of OKLA	1969-1973	BBA

13. Are you or have you ever been a member of the armed forces of the United States? Yes [ ] No [X] If "Yes" list:

A. Dates of service:

B. Branch or component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
NO			

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
MFP INVESTORS LLC 667 MADISON AVE NEW YORK, NY 10065	MANAGING	MEMBER	1998 - PRESENT

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes [ ] No [X]
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT

Revised 1/2011

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

MONEY MANAGER SINCE 1975.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒
If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

N/A

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?
Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☒ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ◯ Removed ◯ Resigned ◯

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒
If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

_____

_____

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒
If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE

25. A. Have you, or businesses of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes [ ] No [X] If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes [ ] No [X]

A. Did you receive any compensation other than reimbursement for expenses? Yes [ ] No [ ]

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
LESLIE DANIELS			
EMMANUEL GEDILD			
MARIO GABELLI			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
JOHNS HOPKINS MEDICINE	BALTIMORE, MD		2002 - PRESENT
ALBERT EINSTEIN COLLEGE OF MEDICINE	BRONX, NY		2000 - PRESENT

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes [ ] No [X] If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes [X] No [ ]

CERTIFICATION

New York (SB)

STATE OF ~~FLORIDA~~, COUNTY OF New York

New York (SB)

Before me, the undersigned Notary Public of ~~Florida,~~ personally appeared MICHAEL F. PRICE,

who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of ~~Florida.~~ New York (SB)

Signature of Applicant-Affiant

Sworn to and subscribed before me this 23rd day of April, 2012.

Signature of Notary Public-State of ~~Florida~~ New York (SB)

SAMIA M. BALI
Notary Public, State of New York
No. 01BA6256464
Qualified in New York County
Commission Expires Feb. 27, 2016

(Print, Typed or Stamped Commissioned Name of Notary Public)

My commission expires: _____

Personally Known ☐ **OR** Produced Identification ☑

Type of Identification Produced

(seal)

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2012 APR 24 AM 9:39
DIVISION OF ELECTIONS
TALLAHASSEE, FL

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☐

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

_____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0158

A black and white copy of this document is not official

1280

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

William H. Harrell, Jr.

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the
Ninth day of February, A.D., 2012,
until the First day of February, A.D., 2016
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 Ninth day of March, A.D., 2012.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.
"State of Florida" appears in small letters across the face of this 8½ x 11" document.
The original document has a reflective line mark in paper. Hold at an angle to view when checking.

STATE BOARD OF ADMINISTRATION OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

POST OFFICE BOX 13300
32317-3300

RICK SCOTT
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AS CHAIRMAN

JEFF ATWATER
CHIEF FINANCIAL OFFICER
AS TREASURER

PAM BONDI
ATTORNEY GENERAL
AS SECRETARY

ASH WILLIAMS
EXECUTIVE DIRECTOR &CIO

March 8, 2012

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 – William H. Harrell, Jr.

Dear Ms. Williams:

Mr. Williams H. Harrell, Jr. has been appointed by Attorney General Pam Bondi to serve on the Investment Advisory Council for the State Board of Administration. Attached please find the original Questionnaire for Senate Confirmation, along with Oath of Office and Acceptance Form, and the February 9, 2012, Cabinet transcript reflecting approval of his appointment. Mr. Harrell's term will be February 9, 2012 through February 1, 2016.

Please let me know if additional information is required.

Sincerely,

Diane Bruce

Diane Bruce
Executive Assistant

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DEPARTMENT OF STATE
2012 MAR -9 AM 10: 07
DIVISION OF ELECTIONS
TALLAHASSEE, FL

Attachments
cc: Ash Williams w/o Attachments
Mr. Ron Poppell w/o Attachments

QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. **Please type or print in black ink.**

Feb 13, 2012
Date Completed

1. Name: Mr. Harrell, Jr William Hughes
   MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: 101 E Kennedy Blvd Suite 1160 Tampa
   STREET OFFICE # CITY
   FL 33602 813-805-0777
   POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 3209 W Lawn Ave Tampa
   STREET CITY COUNTY
   FL 33611 813-288-1615
   POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

   Specify the preferred mailing address: Business ◉ Residence ○ Fax # _____ (optional)

4. A. List all your places of residence for the last ten (10) years.

ADDRESS	CITY & STATE	FROM	TO
3209 W Lawn	Tampa FL	May 09	Present
4118 Barcelona	Tampa FL	April 06	May 09
4811 Melrose Ave	Tampa FL	June 04	April 06
2130 SW 78th Terrace	Gainesville FL	August 02	June 04
2423 W Watrous Ave	Tampa FL	Nov 96	Aug 02

   B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
N/A			

5. Date of Birth: 2/8/68 Place of Birth: San Diego CA
6. Social Security Number: ecord
7. Driver License Number: _____ Issuing State: FL

Revised 11/2011

8. Have you ever used or been known by any other legal name? Yes ◯ No ◉ If "Yes" Explain

9. Are you a United States citizen? Yes ◉ No ◯ If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? whole adult life (unless you count college/ law school)

11. Are you a registered Florida voter? Yes ◉ No ◯ If "Yes" list:

A. County of registration: Hillsborough B. Current party affiliation: Republican

12. Education

A. High School: Stanton (Jacksonville FL) Year Graduated: 1986
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
Duke University	Aug 86 to May 89	BA History
Duke University Law	Aug 89 to May 92	JD
UF Business School	Aug 02 to May 04	MBA

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ■ If "Yes" list:

A. Dates of service: _____

B. Branch or component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) If "Yes" give details:

DATE	PLACE	NATURE	DISPOSITION
nothing outside traffic tickets, don't recall amounts			

15. Concerning your current employer and for all of your employment during the last ten years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
Capco Asset Management, LLC	Investment Management	Principal	02-Present
Trenam Kemker	Law Firm	Partner	92-02

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☐ No ■
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Professional experience managing money for clients over the past 10 years
Education - MBA
Deep interest in the subject of investment generally

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ◉ No ○ If "Yes", list:

MBA
JD, member of Florida Bar

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ■ No ☐
If "Yes", list:

MBA - Concentration in Graham-Buffett Security Analysis; first in class; Outstanding Achievement Award in Core Curriculum

D. Identify all association memberships and association offices held by you that relate to this appointment:

Member, Vistage; Board Member, UF's Gator Student Investment Fund; member, Florida Bar

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?
Yes ☐ No ■ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ■ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE

20. Has probable cause ever been found that you were in violation of the Code of Ethics for Public Officers and Employees, Part III, Chapter 112, F.S.? Yes ◯ No ◉ If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ■ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ◯ Removed ◯ Resigned ◯

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ◯ No ◉
If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ◯ No ◉ If "Yes", explain:

_____

_____

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ◉ No ◯
If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE
law license - 961027	1992	Florida Bar	N/A
Regis as Associated Person to RIA (Capco Asset Management is an RIA):			
LI 00000504156	2004	Office of Financial Regulation	N/A

25. A. Have you, or businesses of which you have been an owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ◯ No ◉ If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ◉ No ◯ If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
Coastal Construction Products	parent, brother	owner/ mgr	sales of construction materials

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ◯ No ◉

A. Did you receive any compensation other than reimbursement for expenses? Yes ◯ No ◯

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
Tim Dolan			
John Touchton			
Richard Hanchett			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
Vistage	8286 Bayberry Rd, Jacksonville Fl 32253	member	2008 - present
Rotary Club of Tampa	806 E Jackson, Tampa FL 33602	member, program chair	2006-2010

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ■ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ◉ No ◯

Revised 11/2011

Harrell

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2012 MAR -9 AM 10: 09

DIVISION OF ELECTIONS
TALLAHASSEE, FL

CERTIFICATION

STATE OF FLORIDA, COUNTY OF

Before me, the undersigned Notary Public of Florida, personally appeared WILLIAM H HARGEL JR, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Signature of Applicant-Affiant

Sworn to and subscribed before me
this 13TH day of FEBRUARY, 2012.

Signature of Notary Public-State of Florida

FRANCES SCOTT

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 8/31/14

NOTARY PUBLIC STATE OF FLORIDA

FRANCES SCOTT
MY COMMISSION # DD 987586
EXPIRES: August 31, 2014
Bonded Thru Budget Notary Services

Personally Known ☑ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

Revised 11/2011

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS, WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC...IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☐

Yes, I assert that identifying information provided in this application should be excluded from inspection under Public Records Law. Please indicate what section of Florida Statutes provides this in your particular situation.

_____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0158

A black and white copy of this document is not official

1280

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
Twentieth day of March, A.D., 2012,
until the Twelfth day of December, A.D., 2014
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 Second day of May, A.D., 2012.

Ken Detzner

Secretary of State

DSDE 99 (3/03)

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8½ x 11" document.

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

RICK SCOTT
GOVERNOR

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DIVISION OF ELECTIONS
TALLAHASSEE, FL

March 26, 2012

Mr. Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 215.444, Florida Statutes:

Mr. Leslie B. Daniels
CAI Private Equity
100 Everglade Avenue
Palm Beach, Florida 33480

as a member of the Investment Advisory Council, subject to confirmation by the Senate. This appointment is effective March 20, 2012 for a term ending December 12, 2014.

Sincerely,

Rick Scott
Governor

RS/jrd

THE CAPITOL
TALLAHASSEE, FLORIDA 32399 • (850) 488-2272 • FAX (850) 922-4292

1002 10

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.
Please type or print in blue or black ink.

April 24, 2012
Date Completed

1. Name: Mr. | Daniels | Leslie | Benedict
Mr./Mrs./Ms. | Last | First | Middle/Maiden

2. Business Address: 249 Royal Palm Way | Suite 503 | Palm Beach
Street | Office # | City
Florida | 33480 | (561) 290-1259
Post Office Box | State | Zip Code | Area Code/Phone Number

3. Residence Address: 100 Everglade Avenue | Palm Beach | Palm Beach
Street | City | County
Florida | 33480 | (561) 655-5135
Post Office Box | State | Zip Code | Area Code/Phone Number

Specify the preferred mailing address: Business ☐ Residence ☒ Fax # (561) 655-2748 (optional)

4. A. List all your places of residence for the last five (5) years.

Address	City & State	From	To
100 Everglade Avenue	Palm Beach, FL	2004	Present
1040 Fifth Avenue, 8A	New York, NY	1986	2010
Neison Island	Greenwich, CT	1980	2010

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address	City & State	From	To
1040 Fifth Avenue, 8A	New York, NY	1986	2010
Neison Island	Greenwich, CT	1980	2010
262 East 78th Street	New York, NY	1976	1986

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TALLAHASSEE, FL

5. Date of Birth: April 3, 1947 Place of Birth: Youngstown, OH

6. Social Security Number

7. Driver License Number: Issuing State: Florida

8. Have you ever used or been known by any other legal name? Yes ☐ No ☒ If "Yes" Explain

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 2011

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Palm Beach B. Current Party Affiliation: Republican

12. Education

A. High School: Gilmour Academy Year Graduated: 1965
Gates Mills, OH
(Name and Location)

B. List all postsecondary educational institutions attended:

Name & Location	Dates Attended	Certificates/Degrees Received
Ohio University	1966-1967	
Youngstown University, OH	1968-1969	
Fordham University, NY	Various	BA, major economics

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) Yes ☐ No ☒ If Yes" give details:

Date	Place	Nature	Disposition

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

Employer's Name & Address	Type of Business	Occupation/Job Title	Period of Employment
CAI Managers & Co., L.P.	Private Equity	Managing Partner	1989 - Present
70 East 55th Street, New York, NY			

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☐ No ☒
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

Position	Employing Agency	Period of Employment

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

I have 40 years work experience in the financial markets including government, municipal and corporate bonds, mortgages, equities and some derivatives. I have also founded and run a business trading private placements and investing in venture capital. I am currently a Managing Partner in a business that I co-founded that is involved in private equity in the United State and Canada.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☐ No ☒
If "Yes", list:

D. Identify all association memberships and association offices held by you that relate to this appointment:

N/A

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?
Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☒ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

Office Title	Date of Election or Appointment	Term of Office	Level of Government

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

Meetings Attended	Meetings Missed	Reason for Absence

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

Date	Nature of Violation	Disposition

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒ If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

_____

_____

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

License/Certificate Title & Number	Original Issue Date	Issuing Authority	Disciplinary Action/Date

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business	Your Relationship to Business	Business' Relationship to Agency

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

Name of Business	Family Member's Relationship to You	Family Member's Relationship to Business	Business' Relationship to Agency

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☐ No ☒

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☐

B. Name of agency or entity you lobbied and the principal(s) you represented:

Agency Lobbied	Principal Represented

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

Name	Mailing Address	Zip Code	Area Code/Phone Number
Governor Scott			
Michael F. Price			
Richard J. Schmeelk			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

Name	Mailing Address	Office(s) Held & Term	Date(s) of Membership
N/A			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

RECEIVED
DEPARTMENT OF STATE

2012 MAY -2 AM 9:10

DIVISION OF ELECTIONS
TALLAHASSEE, FL

CERTIFICATION

STATE OF FLORIDA, COUNTY OF Palm Beach

Before me, the undersigned Notary Public of Florida, personally appeared

_____,

who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

_____
Signature of Applicant-Affiant

Sworn to and subscribed before me this 1st day of May, 2012

_____
Signature of Notary Public-State of Florida

Lesbia Sed
(Print, Type, or Stamp Commissioned Name of Notary Public)

LESBIA SED
MY COMMISSION # DD 895210
EXPIRES: July 26, 2013
Bonded Thru Notary Public Underwriters

My commission expires: _____

Personally Known ☑ **OR** Produced Identification ☐

Type of Identification Produced _____

(seal)

LESBIA SED
MY COMMISSION # DD 895210
EXPIRES: July 26, 2013
Bonded Thru Notary Public Underwriters

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

☐ Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.)_____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OFANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7122

INTRODUCER: For consideration by the Committee on Governmental Oversight and Accountability

SUBJECT: Florida Retirement System

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney		**Submitted as Committee Bill**
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7122 establishes the contribution rates paid by employers participating in the Florida Retirement System (FRS). These rates are intended to fund the full normal cost and the amortization of the unfunded actuarial liability of the FRS. With these increased contributions, the FRS will receive roughly $885 million of additional revenues on an annual basis beginning July 1, 2013.

The bill also increases the contributions paid by employers participating in the retiree health insurance subsidy program. With these increased contributions, the Retiree Health Insurance Trust Fund will receive roughly $42 million of additional revenues on an annual basis beginning July 1, 2013.

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

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the pension plan, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a

closed group.[1] The FRS is a contributory system, with all members contributing 3 percent of their salaries.[2]

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2012, the FRS had 623,011 active members, 334,682 retired members and beneficiaries, and 40,556 active members of the Deferred Retirement Option Program (DROP).[3] The FRS consists of 1,000 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities, and also includes the 185 cities and 251 special districts that have elected to join the system.[4]

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

- Regular Class[5] consists of 535,467 active members, plus 7,675 in renewed membership;
- Special Risk Class[6] includes 70,005 active members;
- Special Risk Administrative Support Class[7] has 59 active members;
- Elected Officers' Class[8] has 2,005 active members, plus 201 in renewed membership; and
- Senior Management Service Class[9] has 7,295 members, plus 251 in renewed membership.[10]

Investment Plan

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

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

A member vests immediately in all employee contributions paid to the investment plan.[11] With respect to the employer contributions, a member vests after completing one work year with an

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[1] The Florida Retirement System Annual Report, July 1, 2011 – June 30, 2012, at 38. Available online at: https://www.rol.frs.state.fl.us/forms/2011-12_Annual_Report.pdf

[2] Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011.

[3] Florida Retirement System 2011-2012 Annual Report, at 54, 62, and 66.

[4] *Id.*, at 38.

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

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

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

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

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

[10] All figures from Florida Retirement System 2011-2012 Annual Report, at 55.

[11] Section 121.4501(6)(a), F.S.

FRS employer.[12] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[13] The investment plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.[14] An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.[15]

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

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

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.[19] For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.[20] Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.[21] For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.[22] For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.[23] Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.[24]

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[12] If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.
[13] Section 121.591, F.S.
[14] See s. 121.4501(16), F.S.
[15] Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an inline-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.
[16] Section 121.4501(8), F.S.
[17] Section 4, Art. IV, Fla. Const.
[18] Section 121.025, F.S.
[19] Section 121.021(45)(a), F.S.
[20] Section 121.021(45)(b), F.S.
[21] Section 121.091, F.S.
[22] Section 121.021(29)(a)1., F.S.
[23] Section 121.021(29)(b)1., F.S.
[24] Sections 121.021(29)(a)2. and (b)2., F.S.

Optional Retirement Programs

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

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

Contribution Rates

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

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

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

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

[28] Section 121.70(1), F.S.

The following are the current employer contribution rates for each class:[29]

Membership Class	Effective July 1, 2012		Effective July 1, 2013	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	3.55%	0.49%	3.55%	2.02%
Special Risk Class	11.01%	2.75%	11.01%	7.03%
Special Risk Administrative Support Class	3.94%	0.83%	3.94%	27.04%
Elected Officer's Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.51%	0.88%	6.51%	27.18%
• Justices and Judges	10.02%	0.77%	10.02%	16.38%
• County Officers	8.36%	0.73%	8.36%	23.01%
Senior Management Service Class	4.84%	0.32%	4.84%	11.25%
Deferred Retirement Option Program	4.33%	0.0%	4.33%	6.21%

For all membership classes, except the DROP, employees contribute 3 percent of their compensation towards retirement.[30]

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

In the annual actuarial valuation of the Florida Retirement, based on July 1, 2012, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan.[32]

	Valuation Results	
	July 1, 2011	July 1, 2012
Actuarial Liability	$144.1 b	$147.2 b
Actuarial Value of Assets	$126.1 b	$127.9 b
Unfunded Actuarial Liability	$18.0 b	$19.3 b
Funded Percentage	87.5%	86.9%

In addition to the actuarial information relating to the FRS pension plan, Milliman, Inc., provided recommended blended rates to be assessed against employers participating in the FRS. These recommended blended rates are noted in the table below for both normal costs as well as the amortization of the unfunded actuarial liability of the FRS pension plan.

[29] Section 121.71(4) and (5), F.S.
[30] Section 121.71(3), F.S.
[31] *See* sections 121.4503 and 121.72(1), F.S.
[32] Florida Retirement System Actuarial Valuation as of July 1, 2012, completed by Milliman, Inc.

Membership Class	Effective July 1, 2013		
	Normal Cost	UAL Rate	Total
Regular Class	3.53%	2.19%	5.72%
Special Risk Class	11.00%	6.83%	17.83%
Special Risk Administrative Support Class	4.17%	30.56%	34.73%
Elected Officer's Class			
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.52%	24.85%	31.37%
• Justices and Judges	10.05%	17.00%	27.05%
• County Officers	8.44%	23.36%	31.80%
Senior Management Service Class	4.81%	12.27%	17.08%
Deferred Retirement Option Program	4.63%	7.01%	11.64%

Retiree Health Insurance Subsidy

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

The subsidy is funded through a contribution by employers participating in the FRS. The current contribution is 1.11% of the employer's monthly payroll. The contribution is paid to the Department of Management Services for deposit in the Retiree Health Insurance Subsidy Trust Fund. This program is funded on a "pay-as-you-go" basis rather than on an actuarial basis. This means that the revenues and expenditures of the trust fund are designed to match each other on an annual basis, with minimal reserves accumulated.

Participants of the university, community college, and senior management service defined contribution retirement programs receive contributions directly into their retirement accounts during the years of employment; these participants will not receive the subsidies during retirement. Participants of the FRS investment plan will not receive the health insurance subsidy contributions directly but will be eligible to receive the health insurance subsidy upon retirement.

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

In the annual actuarial valuation of the Retiree Health Insurance Subsidy Trust Fund, dated December 31, 2012, Milliman, Inc., the state actuary, determined the following key cash flow data for FY 2010-11 and FY 2011-12.[33] Under current law and current administration, the trust fund is expected to deplete its reserves by April 2015. After that date, the trust fund may not have sufficient revenues to pay the full monthly benefits to retirees.

[33] Actuarial Valuation of the Health Insurance Subsidy under GASB 27, completed by Milliman, Inc.

Retiree Health Insurance Subsidy Trust Fund Changes in Fund Balance				
	FY 2010-11	**FY 2011-12**	**FY 2012-13**	**FY 2013-14**
Fund Balance – beginning of Year	291,458,619	$271,349,733	$220,345,962	$142,853,225
Revenues	$336,132,909	$323,494,746	$325,845,577	$335,891,340
Expenditures	$356,241,794	$374,498,517	$403,338,314	$414,342,746
Excess of Revenues over Expenditures	(20,108,886)	(51,003,771)	(77,492,737)	(78,451,406)
Fund Balance – end of year	$271,349,733	$220,345,962	$142,853,225	$64,401,819
Reserves (balance / monthly expenses)	9.1 months	7.1 months	4.25 months	1.9 months

III. Effect of Proposed Changes:

The bill increases the employer-paid contributions for the retiree health insurance subsidy program. Also, the bill revises the employer-paid normal cost rates and unfunded actuarial liability (UAL) rates for the FRS, as determined by the July 1, 2012 Annual Valuation as necessary to adequately fund the costs of retirement benefits during Fiscal Year 2013-2014.

Section 1 amends s. 112.363, F.S., beginning July 1, 2013, to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.11% of gross compensation to 1.25% of gross compensation for each member of the Florida Retirement System.

Section 2 amends s. 121.052, F.S., beginning July 1, 2013, to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.11% of gross compensation to 1.25% of gross compensation for each member of the Elected Officers' Class of Florida Retirement System.

Section 3 amends s. 121.055, F.S., beginning July 1, 2013, to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.11% of gross compensation to 1.25% of gross compensation for each member of the Senior Management Service Class of Florida Retirement System.

Section 4 amends s. 121.071, F.S., beginning July 1, 2013, to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.11% of gross compensation to 1.25% of gross compensation for each member of the Regular, Special Risk, and Special Risk Administrative Support classes of Florida Retirement System.

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

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

This bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

<u>Florida Retirement System</u>
With the enactment of this legislation, the revenues expected to flow into the Florida Retirement System Trust Fund in FY 2013-2014 will increase by approximately $885.5 million from employers when compared to the revenues generated in FY 2012-13. The increases by employer group for FY 2013-14 are noted below.

	Additional Employer Paid Contributions			Fund Source for Payment of Contributions	
Employer Group	**Normal Cost**	**Unfunded Actuarial Liabilities**	**Total**	**General Revenue**	**Trust Fund**
State Agencies	$0.5 m	$177.0 m	$177.5 m	$110.0 m	$67.5 m
Universities	$0.1 m	$71.8 m	$71.9 m	$40.3 m	0
Colleges	$0.1m	$27.7 m	$27.8 m	$27.8 m	0
School Boards	$1.1 m	$295.9 m	$297.0 m	$297.0 m	0
Counties	$0.7 m	$263.4 m	$264.1 m	0	0
Other	Insig.	$47.2 m	$47.2 m	0	0
Total	$2.4 m	$882.9 m	$885.5 m	$475.1 m	$67.5 m

Retiree Health Insurance Trust Fund

With the enactment of this legislation, the revenues expected to flow into the Retiree Health Insurance Trust Fund will increase by approximately $42.1 million annually. The increases by employer group for FY 2013-14 are noted below. With these increased contributions, the trust fund is not expected to deplete its reserves until June 2018.

		Fund Source for Payment of Contributions	
Employer Group	**New Contributions**	**General Revenue**	**Trust Fund**
State Agencies	$6.8 m	$3.4 m	$3.4 m
Universities	$1.8 m	$1.2 m	0
Colleges	$1.4 m	$1.4 m	0
School Boards	$18.5 m	$18.5 m	0
Counties	$11.3 m	0	0
Other	$2.3 m	0	0
Total	$42.1 m	$24.5 m	$3.4 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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.

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

600326

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/21/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Before line 250
4 insert:
5 Section 6. The Legislature finds that a proper and
6 legitimate state purpose is served when employees, officers, and
7 retirees of the state and its political subdivisions, and the
8 dependents, survivors, and beneficiaries of such employees,
9 officers, and retirees, are extended the basic protections
10 afforded by governmental retirement systems. These persons must
11 be provided benefits that are fair and adequate and that are
12 managed, administered, and funded in an actuarially sound

600326

13 manner, as required by s. 14, Article X of the State
14 Constitution and part VII of chapter 112, Florida Statutes.
15 Therefore, the Legislature determines and declares that this act
16 fulfills an important state interest.
17 Section 7. The Legislature finds that a proper and
18 legitimate state purpose is served when employees, officers, and
19 retirees of the state and of its political subdivisions, and the
20 dependents, survivors, and beneficiaries of such employees,
21 officers, and retirees, are extended the basic protections
22 afforded governmental retirement systems that provide fair and
23 adequate benefits, including health insurance subsidies, and
24 that are managed, administered, and funded in a reasonable
25 manner. Therefore, the Legislature hereby determines and
26 declares that this act fulfills an important state interest.
27
28 ========== T I T L E A M E N D M E N T ==========
29 And the title is amended as follows:
30 Between lines 8 and 9
31 insert:
32 providing findings of an important state interest;

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01622B-13 20137122__

A bill to be entitled

An act relating to the Florida Retirement System; amending ss. 112.363, 121.052, 121.055, and 121.071, F.S.; revising the employer contribution rates for the retiree health insurance subsidy; amending s. 121.71, F.S.; revising the required employer retirement contribution rates for members of each membership class and subclass of the Florida Retirement System; providing an effective date.

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

Section 1. Subsection (8) of section 112.363, Florida Statutes, is amended to read:

112.363 Retiree health insurance subsidy.—

(8) CONTRIBUTIONS.—For purposes of funding the insurance subsidy provided by this section:

(a) Beginning October 1, 1987, the employer of each member of a state-administered retirement plan shall contribute 0.24 percent of gross compensation each pay period.

(b) Beginning January 1, 1989, the employer of each member of a state-administered retirement plan shall contribute 0.48 percent of gross compensation each pay period.

(c) Beginning January 1, 1994, the employer of each member of a state-administered retirement plan shall contribute 0.56 percent of gross compensation each pay period.

(d) Beginning January 1, 1995, the employer of each member of a state-administered retirement plan shall contribute 0.66 percent of gross compensation each pay period.

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

585-01622B-13 20137122__

(e) Beginning July 1, 1998, the employer of each member of a state-administered retirement plan shall contribute 0.94 percent of gross compensation each pay period.

(f) Beginning July 1, 2001, the employer of each member of a state-administered plan shall contribute 1.11 percent of gross compensation each pay period.

(g) Beginning July 1, 2013, the employer of each member of a state-administered plan shall contribute 1.25 percent of gross compensation each pay period.

Such contributions shall be submitted to the Department of Management Services and deposited in the Retiree Health Insurance Subsidy Trust Fund.

Section 2. Subsection (7) of section 121.052, Florida Statutes, is amended to read:

121.052 Membership class of elected officers.—

(7) CONTRIBUTIONS.—

(a) The following table states the required retirement contribution rates for members of the Elected Officers' Class and their employers in terms of a percentage of the member's gross compensation. A change in a contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made or deducted as may be appropriate for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

1.

Dates of Contribution	Members	Employers

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

Rate Changes		
July 1, 2001, through June 30, 2002		
Legislators	0%	15.14%
Governor, Lt. Governor, Cabinet Officers	0%	15.14%
State Attorneys, Public Defenders	0%	15.14%
Justices, Judges	0%	20.61%
County Elected Officers	0%	17.61%

2. Effective July 1, 2002, the required retirement contribution rates shall be specified in s. 121.71.

(b) The employer paying the salary of a member of the Elected Officers' Class shall contribute an amount as specified in this subsection or s. 121.71, as appropriate, which shall constitute the employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage. Effective July 1, 2011, each member of the Elected Officers' Class shall pay employee contributions as specified in s. 121.71.

(c) If a member of the Elected Officers' Class ceases to

fill an office covered by this class for 3 calendar months for any reason other than retirement and has not been employed in any capacity with any participating employer for 3 calendar months, the member may receive a refund of all contributions he or she has made to the pension plan, subject to the restrictions otherwise provided in this chapter. Partial refunds are not permitted. The refund shall not include any interest earnings on the contributions for a member of the pension plan. Employer contributions made on behalf of the member are not refundable. A member may not receive a refund of employee contributions if a pending or an approved qualified domestic relations order is filed against the member's retirement account. By obtaining a refund of contributions, a member waives all rights under the Florida Retirement System and the health insurance subsidy provided under s. 112.363 to the service credit represented by the refunded contributions, except the right to purchase his or her prior service credit in accordance with s. 121.081(2).

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

Dates of Contribution Rate Changes	Contribution Rate

October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
~~Effective~~ July 1, 2001, through June 30, 2013	1.11%
Effective July 1, 2013	1.25%

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

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

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

(3)(a) The following table states the required retirement contribution rates for members of the Senior Management Service

Class and their employers in terms of a percentage of the member's gross compensation. A change in the contribution rate is effective with the first salary paid on or after the beginning date of the change. Contributions shall be made for each pay period and are in addition to the contributions required for social security and the Retiree Health Insurance Subsidy Trust Fund.

1.

Dates of Contribution Rate Changes	Members	Employers
July 1, 2001, through June 30, 2002	0%	11.73%

2. Effective July 1, 2002, the required retirement contribution rate shall be as specified in s. 121.71.

(b) The employer paying the salary of a member of the Senior Management Service Class shall contribute an amount as specified in this section or s. 121.71, as appropriate, which shall constitute the entire employer retirement contribution with respect to such member. The employer shall also withhold one-half of the entire contribution of the member required for social security coverage. Effective July 1, 2011, each member shall pay employee contributions as specified in s. 121.71.

(c) Upon termination of employment from all participating employers for 3 calendar months for any reason other than retirement pursuant to s. 121.021(39)(c), a member may receive a

153 refund of all contributions he or she has made to the pension
154 plan, subject to the restrictions otherwise provided in this
155 chapter. Partial refunds are not permitted. The refund shall not
156 include any interest earnings on the contributions for a member
157 of the pension plan. Employer contributions made on behalf of
158 the member are not refundable. A member may not receive a refund
159 of employee contributions if a pending or an approved qualified
160 domestic relations order is filed against the member's
161 retirement account. By obtaining a refund of contributions, a
162 member waives all rights under the Florida Retirement System and
163 the health insurance subsidy provided under s. 112.363 to the
164 service credit represented by the refunded contributions, except
165 the right to purchase his or her prior service credit in
166 accordance with s. 121.081(2).
167 (d) The following table states the required employer
168 contribution on behalf of each member of the Senior Management
169 Service Class in terms of a percentage of the member's gross
170 compensation. Such contribution constitutes the entire health
171 insurance subsidy contribution with respect to each such member.
172 A change in the contribution rate is effective with the first
173 salary paid on or after the beginning date of the change. The
174 retiree health insurance subsidy contribution rate is as
175 follows:
176

Dates of Contribution Rate Changes	Contribution Rate

177
178

October 1, 1987, through December 31, 1988	0.24%

179

January 1, 1989, through December 31, 1993	0.48%

180

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

181

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

182

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

183

~~Effective~~ July 1, 2001, through June 30, 2013	1.11%

184

Effective July 1, 2013	1.25%

185
186
187 Such contributions and accompanying payroll data are due and
188 payable no later than the 5th working day of the month
189 immediately following the month during which the payroll period
190 ended and shall be deposited by the administrator in the Retiree
191 Health Insurance Subsidy Trust Fund.
192 Section 4. Subsection (4) of section 121.071, Florida
193 Statutes, is amended to read:
194 121.071 Contributions.—Contributions to the system shall be
195 made as follows:
196 (4) The following table states the required employer
197 contribution on behalf of each member of the Regular Class,
198 Special Risk Class, or Special Risk Administrative Support Class
199 in terms of a percentage of the member's gross compensation.
200 Such contribution constitutes the entire health insurance

201 subsidy contribution with respect to each such member. A change
202 in the contribution rate is effective with the first salary paid
203 on or after the beginning date of the change. The retiree health
204 insurance subsidy contribution rate is as follows:
205

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%
January 1, 1994, through December 31, 1994	0.56%
January 1, 1995, through June 30, 1998	0.66%
July 1, 1998, through June 30, 2001	0.94%
~~Effective~~ July 1, 2001, through June 30, 2013	1.11%
Effective July 1, 2013	1.25%

206
207
208
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214
215 Such contributions shall be deposited by the administrator in
216 the Retiree Health Insurance Subsidy Trust Fund.
217 Section 5. Subsections (4) and (5) of section 121.71,
218 Florida Statutes, are amended to read:
219 121.71 Uniform rates; process; calculations; levy.—
220 (4) Required employer retirement contribution rates for

221 each membership class and subclass of the Florida Retirement
222 System for both retirement plans are as follows:
223

Membership Class	Percentage of Gross Compensation, Effective July 1, 2013 ~~2012~~	Percentage of Gross Compensation, Effective July 1, 2014 ~~2013~~
Regular Class	3.53% ~~3.55%~~	3.53% ~~3.55%~~
Special Risk Class	11.00% ~~11.01%~~	11.00% ~~11.01%~~
Special Risk Administrative Support Class	4.17% ~~3.94%~~	4.17% ~~3.94%~~
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.52% ~~6.51%~~	6.52% ~~6.51%~~
Elected Officers' Class— Justices, Judges	10.05% ~~10.02%~~	10.05% ~~10.02%~~

224
225
226
227
228
229

230

Elected Officers' Class—
County Elected Officers 8.44% ~~8.36%~~ 8.44% ~~8.36%~~

231

Senior Management Class 4.81% ~~4.84%~~ 4.81% ~~4.84%~~

232

DROP 4.63% ~~4.33%~~ 4.63% ~~4.33%~~

233

234 (5) In order to address unfunded actuarial liabilities of
235 the system, the required employer retirement contribution rates
236 for each membership class and subclass of the Florida Retirement
237 System for both retirement plans are as follows:

238

239

Membership Class	Percentage of Gross Compensation, Effective July 1, 2013 ~~2012~~	Percentage of Gross Compensation, Effective July 1, 2014 ~~2013~~

240

241

Regular Class 2.19% ~~0.49%~~ 2.19% ~~2.02%~~

242

Special Risk Class 6.83% ~~2.75%~~ 6.83% ~~7.03%~~

243

Special Risk
Administrative 30.56% ~~0.83%~~ 30.56% ~~27.04%~~

Support Class

244

Elected Officers' Class—
Legislators, Governor,
Lt. Governor,
Cabinet Officers,
State Attorneys,
Public Defenders 24.85% ~~0.88%~~ 24.85% ~~27.18%~~

245

Elected Officers' Class—
Justices, Judges 17.00% ~~0.77%~~ 17.00% ~~16.38%~~

246

Elected Officers' Class—
County Elected Officers 23.36% ~~0.73%~~ 23.36% ~~23.01%~~

247

Senior Management Service Class 12.27% ~~0.32%~~ 12.27% ~~11.25%~~

248

DROP 7.01% ~~0.00%~~ 7.01% ~~6.21%~~

249

250 Section 6. This act shall take effect July 1, 2013.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7120

INTRODUCER: For consideration by the Committee on Governmental Oversight and Accountability

SUBJECT: State Group Health Insurance Program

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney		**Submitted as Committee Bill**
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7120 expands the group of employees eligible to participate in the State Employee Health Insurance Program (program). Under current law, no person paid from other-personal-services funds is eligible regardless of the numbers of hours the employee works. Under the provisions of this bill, any state employee working an average of 30 or more hours per week will be eligible for health insurance coverage and premium subsidies. In addition, the proration of the state premium contribution will apply only to permanent employees working less than 30 hours per week on average. The bill requires employers participating in the program to submit certain information relating to employees paid from other-personal-services funds to ensure compliance with the federal law.

The bill continues the current level of contributions into health savings accounts for employees participating in the high deductible health insurance plans under the State Employee Health Insurance Program. The authority for the state to contribute to the accounts expires on June 30, 2013. Under this bill, the state can continue to contribute at the current levels ($500 for individual coverage and $1,000 for family coverage) for FY 2013-14. Beginning in FY 2014-15, the amount of the contributions by the state will be established in the annual general appropriations act.

The bill also modifies the state prescription drug program by repealing expiration dates on the current provisions. Under this bill, the state prescription drug program will continue without modification.

This bill substantially amends sections 110.123 and 110.131 of the Florida Statutes, repeals section 53 of chapter 2012-119, Laws of Florida, and reenacts section 110.12315 of the Florida Statutes.

II. Present Situation:

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

The preferred provider organization (PPO) plan is the statewide, self-insured health plan administered by Blue Cross Blue Shield of Florida. The administrator is responsible for processing health claims, providing access to a Preferred Provider Care Network, and managing customer service, utilization review, and case management functions.

The standard health maintenance organization (HMO) plan is an insurance arrangement in which the state has contracted with 5 regional HMOs. Two of the HMOs (Capital Health Plan and Florida Health Plan) operate on a traditional fully insured model. The other three (AvMed, Coventry, and United Health Care) operate on a self-insured model under which the state bears the risk of the medical claims.

The program offers two high-deductable health plans with health savings accounts. The Health Investor PPO Plan is the statewide, high deductable health plan with an integrated health saving account. It is also administered by Blue Cross Blue Shield of Florida. The Health Investor HMO Plan is a high deductable health plan with an integrated health saving account in which the state has contracted with the participating HMOs.

A state employee participating in either Health Investor plan is eligible to receive contributions into the employee's health savings account. The participant may draw upon these funds to meet the qualified medical expenses.[1]

The annual contribution from the State Employee Health Insurance Trust Fund is $500 for single coverage and $1,000 for family coverage. These contributions are made in equal monthly installments throughout the plan year. These contributions are funded as part of the employer paid premium for health insurance coverage. The authority to make employer-paid contributions into a participant's health savings account expires June 30, 2012.[2]

Employee Eligibility
Section 110.123, F.S., provides that only employees in permanent positions are eligible to participate in the health insurance program. If the employee in a permanent position works less than a full 40 hour workweek, the state premium contribution is reduced proportionately.

[1] 26 U.S.C. s. 213(d).
[2] Section 110.131(12), Florida Statutes.

Persons paid from other-personal-services funds are not eligible to participate in the health insurance program regardless of the hours worked.[3]

Prescription Drug Program
The State Employee Health Insurance Program has a single pharmaceutical benefit manager. All prescriptions are filled using this vendor and its associated network of pharmacies. The costs of the pharmacy benefit are embedded in the overall premiums paid by the employer and employee as well as the copayments made at the time of purchase.

Section 110.12315, F.S., sets out the prescription copayments. The member receives a 30-day supply limit for retail purchases and a 90-day supply limit for mail order purchases. These copayments are described below:

	Standard Plan		**High Deductible Plan**	
	Retail	**Mail**	**Retail**	**Mail**
Generic	$7	$14	30%	30%
Preferred Brand	$30	$60	30%	30%
Non Preferred Brand	$50	$100	50%	50%

Section 52 of chapter 2012-119, Laws of Florida, added language to s. 110.12315(2)(b), F.S., to allow the Department of Management Services to implement a 90-day supply limit program for certain maintenance drugs purchased at retail. Pursuant to section 53(1) of chapter 2012-119, Laws of Florida, this authority expires on June 30, 2013, and the statutory language will revert to the language in existence on June 30, 2011.

In addition, section 52 of chapter 2012-119, Laws of Florida, continued a modification of the copayments. Pursuant to section 53(2) of chapter 2012-119, Laws of Florida, the modification to the copayment schedule expires July 1, 2013, and the statutory language will revert to the language in existence on December 31, 2010. The copayments in effect on December 31, 2010, are shown in the table below.

	Standard Plan	
	Retail	**Mail**
Generic	$10	$20
Preferred Brand	$25	$50
Non Preferred Brand	$40	$80

Employer and Employee Premiums
The state program is considered employer-sponsored since the state contracts with providers and contributes a substantial amount on behalf of the employee toward the cost of the insurance premium. The state's employer contribution is part of a state employee's overall compensation.

[3] Section 110.131(3), Florida Statutes.

The employee pays a set monthly premium for either a single or family plan. The state pays the remainder of the cost of the premium.

The following chart shows the monthly contributions for the state and the employee to employee health insurance premiums beginning May 2013:[4]

Subscriber category		Standard Plans			High Deductible Plans		
		Employer	Employee	Total	Employer	Employee	Total
Career Service	Single	$537.74	$50.00	$587.74	$537.74	15.00	$552.74
	Family	$1,149.14	$180.00	$1,329.14	$1,149.14	$64.30	$1,213.44
	Spouse	$1,299.16	$30.00	$1,329.16	$1,183.44	$30.00	$1,213.44
Others	Single	$579.40	$8.34	$587.74	$544.40	$8.34	$552.74
	Family	$1,299.14	$30.00	$1,329.14	$1,183.44	$30.00	$1,213.44

Patient Protection and Affordable Care Act
The federal Patient Protection and Affordable Care Act impacts the State Employee Health Insurance Program by requiring large employers[5] to offer affordable[6] coverage that meets minimum standards to its full time employees.[7]

If the large employer fails to comply with the federal law, various penalties and assessments may be levied. If the employer fails to offer affordable coverage to its full-time employees, the employer may be assessed a $3,000 annual penalty for each full-time employee who enrolls in an exchange and receives a federal subsidy. If the employer fails to offer any coverage to all or a portion of its employees and any of its full-time employees enroll in an exchange and receive a subsidy, the employer may be assessed a $2,000 annual penalty for each full-time employee (regardless of whether the employee was offered coverage or not).

The Self-Insurance Estimating Conference (Conference) has reviewed the potential impacts that the Patient Protection and Affordable Care Act may have on the State Employee Health Insurance Program.
Two key provisions in the current Florida law cause some concern regarding the potential imposition of penalties for noncompliance with the federal law. Those provisions relate to the prohibition on persons paid from other-personal-services (OPS) funds from participating in the State Employee Health Insurance Program and the requirement that part-time employees pay a prorated share of the premium contribution that the employer would otherwise pay.

In terms of the OPS limitation, the Conference determined that the state may be subject to $321.8 million penalty annually if the current law prohibition continued for OPS employees working an average of 30 or more hours per week. The Conference also determined that offering the

[4] Section 8(3) of chapter 2012-118, Laws of Florida.
[5] For purposes of this discussion, "large employer" means any employer that employed at least an average of 50 fulltime employees on business days during the preceding year. See 26 U.S.C. s. 4980H.
[6] The insurance must pay at least 60% of the cost of the covered health care expenses, and the premium paid by the employee may not exceed 9.5% of the employee's income earned from the employer. See Notice 2011-73 from the Internal Revenue Service.
[7] Any employee who works more than an average of 30 hours per week is deemed to be a full-time employee. See 26 U.S.C. s. 4980H.

employees coverage and a premium structure identical to current permanent full-time employees would generate an additional $33.48 million in contributions and an additional $35.60 million in expenses for the Trust Fund in FY 2013-14.[8] A major portion of the additional revenues would come from premiums paid by state agencies and universities.

In terms of the "proration" issue, no new revenues or expenses would be realized by the Trust Fund. Rather, costs would be shifted from the employees (currently paying a portion of the state premium) to the state agencies and universities (prospectively paying the full state contribution for any employee working 30 or more hours). This cost shift is estimated to be roughly $0.4 million in FY 2013-14.[9]

III. Effect of Proposed Changes:

Section 1 amends s. 110.123, F.S., to redefine the terms "full-time state employees" and "part-time state employees" so that persons paid from OPS funds and working, or expected to be working, an average of 30 or more hours per week will be eligible to participate in the State Group Health Insurance Program. In addition, part-time permanent employees who work an average of 30 or more hours per week will not have to pay a portion of the state health insurance premium otherwise paid by the employer. The bill also extends the authority for the state to continue to contribute to participants' health savings accounts. Beginning in FY 2014-15, the amount to be contributed by the state will be set in the annual general appropriations act. The bill requires that employers participating in the program to submit certain information relating to employees paid from other-personal-services funds to ensure compliance with the federal law.

Section 2 reenacts s. 110.12315, F.S., to save the current language contained in paragraph (2)(b) from reverting to the text that existed on June 30, 2011, and save the current language contained in paragraph (7)(a) from reverting to the text that existed on December 31, 2010.

Section 3 repeals section 53 of chapter 2012-119, Laws of Florida, to eliminate the direction to revert the language of s. 110.12315, F.S., to prior text.

Section 4 amends s. 110.131, F.S., to authorize certain other-personal-services employees to participate in the state group insurance program.

This bill takes effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[8] Impact on the State Health Insurance Program of the Patient Protection and Affordable Care Act, adopted February 28, 2013, by the Self-Insurance Estimating Conference, page 7.
[9] Id., at page 8.

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 State Employee Health Insurance Trust Fund is expected to experience $33.5 million of additional revenues and $35.6 million of additional expenses in FY 2013-14.

State agencies and universities participating in the State Group Health Insurance Program are expected to incur roughly $36 million in new premium costs during FY 2013-14.

Employers participating in the State Group Insurance Program may incur additional costs in reporting information to the Department of Management Services relating to employees paid from other-personal-services funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/21/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 26 - 86
and insert:
Section 1. Effective January 1, 2014, paragraphs (c) and (f) of subsection (2), paragraph (g) of subsection (3), paragraph (d) of subsection (4), and paragraph (a) of subsection (12) of section 110.123, Florida Statutes, are amended to read:
110.123 State group insurance program.—
(2) DEFINITIONS.—As used in this section, the term:
(c) "Full-time state employees" means ~~includes all full-time~~ employees of all branches or agencies of state government

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13 holding salaried positions, who are ~~and~~ paid by state warrant or
14 from agency funds, and who work or are expected to work an
15 average of at least 30 hours per week; ~~and~~ employees paid from
16 regular salary appropriations for 8 months' employment,
17 including university personnel on academic contracts; and~~, but~~
18 ~~in no case shall "state employee" or "salaried position" include~~
19 persons paid from other-personal-services (OPS) funds as
20 described in subparagraphs 1. and 2. "Full-time state employees"
21 includes all full-time employees of the state universities.
22 1. For persons employed before January 1, 2014, the term
23 includes persons paid from other-personal-services (OPS) funds
24 who worked at least an average of 30 hours per week from April
25 1, 2013, through September 30, 2013.
26 2. For persons employed on or after January 1, 2014, the
27 term includes persons paid from other-personal-services (OPS)
28 funds who:
29 a. Have worked an average of at least 30 hours per week
30 during a specified 12 calendar-month period; or
31 b. Are reasonably expected to work an average of at least
32 30 hours per week during the initial 12 calendar months
33 following the commencement of their employment.
34 (f) "Part-time state employee" means an ~~any~~ employee of any
35 branch or agency of state government paid by state warrant from
36 salary appropriations or from agency funds, and who is employed
37 for less than an average of 30 hours per week ~~the normal full-~~
38 ~~time workweek established by the department~~ or, if on academic
39 contract or seasonal or other type of employment which is less
40 than year-round, is employed for less than 8 months during any
41 12-month period, but does not ~~in no case shall "part-time"~~

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42 ~~employee~~ include a person paid from other-personal-services
43 (OPS) funds. “Part-time state employee” includes any part-time
44 employee of the state universities.
45 (3) STATE GROUP INSURANCE PROGRAM.—
46 (g) Participation by individuals in the program is
47 available to all state officers, full-time state employees, and
48 part-time state employees~~;~~ and ~~such participation in the program~~
49 ~~or any plan~~ is voluntary. Participation in the program is also
50 available to retired state officers and employees~~, as defined in~~
51 ~~paragraph (2)(g),~~ who elect at the time of retirement to
52 continue coverage under the program, but ~~they~~ may elect to
53 continue all or only part of the coverage they had at the time
54 of retirement. A surviving spouse may elect to continue coverage
55 only under a state group health insurance plan, a TRICARE
56 supplemental insurance plan, or a health maintenance
57 organization plan.
58 1. Full-time state employees described in subsection
59 (2)(c)1. are eligible for health insurance coverage in calendar
60 year 2014 as long as they remain employed by an employer
61 participating in the state group insurance program during the
62 year. This subparagraph expires December 31, 2014.
63 2. Employees paid from other-personal-services (OPS) funds
64 are not eligible for coverage before January 1, 2014.
65 (4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE; LIMITATION
66 ON ACTIONS TO PAY AND COLLECT PREMIUMS.—
67 (d) The state contribution for health insurance coverage
68 for a part-time ~~permanent~~ state employee who elects to
69 participate in the program shall be prorated so that the amount
70 of the cost contributed for the part-time permanent employee

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71 bears the same ~~that~~ relation to the amount of cost contributed
72 for a similar full-time employee that the part-time employee's
73 normal workday bears to a full-time employee's normal workday.
74
75 Delete line 153
76 and insert:
77 Section 5. Except as otherwise expressly provided in this
78 act, this act shall take effect July 1, 2013.
79
80 ========== T I T L E A M E N D M E N T ==========
81 And the title is amended as follows:
82 Delete lines 8 - 11
83 and insert:
84 group insurance program; revising provisions
85
86 Delete lines 21 - 22
87 and insert:
88 group health insurance program; providing effective
89 dates.

283766

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/21/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with directory and title amendments)**
2
3 Between lines 109 and 110
4 insert:
5 (13) OTHER-PERSONAL-SERVICES EMPLOYEES (OPS).—
6 (a) Each agency or other entity that participates in the
7 state group insurance program shall provide information to the
8 department on each of its employees regardless of whether the
9 employee participates in the program. Such information must
10 include the name of the employee, number of hours worked by the
11 employee, and any other information determined by the department
12 to be necessary to determine the eligibility of the employee to

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13 participate in the program. Such information shall be submitted
14 as prescribed by the department.
15 (b) Each agency or other entity that participates in the
16 state group insurance program shall identify any of its
17 employees paid from OPS funds or similar funds who are employed
18 by another agency or entity participating in the state group
19 insurance program.
20
21 ====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
22 And the directory clause is amended as follows:
23 Delete line 28
24 and insert:
25 (12) of section 110.123, Florida Statutes, are amended, and
26 subsection (13) is added to that section, to read:
27
28 ================ T I T L E A M E N D M E N T ================
29 And the title is amended as follows:
30 Delete line 13
31 and insert:
32 savings accounts; requiring each agency or entity that
33 participates in the program to provide information
34 about its employees which is necessary to determine
35 eligibility for the program; reenacting s.
36 110.12315(2)(b) and

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-02500B-13 20137120__

A bill to be entitled

An act relating to state employee health insurance; amending s. 110.123, F.S.; modifying the terms "full-time state employee" and "part-time state employee" for the purposes of expressly excluding persons paid from other-personal-services funds who work less than a certain number of hours per week from the state group insurance program; applying certain hourly limitations on the calculation of the state's contribution for the health insurance coverage of part-time permanent employees; revising provisions relating to employer contributions to employee health savings accounts; reenacting s. 110.12315(2)(b) and (7)(a), F.S., relating to the state employee's prescription drug program; repealing s. 53 of chapter 2012-119, Laws of Florida, relating to the reversion of certain state employee's prescription drug provisions to those in previous existence; amending s. 110.131, F.S.; providing that OPS employees working 30 hours or more per week may be eligible for the state group health insurance program; providing an effective date.

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

Section 1. Paragraphs (c) and (f) of subsection (2), paragraph (d) of subsection (4), and paragraph (a) of subsection (12) of section 110.123, Florida Statutes, are amended to read:

110.123 State group insurance program.—

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

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(2) DEFINITIONS.—As used in this section, the term:

(c) "Full-time state employees" includes all full-time employees of all branches or agencies of state government holding salaried positions and paid by state warrant or from agency funds, and employees paid from regular salary appropriations for 8 months' employment, including university personnel on academic contracts~~, but in no case shall "state employee" or "salaried position" include persons paid from other personal services (OPS) funds~~. "Full-time employees" includes all full-time employees of the state universities.

1. Until December 31, 2013, the term does not include persons paid from other-personal-services (OPS) funds.

2. Beginning January 1, 2014, the term does not include persons paid from other-personal-services (OPS) funds who have worked less than an average of 40 hours per week during the past 12 calendar months or who are reasonably expected to work less than an average of 40 hours per week during the 12 calendar months following his or her employment.

(f) "Part-time state employee" means any employee of any branch or agency of state government paid by state warrant from salary appropriations or from agency funds, and who is employed for less than the normal full-time workweek established by the department or, if on academic contract or seasonal or other type of employment which is less than year-round, is employed for less than 8 months during any 12-month period~~, but in no case shall "part-time" employee include a person paid from other-personal-services (OPS) funds~~. "Part-time state employee" includes any part-time employee of the state universities.

1. Until December 31, 2013, the term does not include a

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59 person paid from other-personal-services (OPS) funds.
60 2. Beginning January 1, 2014, the term does not include
61 persons paid from other-personal-services (OPS) funds who have
62 worked less than an average of 30 hours per week during the past
63 12 calendar months or who are reasonably expected to work less
64 than an average of 30 hours per week during the 12 calendar
65 months following his or her employment.
66 (4) PAYMENT OF PREMIUMS; CONTRIBUTION BY STATE; LIMITATION
67 ON ACTIONS TO PAY AND COLLECT PREMIUMS.—
68 (d) The state contribution for health insurance coverage
69 for a part-time permanent state employee who elects to
70 participate in the program:
71 1. Before December 31, 2013, shall be prorated so that the
72 amount of the cost contributed for the part-time permanent
73 employee bears the same ~~that~~ relation to the amount of cost
74 contributed for a similar full-time employee that the part-time
75 employee's normal workday bears to a full-time employee's normal
76 workday.
77 2. On or after January 1, 2014, who elects to participate
78 in the program and who has worked less than an average of 30
79 hours per week during the past 12 calendar months or who is
80 reasonably expected to work less than an average of 30 hours per
81 week during the 12 calendar months following his or her
82 employment, shall be prorated so that the amount of the cost
83 contributed for the part-time permanent employee bears the same
84 relation to the amount of cost contributed for a similar full-
85 time employee that the part-time employee's normal workday bears
86 to a full-time employee's normal workday.
87 (12) HEALTH SAVINGS ACCOUNTS.—The department is authorized

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

88 to establish health savings accounts for full-time and part-time
89 state employees in association with a health insurance plan
90 option authorized by the Legislature and conforming to the
91 requirements and limitations of federal provisions relating to
92 the Medicare Prescription Drug, Improvement, and Modernization
93 Act of 2003.
94 (a)~~1.~~ A member participating in this health insurance plan
95 option is eligible to:
96 1. Receive an employer contribution into the employee's
97 health savings account from the State Employees Health Insurance
98 Trust Fund in an amount to be determined by the Legislature. A
99 member is not eligible for an employer contribution upon
100 termination of employment. For the 2013-2014 ~~2012-2013~~ fiscal
101 year, the state's monthly contribution for employees having
102 individual coverage shall be $41.66 and the monthly contribution
103 for employees having family coverage shall be $83.33. For the
104 2014-2015 fiscal year and thereafter, the state's contribution
105 from the trust fund into the member's health savings account
106 shall be set in the annual General Appropriations Act.
107 2. ~~A member participating in this health insurance plan~~
108 ~~option is eligible to~~ Deposit the member's own funds into a
109 health savings account.
110 Section 2. Paragraph (b) of subsection (2) and paragraph
111 (a) of subsection (7) of section 110.12315, Florida Statutes, as
112 amended by section 52 of chapter 2012-119, Laws of Florida, are
113 reenacted to read:
114 110.12315 Prescription drug program.—The state employees'
115 prescription drug program is established. This program shall be
116 administered by the Department of Management Services, according

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

117 to the terms and conditions of the plan as established by the
118 relevant provisions of the annual General Appropriations Act and
119 implementing legislation, subject to the following conditions:
120 (2) In providing for reimbursement of pharmacies for
121 prescription medicines dispensed to members of the state group
122 health insurance plan and their dependents under the state
123 employees' prescription drug program:
124 (b) There shall be a 30-day supply limit for prescription
125 card purchases and 90-day supply limit for mail order or mail
126 order prescription drug purchases. The Department of Management
127 Services may implement a 90-day supply limit program for certain
128 maintenance drugs as determined by the department at retail
129 pharmacies participating in the program if the department
130 determines it to be in the best financial interest of the state.
131 (7) Under the state employees' prescription drug program
132 copayments must be made as follows:
133 (a) Effective January 1, 2012, for the State Group Health
134 Insurance Standard Plan:
135 1. For generic drug with card.....$7.
136 2. For preferred brand name drug with card.....$30.
137 3. For nonpreferred brand name drug with card.....$50.
138 4. For generic mail order drug.....$14.
139 5. For preferred brand name mail order drug.....$60.
140 6. For nonpreferred brand name mail order drug.....$100.
141 Section 3. Section 53 of chapter 2012-119, Laws of Florida,
142 is repealed.
143 Section 4. Subsection (5) is added to section 110.131,
144 Florida Statutes, to read:
145 110.131 Other-personal-services employment.—

146 (5) Beginning January 1, 2014, an other-personal-services
147 (OPS) employee who has worked an average of 30 or more hours per
148 week during the past 12 calendar months or who is reasonably
149 expected to work an average of 30 or more hours per week during
150 the 12 calendar months following his or her employment is
151 eligible to participate in the state group insurance program as
152 provided under s. 110.123.
153 Section 5. This act shall take effect July 1, 2013.

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 1142

INTRODUCER: Senator Gibson

SUBJECT: Small Business Participation in State Contracting

DATE: March 13, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Pre-meeting**
2.			CM	
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

SB 1142 requires state executive branch agencies to award 35 percent of their annual contracting to small businesses, and requires that subcontractors on every contract awarded pursuant to s. 287.057, F.S., must be a small business subcontractor. The bill also prohibits contract bundling, provides relevant definitions, and creates reporting requirements.

This bill creates section 287.0577 of the Florida Statutes.

II. Present Situation:

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services.[2] Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

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

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

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

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

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

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or state agencies.[6]

Existing Small Business Efforts

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

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

Section 287.0947, F.S., specifies that the Secretary of DMS may create the Florida Advisory Council on Small and Minority Business Development with the purpose of advising and assisting the secretary in carrying out the secretary's duties with respect to minority businesses and economic and business development. The council must meet at the call of its chair, at the request of a majority of its membership, at the request of the commission or its executive administrator,

[3] *See* ss. 287.012(6) and 287.057, F.S.
[4] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[5] *See* s. 287.057(3)(f), F.S.
[6] *See* ss. 287.042(2)(c) and 120.57(3), F.S.

or at such times as may be prescribed by rule, but not less than once a year, to offer its views on issues related to small and minority business development of concern to this state.

The powers and duties of the council include, but are not limited to: researching and reviewing the role of small and minority businesses in the state's economy; reviewing issues and emerging topics relating to small and minority business economic development; studying the ability of financial markets and institutions to meet small business credit needs and determining the impact of government demands on credit for small businesses; assessing the implementation of a state economic development comprehensive plan, as it relates to small and minority businesses; assessing the reasonableness and effectiveness of efforts by any state agency or by all state agencies collectively to assist minority business enterprises; and advising the Governor, the secretary, and the Legislature on matters relating to small and minority business development which are of importance to the international strategic planning and activities of this state. The council must present an annual report[7] to the secretary that sets forth in appropriate detail the business transacted by the council during the year and any recommendations to the secretary, including those to improve business opportunities for small and minority business enterprises.

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

Performance Bond Requirements

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

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

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

[7] The annual reports are available on the world-wide web at: http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/small_and_minority_business_council/annual_report

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

III. Effect of Proposed Changes:

The bill creates section 287.0577, F.S., which addresses small business participation in state contracting, contract bundling, set-asides for small businesses, and bonding and reporting requirements.

Definitions

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

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

The term includes any such business entity organized as any legal entity.

Bundling

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

Set-asides

The bill requires an agency to annually award to small businesses, either directly or indirectly as subcontractors, at least 35 percent of the total dollar amount of contracts awarded. Each contract awarded under s. 287.057, F.S., must require the vendor to use small businesses in the state as

subcontractors or subvendors. The percentage of funds, in terms of gross contract amount and revenues, that must be expended for subcontracting with small businesses in the state must be determined by the agency before the solicitation for the contract is issued; however, the contract may not allow a vendor to expend less than 35 percent of the gross contract amount for subcontracting with small businesses in the state.

Each contract must include specific requirements for the timely payment of subcontractors by the prime contractor and specific terms and conditions applicable if a prime contractor does not pay a subcontractor within the time limits specified in the contract. The bill also requires that payment from the owner and general contractor must be paid to subcontractors within 15 calendar days after receipt of a subcontractor's invoice and pay application.

Bonding

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

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

Reporting

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

This bill may increase the costs incurred by state agencies in contracting. The impacts are discussed below by topic.

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

In terms of the set asides to small businesses, state agencies may be required to conduct more procurements or require contractors to engage small businesses as subcontractors. With an increase in the number of procurements, the state agencies will incur greater costs. If the set aside thresholds are met through subcontracting, the overall costs of the services procured may increase as the aggregated profits and administrative costs of the contractors increase.

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

Some phrases in the bill, such as "not appropriate for award to a small business" in lines 36-37, and "dominant within the business entity's industry" on line 41, are not defined, which could lead to uncertainty in applying the definition of "contract bundling."

The bill doesn't provide for a single entity to confirm whether small businesses meet the definition supplied in the bill. As a result, individual agencies will need to make the determinations of whether a small business qualifies for the required set-asides. The Legislature may wish to consider whether it would be more efficient for a single entity to determine whether a business qualifies under the provisions of the bill, in order to avoid duplication of effort by businesses and agencies.

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

It is unclear whether lines 85-86 require the use of small vendors on all contracts, or only those contracts which would already use subcontractors.

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

VIII. 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.

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LEGISLATIVE ACTION

Senate	.	House
Comm: TP	.	
03/21/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

287.0577 Small business participation in state contracting; bundled contracts.—

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

(a) "Bundled contract" means the consolidation of contracts for the procurement of commodities or contractual services, at least part of which may be provided or performed by one or more

419636

13 small businesses, into a single contract that is not appropriate
14 for award to a small business as the prime contractor.
15 (b) "Small business" means a business entity organized for
16 profit that is independently owned and operated, that is not
17 dominant within the business entity's industry, and that:
18 1. Currently is, and for at least the previous 3 years has
19 been, domiciled in the state.
20 2. Has a workforce of 25 or fewer employees, including
21 independent contractors or other contractual personnel.
22 3. Has had, for at least the previous 3 years, average
23 annual gross sales that do not exceed the following:
24 a. For a contractor licensed under chapter 489, $3 million
25 per year.
26 b. For a sole proprietorship performing contractual
27 services within the scope of the proprietor's professional
28 license or certification, $500,000 per year.
29 c. For any other business entity, $1 million per year.
30 4. Currently has, and for at least the previous 3 years has
31 had, together with its affiliates, a net worth that does not
32 exceed $5 million. For a sole proprietorship, the net worth
33 limit of $5 million includes both personal and business
34 investments but does not include the proprietor's primary
35 residence.
36
37 The term includes any such business entity organized as any form
38 of corporation, partnership, limited liability company, sole
39 proprietorship, joint venture, association, trust, cooperative,
40 or other legal entity.
41 (2) An agency must accept as responsive a bid by a small

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42 business for a portion of a bundled contract.
43 Section 2. This act shall take effect July 1, 2013.
44
45 ========== T I T L E A M E N D M E N T ==========
46 And the title is amended as follows:
47 Delete everything before the enacting clause
48 and insert:
49 A bill to be entitled
50 An act relating to small business participation in
51 state contracting; creating s. 287.0577, F.S.;
52 defining the terms “bundled contract” and “small
53 business”; requiring state agencies to accept as
54 responsive a bid by a small business for a portion of
55 a bundled contract; providing an effective date.

By Senator Gibson

9-01035A-13 20131142__

A bill to be entitled

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

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

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

287.0577 Small business participation in state contracting;

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

9-01035A-13 20131142__

contract bundling; set-asides for small businesses; bonding and reporting requirements.—

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

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

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

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

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

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

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

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

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

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

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59 investments but does not include the proprietor's primary
60 residence.
61
62 The term includes any such business entity organized as any form
63 of corporation, partnership, limited liability company, sole
64 proprietorship, joint venture, association, trust, cooperative,
65 or other legal entity.
66 (2) CONTRACT BUNDLING; SOLICITATION.—
67 (a) An agency, to the maximum extent practicable, shall
68 structure agency contracts to facilitate competition by and
69 among small businesses in the state, taking all reasonable steps
70 to eliminate obstacles to their participation and avoiding the
71 unnecessary and unjustified contract bundling that may preclude
72 small businesses' participation as prime contractors.
73 (b) Before issuing a solicitation for a bundled contract,
74 an agency must conduct market research to determine whether
75 contract bundling is necessary and justified. If the agency
76 determines that contract bundling is necessary and justified,
77 the agency must include in the solicitation a written summary of
78 the agency's market research and a written analysis of the
79 research that explains why contract bundling is necessary and
80 justified.
81 (3) SET-ASIDES FOR SMALL BUSINESSES.—
82 (a) An agency shall annually award to small businesses,
83 either directly or indirectly as subcontractors, at least 35
84 percent of the total dollar amount of contracts awarded.
85 (b) Each contract awarded under s. 287.057 must require the
86 vendor to use small businesses in the state as subcontractors or
87 subvendors. The percentage of funds, in terms of gross contract

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

88 amount and revenues, that must be expended for subcontracting
89 with small businesses in the state shall be determined by the
90 agency before the solicitation for the contract is issued;
91 however, the contract may not allow a vendor to expend less than
92 35 percent of the gross contract amount for subcontracting with
93 small businesses in the state.
94 (c) Each contract must include specific requirements for:
95 1. The timely payment of subcontractors by the prime
96 contractor and specific terms and conditions applicable if a
97 prime contractor does not pay a subcontractor within the time
98 limits specified in the contract.
99 2. Payment from the owner and general contractor shall be
100 paid to subcontractors within 15 calendar days after receipt of
101 a subcontractor's invoice and pay application.
102 (4) BONDING REQUIREMENTS.—Notwithstanding any provision of
103 law, an agency, a general contractor, or a prime contractor may
104 not require a vendor to post a bid bond, performance bond, or
105 other surety for a contract that does not exceed $500,000. This
106 subsection does not apply to any requirement for posting a bond
107 pending the protest of a solicitation; the protest of a rejected
108 bid, proposal, or reply; or the protest of a contract award.
109 (5) REPORTING REQUIREMENTS.—The rules ombudsman in the
110 Executive Office of the Governor shall:
111 (a) Establish a system to measure and report the use of
112 small businesses in state contracting. This system shall
113 maintain information and statistics on small business
114 participation, awards, dollar volume of expenditures, and other
115 appropriate types of information to analyze progress in small
116 businesses access to state contracts and to monitor agency

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

117 compliance with this section. Such reporting must include, but
118 is not limited to, the identification of all subcontracts in
119 state contracting by dollar amount and by number of subcontracts
120 and identification of the use of small businesses as prime
121 contractors and subcontractors by dollar amounts of contracts
122 and subcontracts, number of contracts and subcontracts,
123 industry, and any conditions or circumstances that significantly
124 affected the performance of subcontractors. An agency shall
125 report its compliance with the reporting system at least
126 annually and at the request of the rules ombudsman in the
127 Executive Office of the Governor. All agencies shall cooperate
128 with the rules ombudsman in the Executive Office of the Governor
129 in establishing this reporting system.
130 (b) Report agency compliance with paragraph (a) for the
131 preceding fiscal year to the Governor and Cabinet, the President
132 of the Senate, the Speaker of the House of Representatives, and
133 the rules ombudsman in the Executive Office of the Governor on
134 or before February 1 of each year. The report must contain, at a
135 minimum, the following:
136 1. Total expenditures of each agency by industry.
137 2. The dollar amount and percentage of contracts awarded to
138 small businesses by each state agency.
139 3. The dollar amount and percentage of contracts awarded
140 indirectly to small businesses as subcontractors by each state
141 agency.
142 4. The total dollar amount and percentage of contracts
143 awarded to small businesses, whether directly or indirectly as
144 subcontractors.
145 Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/13
Meeting Date

Topic: Small Business Contracting

Bill Number: SB 1142 *(if applicable)*

Name: David Cruz

Amendment Barcode: _____ *(if applicable)*

Job Title: Legislative Advocate

Address: P.O. Box 1757
Street

Tally, FL 32302
City *State* *Zip*

Phone: 701-3676

E-mail: _____

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

Representing: Florida League of Cities

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
9th District

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Communications, Energy, and Public Utilities
Criminal Justice
Regulated Industries

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

RECEIVED
MAR 0 6 2013
GOVERNMENTAL OPERATIONS

March 5, 2013

Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Ring Jeremy

I respectfully request that SB 1142, relating to Small Business Participation in State Contracting, be placed on the next committee agenda.

SB 1142, will require agencies to eliminate obstacles of small business participation and avoid unnecessary and unjustified contract bundling that may preclude small business participation as prime contractors.

Thank you for your time and consideration.

Sincerely,

Audrey

Audrey Gibson
State Senator
District 9

REPLY TO:
❒ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553 FAX: (904) 359-2532
❒ 205 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 134

INTRODUCER: Governmental Oversight and Accountability Committee, Education Committee and Senator Ring

SUBJECT: Meetings of District School Boards

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	**Fav/CS**
2.	Naf	McVaney	GO	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 134 amends requirements for meetings of district school boards.

Current law provides certain requirements for district school board meetings but does not require that they be held at a specific time of day.

This bill requires each district school board to convene at least one regular meeting each quarter within a school year during the evening hours. It further requires each district school board to create written criteria for deciding when to convene such meetings.

The bill specifies circumstances in which a district school board is deemed to be in compliance with the new requirements.

This bill amends section 1001.372 of the Florida Statutes.

II. Present Situation:

General Public Meetings Requirements

Florida Constitution
The Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or of any collegial body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.[1]

Sunshine Law
The Sunshine Law requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken, to be open to the public at all times.[2] For each such public meeting, a board or commission must:

- Provide reasonable notice of the meeting;[3] and
- Promptly record minutes of the meeting.[4]

District School Boards

Generally
The Florida Constitution requires that each county form a school district, and that each school district be governed by a school board composed of five or more members.[5] Each school board is responsible for the operation, control, and supervision of all free public schools within the school district.[6]

Meeting Requirements
In addition to general access and notice requirements, meetings of district school boards are subject to more specific provisions, including frequency requirements. Each district school board must:

- Hold at least one regular meeting each month for the transaction of business according to a schedule arranged by the district school board.
- Convene in special sessions when called by the district school superintendent or by the district school superintendent on request of the chair of the district school board, or on request of a majority of the members of the school board. If the district school superintendent fails to call a special meeting when requested to do so, such a meeting may be called by the chair of the district school board or by a majority of the members of the district school board by giving 2 days' written notice of the time and purpose of the meeting to all members and to the district school superintendent.

Times of day for district school board meetings, however, are not currently specified in law.

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[1] FLA. CONST., art. I, s. 24(b).
[2] Section 286.011(1), F.S.
[3] *Id*.
[4] Section 286.011(2), F.S.
[5] FLA. CONST., art. IX, s. 4(a).
[6] FLA. CONST., art. IX, s. 4(b).

III. Effect of Proposed Changes:

The bill requires each district school board to convene at least one regular meeting each quarter within a school year during the evening hours. The bill does not define "each quarter within a school year" or "evening hours;" rather, it requires each district school board to create written criteria for deciding when to convene a quarterly meeting during the evening hours.

The bill specifies that a district school board is deemed to be in compliance with the new requirements if it maintains, and operates in accordance with, a policy that requires the portion of a regular meeting that is open to public comment to begin no earlier than 4:30 p.m.

The bill also reorganizes and makes clarifying, non-substantive drafting changes to the provisions governing the convening of special sessions.

The bill's effective date is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

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:

District school boards that do not already hold at least one evening meeting a quarter may incur indeterminate costs as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Governmental Oversight and Accountability on March 21, 2013:
The CS/CS differs from the CS in that it specifies circumstances in which a district school board is deemed to be in compliance with the new requirements.

CS by Education on February 19, 2013:
The CS differs from the original bill in that it:

- Provides that the district school board must "convene" the meeting instead of "conduct" it to clarify the time period during which the meeting must begin.
- Does not allow such meeting to be convened either "after school hours" or "during the evening hours;" instead, the meeting may only be convened "during the evening hours."

B. Amendments:

None.

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

848934

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete line 22
4 and insert:
5 evening hours. A district school board is deemed to be in
6 compliance with this paragraph if it maintains, and operates in
7 accordance with, a policy that requires the portion of a regular
8 meeting that is open to public comment to begin no earlier than
9 4:30 p.m.
10
11 ========== T I T L E A M E N D M E N T ==========
12 And the title is amended as follows:

848934

13 Delete line 7
14 and insert:
15 meeting; providing that a district school board is
16 deemed to be in compliance under certain
17 circumstances; providing an effective date.

858128

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/22/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 48 and 49
insert:
Section 2. Subsection (8) is added to section 1001.41, Florida Statutes, to read:
1001.41 General powers of district school board.—The district school board, after considering recommendations submitted by the district school superintendent, shall exercise the following general powers:
(8) Make requests at a regular or special meeting of the district school board or to the superintendent or his or her

858128

13 designee to research issues pertaining to the efficient
14 operation and general improvement of the district school system.
15 Section 3. Subsection (15) of section 1001.51, Florida
16 Statutes, is amended to read:
17 1001.51 Duties and responsibilities of district school
18 superintendent.—The district school superintendent shall
19 exercise all powers and perform all duties listed below and
20 elsewhere in the law, provided that, in so doing, he or she
21 shall advise and counsel with the district school board. The
22 district school superintendent shall perform all tasks necessary
23 to make sound recommendations, nominations, proposals, and
24 reports required by law to be acted upon by the district school
25 board. All such recommendations, nominations, proposals, and
26 reports by the district school superintendent shall be either
27 recorded in the minutes or shall be made in writing, noted in
28 the minutes, and filed in the public records of the district
29 school board. It shall be presumed that, in the absence of the
30 record required in this section, the recommendations,
31 nominations, and proposals required of the district school
32 superintendent were not contrary to the action taken by the
33 district school board in such matters.
34 (15) COOPERATE WITH DISTRICT SCHOOL BOARD.—Cooperate with
35 the district school board in every manner practicable to the end
36 that the district school system may continuously be improved.
37 The superintendent or his or her designee shall accept a school
38 board member’s request to research issues pertaining to the
39 efficient operation and general improvement of the district
40 school system.
41

858128

42 ========== T I T L E A M E N D M E N T ==========
43 And the title is amended as follows:
44 Delete lines 2 - 7
45 and insert:
46 An act relating to district school boards; amending s.
47 1001.372, F.S.; requiring district school boards to
48 convene at least one regular meeting each quarter
49 during a school year during the evening hours and to
50 create written criteria for convening such a meeting;
51 amending s. 1001.41, F.S.; revising the general powers
52 of a district school board; amending s. 1001.51, F.S.;
53 revising the duties and responsibilities of a
54 superintendent; providing an effective date.

By the Committee on Education; and Senator Ring

581-01706-13 2013134c1

A bill to be entitled

An act relating to meetings of district school boards; amending s. 1001.372, F.S.; requiring district school boards to convene at least one regular meeting each quarter during a school year during the evening hours and to create written criteria for convening such a meeting; providing an effective date.

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

Section 1. Subsection (1) of section 1001.372, Florida Statutes, is amended to read:

1001.372 District school board meetings.—

(1) REGULAR AND SPECIAL MEETINGS.—

(a) The district school board shall hold not less than one regular meeting each month for the transaction of business according to a schedule arranged by the district school board. The district school board shall convene at least one regular meeting each quarter within a school year during the evening hours. The district school board shall create written criteria for deciding when to convene a quarterly meeting during the evening hours.

(b) The district school board ~~and~~ shall convene in a special meeting ~~sessions~~ when called by the district school superintendent or by the district school superintendent on request of the chair of the district school board, or on request of a majority of the members of the district school board. If the district school superintendent does not call a special meeting when requested to do so, as prescribed in this

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

581-01706-13 2013134c1

paragraph, such a meeting may be called by the chair of the district school board or by a majority of the members of the district school board by giving 2 days' written notice of the time and purpose of the meeting to all members and to the district school superintendent. An action~~; provided that actions~~ taken at a special meeting has ~~meetings shall have~~ the same force and effect as if taken at a regular meeting, and~~;~~ ~~and provided further that in the event the district school superintendent should fail to call a special meeting when requested to do so, as prescribed herein, such a meeting may be called by the chair of the district school board or by a majority of the members of the district school board by giving 2 days' written notice of the time and purpose of the meeting to all members and to the district school superintendent, in which event~~ the minutes of the meeting must ~~shall~~ set forth the facts regarding the procedure in calling the meeting and the reason the meeting was called. The minutes must ~~therefor and shall~~ be signed ~~either~~ by the chair or by a majority of the members of the district school board.

Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/2013
Meeting Date

Topic: Meeting of District School Boards

Bill Number: SB 134 *(if applicable)*

Name: William F. Hutchinson III

Amendment Barcode: 581-01706-13 *(if applicable)*

Job Title: Retired School Volunteer

Address: 123 Dallas St.
Street

Avon Park, FL 33825
City *State* *Zip*

Phone: 863-381-5034

E-mail: pep317@GMail.com

Speaking: ☐ For ☐ Against ☑ Information

Representing: N/A

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

I am Not a Lobbyist

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7124

INTRODUCER: For consideration by the Committee on Governmental Oversight and Accountability

SUBJECT: OGSR/Employment Discrimination Complaints

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney		**Submitted as committee bill**
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7124 is the result of an Open Government Sunset Review by the Governmental Oversight and Accountability Committee.

Current law provides a temporary public records exemption for all complaints and related records, held by any agency, that relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with certain hiring and employment practices. This part of the exemption expires when one of specified conditions occurs.

When the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public disclosure requirements. This part of the exemption does not expire.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2013, unless reenacted by the Legislature. This bill reenacts the exemption and makes clarifying changes.

The bill does not expand the scope of the public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

This bill amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Laws

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

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

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] It

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the

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

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[13]

The Act also requires specified questions to be considered during the review process.[14]

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[15] A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception[16] to the exemption is created.[17]

Employment Discrimination

State law prohibits employment discrimination on the basis of race, color, religion, national origin, sex, handicap, or marital status.[18] Most of the state and local agencies that responded to

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Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

[11] Section 119.15(3), F.S.

[12] Section 119.15(6)(b), F.S.

[13] *Id*.

[14] Section 119.15(6)(a), F.S. The specified questions are:

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

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

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

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

[18] Section 760.10, F.S.

questionnaires sent pursuant to the Open Government Sunset Review indicated that they have a process for receiving, processing, and investigating complaints of employment discrimination.[19]

Florida Commission on Human Relations

The Florida Commission on Human Relations (commission) is an independent commission tasked with promoting and encouraging fair treatment and equal opportunity for all persons and mutual understanding and respect among economic, social, racial, religious, and ethnic groups.[20] Among its specified duties is that the commission must receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging a discriminatory practice.[21]

Public Records Exemption under Review

Current law provides a public records exemption for all complaints and other records in the custody of any agency[22] which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities.[23] The exemption expires when:

- A finding is made relating to probable cause;
- The investigation of the complaint becomes inactive; or
- The complaint or any other records is made part of the official record of any hearing or court proceeding.[24]

The exemption specifies that:

- It shall not affect any function or activity of the Florida Commission on Human Relations; and
- Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.[25]

In addition, when the alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from public records disclosure requirements.[26] The exemption does not authorize the release of such records.

Professional staff of the Governmental Oversight and Accountability Committee conducted a review of the exemption pursuant to the Open Government Sunset Review Act and sent questionnaires to state and local agencies regarding their use of the exemption. Those agencies responding to the questionnaire indicated that there is a public necessity to continue to protect

[19] The questionnaire responses are on file with the Senate Governmental Oversight and Accountability Committee.
[20] Section 760.05, F.S.
[21] Section 760.06(5), F.S.
[22] The meaning of "agency" is as defined in s. 119.011(2), F.S. (*see* footnote 4).
[23] Section 119.071(2)(g)1.a., F.S.
[24] *Id*.
[25] Section 119.071(2)(g)1.b. and c., F.S.
[26] Section 119.071(2)(g)2., F.S.

the information, and recommended reenactment of the public records exemption under review. Their responses[27] appear to indicate that the exemption is necessary to preserve the effective and efficient administration of government investigations of employment discrimination complaints.

III. Effect of Proposed Changes:

The bill removes the repeal date, thereby reenacting the public records exemption for employment discrimination complaints.

The bill also makes clarifying drafting changes.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

This bill reenacts but does not expand the scope of an existing public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

[27] On file with the Senate Governmental Oversight and Accountability Committee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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.

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

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-02103D-13 20137124__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S., relating to a public records exemption for agency records concerning complaints of employment discrimination; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (g) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(g)1.~~a.~~ All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until a finding is made relating to probable cause, the investigation of the complaint becomes inactive, or the complaint or other record is made part of the official record of any hearing or court proceeding.

a.~~b.~~ This exemption does ~~provision shall~~ not affect any function or activity of the Florida Commission on Human

585-02103D-13 20137124__

Relations.

b.~~c.~~ Any state or federal agency that is authorized to have access to such complaints or records by any provision of law shall be granted such access in the furtherance of such agency's statutory duties.

2. If an ~~when the~~ alleged victim chooses not to file a complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

586578

585-02490-13

Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 292.055, F.S., which provides an exemption from public records requirements for any identifying information of a donor or prospective donor to the direct-support organization of the Department of Veterans' Affairs, and an exemption from public meetings requirements for portions of meetings at which the identity of a donor or prospective donor whose identity is confidential and exempt is discussed; removing superfluous language; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Subsection (9) of section 292.055, Florida Statutes, is amended to read:

292.055 Direct-support organization.—

(9) CONFIDENTIALITY OF DONORS.—

(a) Any information identifying ~~The identity of~~ a donor or prospective donor to the direct-support organization who desires to remain anonymous~~, and all information identifying such donor or prospective donor,~~ is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State

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Constitution.

(b) Portions of meetings of the direct-support organization during which the identity of a donor ~~donors~~ or prospective donor, whose identity is confidential and exempt pursuant to paragraph (a), ~~donors~~ is discussed are exempt from ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution.

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 474

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

SUBJECT: OGSR/Department of Veterans' Affairs/Direct-support Organization/Donor Information

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ryon	Ryon		**ms SPB 7002 as introduced**
2.	Naf	McVaney	GO	**Fav/CS**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 474 is the result of an Open Government Sunset Review performed by the Committee on Military Affairs, Space, and Domestic Security.

Current law[1] provides a public records exemption for personal identifying information of a donor or prospective donor to the direct-support organization to the Florida Department of Veterans' Affairs who desires to remain anonymous. It also provides a public meetings exemption for portions of meetings of the direct-support organization during which the identity of a donor or prospective donor is discussed. The exemptions are subject to review under the Open Government Sunset Review Act[2] and will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature.

[1] Section 252.055(9), F.S.
[2] Section 119.15, F.S.

The bill reenacts and makes drafting clarifications to the exemptions. The bill does not expand the scope of the exemptions; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

The bill amends section 292.055(9) of the Florida Statutes.

II. Present Situation:

Public Records and Meeting Requirements

The State Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or state, or received in connection with the official business of any public body, officer, or employee of the of persons acting on their behalf.[3] The records of the legislative, executive, and judicial branches are specifically included.[4] The State 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.[5]

In addition to the State Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act[6] guarantees every person's right to inspect and copy any state or local government public record[7] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] The Sunshine Law[9] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.[10]

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[3] FLA. CONST., art. I, s. 24(a).
[4] *Id*.
[5] FLA. CONST., art. I, s. 24(b).
[6] Chapter 119, F.S.
[7] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[8] Section 119.07(1)(a), F.S.
[9] Section 286.011, F.S.
[10] Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the State Constitution. That section requires the rules of procedure of each house to provide that:

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

Only the Legislature may create an exemption to public records or open meetings requirements.[11] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[12] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[13] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[14]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[15] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[16]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[17] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[18]

The Act also requires specified questions to be considered during the review process.[19]

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

[12] FLA. CONST., art. I, s. 24(c).

[13] The bill may, however, contain multiple exemptions that relate to one subject.

[14] FLA. CONST., art. I, s. 24(c).

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

[16] Section 119.15(3), F.S.

[17] Section 119.15(6)(b), F.S.

[18] *Id*.

[19] Section 119.15(6)(a), F.S. The specified questions are:

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

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[20] A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception[21] to the exemption is created.

The Florida Veterans Foundation

The 2008 Legislature authorized the establishment of a direct-support organization to provide assistance, funding, and support for the Florida Department of Veterans' Affairs (FDVA) in carrying out its mission of veterans' advocacy.[22] Section 292.055(2), F.S., calls on the direct-support organization to organize and operate exclusively to:

- Obtain funds;
- Request and receive grants, gifts, and bequests of moneys;
- Acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and
- Make expenditures to or for the benefit of the FDVA, Florida's veterans, and congressionally chartered veterans service organizations that have subdivisions that are incorporated in Florida.

The direct-support organization was incorporated as the Florida Veterans Foundation (FVF) in June 2008, and is governed by a voluntary board of directors appointed by the executive director of the FDVA.

The FVF's mission is to serve, support, and advocate for Florida veterans to improve their well-being. To achieve its mission, the FVF has identified the following goals that it aims to further with its charitable and educational programs and services:

- Keeping veterans in their homes safely and comfortably;
- Increasing a veteran's access to quality healthcare and benefits;
- Raising the public's awareness of psychological and neurological issues facing veterans;
- Reducing the stigma associated with seeking behavioral health treatment;
- Decreasing veterans suicide;
- Increasing veteran employment;
- Reducing chronic homelessness among veterans; and
- Providing justice-involved veterans an opportunity to receive treatment vice incarceration.[23]

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

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

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

[22] Chapter 2008-84, L.O.F.

[23] *See* Florida Veterans Foundation *Who We Are Brochure*. http://www.floridaveteransfoundation.org/DOCs/Who_We_Are_Brochure.pdf (last visited March 19, 2013).

For the first four years of its existence, the FVF relied upon a combination of state funding and charitable donations to carry out its mission. When the 2008 Legislature authorized the establishment of the FVF, it also created a short-term state funding source to support the organization. The Legislature entitled the FVF to a percentage of the annual revenue collected from the sale of the Florida Salutes Veterans license plate.[24] This allocation of state revenue expired on June 30, 2012, and served as a substantial revenue source for the FVF for four years.[25] Moving forward, the FVF will rely solely on charitable donations to carry out its functions.

The table below illustrates the annual revenue the FVF received from charitable donations and license plate fees since its inception.[26]

Table 1: Florida Veterans Foundation Annual Revenue Sources					
REVENUE SOURCE	**FISCAL YEAR**				**TOTAL**
	2008-09	**2009-10**	**2010-11**	**2011-12**	
Charitable Donations	$108,870	$54,124	$29,327	$205,136	$397,457
License Plate Fees	$68,052	$63,199	$26,644[27]	$23,325	$181,220
Total	$176,922	$117,323	$55,971	$228,461	$578,677

Current Exemption Under Review

Under s. 295.055(9), F.S., the following information held by the FVF is confidential and exempt from public records requirements:

- The identity of a donor or prospective donor to the foundation who wishes to remain anonymous; and
- All information identifying such donor or prospective donor.

In addition, portions of meetings of the FVF during which the identity of donors or prospective donors is discussed are exempt from public meetings requirements.

The exemptions are scheduled to expire on October 2, 2013, unless saved from repeal by the Legislature after a review under the Open Government Sunset Act.[28]

[24] For fiscal years 2008-09 and 2009-10, the FVF was entitled to 20 percent of the Florida Salutes Veterans license plate revenue (Ch. 2008-84, L.O.F.). For fiscal years 2010-11 and 2011-12, the percentage which FVF was entitled was reduced to 10 percent of the license plate revenue (Ch. 2010-168, L.O.F.).

[25] Additionally, s. 320.08058(73), F.S., entitles the FVF to 20 percent of the annual revenues collected from the sale of the Veterans of Foreign Wars license plate, following its development. The Veterans of Foreign Wars license plate has not yet been developed and FVF representatives anticipate minimal revenues from the sale of the license plate.

[26] Data in Table 1 obtained from FVF Annual Reports and e-mail correspondence with FVF staff.

[27] For FY 2011 and FY 2012, the Florida Department of Highway Safety and Motor Vehicles over-distributed license plate revenue totaling $29,872 to the FVF. As of Jan 13, 2012, the FVF had returned all of the over distribution. The license plate revenue amounts in the table represent the amount required by s. 320.08058(4), F.S., to be distributed to the FVF, not the actual amount that was erroneously distributed.

[28] Section 292.055(9)(c), F.S.

Senate professional staff of the Committee on Military Affairs, Space, and Domestic Security conducted a review of the exemptions in s. 292.055(9), F.S., as required by the Open Government Sunset Review Act.[29]

In response to questions posed by Senate professional staff, representatives of the FVF reported that as of July 2012:[30]

- No donors who have contributed to the FVF have requested anonymity; and
- The FVF has never received a request for personal information of individuals who have contributed to the FVF.

According to the FVF, although the FVF has not had the opportunity to utilize the exemptions, the exemptions are important to the success of the FVF's fundraising efforts.[31] The FVF recommends the Legislature reenact the exemptions in order to preserve competitiveness with other charitable organizations which have such an exemption.[32]

Representatives of the FVF provided the following circumstances to support reenactment of the exemptions:

- The FVF is now fully reliant upon the solicitation of charitable contributions to carry out its mission moving forward due to the recent discontinuation of state license plate revenue allocated to the FVF;[33]
- The FVF plans to enhance donation solicitation practices and find new and creative ways to enhance the public's awareness of the FVF to increase donations;[34] and
- As the FVF continues to become more well-known among the public, the veteran community, and government leaders, expectations of the FVF's abilities to provide quality services to Florida veterans have and will continue to increase.[35]

Based upon the Open Government Sunset Review of the exemption, professional staff of the Committee on Military Affairs, Space, and Domestic Security recommend the Legislature retain the exemptions established in s. 252.055(9), F.S. The exemptions for the identity of donors and potential donors to the FVF allows the FVF to effectively and efficiently secure charitable donations in order to fund the provision of quality services to veterans in Florida. To the extent that donors might be dissuaded from contributing to the FVF in the absence of the public records exemption, the ability of the FVF to raise funds might be limited.

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[29] Section 119.15, F.S.
[30] Senate Military Affairs, Space, and Domestic Security Committee staff meeting with John Haynes, FVF Chairman, and Jim Brodie, FDVA Legislative Affairs Director. July 19, 2012.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] Senate Military Affairs, Space, and Domestic Security Committee staff meeting with John Haynes, FVF Chairman, Barbara Radford, Executive Assistant to Chairman, and Jim Brodie, Legislative Affairs Director, FDVA. August 20, 2012.

III. Effect of Proposed Changes:

The bill deletes the Open Government Sunset Review repeal date, thereby continuing the exemptions for personal identifying information of donors or prospective donors to the Department of Veterans' Affairs direct-support organization.

The bill also clarifies that the public meetings exemption applies only to those portions of meetings at which the identity of a donor or prospective donor who wishes to remain anonymous as required by the public records exemption is discussed.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to affect county or municipal government.

B. Public Records/Open Meetings Issues:

The bill reenacts existing public records and meetings exemptions. The bill does not expand the scope of the exemptions; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 21, 2013:
The CS differs from the original bill in that it makes non-substantive drafting clarifications to the exemptions under review.

B. Amendments:

None.

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

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

583-01045-13 2013474__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 292.055, F.S., which provides an exemption from public records requirements for all identifying information of a donor or prospective donor to the direct-support organization of the Department of Veterans' Affairs, and an exemption from public meetings requirements for portions of meetings of the direct-support organization at which identifying information of a donor or prospective donor is discussed; saving the exemptions from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Subsection (9) of section 292.055, Florida Statutes, is amended to read:

292.055 Direct-support organization.—

(9) CONFIDENTIALITY OF DONORS.—

(a) The identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Portions of meetings of the direct-support organization during which the identity of a donor~~s~~ or prospective donor~~s~~ is discussed are exempt from ~~the provisions of~~ s. 286.011 and s.

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

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24(b), Art. I of the State Constitution.

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

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

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585-02493-13

Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., relating to an exemption from public records requirements for personal identifying information of an applicant or recipient of paratransit services; making clarifying changes; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Paragraph (h) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(h)1. Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency before, on, or after the effective date of this exemption.

3. Confidential and exempt personal identifying information shall be disclosed:

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a. With the express written consent of the applicant or recipient ~~individual~~ or the ~~individual's~~ legally authorized representative of such applicant or recipient;

b. In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient ~~individual~~;

c. By court order upon a showing of good cause; or

d. To another agency in the performance of its duties and responsibilities.

~~4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1768

INTRODUCER: Committee on Governmental Oversight and Accountability and Committee on Transportation

SUBJECT: OGSR/Personal Information/Paratransit Services

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Eichin		**tr SPB 7020 as introduced**
2.	Naf	McVaney	GO	**Fav/CS**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1768 is the result of an Open Government Sunset Review by the Transportation Committee.

Current law provides a public records exemption for personal identifying information of applications for, or recipients of, paratransit services. The exemption will repeal pursuant to the Open Government Sunset Review Act on October 2, 2013, unless reenacted by the Legislature. This bill reenacts the exemption and makes non-substantive drafting clarifications.

This bill does not expand the scope of the public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

This bill amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Laws

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

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

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] It

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the

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

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[13]

The Act also requires specified questions to be considered during the review process.[14]

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[15] A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception[16] to the exemption is created.[17]

Paratransit Services

The Americans with Disabilities Act (ADA) requires public entities operating non-commuter fixed route transportation services to provide paratransit[18] and other special transportation

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Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

[11] Section 119.15(3), F.S.

[12] Section 119.15(6)(b), F.S.

[13] *Id*.

[14] Section 119.15(6)(a), F.S. The specified questions are:

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

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

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

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

[18] Federal law defines "paratransit" to mean "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems" (49 C.F.R. § 37.3). Florida law defines "paratransit" to

services to individuals who are unable to use the fixed route system.[19] The United States Department of Transportation has issued regulations specifying circumstances under which such services should be provided, including requirements for state and local entities to administer a process for determining eligibility. Eligible recipients for such services include:

- Individuals unable to get on or off public transit without assistance;
- Individuals who use a wheelchair lift on public transportation but such transportation is not available when needed; and
- Disabled individuals with a specific impairment that prevents travel to a point of departure or travel from a disembarking location.[20]

Federal law also requires each state plan to provide Medicaid services to indicate that the Medicaid agency "will ensure necessary transportation for recipients to and from providers; and describe the methods that the agency will use to meet this requirement."[21] The Medicaid agency in Florida is the Agency for Health Care Administration (AHCA).

Florida law requires each agency that purchases transportation services for the transportation disadvantaged, including AHCA, to pay the rates established in the service plan or negotiated statewide contract, unless a more cost-effective method exists or if the community transportation coordinator (CTC) does not coordinate such services.[22] These services are referred to as Medicaid Non-Emergency Transportation Services.

The Commission for the Transportation Disadvantaged[23] (commission) manages such services.[24] The commission contracts with a CTC and a planning agency in each county to provide transportation services.[25] The local coordinating board[26] assists the CTC in establishing eligibility guidelines.[27] Applicants must submit an application that requires the disclosure of medical and disability information, among other information.[28]

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mean "those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and provider of the service; paratransit service is provided by taxis, limousines, "dial-a-ride," buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature (s. 427.011(9), F.S.).

[19] 49 C.F.R. § 37, Subpart F.

[20] 49 C.F.R. § 37.123.

[21] 42 C.F.R. § 431.53.

[22] *See* s. 427.0135, F.S.

[23] Part I of ch. 427, F.S., establishes the commission for the purpose of coordinating transportation services provided to the transportation disadvantaged and a goal of providing cost-effective transportation by qualified community transportation coordinators or operators. The commission is housed within the Department of Transportation and consists of seven members appointed by the Governor. In addition, a technical working group advises the commission on issues of importance to the state. Section 427.012, F.S.

[24] The commission has been providing transportation for AHCA under a fixed fee basis since 2004. The current multi-year contract between the commission and AHCA was executed in December 2008. *See "2012 Annual Performance Report,"* Florida Commission for the Transportation Disadvantaged, at page 13, available at http://www.dot.state.fl.us/ctd/docs/APR/2012/APR%202012%20Final.pdf (last visited March 17, 2013).

[25] *See* ss. 427.013 and 427.0155, F.S.

[26] The local coordinating board is appointed and staffed by the metropolitan planning organization or designated official planning agency, and oversees and annually evaluates the CT C (*see* the *"2012 Annual Performance Report"* referenced in footnote 24, at page 12).

[27] Sections 427.0155(7) and 427.0157(4), F.S.

[28] *See*, for example, the Lake County application, available at http://www.lakecountyfl.gov/pdfs/Community_Services/transportation_disadvantaged/aplication_for_paratransit_services.pd

Public Records Exemption Under Review

Current law provides that personal identifying information of an applicant for or a recipient of paratransit services, held by an agency, is confidential and exempt from public records requirements.[29] The confidential and exempt information must be disclosed:

- With the express written consent of the applicant or recipient, or the legally authorized representative of such applicant or recipient;
- In a medical emergency, but only to the extent that is necessary to protect the health or life of the applicant or recipient;
- By court order upon a showing of good cause; or
- To another agency in the performance of its duties and responsibilities.[30]

Pursuant to the Open Government Sunset Review Act, the public records exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

III. Effect of Proposed Changes:

This bill deletes the public records exemption's repeal date, thereby reenacting the public records exemption for personal identifying information of an applicant for or a recipient of paratransit services that is held by an agency.

The bill also makes non-substantive drafting clarifications to the exemption.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

This bill reenacts but does not expand the scope of an existing public records exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is *not* required for passage.

C. Trust Funds Restrictions:

None.

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f (last visited March 17, 2013), and the Collier Area application, available at http://www.colliergov.net/Modules/ShowDocument.aspx?documentid=39276 (last visited March 17, 2013).

[29] Section 119.071(5)(h)1., F.S.

[30] Section 119.071(5)(h)3., F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 21, 2013:
The CS differs from the original bill in that it makes non-substantive drafting clarifications to the public records exemption under review.

B. Amendments:

None.

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

By the Committee on Transportation

596-02061-13 20131768__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; deleting provisions relating to the future repeal of an exemption from public records requirements for certain personal identifying information of persons using paratransit services; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Paragraph (h) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(5) OTHER PERSONAL INFORMATION.—

(h)1. Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency before, on, or after the effective date of this exemption.

3. Confidential and exempt personal identifying information shall be disclosed:

a. With the express written consent of the individual or the individual's legally authorized representative;

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596-02061-13 20131768__

b. In a medical emergency, but only to the extent that is necessary to protect the health or life of the individual;

c. By court order upon a showing of good cause; or

d. To another agency in the performance of its duties and responsibilities.

~~4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JEFF BRANDES
22nd District

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

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

March 21, 2013

Senator Jeremy Ring, Chairman
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Ring:

I respectfully request that my legislative assistant Caitlin Murray be permitted to present my bill, SB 1768, regarding the OGSR/ Personal Information/ Paratransit Services, before the Governmental Oversight and Accountability Committee on Thursday, March 21th at 10:00 in my absence.

I appreciate your consideration of this request; please contact me should you have any questions or concerns.

Sincerely,

Jeff Brandes

CC: Joe McVaney

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

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 376

INTRODUCER: Senator Hays

SUBJECT: Public Records Exemption/Names of Spouses & Children of Law Enforcement & Other Specified Agency Personnel

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Fav/1 amendment**
2.	Naf	McVaney	GO	**Favorable**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	[ ]	Statement of Substantial Changes
B. AMENDMENTS.....	[X]	Technical amendments were recommended
	[ ]	Amendments were recommended
	[ ]	Significant amendments were recommended

I. Summary:

SB 376 expands an existing public records exemption for certain personal identification and location information for specified law enforcement personnel and their spouses and children to also protect the *names* of such spouses and children.

The expanded exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

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

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

This bill amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Laws

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

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

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

The Open Government Sunset Review Act[10] requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.[11] It further provides that a public records exemption may be created

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] Section 119.15, F.S.
[11] Section 119.15(3), F.S.

or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.[12]

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

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

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

Although there is some inconsistency among the types of information exempted,[14] all of the exemptions protect the following information:

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

Six of the exemptions protect the names of the following agency personnel's spouses and children:

- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad Litem;
- Department of Juvenile Justice direct-care personnel;

[12] Section 119.15(5)(b), F.S.
[13] Included in this category are the following: active or former sworn or civilian law enforcement personnel, including Department of Corrections officers and correctional probation officers, Department of Children and Families abuse and exploitation investigators, Department of Health child abuse investigators, and Department of Revenue collection and enforcement personnel.
[14] Some of the exemptions also protect photographs, dates of birth, and names of agency personnel and their spouses and children.

- Department of Business and Professional Regulation inspectors and investigators; and
- County tax collectors.

The exemption for active and former law enforcement personnel and their families does not protect the names of such personnel's spouses and children.

III. Effect of Proposed Changes:

The bill expands the public records exemption for personal identification and location information of active and former law enforcement officers and their spouses and children to also protect the *names* of the spouses and children.

The bill provides for repeal of the expanded portion of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Florida Constitution provides that no county or municipality may be bound by any general law that mandates it to spend funds or to take an action requiring the expenditure of funds unless the Legislature determines that such law fulfills an important state interest *and* one of specified other requirements is met.[15] Certain laws, including those with an insignificant fiscal impact, are exempt from the mandates restrictions of the section.[16]

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[15] Article VII, s. 18(a) of the Florida Constitution. The specified other requirements are:

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; *or*
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance. *Id*.

[16] Article VII, s. 18(d) of the Florida Constitution. Other laws that are exempt from the mandates requirements are:

- Laws adopted to require funding of pension benefits existing on the effective date of Art. VII, s. 18 of the Florida Constitution;
- Criminal laws;
- Election laws;
- The general appropriations act;
- Special appropriations acts;
- Laws reauthorizing but not expanding then-existing statutory authority; and
- Laws creating, modifying, or repealing noncriminal infractions. *Id*.

This bill may require counties and municipalities to take actions that may require the expenditure of funds. If so, the bill may be exempt if the fiscal impact is insignificant.

If the bill has a significant fiscal impact, it may still qualify for an exception if it contains a legislative finding that it fulfills an important state interest *and* meets one of the other specified requirements. The bill does not contain a finding that it fulfills an important state interest; however, it may meet one of the other specified requirements. The expanded exemption applies to state and local governments; therefore, the bill appears to apply to all persons similarly situated. The bill also could meet one of the other specified requirements by passing with a two-thirds vote of the membership of each house.[17]

B. Public Records/Open Meetings Issues:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. Because this bill expands a public records exemption, a two-thirds vote is required.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. Because this bill expands a public records exemption, it contains a public necessity statement.

Single Subject Requirement
Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill expands a public records exemption, it does not contain other substantive provisions.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including the names of spouses and children of specified agency personnel in the existing exemption that protects certain personal and identifying information. The public necessity statement provides that the exemption is necessary to protect those sworn and civilian law enforcement personnel and other specified investigative agency personnel who because of their job responsibilities often come into close contact with persons who want to harm them or their families. The public necessity statement further provides that the harm of releasing the names of spouses and children outweighs the public benefit of disclosing them.

[17] A two-thirds vote of the membership of each house requires a two-thirds vote of *all* members, not just of those present and voting.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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:

Barcode 366616 by Criminal Justice on February 19, 2013:
Clarifies that all law enforcement agency personnel that are specified in the current exemption are included in the bill's expanded protections.

By Senator Hays

11-00297C-13 2013376__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; creating an exemption from public records requirements for the names of the spouses and children of active or former sworn or civilian law enforcement personnel, including children and spouses of correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; providing for future review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular

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11-00297C-13 2013376__

telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families ~~Family Services~~ whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel identified in sub-sub-subparagraph a.(I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

b. The home addresses, telephone numbers, dates of birth,

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59 and photographs of firefighters certified in compliance with s.
60 633.35; the home addresses, telephone numbers, photographs,
61 dates of birth, and places of employment of the spouses and
62 children of such firefighters; and the names and locations of
63 schools and day care facilities attended by the children of such
64 firefighters are exempt from s. 119.07(1).
65 c. The home addresses, dates of birth, and telephone
66 numbers of current or former justices of the Supreme Court,
67 district court of appeal judges, circuit court judges, and
68 county court judges; the home addresses, telephone numbers,
69 dates of birth, and places of employment of the spouses and
70 children of current or former justices and judges; and the names
71 and locations of schools and day care facilities attended by the
72 children of current or former justices and judges are exempt
73 from s. 119.07(1).
74 d. The home addresses, telephone numbers, social security
75 numbers, dates of birth, and photographs of current or former
76 state attorneys, assistant state attorneys, statewide
77 prosecutors, or assistant statewide prosecutors; the home
78 addresses, telephone numbers, social security numbers,
79 photographs, dates of birth, and places of employment of the
80 spouses and children of current or former state attorneys,
81 assistant state attorneys, statewide prosecutors, or assistant
82 statewide prosecutors; and the names and locations of schools
83 and day care facilities attended by the children of current or
84 former state attorneys, assistant state attorneys, statewide
85 prosecutors, or assistant statewide prosecutors are exempt from
86 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
87 e. The home addresses, dates of birth, and telephone

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88 numbers of general magistrates, special magistrates, judges of
89 compensation claims, administrative law judges of the Division
90 of Administrative Hearings, and child support enforcement
91 hearing officers; the home addresses, telephone numbers, dates
92 of birth, and places of employment of the spouses and children
93 of general magistrates, special magistrates, judges of
94 compensation claims, administrative law judges of the Division
95 of Administrative Hearings, and child support enforcement
96 hearing officers; and the names and locations of schools and day
97 care facilities attended by the children of general magistrates,
98 special magistrates, judges of compensation claims,
99 administrative law judges of the Division of Administrative
100 Hearings, and child support enforcement hearing officers are
101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
102 Constitution if the general magistrate, special magistrate,
103 judge of compensation claims, administrative law judge of the
104 Division of Administrative Hearings, or child support hearing
105 officer provides a written statement that the general
106 magistrate, special magistrate, judge of compensation claims,
107 administrative law judge of the Division of Administrative
108 Hearings, or child support hearing officer has made reasonable
109 efforts to protect such information from being accessible
110 through other means available to the public.
111 f. The home addresses, telephone numbers, dates of birth,
112 and photographs of current or former human resource, labor
113 relations, or employee relations directors, assistant directors,
114 managers, or assistant managers of any local government agency
115 or water management district whose duties include hiring and
116 firing employees, labor contract negotiation, administration, or

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117 other personnel-related duties; the names, home addresses,
118 telephone numbers, dates of birth, and places of employment of
119 the spouses and children of such personnel; and the names and
120 locations of schools and day care facilities attended by the
121 children of such personnel are exempt from s. 119.07(1) and s.
122 24(a), Art. I of the State Constitution.
123 g. The home addresses, telephone numbers, dates of birth,
124 and photographs of current or former code enforcement officers;
125 the names, home addresses, telephone numbers, dates of birth,
126 and places of employment of the spouses and children of such
127 personnel; and the names and locations of schools and day care
128 facilities attended by the children of such personnel are exempt
129 from s. 119.07(1) and s. 24(a), Art. I of the State
130 Constitution.
131 h. The home addresses, telephone numbers, places of
132 employment, dates of birth, and photographs of current or former
133 guardians ad litem, as defined in s. 39.820; the names, home
134 addresses, telephone numbers, dates of birth, and places of
135 employment of the spouses and children of such persons; and the
136 names and locations of schools and day care facilities attended
137 by the children of such persons are exempt from s. 119.07(1) and
138 s. 24(a), Art. I of the State Constitution, if the guardian ad
139 litem provides a written statement that the guardian ad litem
140 has made reasonable efforts to protect such information from
141 being accessible through other means available to the public.
142 i. The home addresses, telephone numbers, dates of birth,
143 and photographs of current or former juvenile probation
144 officers, juvenile probation supervisors, detention
145 superintendents, assistant detention superintendents, juvenile

146 justice detention officers I and II, juvenile justice detention
147 officer supervisors, juvenile justice residential officers,
148 juvenile justice residential officer supervisors I and II,
149 juvenile justice counselors, juvenile justice counselor
150 supervisors, human services counselor administrators, senior
151 human services counselor administrators, rehabilitation
152 therapists, and social services counselors of the Department of
153 Juvenile Justice; the names, home addresses, telephone numbers,
154 dates of birth, and places of employment of spouses and children
155 of such personnel; and the names and locations of schools and
156 day care facilities attended by the children of such personnel
157 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
158 Constitution.
159 j. The home addresses, telephone numbers, dates of birth,
160 and photographs of current or former public defenders, assistant
161 public defenders, criminal conflict and civil regional counsel,
162 and assistant criminal conflict and civil regional counsel; the
163 home addresses, telephone numbers, dates of birth, and places of
164 employment of the spouses and children of such defenders or
165 counsel; and the names and locations of schools and day care
166 facilities attended by the children of such defenders or counsel
167 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
168 Constitution.
169 k. The home addresses, telephone numbers, and photographs
170 of current or former investigators or inspectors of the
171 Department of Business and Professional Regulation; the names,
172 home addresses, telephone numbers, and places of employment of
173 the spouses and children of such current or former investigators
174 and inspectors; and the names and locations of schools and day

175 care facilities attended by the children of such current or
176 former investigators and inspectors are exempt from s. 119.07(1)
177 and s. 24(a), Art. I of the State Constitution if the
178 investigator or inspector has made reasonable efforts to protect
179 such information from being accessible through other means
180 available to the public. This sub-subparagraph is subject to the
181 Open Government Sunset Review Act in accordance with s. 119.15
182 and shall stand repealed on October 2, 2017, unless reviewed and
183 saved from repeal through reenactment by the Legislature.
184 1. The home addresses and telephone numbers of county tax
185 collectors; the names, home addresses, telephone numbers, and
186 places of employment of the spouses and children of such tax
187 collectors; and the names and locations of schools and day care
188 facilities attended by the children of such tax collectors are
189 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
190 Constitution if the county tax collector has made reasonable
191 efforts to protect such information from being accessible
192 through other means available to the public. This sub-
193 subparagraph is subject to the Open Government Sunset Review Act
194 in accordance with s. 119.15 and shall stand repealed on October
195 2, 2017, unless reviewed and saved from repeal through
196 reenactment by the Legislature.
197 3. An agency that is the custodian of the information
198 specified in subparagraph 2. and that is not the employer of the
199 officer, employee, justice, judge, or other person specified in
200 subparagraph 2. shall maintain the exempt status of that
201 information only if the officer, employee, justice, judge, other
202 person, or employing agency of the designated employee submits a
203 written request for maintenance of the exemption to the

204 custodial agency.
205 4. The exemptions in this paragraph apply to information
206 held by an agency before, on, or after the effective date of the
207 exemption.
208 5. This paragraph is subject to the Open Government Sunset
209 Review Act in accordance with s. 119.15, and shall stand
210 repealed on October 2, 2017, unless reviewed and saved from
211 repeal through reenactment by the Legislature.
212 Section 2. The Legislature finds that it is a public
213 necessity that the names of the spouses and children of active
214 or former sworn or civilian law enforcement personnel be exempt
215 from s. 119.07(1) and s. 24(a), Art. I of the State
216 Constitution. Sworn and civilian law enforcement personnel in
217 this state perform a variety of important duties that ensure
218 public safety and welfare and encourage safe and civil
219 communities. Correctional and correctional probation officers
220 work with felons, many of whom have committed violent crimes.
221 Personnel of the Department of Children and Families whose
222 duties include the investigation of abuse, neglect,
223 exploitation, fraud, theft, or other criminal activities, and
224 personnel of the Department of Health, work with individuals who
225 may be a danger to their own children and families, as well as
226 the children of others. Personnel of the Department of Revenue
227 or local governments whose responsibilities include revenue
228 collection and enforcement or child support enforcement
229 investigate and bring enforcement actions against individuals
230 who have failed to pay their lawful taxes or failed to pay to
231 support their children. As a result of their duties, these sworn
232 and civilian law enforcement personnel often come in close

233 contact with individuals who not only may be a threat to these
234 personnel, but who might seek to take revenge against them by
235 harming their spouses and children. Permitting access to the
236 names of spouses and children of active or former sworn or
237 civilian law enforcement personnel provides a means by which
238 individuals who have been investigated, arrested, interrogated,
239 or incarcerated can identify and cause physical or emotional
240 harm to these spouses and children. The Legislature therefore
241 finds that the harm that may result from the release of the
242 names of spouses and children of such law enforcement personnel
243 outweighs any public benefit that may be derived from the
244 disclosure of the information.
245 Section 3. This act shall take effect October 1, 2013.

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

366616

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/19/2013	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

1 **Senate Amendment**
2
3 Delete line 51
4 and insert:
5 former sworn or civilian law enforcement personnel and the other
6 specified agency personnel identified in

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-21-13
Meeting Date

Topic: Public Records

Bill Number: 376 *(if applicable)*

Name: ~~Electra Bustle~~ Lindsey Perkins

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 123 S. Adams St.
Street

Phone: (850) 671-4401

_____
City *State* *Zip*

E-mail: _____

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Sheriffs Assoc.

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

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

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

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

CC: Joe McVaney, Staff Director
Courtney Hicks, Administrative Assistant

Subject: Committee Agenda Request

Date: March 5, 2013

I respectfully request that **Senate Bill #376**, relating to Public Records/Children and Spouses of Law Enforcement Personnel, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

File signed original with committee office

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 1074

INTRODUCER: Senator Hays

SUBJECT: State-owned or State-leased Space

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Favorable**
2.			EP	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 1074 gives the Department of Management Services more authority to coordinate and direct state agency use of state-owned and privately-leased office space, requires competitive solicitation for more agency leases, streamlines reports related to leasing activities, and increases reporting related to facility energy savings. The bill also makes changes intended to facilitate the sale of non-conservation state lands determined to be surplus.

The bill amends sections 216.0152, 253.031, 253.034, 255.248, 255.249, 255.25, 255.252, 255.254, 255.257, 255.503, 110.171, and 985.682 of the Florida Statutes.

II. Present Situation:

Leasing and DMS Authority

The Department of Management Services' (DMS) Facilities Program, also called the Division of Real Estate Development and Management, is responsible for the overall management of the 103 state-owned facilities in the Florida Facilities Pool, and other facilities and structures. One of the divisions in the program, the Bureau of Leasing, administers public and private leasing.

According to the DMS 2012 Master Leasing Report,[1] the state leases a total of 13.5 million square feet with an annual rent of $237 million, of which 7.1 million square feet is in 765 private sector leases, with an annual rent of $136 million.

[1] Available at http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/lease_management

Chapter 255, F.S., provides the statutory authority for the DMS to manage and operate the Florida Facilities Pool and specifies the oversight role DMS has in the leasing of privately owned space. The DMS has the authority to approve leases of greater than 5,000 square feet that cover more than one fiscal year by operation of s. 255.25(2)(a), F.S. Except as provided for emergency space needs,[2] no state agency may enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for, and receipt of, competitive solicitations, if such lease is, in the judgment of the DMS, in the best interests of the state.[3]

The approval of the DMS, except for technical sufficiency, need not be obtained for the lease of less than 5,000 square feet of space within a privately owned building, provided the agency head or the agency head's designated representative has certified that all criteria for leasing have been fully complied with,[4] and has determined such lease to be in the best interest of the state.[5]

Section 255.249(4)(b), F.S., requires the DMS to promulgate rules to provide procedures for: soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings; evaluating the proposals received; exemption from competitive bidding requirements of any lease the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), F.S.; and the securing of at least three documented quotes for a lease that is not required to be competitively bid.

In sum, while the DMS is responsible for prior approval of lease terms for leases over 5,000 square feet, the lease is executed between the landlord and the agency. For leases less than 5,000 square feet, approval by the DMS is not necessary, except for technical sufficiency, so long as the agency head or its designee has certified compliance with applicable leasing criteria and has determined the lease is in the best interest of the state. Leases under 5,000 square feet need not be competitively bid. The terms "bids" and "proposals" are used throughout the leasing provisions of ch. 255, F.S.; the term "invitation to negotiate" does not appear in the chapter.

The 2007 Legislature amended s. 255.249, F.S., to grant the DMS the authority to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities and to require DMS to submit an annual master leasing report to the Legislature; the report must contain analyses and other information on the status of state-owned facilities and private sector leased space. To assist the DMS in preparing the report, state agencies are required to provide their projected requirements for leased space based on active and planned full-time employee data, lease-expiration schedules for each geographic region of the state, and opportunities for consolidating operations, as well as costs relating to occupancy and relocation. In

[2] Section 255.25(10), F.S., provides that the DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, or structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.
[3] The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by s. 3, ch. 90-224, L.O.F., and raised in 1999 to 5,000 square feet by s. 22, ch. 99-399, L.O.F.
[4] Pursuant to s. 255.249(4)(k), F.S.
[5] Section 255.25(2)(b), F.S.

September 2008, DMS released the first required Master Leasing Report and Leasing Plan, in which the DMS advocated strongly for the centralization of leasing functions.

Legislative Direction on Leased Space

In 2009, the Legislature directed the DMS to compile a list of all state-owned surplus real property that has a value greater than $1,000 in order to determine potential cost savings and revenue opportunities from the sale or lease of assets, identify current contracts for leased office space in which the leased space is not fully used or occupied, and include a plan for contract renegotiation or subletting unoccupied space.[6] The DMS subsequently reported[7] the following in regards to space leased by state agencies:

- 566 private leases with 1.3 million square feet in potential excess space.
- More than 500,000 square feet of potential excess space is in Leon County.
- 276 leases with potential excess space with terms of 24 months or less.
- 80 percent of the leases have less than 2,500 square feet of potential excess space.

The DMS planned to work with state agencies and a contracted tenant broker to renegotiate leases with over 1,500 square feet of excess space, and at least 18 months of remaining term, to recognize potential cost savings.

The DMS was directed in 2011 to use the services of a tenant broker to renegotiate all leases over 150,000 square feet,[8] and report to the Legislative Budget Commission the projected savings, implementation costs, and recommendations for leases to terminate.

In 2012, the DMS and agencies were directed to use tenant broker services to renegotiate or reprocure all private lease agreements expiring between July 1, 2013, and June 30, 2015, in order to achieve a reduction in costs in future years.[9] The DMS had to incorporate this initiative into its 2012 Master Leasing Report and could use tenant broker services to explore the possibilities of co-location, to review the space needs of each agency, and to review the length and terms of potential renewals or renegotiations. The DMS was directed to provide a report by March 1, 2013, which lists each lease contract for private office or storage space, the status of renegotiations, and the savings achieved. According to the Lease Renegotiation Stats Report released by the DMS,[10] renegotiations since July 1, 2011, have resulted in a projected reduction in lease costs of $25.1 million and a net reduction of 709,296 square feet for Fiscal Years 2011-12 and 2012-13.

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[6] Chapter 2009-15, L.O.F.
[7] DMS' Interim Report to the Legislature, *State of Florida Surplus Real Estate and Private Lease Renegotiation Plan*, March 3, 2009.
[8] Section 76, Chapter 2011-47, L.O.F.
[9] Section 23, Chapter 2012-119, L.O.F.
[10] Available at http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/lease_management

Inventory of State-owned and State-leased Facilities

Pursuant to s. 216.0152, F.S., the DMS must develop and maintain an automated inventory of all facilities owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. The DMS must use this data for determining maintenance needs and conducting strategic analyses. For assessing needed repairs and renovations of facilities, the DMS must update its inventory with condition information for facilities of 3,000 square feet or more, and the inventories must record acquisitions of new facilities and significant changes in existing facilities as they occur. The DMS must provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch. Each agency and the judicial branch must report significant changes in the inventory as they occur. Items relating to the condition and life-cycle cost of a facility must be updated at least every 5 years. The DMS must publish a complete report detailing this inventory every 3 years, and must publish an annual update of the report.

Inventory of State-owned Real Property

In 2010, the Legislature mandated the creation of a database to identify surplus property and dispose of such property owned by the state that is unnecessary to achieving the state's responsibilities.[11] Pursuant to s. 216.0153, F.S., the Department of Environmental Protection (DEP) must create, administer, and maintain a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district. The comprehensive state-owned real property system must contain a database that includes an accurate inventory of all real property that is leased, owned, rented, occupied, or managed by the state, the judicial branch, or the water management districts. The Division of State Lands in the DEP is the statewide custodian of the real property information and accountable for its accuracy.

The Division of State Lands in the DEP must annually submit a report that lists the state-owned real property recommended for disposition, including a report by the DMS of surplus buildings recommended for disposition. The report must include specific information that documents the valuation and analysis process used to identify the specific state-owned real property recommended for disposition.

The DEP and DMS are now implementing the Florida State Owned Lands and Records Information System (FL-SOLARIS), designed with two main components:

- Facility Information Tracking System (FITS);
- Lands Information Tracking System (LITS).

The FITS component is now operational and is designed to give agencies an online interface to record data on their state-owned facilities, as well as provide the mechanism for agencies' annual identification and reporting of properties that are candidates for disposition.[12]

[11] Chapter 2010-280, L.O.F.
[12] Information available at http://www.dms.myflorida.com/business_operations/real_estate_development_management/facilities_management/facilities_inventory_tracking_system_fits (last visited March 18, 2013).

Sale and Disposition of Surplus State-Owned Lands

Section 253.034, F.S., provides that for state land determined to be surplus by the Board of Trustees of the Internal Improvement Trust Fund, in order to determine the sale price of the land, it must be appraised, if the estimated value is over $100,000. At the discretion of the Division of State Lands in the DEP, a second appraisal may be required if the value is determined to be equal or greater than $1 million. All property less than $100,000 can be valued by comparable sales analysis or a broker's opinion of value.

Section 253.03, F.S., provides that before a building or parcel of land is offered for lease, sublease, or sale to a local or federal unit of government or a private party, it must first be offered for lease to state agencies, state universities, and community colleges, with a priority consideration given to state universities and community colleges. Once a state agency, county, or local government has requested the use of surplus property, it has six months to secure the property under lease.

Energy Performance and Reporting

The "Florida Energy Conservation and Sustainable Buildings Act" in ss. 255.251 through 255.2575, F.S., creates duties for agencies and the DMS with regards to energy efficiency in buildings leased and owned by the state.

Section 255.252(4), F.S., encourages agencies to consider shared savings financing of energy-efficiency and conservation projects, using contracts that split the resulting savings for a specified period of time between the state and the vendor. Such energy contracts may be funded from the operating budget.

Section 255.254, F.S., requires agencies to seek from the DMS an evaluation of life-cycle costs based on sustainable building ratings for all leased or newly constructed facilities. Agencies are required to perform an energy performance analysis for all leased facilities larger than 5,000 square feet. The energy performance analysis is required to project forward through the term of the proposed lease the annual energy consumption and cost of the major energy-consuming systems and the analysis is to be based on actual expenses. Potential leases may only be made where there is a showing that the energy costs incurred by the state are minimal compared to available like facilities. A lease agreement for any building leased by the state from a private sector entity must include provisions for monthly energy use data to be collected and submitted monthly to the department by the owner of the building.

Section 255.257, F.S., requires all agencies to collect energy consumption and cost data for all state-owned and metered state-leased facilities of 5,000 square feet and larger, and report all such data to the DMS.

Consultants' Competitive Negotiation Act

The Consultants' Competitive Negotiation Act (CCNA) in s. 287.055, F.S., is used by public entities for the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services in construction, rehabilitation, or renovation activities. The

CCNA must be used when professional services on a project for which the basic cost of construction, as estimated by the agency, will exceed $325,000, or for planning or study activity where compensation exceeds $35,000. The CCNA process generally involves a competitive selection process, in which compensation is not considered, followed by a competitive negotiation process, during which compensation is determined.

III. Effect of Proposed Changes:

Section 1 amends s. 216.0152, F.S., to require the Department of Transportation (DOT) to provide a yearly inventory of transportation facilities of the state transportation system to the Department of Management Services (DMS) and the Department of Environmental Protection (DEP).

The bill requires the DMS and DEP to publish a yearly inventory of all state-owned facilities, including the inventories of the Board of Governors of the State University System, the Department of Education, and the DOT, excluding the transportation facilities of the state transportation system. The annual report of state-owned real property recommended for disposition required under s. 216.0153, F.S., must be included in this report.

Section 2 amends s. 253.031, F.S., to provide that authorized agents of the Board of Trustees of the Internal Improvement Trust Fund have authority to sign deeds conveying land.

Section 3 amends a requirement in s. 253.034, F.S., relating to when the Division of State Lands (division) may use a comparable sales analysis or broker's opinion of value. Currently, the division, when determining the sale price of lands to be surplussed, must consider an appraisal, or, for lands estimated at a value of less than $100,000, a comparable sales analysis or a broker's opinion of value. The bill allows the division to use a comparable sales analysis or a broker's opinion of value for lands estimated at a value of less than $500,000.

The bill requires that parcels with a market value over $500,000 must be initially offered for sale by competitive bid. The division may use agents for this process. Any parcels unsuccessfully offered for sale by competitive bid, and parcels with a market value of $500,000 or less, may be sold by any reasonable means, including procuring real estate services, open or exclusive listings, competitive bid, auction, negotiated direct sales, or other appropriate services, to facilitate the sale.

The bill reduces from 6 months to 90 days the time period during which a public entity that has requested use of a property must secure the property under lease.

Before a building or parcel of land is offered for lease or sale, it must first be offered for lease to state agencies, state universities, and community colleges, contingent upon the submission of a business plan for the proposed use of the building or parcel. Within 60 days after the offer of a surplus building or parcel, a state agency, state university, or community college that requests the transfer of a surplus building or parcel must develop and submit a business plan for the proposed use. The business plan must include the proposed use, the cost of renovation, the replacement cost for a new building for the same proposed use, a capital improvement plan for the building, evidence that the building or parcel meets an existing need that cannot be otherwise met, and

other criteria developed by rule by the DEP. The board or its designee must compare the appraised value of the building or parcel to any submitted business plan for proposed use of the building or parcel to determine if the transfer or sale is in the best interest of the state. The bill changes this subsection to delete the priority consideration given to state universities and community colleges.

Section 4 amends s. 255.248, F.S., to add definitions of "managing agency" and "tenant broker" to the chapter of the Florida Statutes that governs public property and publicly owned buildings.

Section 5 amends s. 255.249, F.S., to expand the duties of the DMS with regards to the Florida Facilities Pool, and the leasing of space in privately owned space.

The bill expands the DMS' authority with regards to the Florida Facilities Pool, to include the operation, alteration, and modification of all facilities in the pool and adjacent grounds.

An agency that intends to terminate a lease of privately owned space before the expiration of its base term must notify the DMS 90 days before the termination.

The DMS may direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Records Information System managed by the Department of Environmental Protection.

If expressly authorized by the General Appropriations Act (GAA) and, in the best interest of the state, the DMS may implement renovations or construction that more efficiently use state-owned buildings. Such use of tenant-improvement funds applies only to state-owned buildings, and all expenditures must be reported by the department in the master leasing report that the DMS annually publishes.

The bill requires that a required DMS-developed strategic leasing plan be included in the master leasing report, which must provide, in addition to existing requirements, recommendations for using capital improvement funds to implement the consolidation of state agencies into state-owned office buildings.

The bill amends state agency duties to allow the agencies to use the services of a tenant broker in preparing the required yearly reporting information to the DMS. The title entity or managing agency must also report to the DMS any vacant or underutilized space for all state-owned office buildings, any restrictions that apply to any other agency occupying the vacant or underutilized space, and any significant changes to its occupancy for the coming fiscal year.

The bill mandates that the DMS adopt rules relating to:

- State agency use of space identified in the Florida State-Owned Lands and Records Information System; and
- Procedures for the effective and efficient administration of s. 255.249, F.S.

Section 6 amends s. 255.25, F.S., to require a state agency to notify the DMS at least 30 days before execution of a lease of less than 2,000 square feet (a change from 5,000 square feet), for DMS to determine whether suitable space is available in state-owned or leased space in the same

geographic region. If the DMS determines execution of the lease is not in the best interests of the state, the DMS must notify the agency, the Governor and the Legislature. Leases for 2,000 square feet or more (changed from 5,000 square feet) must be competitively solicited.

The DMS has the authority to approve leases of 2,000 square feet or more (a change from 5,000 square feet), and extensions of existing leases of 2,000 square feet or more (a change from 5,000 square feet). The bill deletes a provision that allows an agency to determine that it is in its best interest to remain in the space it currently occupies.

In leases of 2,000 square feet or more (a change from 5,000 square feet), agencies and lessors must agree to the cost of tenant improvements before the effective date of the lease.

The bill also requires state agencies to use tenant brokers with a "lease action," except for leases between governmental entities. "Lease action" is not defined but presumably includes extensions and renewals. This is a change from the current provision which allows the state agency head to determine whether or not to use the services of a tenant broker. The bill deletes a requirement that agencies must use tenant brokers that are on contract with the DMS; but the new definition of "tenant broker" created in s. 255.248, F.S., specifies that the tenant brokers to be used by agencies must be under contract with the DMS.

Section 7 amends s. 255.252, F.S., to allow, but not require, vendors for energy-saving contracts to be selected pursuant to the Consultants' Competitive Negotiation Act in s. 287.055, F.S.

Section 8 amends s. 255.254, F.S., to require that an energy performance analysis must be performed prior to finalization on all leases of more than 2,000 square feet (change from 5,000 square feet).

Section 9 amends s. 255.257, F.S., to require that each state agency must collect data on energy consumption and costs for all state-owned and state-leased facilities. The requirement currently applies to state-leased facilities of 5,000 square feet or more.

Section 10 amends s. 255.503, F.S., to allow the DMS to charge fees directly to state employees for the use of parking facilities and to allow the DMS to use facility rentals or charges for improvement, maintenance, and repair of those facilities.

Sections 11 and 12 amend sections 110.171 and 985.682, F.S., to correct cross-references.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Tenant brokers may obtain increased business from state agencies.

C. Government Sector Impact:

Indeterminate. Greater coordination and efficiency of state agency leasing activities should result in cost savings.

According to the DMS, "[t]he bill would allow DMS, at the direction of the Legislature through the General Appropriations Act, to use fixed capital outlay funds to implement renovations or construction of fixed capital outlay projects to increase utilization and occupancy of state-owned office buildings. Because of the bond covenants in place for the Florida Facilities Pool, funds for non-pool facilities should not be comingled with facilities pool funds. Fixed capital outlay funds to renovate Florida Facilities Pool facilities are appropriated based upon annual Legislative Budget Requests and the Capital Improvement Plan. DMS frequently manages construction projects for other agencies or enters into client agency agreements for projects. Fixed capital outlay funds to renovate non-pool facilities are placed in the specific owner-agency's General Appropriations Act line item with proviso to specify what the funds are to be used for and may specify DMS to manage the project."

VI. Technical Deficiencies:

None.

VII. Related Issues:

On line 336 of the bill, the rulemaking authority given to the "department" should instead be given to the Board of Trustees of the Internal Improvement Trust Fund.

The term "lease action" is used in the bill on line 823, but not defined. The Legislature may wish to define the term to avoid agency actions inconsistent with the intent of the bill.

VIII. 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.

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

By Senator Hays

11-00584B-13 20131074__

A bill to be entitled

An act relating to state-owned or state-leased space; amending s. 216.0152, F.S.; revising provisions relating to the update of an inventory of certain facilities needing repairs or innovation maintained by the Department of Management Services; revising provisions relating to a report detailing an inventory of state-owned facilities; amending s. 253.031, F.S.; clarifying that deeds may be signed by agents of the Board of Trustees of the Internal Improvement Trust Fund; amending s. 253.034, F.S.; revising provisions relating to decisions by the board to surplus lands; revising the valuation of lands that are subject to certain requirements; requiring state entities to submit a business plan if a building or parcel is offered for use to the entity; amending s. 255.248, F.S.; defining the terms “managing agency” and “tenant broker”; amending s. 255.249, F.S.; revising the responsibilities of the Department of Management Services with respect to state-owned buildings; prohibiting a state agency from leasing space in a private building under certain circumstances; requiring an agency to notify the department of an early termination of a lease within a certain timeframe; authorizing the department to direct state agencies to occupy space in a state-owned building; authorizing the department to implement renovations in order to more efficiently use state-owned buildings; revising the contents of the master leasing report;

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

11-00584B-13 20131074__

authorizing state agencies to use the services of a tenant broker to provide certain information to the department; requiring the title entity or managing agency to report any vacant or underutilized space to the department; authorizing the department to adopt additional rules; amending s. 255.25, F.S.; reducing the amount of square feet which an agency may lease without department approval; deleting an exemption that allows an agency to negotiate a replacement lease under certain circumstances; requiring a state agency to use a tenant broker to assist with lease actions; amending s. 255.252, F.S.; specifying that a vendor for certain energy efficiency contracts must be selected in accordance with state procurement requirements; amending s. 255.254, F.S.; revising provisions relating to requirements for energy performance analysis for certain buildings; amending 255.257, F.S.; requiring all state-owned facilities to report energy consumption and cost data; amending s. 255.503, F.S.; authorizing the department to charge state employees fees for the use of parking facilities; amending ss. 110.171 and 985.682, F.S.; conforming cross-references; providing effective dates.

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

Section 1. Section 216.0152, Florida Statutes, is amended to read:

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

216.0152 Inventory of state-owned facilities or state-occupied facilities.—

(1) The Department of Management Services shall develop and maintain an automated inventory of all facilities owned, leased, rented, or otherwise occupied or maintained by a state ~~any~~ agency ~~of the state~~, the judicial branch, or the water management districts. The inventory data shall be provided annually by July 1 by the owning or operating agency in a format prescribed by the department and must ~~shall~~ include the location, occupying agency, ownership, size, condition assessment, valuations, operating costs, maintenance record, age, parking and employee facilities, building uses, full-time equivalent occupancy, known restrictions or historic designations, leases or subleases, associated revenues, and other information as required by ~~in a~~ rule adopted by the department. The department shall use this data for determining maintenance needs, conducting strategic analyses, including, but not limited to, analyzing and identifying candidates for surplus, valuation, and disposition, and life-cycle cost evaluations of the facility. ~~Inventory data shall be provided to the department on or before July 1 of each year by the owning or operating agency in a format prescribed by the department.~~ The inventory need not include a condition assessment or maintenance record of facilities not owned by a state agency, the judicial branch, or a water management district. The term "facility," as used in this section, means buildings, structures, and building systems, but does not include transportation facilities of the state transportation system.

(a) For reporting purposes, the Department of

Transportation shall develop and maintain an inventory of the transportation facilities of the state transportation system and, by July 1 of each year, provide this inventory to the Department of Management Services and the Department of Environmental Protection. The Department of Transportation shall also identify and dispose of surplus property pursuant to ss. 337.25 and 339.04.

(b) The Board of Governors of the State University System and the Department of Education, respectively, shall develop and maintain an inventory, in the manner prescribed by the Department of Management Services, of all state university and community college facilities and, by July 1 of each year, provide this inventory ~~shall make the~~ data ~~available~~ in a format acceptable to the Department of Management Services. ~~By March 15, 2011, the department shall adopt rules pursuant to ss. 120.536 and 120.54 to administer this section.~~

~~(2) For the purpose of assessing needed repairs and renovations of facilities, the Department of Management Services shall update its inventory with condition information for facilities of 3,000 square feet or more and cause to be updated the other inventories required by subsection (1) at least once every 5 years, but the inventories shall record acquisitions of new facilities and significant changes in existing facilities as they occur. The Department of Management Services shall provide each agency and the judicial branch with the most recent inventory applicable to that agency or to the judicial branch. Each agency and the judicial branch shall, in the manner prescribed by the Department of Management Services, report significant changes in the inventory as they occur. Items~~

117 ~~relating to the condition and life-cycle cost of a facility~~
118 ~~shall be updated at least every 5 years.~~
119 (2) ~~(3)~~ The Department of Management Services and the
120 Department of Environmental Protection shall, by October 1 of
121 each year, ~~every 3 years,~~ publish a complete report detailing
122 the ~~this~~ inventory of all state-owned facilities, including the
123 inventories of the Board of Governors of the State University
124 System, the Department of Education, and the Department of
125 Transportation, excluding the transportation facilities of the
126 state transportation system. The annual report of state-owned
127 real property recommended for disposition required under s.
128 216.0153 must be included in this report ~~and shall publish an~~
129 ~~annual update of the report. The department shall furnish the~~
130 ~~updated report to the Executive Office of the Governor and the~~
131 ~~Legislature no later than September 15 of each year~~.
132 (3) The Department of Management Services shall adopt rules
133 to administer this section.
134 Section 2. Subsection (8) of section 253.031, Florida
135 Statutes, is amended to read:
136 253.031 Land office; custody of documents concerning land;
137 moneys; plats.—
138 (8) The board shall keep a suitable seal of office. An
139 impression of this seal shall be made upon the deeds conveying
140 lands sold by the state, by the Board of Education, and by the
141 Board of Trustees of the Internal Improvement Trust Fund of this
142 state; and all such deeds shall be ~~personally~~ signed by the
143 ~~officers or~~ trustees or their agents as authorized under s.
144 253.431, making the same and impressed with the ~~said~~ seal and
145 are ~~shall be~~ operative and valid without witnesses to the

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146 execution thereof; and the impression of such seal on any such
147 deeds entitles ~~shall entitle~~ the same to record and to be
148 received in evidence in all courts.
149 Section 3. Subsection (6) and subsection (15) of section
150 253.034, Florida Statutes, are amended to read:
151 253.034 State-owned lands; uses.—
152 (6) The Board of Trustees of the Internal Improvement Trust
153 Fund shall determine which lands, the title to which is vested
154 in the board, may be surplused. For conservation lands, the
155 board shall determine whether ~~make a determination that~~ the
156 lands are no longer needed for conservation purposes and may
157 dispose of them by an affirmative vote of at least three
158 members. In the case of a land exchange involving the
159 disposition of conservation lands, the board must determine by
160 an affirmative vote of at least three members that the exchange
161 will result in a net positive conservation benefit. For all
162 other lands, the board shall determine whether ~~make a~~
163 ~~determination that~~ the lands are no longer needed and may
164 dispose of them by an affirmative vote of at least three
165 members.
166 (a) For the purposes of this subsection, all lands acquired
167 by the state before ~~prior to~~ July 1, 1999, using proceeds from
168 ~~the~~ Preservation 2000 bonds, the Conservation and Recreation
169 Lands Trust Fund, the Water Management Lands Trust Fund,
170 Environmentally Endangered Lands Program, and the Save Our Coast
171 Program and titled to the board~~,~~ which ~~lands~~ are identified as
172 core parcels or within original project boundaries are~~, shall be~~
173 deemed to have been acquired for conservation purposes.
174 (b) For any lands purchased by the state on or after July

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175 1, 1999, before ~~a determination shall be made by the board prior~~
176 ~~to~~ acquisition, the board must determine which ~~as to those~~
177 parcels must ~~that shall~~ be designated as having been acquired
178 for conservation purposes. ~~No~~ Lands acquired for use by the
179 Department of Corrections, the Department of Management Services
180 for use as state offices, the Department of Transportation,
181 except those specifically managed for conservation or recreation
182 purposes, or the State University System or the Florida
183 Community College System may not ~~shall~~ be designated as having
184 been purchased for conservation purposes.
185 (c) At least every 10 years, as a component of each land
186 management plan or land use plan and in a form and manner
187 prescribed by rule by the board, each manager shall evaluate and
188 indicate to the board those lands that are not being used for
189 the purpose for which they were originally leased. For
190 conservation lands, the council shall review and ~~shall~~ recommend
191 to the board whether such lands should be retained in public
192 ownership or disposed of by the board. For nonconservation
193 lands, the division shall review such lands and ~~shall~~ recommend
194 to the board whether such lands should be retained in public
195 ownership or disposed of by the board.
196 (d) Lands owned by the board which are not actively managed
197 by any state agency or for which a land management plan has not
198 been completed pursuant to subsection (5) must ~~shall~~ be reviewed
199 by the council or its successor for its recommendation as to
200 whether such lands should be disposed of by the board.
201 (e) Before ~~Prior to~~ any decision by the board to surplus
202 lands, the Acquisition and Restoration Council shall review and
203 make recommendations to the board concerning the request for

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204 surplusing. The council shall determine whether the request for
205 surplusing is compatible with the resource values of and
206 management objectives for such lands.
207 (f) In reviewing lands owned by the board, the council
208 shall consider whether such lands would be more appropriately
209 owned or managed by the county or other unit of local government
210 in which the land is located. The council shall recommend to the
211 board whether a sale, lease, or other conveyance to a local
212 government would be in the best interests of the state and local
213 government. The provisions of this paragraph in no way limit the
214 provisions of ss. 253.111 and 253.115. Such lands shall be
215 offered to the state, county, or local government for a period
216 of 45 days. Permittable uses for such surplus lands may include
217 public schools; public libraries; fire or law enforcement
218 substations; governmental, judicial, or recreational centers;
219 and affordable housing meeting the criteria of s. 420.0004(3).
220 County or local government requests for surplus lands shall be
221 expedited throughout the surplusing process. If the county or
222 local government does not elect to purchase such lands in
223 accordance with s. 253.111, ~~then~~ any surplusing determination
224 involving other governmental agencies shall be made when ~~upon~~
225 the board decides ~~deciding~~ the best public use of the lands.
226 Surplus properties in which governmental agencies have expressed
227 no interest must ~~shall~~ then be available for sale on the private
228 market.
229 (g)~~1.~~ The sale price of lands determined to be surplus
230 pursuant to this subsection and s. 253.82 shall be determined by
231 the division, which shall consider ~~and shall take into~~
232 ~~consideration~~ an appraisal of the property, or, if ~~when~~ the

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233 estimated value of the land is $500,000 or less ~~than $100,000~~, a
234 comparable sales analysis or a broker's opinion of value. ~~If the~~
235 ~~appraisal referenced in this paragraph yields a value equal to~~
236 ~~or greater than $1 million,~~ The division~~, in its sole~~
237 ~~discretion,~~ may require a second appraisal. The individual or
238 entity that requests ~~requesting~~ to purchase the surplus parcel
239 shall pay all ~~appraisal~~ costs associated with determining the
240 property's value, if any.
241 1.~~2.a.~~ A written valuation of land determined to be surplus
242 pursuant to this subsection and s. 253.82, and related documents
243 used to form the valuation or which pertain to the valuation,
244 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
245 I of the State Constitution.
246 a.~~b.~~ The exemption expires 2 weeks before the contract or
247 agreement regarding the purchase, exchange, or disposal of the
248 surplus land is first considered for approval by the board.
249 b.~~c.~~ Before ~~Prior to~~ expiration of the exemption, the
250 division may disclose confidential and exempt appraisals,
251 valuations, or valuation information regarding surplus land:
252 (I) During negotiations for the sale or exchange of the
253 land.
254 (II) During the marketing effort or bidding process
255 associated with the sale, disposal, or exchange of the land to
256 facilitate closure of such effort or process.
257 (III) When the passage of time has made the conclusions of
258 value invalid.
259 (IV) When negotiations or marketing efforts concerning the
260 land are concluded.
261 2.~~3.~~ A unit of government that acquires title to lands

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262 hereunder for less than appraised value may not sell or transfer
263 title to all or any portion of the lands to any private owner
264 for ~~a period of~~ 10 years. Any unit of government seeking to
265 transfer or sell lands pursuant to this paragraph must ~~shall~~
266 first allow the board of trustees to reacquire such lands for
267 the price at which the board sold such lands.
268 (h) Parcels with a market value over $500,000 must be
269 initially offered for sale by competitive bid. The division may
270 use agents, as authorized by s. 253.431, for this process. Any
271 parcels unsuccessfully offered for sale by competitive bid, and
272 parcels with a market value of $500,000 or less, may be sold by
273 any reasonable means, including procuring real estate services,
274 open or exclusive listings, competitive bid, auction, negotiated
275 direct sales, or other appropriate services, to facilitate the
276 sale.
277 (i)~~(h)~~ After reviewing the recommendations of the council,
278 the board shall determine whether lands identified for surplus
279 are to be held for other public purposes or ~~whether such lands~~
280 are no longer needed. The board may require an agency to release
281 its interest in such lands. A state ~~For an~~ agency, county, or
282 local government that has requested the use of a property that
283 was to be declared as surplus, ~~said agency~~ must secure ~~have~~ the
284 property under lease within 90 days after being notified that it
285 may use such property ~~6 months of the date of expiration of the~~
286 ~~notice provisions required under this subsection and s. 253.111~~.
287 (j)~~(i)~~ Requests for surplusing may be made by any public or
288 private entity or person. All requests shall be submitted to the
289 lead managing agency for review and recommendation to the
290 council or its successor. Lead managing agencies ~~shall~~ have 90

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291 days to review such requests and make recommendations. Any
292 surplusing requests that have not been acted upon within the 90-
293 day time period shall be immediately scheduled for hearing at
294 the next regularly scheduled meeting of the council or its
295 successor. Requests for surplusing pursuant to this paragraph
296 are ~~shall~~ not ~~be~~ required to be offered to local or state
297 governments as provided in paragraph (f).
298 (k) ~~(j)~~ Proceeds from any sale of surplus lands pursuant to
299 this subsection shall be deposited into the fund from which such
300 lands were acquired. However, if the fund from which the lands
301 were originally acquired no longer exists, such proceeds shall
302 be deposited into an appropriate account to be used for land
303 management by the lead managing agency assigned the lands before
304 ~~prior to~~ the lands were ~~being~~ declared surplus. Funds received
305 from the sale of surplus nonconservation lands, or lands that
306 were acquired by gift, by donation, or for no consideration,
307 shall be deposited into the Internal Improvement Trust Fund.
308 (l) ~~(k)~~ Notwithstanding ~~the provisions of~~ this subsection,
309 ~~no~~ such disposition of land may not ~~shall~~ be made if it ~~such~~
310 ~~disposition~~ would have the effect of causing all or any portion
311 of the interest on any revenue bonds issued to lose the
312 exclusion from gross income for federal income tax purposes.
313 (m) ~~(l)~~ The sale of filled, formerly submerged land that
314 does not exceed 5 acres in area is not subject to review by the
315 council or its successor.
316 (n) ~~(m)~~ The board may adopt rules to administer ~~implement~~
317 ~~the provisions of~~ this section~~,~~ which may include procedures for
318 administering surplus land requests and criteria for when the
319 division may approve requests to surplus nonconservation lands

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320 on behalf of the board.
321 (15) Before a building or parcel of land is offered for
322 lease, sublease, or sale to a local or federal unit of
323 government or a private party, it must ~~shall~~ first be offered
324 for lease to state agencies, state universities, and community
325 colleges, contingent upon the submission of a business plan for
326 the proposed use of the building or parcel. Within 60 days after
327 the offer of a surplus building or parcel, a state agency, state
328 university, or Florida College System institution that requests
329 the transfer of a surplus building or parcel must develop and
330 submit a business plan for the proposed use of the building or
331 parcel. The business plan must, at a minimum, include the
332 proposed use, the cost of renovation, the replacement cost for a
333 new building for the same proposed use, a capital improvement
334 plan for the building, evidence that the building or parcel
335 meets an existing need that cannot be otherwise met, and other
336 criteria developed by rule by the department ~~with priority~~
337 ~~consideration given to state universities and community~~
338 ~~colleges~~. A state agency, university, or Florida College System
339 institution shall ~~community college must~~ submit its business ~~a~~
340 plan for review and approval by the Board of Trustees of the
341 Internal Improvement Trust Fund or its designee regarding the
342 intended use of the building or parcel of land before approval
343 of a lease. The board or its designee shall compare the
344 appraised value of the building or parcel to any submitted
345 business plan for proposed use of the building or parcel to
346 determine if the transfer or sale is in the best interest of the
347 state.
348 Section 4. Section 255.248, Florida Statutes, is amended to

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349 read:
350 255.248 Definitions~~; ss. 255.249 and 255.25~~.—As used in
351 this section and ss. 255.249-255.25 ~~255.249 and 255.25~~, the
352 term:
353 (1) "Best leasing value" means the highest overall value to
354 the state based on objective factors that include, but are not
355 limited to, rental rate, renewal rate, operational and
356 maintenance costs, tenant-improvement allowance, location, lease
357 term, condition of facility, landlord responsibility, amenities,
358 and parking.
359 (2) "Competitive solicitation" means an invitation to bid,
360 a request for proposals, or an invitation to negotiate.
361 (3) "Department" means the Department of Management
362 Services.
363 (4) "Managing agency" means an agency that serves as the
364 title entity or that leases property from the Board of Trustees
365 of the Internal Improvement Trust Fund for the operation and
366 maintenance of a state-owned office building.
367 (5)~~(4)~~ "Privately owned building" means any building not
368 owned by a governmental agency.
369 (6)~~(5)~~ "Responsible lessor" means a lessor that ~~who~~ has the
370 capability in all respects to fully perform the contract
371 requirements and the integrity and reliability that will assure
372 good faith performance.
373 (7)~~(6)~~ "Responsive bid," "responsive proposal," or
374 "responsive reply" means a bid or proposal, or reply submitted
375 by a responsive and responsible lessor, which conforms in all
376 material respects to the solicitation.
377 (8)~~(7)~~ "Responsive lessor" means a lessor that has

378 submitted a bid, proposal, or reply that conforms in all
379 material respects to the solicitation.
380 (9)~~(8)~~ "State-owned office building" means any building
381 whose title ~~to which~~ is vested in the state and which is used by
382 one or more executive agencies predominantly for administrative
383 direction and support functions. The ~~This~~ term excludes:
384 (a) District or area offices established for field
385 operations where law enforcement, military, inspections, road
386 operations, or tourist welcoming functions are performed.
387 (b) All educational facilities and institutions under the
388 supervision of the Department of Education.
389 (c) All custodial facilities and institutions used
390 primarily for the care, custody, or treatment of wards of the
391 state.
392 (d) Buildings or spaces used for legislative activities.
393 (e) Buildings purchased or constructed from agricultural or
394 citrus trust funds.
395 (10) "Tenant broker" means a private real estate broker or
396 brokerage firm licensed to do business in this state and under
397 contract with the department to provide real estate transaction,
398 portfolio management, and strategic planning services for state
399 agencies.
400 Section 5. Section 255.249, Florida Statutes, is amended to
401 read:
402 255.249 Department of Management Services; responsibility;
403 department rules.—
404 (1) The department shall have responsibility and authority
405 for the operation, custodial care, ~~and~~ preventive maintenance,
406 repair, alteration, modification, and allocation of space for ~~of~~

407 all buildings in the Florida Facilities Pool and adjacent ~~the~~
408 grounds ~~located adjacent thereto~~.
409 (2) A state agency may not lease space in a private
410 building that is to be constructed for state use without first
411 obtaining prior approval of the architectural design and
412 preliminary construction from the department.
413 (3) ~~(2)~~ The department shall require a ~~any~~ state agency
414 planning to terminate a lease for the purpose of occupying space
415 in a new state-owned office building~~, the funds for which are~~
416 ~~appropriated after June 30, 2000,~~ to state why the proposed
417 relocation is in the best interest of the state.
418 (4) ~~(3)(a)~~ An agency that intends to terminate a lease of
419 privately owned space before the expiration of its base term,
420 must notify the department 90 days before the termination. The
421 department shall, to the extent feasible, coordinate the
422 vacation of privately owned leased space with the expiration of
423 the lease on that space and, when a lease is terminated before
424 expiration of its base term, will make a reasonable effort to
425 place another state agency in the space vacated. A ~~Any~~ state
426 agency may lease the space in any building that was subject to a
427 lease terminated by a state agency for a period of time equal to
428 the remainder of the base term without ~~the requirement of~~
429 competitive solicitation.
430 (5) The department may direct a state agency to occupy, or
431 relocate to, space in any state-owned office building, including
432 all state-owned space identified in the Florida State-Owned
433 Lands and Records Information System managed by the Department
434 of Environmental Protection.
435 (6) If expressly authorized by the General Appropriations

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436 Act and, in the best interest of the state, the department may
437 implement renovations or construction that more efficiently use
438 state-owned buildings. Such use of tenant-improvement funds
439 applies only to state-owned buildings, and all expenditures must
440 be reported by the department in the master leasing report
441 identified in subsection (8).
442 (7) ~~(b)~~ The department shall develop and implement a
443 strategic leasing plan. The strategic leasing plan must ~~shall~~
444 forecast space needs for all state agencies and identify
445 opportunities for reducing costs through consolidation,
446 relocation, reconfiguration, capital investment, and the
447 renovation, building, or acquisition of state-owned space.
448 (8) ~~(c)~~ The department shall annually publish a master
449 leasing report that includes the strategic leasing plan created
450 under subsection (7). The department shall annually submit
451 ~~furnish~~ the ~~master~~ leasing report to the Executive Office of the
452 Governor and the Legislature by October 1. The report must
453 provide ~~September 15 of each year which provides the following~~
454 ~~information~~:
455 (a) ~~1.~~ A list, by agency and by geographic market, of all
456 leases that are due to expire within 24 months.
457 (b) ~~2.~~ Details of each lease, including location, size, cost
458 per leased square foot, lease-expiration date, and a
459 determination of whether sufficient state-owned office space
460 will be available at the expiration of the lease to accommodate
461 affected employees.
462 (c) ~~3.~~ A list of amendments and supplements to and waivers
463 of terms and conditions in lease agreements that have been
464 approved pursuant to s. 255.25(2) ~~(a)~~ during the previous 12

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465 months and an associated comprehensive analysis, including
466 financial implications, showing that any amendment, supplement,
467 or waiver is in the state's long-term best interest.
468 (d)~~4.~~ Financial impacts to the Florida Facilities Pool
469 rental rate due to the sale, removal, acquisition, or
470 construction of pool facilities.
471 (e)~~5.~~ Changes in occupancy rate, maintenance costs, and
472 efficiency costs of leases in the state portfolio. Changes to
473 occupancy costs in leased space by market and changes to space
474 consumption by agency and by market.
475 (f)~~6.~~ An analysis of portfolio supply and demand.
476 (g)~~7.~~ Cost-benefit analyses of acquisition, build, and
477 consolidation opportunities, recommendations for strategic
478 consolidation, and strategic recommendations for disposition,
479 acquisition, and building.
480 (h) Recommendations for using capital improvement funds to
481 implement the consolidation of state agencies into state-owned
482 office buildings.
483 (i)~~8.~~ The updated plan required by s. 255.25(4)(c).
484 (9)~~(d)~~ Annually, by June 30: ~~of each year,~~
485 (a) Each state agency shall ~~annually~~ provide to the
486 department all information regarding agency programs affecting
487 the need for or use of space by that agency, reviews of lease-
488 expiration schedules for each geographic area, active and
489 planned full-time equivalent data, business case analyses
490 related to consolidation plans by an agency, a telework program
491 under s. 110.171, and current occupancy and relocation costs,
492 inclusive of furnishings, fixtures and equipment, data, and
493 communications. State agencies may use the services of a tenant

494 broker in preparing this information.
495 (b) The title entity or managing agency shall report to the
496 department any vacant or underutilized space for all state-owned
497 office buildings and any restrictions that apply to any other
498 agency occupying the vacant or underutilized space. The title
499 entity or managing agency shall also notify the department of
500 any significant changes to its occupancy for the coming fiscal
501 year.
502 (10)~~(4)~~ The department shall adopt rules ~~pursuant to~~
503 ~~chapter 120~~ providing:
504 (a) Methods for accomplishing the duties outlined in
505 subsection (1).
506 (b) Procedures for soliciting and accepting competitive
507 solicitations for leased space of 2,000 ~~5,000~~ square feet or
508 more in privately owned buildings, for evaluating ~~the~~ proposals
509 received, for exemption from competitive solicitations
510 requirements of any lease for ~~the purpose of which is~~ the
511 provision of care and living space for persons or emergency
512 space needs as provided in s. 255.25(10), and for ~~the~~ securing
513 ~~of~~ at least three documented quotes for a lease that is not
514 required to be competitively solicited.
515 (c) A standard method for determining square footage or any
516 other measurement used as the basis for lease payments or other
517 charges.
518 (d) Methods of allocating space in both state-owned office
519 buildings and privately owned buildings leased by the state
520 based on use, personnel, and office equipment.
521 (e)~~1.~~ Acceptable terms and conditions for inclusion in
522 lease agreements.

523 ~~2.~~ At a minimum, such terms and conditions must ~~shall~~
524 include~~, at a minimum,~~ the following clauses, which may not be
525 amended, supplemented, or waived:
526 1.~~a.~~ As provided in s. 255.2502, "The State of Florida's
527 performance and obligation to pay under this contract is
528 contingent upon an annual appropriation by the Legislature."
529 2.~~b.~~ "The lessee has ~~shall have~~ the right to terminate this
530 lease, without penalty, if ~~this lease in the event~~ a state-owned
531 building becomes available to the lessee for occupancy and the
532 lessee has given ~~upon giving~~ 6 months' advance written notice to
533 the lessor by certified mail, return receipt requested."
534 (f) State agency use of space identified in the Florida
535 State-Owned Lands and Records Information System under
536 subsection (5) ~~Maximum rental rates, by geographic areas or by~~
537 ~~county, for leasing privately owned space~~.
538 (g) A standard method for the assessment of rent to state
539 agencies and other authorized occupants of state-owned office
540 space, notwithstanding the source of funds.
541 (h) For full disclosure of the names and the extent of
542 interest of the owners holding a 4-percent or more interest in
543 ~~any~~ privately owned property leased to the state or in the
544 entity holding title to the property, for exemption from such
545 disclosure of any beneficial interest that ~~which~~ is represented
546 by stock in a ~~any~~ corporation registered with the Securities and
547 Exchange Commission or registered pursuant to chapter 517, which
548 ~~stock~~ is for sale to the general public, and for exemption from
549 such disclosure of any leasehold interest in property located
550 outside the territorial boundaries of the United States.
551 (i) For full disclosure of the names of all public

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552 officials, agents, or employees holding any interest in any
553 privately owned property leased to the state or in the entity
554 holding title to the property, and the nature and extent of
555 their interest, for exemption from such disclosure of any
556 beneficial interest that ~~which~~ is represented by stock in any
557 corporation registered with the Securities and Exchange
558 Commission or registered pursuant to chapter 517, which ~~stock~~ is
559 for sale to the general public, and for exemption from such
560 disclosure of any leasehold interest in property located outside
561 the territorial boundaries of the United States.
562 (j) A method for reporting leases for nominal or no
563 consideration.
564 (k) For a lease of less than 2,000 ~~5,000~~ square feet, a
565 method for certification by the agency head or the agency head's
566 designated representative that all criteria for leasing have
567 been fully complied with and for ~~the~~ filing ~~of~~ a copy of such
568 lease and all supporting documents with the department for its
569 review and approval as to technical sufficiency and whether it
570 is in the best interests of the state.
571 (l) A standardized format for state agency reporting of the
572 information required by paragraph (9)(a) ~~(3)(d)~~.
573 (m) Procedures for the effective and efficient
574 administration of this section.
575 (11)~~(5)~~ The department shall prepare a form listing all
576 conditions and requirements adopted pursuant to this chapter
577 which must be met by any state agency leasing any building or
578 part thereof. Before executing any lease, this form must ~~shall~~
579 be certified by the agency head or the agency head's designated
580 representative and submitted to the department.

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(12)~~(6)~~ The department may contract for real estate consulting or tenant brokerage services in order to carry out its duties relating to the strategic leasing plan under subsection (7). The contract must ~~shall~~ be procured pursuant to s. 287.057. The vendor ~~vendor that is~~ awarded the contract shall be compensated ~~by the department,~~ subject to the provisions of the contract, and such compensation is subject to appropriation by the Legislature. A ~~The~~ real estate consultant or tenant broker may not receive compensation directly from a lessor for services that are rendered pursuant to the contract. Moneys paid by a lessor to the department under a facility-leasing arrangement are not subject to the charges imposed under s. 215.20.

Section 6. Section 255.25, Florida Statutes, is amended to read:

255.25 Approval required before ~~prior to~~ construction or lease of buildings.—

(1)~~(a) A state agency may not lease space in a private building that is to be constructed for state use unless prior approval of the architectural design and preliminary construction plans is first obtained from the department.~~

~~(b)~~ During the term of existing leases, each agency shall consult with the department regarding opportunities for consolidation, use of state-owned space, build-to-suit space, and potential acquisitions; shall monitor market conditions; and shall initiate a competitive solicitation or, if appropriate, lease-renewal negotiations for each lease held in the private sector to effect the best overall lease terms reasonably available to that agency.

(a) Amendments to leases may be permitted to modify any lease provisions or ~~any~~ other terms or conditions unless~~, except to the extent~~ specifically prohibited under ~~by~~ this chapter.

(b) The department shall serve as a mediator in lease-renewal negotiations if the agency and the lessor are unable to reach a compromise within 6 months after renegotiation and if ~~either~~ the agency or lessor requests intervention by the department.

(c) If ~~When specifically~~ authorized by the General Appropriations Act, and in accordance with s. 255.2501, if applicable, the department may approve a lease-purchase, sale-leaseback, or tax-exempt leveraged lease contract or other financing technique for the acquisition, renovation, or construction of a state fixed capital outlay project if ~~when~~ it is in the best interest of the state.

(2)~~(a)~~ Except as provided in ss. 255.249 and ~~s.~~ 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and of the need for the lease ~~therefor~~ is first obtained from the department. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such terms and conditions as are established by the department, subject to final approval by the head of the department ~~of Management Services~~ and s. 255.2502.

(a)~~(b)~~ For the lease of less than 2,000 ~~5,000~~ square feet of space, including space leased for nominal or no consideration, a state agency must notify the department at least 90 ~~30~~ days before the execution of the lease. The department shall review the lease and determine whether suitable space is available in a state-owned or state-leased building

located in the same geographic region. If the department determines that space is not available, the department shall determine whether the state agency lease is in the best interests of the state. If the department determines that the execution of the lease is not in the best interests of the state, the department shall notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives ~~and the presiding officers of each house of the Legislature~~ of such finding in writing. A lease that is for a term extending beyond the end of a fiscal year is subject to ~~the provisions of~~ ss. 216.311, 255.2502, and 255.2503.

(b) ~~(c)~~ The department shall adopt ~~as a rule~~ uniform leasing procedures by rule for use by each state agency ~~other than the Department of Transportation~~. Each state agency shall ensure that the leasing practices of that agency are in substantial compliance with the uniform leasing rules adopted under this section and ss. 255.249, 255.2502, and 255.2503.

(c) ~~(d) Notwithstanding paragraph (a) and except as provided in ss. 255.249 and 255.2501, a state agency may not lease a building or any part thereof unless prior approval of the lease terms and conditions and of the need therefor is first obtained from the department.~~ The department may not approve any term or condition in a lease agreement which has been amended, supplemented, or waived unless a comprehensive analysis, including financial implications, demonstrates that such amendment, supplement, or waiver is in the state's long-term best interest. An ~~Any~~ approved lease may include an option to purchase or an option to renew the lease, or both, upon such

terms and conditions as are established by the department, subject to final approval by the head of the department, ~~of Management Services~~ and the provisions of s. 255.2502.

(3)(a) Except as provided in subsection (10), a state agency may not enter into a lease as lessee for the use of 2,000 ~~5,000~~ square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.

1.a. An invitation to bid must ~~shall~~ be made available simultaneously to all lessors and ~~must~~ include a detailed description of the space sought; the time and date for the receipt of bids and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining the acceptability of the bid. If the agency contemplates renewing ~~renewal of~~ the contract, that fact must be stated in the invitation to bid. The bid must include the price for each year for which the contract may be renewed. Evaluation of bids must ~~shall~~ include consideration of the total cost for each year as submitted by the lessor. Criteria that were not set forth in the invitation to bid may not be used in determining the acceptability of the bid.

b. The contract shall be awarded with reasonable promptness by written notice to the responsible and responsive lessor that submits the lowest responsive bid. The contract file must contain a written determination that the bid meets ~~This bid must be determined in writing to meet~~ the requirements and criteria set forth in the invitation to bid.

2.a. If an agency determines in writing that the use of an

697 invitation to bid is not practicable, leased space shall be
698 procured by competitive sealed proposals. A request for
699 proposals shall be made available simultaneously to all lessors
700 and must include a statement of the space sought; the time and
701 date for the receipt of proposals and of the public opening; and
702 all contractual terms and conditions applicable to the
703 procurement, including the criteria, which must include, but
704 need not be limited to, price, to be used in determining the
705 acceptability of the proposal. The relative importance of price
706 and other evaluation criteria must ~~shall~~ be indicated. If the
707 agency contemplates renewing ~~renewal of~~ the contract, that fact
708 must be stated in the request for proposals. The proposal must
709 include the price for each year for which the contract may be
710 renewed. Evaluation of proposals must ~~shall~~ include
711 consideration of the total cost for each year as submitted by
712 the lessor.
713 b. The contract shall be awarded to the responsible and
714 responsive lessor whose proposal is determined in writing to be
715 the most advantageous to the state, taking into consideration
716 the price and the other criteria set forth in the request for
717 proposals. The contract file must contain documentation
718 supporting the basis on which the award is made.
719 3.a. If the agency determines in writing that the use of an
720 invitation to bid or a request for proposals will not result in
721 the best leasing value to the state, the agency may procure
722 leased space by competitive sealed replies. The agency's written
723 determination must specify reasons ~~that explain~~ why negotiation
724 may be necessary in order for the state to achieve the best
725 leasing value and must be approved in writing by the agency head

726 or his or her designee before ~~prior to the~~ advertisement of an
727 invitation to negotiate. Cost savings related to the agency
728 procurement process are not sufficient justification for using
729 an invitation to negotiate. An invitation to negotiate shall be
730 made available to all lessors simultaneously and must include a
731 statement of the space sought; the time and date for the receipt
732 of replies and of the public opening; and all terms and
733 conditions applicable to the procurement, including the criteria
734 to be used in determining the acceptability of the reply. If the
735 agency contemplates renewing ~~renewal of~~ the contract, that fact
736 must be stated in the invitation to negotiate. The reply must
737 include the price for each year for which the contract may be
738 renewed.
739 b. The agency shall evaluate and rank responsive replies
740 against all evaluation criteria set forth in the invitation to
741 negotiate and ~~shall~~ select, based on the ranking, one or more
742 lessors with which to commence negotiations. After negotiations
743 are conducted, the agency shall award the contract to the
744 responsible and responsive lessor that the agency determines
745 will provide the best leasing value to the state. The contract
746 file must contain a short, plain statement that explains the
747 basis for lessor selection and sets forth the lessor's
748 deliverables and price pursuant to the contract, and an
749 explanation of how these deliverables and price provide the best
750 leasing value to the state.
751 (b) The department ~~of Management Services~~ shall have the
752 authority to approve a lease for 2,000 ~~5,000~~ square feet or more
753 of space which ~~that~~ covers more than 12 consecutive months ~~1~~
754 ~~fiscal year~~, subject to ~~the provisions of~~ ss. 216.311, 255.2501,

755 255.2502, and 255.2503, if such lease is, in the judgment of the
756 department, in the best interests of the state. In determining
757 best interest, the department shall consider availability of
758 state-owned space and analyses of build-to-suit and acquisition
759 opportunities. This paragraph does not apply to buildings or
760 facilities of any size leased for the purpose of providing care
761 and living space to individuals ~~for persons~~.
762 (c) The department may approve extensions of an existing
763 lease of 2,000 ~~5,000~~ square feet or more of space if such
764 extensions are determined to be in the best interests of the
765 state; however, ~~but in no case shall~~ the total of such
766 extensions may not exceed 11 months. If at the end of the 11th
767 month an agency still needs that space, it must ~~shall~~ be
768 procured by competitive bid in accordance with s. 255.249(10)(b)
769 ~~255.249(4)(b)~~. ~~However, an agency that determines that it is in~~
770 ~~its best interest to remain in the space it currently occupies~~
771 ~~may negotiate a replacement lease with the lessor if an~~
772 ~~independent comparative market analysis demonstrates that the~~
773 ~~rates offered are within market rates for the space and the cost~~
774 ~~of the new lease does not exceed the cost of a comparable lease~~
775 ~~plus documented moving costs. A present-value analysis and the~~
776 ~~consumer price index shall be used in the calculation of lease~~
777 ~~costs. The term of the replacement lease may not exceed the base~~
778 ~~term of the expiring lease.~~
779 (d) Any person who files an action protesting a decision or
780 intended decision pertaining to a competitive solicitation for
781 space to be leased by the agency pursuant to s. 120.57(3)(b)
782 shall post with the state agency at the time of filing the
783 formal written protest a bond payable to the agency in an amount

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784 equal to 1 percent of the estimated total rental of the basic
785 lease period or $5,000, whichever is greater, which bond is
786 ~~shall be~~ conditioned on ~~upon~~ the payment of all costs that may
787 be adjudged against him or her in the administrative hearing in
788 which the action is brought and in any subsequent appellate
789 court proceeding. If the agency prevails after completion of the
790 administrative hearing process and any appellate court
791 proceedings, it shall recover all costs and charges, which must
792 ~~shall~~ be included in the final order or judgment, excluding
793 attorney ~~attorney's~~ fees. Upon payment of such costs and charges
794 by the person protesting the award, the bond shall be returned
795 to him or her. If the person protesting the award prevails, the
796 bond shall be returned to that person and he or she shall
797 recover from the agency all costs and charges, which must ~~shall~~
798 be included in the final order of judgment, excluding attorney
799 ~~attorney's~~ fees.
800 (e) The agency and the lessor, when entering into a lease
801 for 2,000 ~~5,000~~ or more square feet of a privately owned
802 building, shall, before the effective date of the lease, agree
803 upon and separately state the cost of tenant improvements which
804 may qualify for reimbursement if the lease is terminated before
805 the expiration of its base term. The department shall serve as
806 mediator if the agency and the lessor are unable to agree. The
807 amount agreed upon and stated shall, if appropriated, be
808 amortized over the original base term of the lease on a
809 straight-line basis.
810 (f) The unamortized portion of tenant improvements, if
811 appropriated, shall be paid in equal monthly installments over
812 the remaining term of the lease. If any portion of the original

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813 leased premises is occupied after termination but during the
814 original term by a tenant who ~~that~~ does not require material
815 changes to the premises, the repayment of the cost of tenant
816 improvements applicable to the occupied but unchanged portion
817 shall be abated during occupancy. The portion of the repayment
818 to be abated must ~~shall~~ be based on the ratio of leased space to
819 unleased space.
820 (g) Notwithstanding s. 287.056(1), a state agency shall
821 ~~may, at the sole discretion of the agency head or his or her~~
822 ~~designee,~~ use the services of a tenant broker under a state term
823 contract to assist with a lease action ~~a competitive~~
824 ~~solicitation~~ undertaken by the agency, with the exception of
825 leases between governmental entities. If using ~~In making its~~
826 ~~determination whether to use a tenant broker, a state agency~~
827 ~~shall consult with the department. A state agency may not use~~
828 ~~the services of a tenant broker unless the tenant broker is~~
829 ~~under a term contract with the state which complies with~~
830 ~~paragraph (h). If a state agency uses~~ the services of a tenant
831 broker with respect to a transaction, the agency may not enter
832 into a lease with a ~~any~~ landlord for whom ~~to which~~ the tenant
833 broker is providing brokerage services for that transaction.
834 (h) ~~The Department of Management Services may,~~ Pursuant to
835 s. 287.042(2)(a), the department shall procure ~~a~~ term contracts
836 ~~contract~~ for tenant broker ~~real estate consulting and brokerage~~
837 services. A state agency may not purchase services from the
838 contract unless the contract has been procured under s.
839 287.057(1) ~~after March 1, 2007,~~ and contains the following
840 provisions or requirements:
841 1. Awarded tenant brokers must maintain an office or

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842 presence in the market served. In awarding the contract,
843 preference must be given to brokers who ~~that~~ are licensed in
844 this state under chapter 475 and who ~~that~~ have 3 or more years
845 of experience in the market served. The contract may be made
846 with multiple ~~up to three~~ tenant brokers in order to serve the
847 marketplace ~~in the north, central, and south areas of the state~~.
848 2. Each contracted tenant broker works ~~shall work~~ under the
849 direction, supervision, and authority of the state agency,
850 subject to the rules governing lease procurements.
851 3. The department shall provide training for the awarded
852 tenant brokers concerning the rules governing the procurement of
853 leases.
854 4. Tenant brokers must comply with all applicable
855 provisions of s. 475.278.
856 5. Real estate consultants and tenant brokers shall be
857 compensated by the state agency, subject to the provisions of
858 the term contract, and such compensation is subject to
859 appropriation by the Legislature. A real estate consultant or
860 tenant broker may not receive compensation directly from a
861 lessor for services that are rendered under the term contract.
862 Moneys paid by a lessor to the state agency under a facility
863 leasing arrangement are not subject to the charges imposed under
864 s. 215.20. All terms relating to the compensation of the real
865 estate consultant or tenant broker must ~~shall~~ be specified in
866 the term contract and may not be supplemented or modified by the
867 state agency using the contract.
868 6. The department shall conduct periodic customer-
869 satisfaction surveys.
870 7. Each state agency shall report the following information

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871 to the department:
872 a. The number of leases that adhere to the goal of the
873 workspace-management initiative of 180 square feet per full-time
874 employee ~~FTE~~.
875 b. The quality of space leased and the adequacy of tenant-
876 improvement funds.
877 c. The timeliness of lease procurement, measured from the
878 date of the agency's request to the finalization of the lease.
879 d. Whether cost-benefit analyses were performed before
880 execution of the lease in order to ensure that the lease is in
881 the best interest of the state.
882 e. The lease costs compared to market rates for similar
883 types and classifications of space according to the official
884 classifications of the Building Owners and Managers Association.
885 (4)(a) The department may ~~shall~~ not authorize any state
886 agency to enter into a lease agreement for space in a privately
887 owned building if ~~when~~ suitable space is available in a state-
888 owned building located in the same geographic region, except
889 upon presentation to the department of sufficient written
890 justification, acceptable to the department, that a separate
891 space is required in order to fulfill the statutory duties of
892 the agency making the ~~such~~ request. The term "state-owned
893 building" as used in this subsection means any state-owned
894 facility regardless of use or control.
895 (b) State agencies shall cooperate with local governmental
896 units by using suitable, existing publicly owned facilities,
897 subject to ~~the provisions of~~ ss. 255.2501, 255.2502, and
898 255.2503. Agencies may use ~~utilize~~ unexpended funds appropriated
899 for lease payments to:

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900 1. Pay their proportion of operating costs.
901 2. Renovate applicable spaces.
902 (c) Because the state has a substantial financial
903 investment in state-owned buildings, it is legislative policy
904 and intent that if ~~when~~ state-owned buildings meet the needs of
905 state agencies, agencies must fully use such buildings before
906 leasing privately owned buildings. ~~By September 15, 2006,~~ The
907 department ~~of Management Services~~ shall create a 5-year plan for
908 implementing this policy. The department shall update this plan
909 annually, detailing proposed departmental actions to meet the
910 plan's goals, and include ~~shall furnish~~ this plan annually as
911 part of the master leasing report.
912 (5) Before construction or renovation of any state-owned
913 building or state-leased space is commenced, the department ~~of~~
914 ~~Management Services~~ shall determine ~~ascertain~~, through the ~~by~~
915 submission of proposed plans to the Division of State Fire
916 Marshal for review, whether ~~that~~ the proposed construction or
917 renovation plan complies with the uniform firesafety standards
918 required by the division ~~of State Fire Marshal~~. The review of
919 construction or renovation plans for state-leased space must
920 ~~shall~~ be completed within 10 calendar days after ~~of~~ receipt of
921 the plans by the division ~~of State Fire Marshal~~. The review of
922 construction or renovation plans for a state-owned building must
923 ~~shall~~ be completed within 30 calendar days after ~~of~~ receipt of
924 the plans by the division ~~of State Fire Marshal~~. The
925 responsibility for submission and retrieval of the plans may
926 ~~called for in this subsection shall~~ not be imposed on the design
927 architect or engineer, but is ~~shall be~~ the responsibility of the
928 two agencies. If ~~Whenever~~ the division ~~of State Fire Marshal~~

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929 determines that a construction or renovation plan is not in
930 compliance with ~~such~~ uniform firesafety standards, the division
931 ~~of State Fire Marshal~~ may issue an order to cease all
932 construction or renovation activities until compliance is
933 obtained, except those activities required to achieve ~~such~~
934 compliance. The lessor shall provide the department with ~~of~~
935 ~~Management Services~~ documentation certifying that the facility
936 meets all of ~~shall withhold approval of any proposed lease until~~
937 ~~the construction or renovation plan complies with~~ the uniform
938 firesafety standards ~~of the Division of State Fire Marshal~~. The
939 cost of all modifications or renovations made for the purpose of
940 bringing leased property into compliance with the uniform
941 firesafety standards are ~~shall be~~ borne by the lessor. The state
942 may not take occupancy without the division's final approval.
943 (6) Before construction or substantial improvement of any
944 state-owned building is commenced, the department ~~of Management~~
945 ~~Services~~ must determine ~~ascertain~~ that the proposed construction
946 or substantial improvement complies with the flood plain
947 management criteria for mitigation of flood hazards, as
948 prescribed in the October 1, 1986, rules and regulations of the
949 Federal Emergency Management Agency, and the department shall
950 monitor the project to assure compliance with the criteria. ~~In~~
951 ~~accordance with chapter 120,~~ The department ~~of Management~~
952 ~~Services~~ shall adopt rules ~~any~~ necessary ~~rules~~ to ensure that
953 all ~~such~~ proposed state construction and substantial improvement
954 of state buildings in designated flood-prone areas complies with
955 the flood plain management criteria. If ~~Whenever~~ the department
956 determines that a construction or substantial improvement
957 project is not in compliance with such ~~with the established~~

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958 ~~flood plain management~~ criteria, the department may issue an
959 order to cease all construction or improvement activities until
960 compliance is obtained, except those activities required to
961 achieve such compliance.
962 (7) This section does not apply to any lease having a term
963 of less than 120 consecutive days for the purpose of securing
964 the one-time special use of the leased property. ~~This section~~
965 ~~does not apply to any lease for nominal or no consideration.~~
966 (8) An agency may not enter into more than one lease for
967 space in the same privately owned facility or complex within any
968 12-month period except upon competitive solicitation.
969 (9) Specialized educational facilities, excluding
970 classrooms, are ~~shall be~~ exempt from the competitive bid
971 requirements for leasing pursuant to this section if the
972 executive head of a ~~any~~ state agency certifies in writing that
973 the ~~said~~ facility is available from a single source and that the
974 competitive bid requirements would be detrimental to the state.
975 Such certification must ~~shall~~ include documentation of evidence
976 of steps taken to determine sole-source status.
977 (10) The department ~~of Management Services~~ may approve
978 emergency acquisition of space without competitive bids if
979 existing state-owned or state-leased space is destroyed or
980 rendered uninhabitable by an act of God, fire, malicious
981 destruction, or structural failure, or by legal action, or if
982 the agency head certifies in writing that there is an immediate
983 danger to the public health, safety, or welfare, or if other
984 substantial loss to the state requires emergency action and ~~if~~
985 the chief administrator of the state agency or the chief
986 administrator's designated representative certifies in writing

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987 that no other agency-controlled space is available to meet this
988 emergency need; however, ~~but in no case shall~~ the lease for such
989 space may not exceed 11 months. If the lessor elects not to
990 replace or renovate the destroyed or uninhabitable facility, the
991 agency shall procure the needed space by competitive bid in
992 accordance with s. 255.249(10)(b) ~~255.249(4)(b)~~. If the lessor
993 elects to replace or renovate the destroyed or uninhabitable
994 facility and the construction or renovations will not be
995 complete at the end of the 11-month lease, the agency may modify
996 the lease to extend it on a month-to-month basis for up to ~~an~~
997 ~~additional~~ 6 months to allow completion of such construction or
998 renovations.
999 (11) In any leasing of space which occurs ~~that is~~
1000 ~~accomplished~~ without competition, the individuals taking part in
1001 the development or selection of criteria for evaluation, in the
1002 evaluation, and in the award processes must ~~shall~~ attest in
1003 writing that they are independent of, and have no conflict of
1004 interest in, the entities evaluated and selected.
1005 Section 7. Subsection (4) of section 255.252, Florida
1006 Statutes, is amended to read:
1007 255.252 Findings and intent.—
1008 (4) In addition to designing and constructing new buildings
1009 to be energy-efficient, it is the policy of the state to operate
1010 and maintain state facilities in a manner that minimizes energy
1011 consumption and maximizes building sustainability and to operate
1012 facilities leased by the state so as to minimize energy use. It
1013 is further the policy of the state that the renovation of
1014 existing state facilities be in accordance with a sustainable
1015 building rating or a national model green building code. State

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1016 agencies are encouraged to consider shared savings financing of
1017 energy-efficiency and conservation projects, using contracts
1018 that split the resulting savings for a specified period of time
1019 between the state agency and the private firm or cogeneration
1020 contracts and that otherwise permit the state to lower its net
1021 energy costs. Such energy contracts may be funded from the
1022 operating budget. The vendor for such energy contracts may be
1023 selected in accordance with s. 287.055.
1024 Section 8. Effective July 1, 2014, subsection (1) of
1025 section 255.254, Florida Statutes, is amended to read:
1026 255.254 No facility constructed or leased without life-
1027 cycle costs.—
1028 (1) A ~~No~~ state agency may not ~~shall~~ lease, construct, or
1029 have constructed, within limits prescribed in this section, a
1030 facility without having secured from the department an
1031 evaluation of life-cycle costs based on sustainable building
1032 ratings. ~~Furthermore,~~ Construction shall proceed only upon
1033 disclosing to the department, for the facility chosen, the life-
1034 cycle costs as determined in s. 255.255, the facility's
1035 sustainable building rating goal, and the capitalization of the
1036 initial construction costs of the building. The life-cycle costs
1037 and the sustainable building rating goal shall be primary
1038 considerations in the selection of a building design. For leased
1039 facilities larger ~~buildings more~~ than 2,000 ~~5,000~~ square feet in
1040 area within a given building boundary, an energy performance
1041 analysis that calculates ~~consisting of a projection of~~ the total
1042 annual energy consumption and energy costs ~~in dollars~~ per square
1043 foot ~~of major energy-consuming equipment and systems based on~~
1044 ~~actual expenses from the last 3 years and projected forward for~~

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1045 ~~the term of the proposed lease~~ shall be performed. The analysis
1046 must also compare the energy performance of the proposed lease
1047 to ~~lease shall only be made where there is a showing that the~~
1048 ~~energy costs incurred by the state are minimal compared to~~
1049 ~~available~~ like facilities. A lease may not be finalized until
1050 the energy performance analysis has been approved by the
1051 department. ~~A lease agreement for any building leased by the~~
1052 ~~state from a private sector entity shall include provisions for~~
1053 ~~monthly energy use data to be collected and submitted monthly to~~
1054 ~~the department by the owner of the building.~~
1055 Section 9. Effective July 1, 2014, subsection (1) of
1056 section 255.257, Florida Statutes, is amended to read:
1057 255.257 Energy management; buildings occupied by state
1058 agencies.—
1059 (1) ENERGY CONSUMPTION AND COST DATA.— Each state agency
1060 shall collect data on energy consumption and cost for all~~. The~~
1061 ~~data gathered shall be on~~ state-owned facilities and metered
1062 state-leased facilities ~~of 5,000 net square feet or more~~. These
1063 data will be used in the computation of the effectiveness of the
1064 state energy management plan and the effectiveness of the energy
1065 management program of each of the state agencies. Collected data
1066 shall be reported annually to the department in a format
1067 prescribed by the department.
1068 Section 10. Subsection (4) of section 255.503, Florida
1069 Statutes, is amended to read:
1070 255.503 Powers of the Department of Management Services.—
1071 The Department of Management Services shall have all the
1072 authority necessary to carry out and effectuate the purposes and
1073 provisions of this act, including, but not limited to, the

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1074 authority to:
1075 (4) Operate existing state-owned facilities in the pool,
1076 including charging fees directly to state employees for the use
1077 of parking facilities, and to pledge rentals or charges for such
1078 facilities for the improvement, repair, maintenance, and
1079 operation of such facilities, or to finance the acquisition of
1080 facilities pursuant to the provisions of this act.
1081 Section 11. Subsection (7) of section 110.171, Florida
1082 Statutes, is amended to read:
1083 110.171 State employee telework program.—
1084 (7) Agencies that have a telework program shall establish
1085 and track performance measures that support telework program
1086 analysis and report data annually to the department in
1087 accordance with s. 255.249(9) ~~255.249(3)(d)~~. Such measures must
1088 include, but need not be limited to, those that quantify
1089 financial impacts associated with changes in office space
1090 requirements resulting from the telework program. Agencies
1091 operating in office space owned or managed by the department
1092 shall consult the department to ensure consistency with the
1093 strategic leasing plan required under s. 255.249(7)
1094 ~~255.249(3)(b)~~.
1095 Section 12. Paragraph (b) of subsection (15) of section
1096 985.682, Florida Statutes, is amended to read:
1097 985.682 Siting of facilities; study; criteria.—
1098 (15)
1099 (b) Notwithstanding s. 255.25(1)~~(b)~~, the department may
1100 enter into lease-purchase agreements to provide juvenile justice
1101 facilities for ~~the~~ housing ~~of~~ committed youths, contingent upon
1102 available funds. The facilities provided through such agreements

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1103 must ~~shall~~ meet the program plan and specifications of the
1104 department. The department may enter into such lease agreements
1105 with private corporations and other governmental entities.
1106 However, notwithstanding ~~the provisions of~~ s. 255.25(3)(a), a ~~no~~
1107 ~~such~~ lease agreement may not be entered into except upon
1108 advertisement for the receipt of competitive bids and award to
1109 the lowest and best bidder except if ~~when~~ contracting with other
1110 governmental entities.
1111 Section 13. Except as otherwise expressly provided in this
1112 act, this act shall take effect July 1, 2013.

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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)

3/21/13
Meeting Date

Topic: State-Owned + State-leased space

Bill Number: SB 1074 *(if applicable)*

Name: Marlene Williams

Amendment Barcode: *(if applicable)*

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Speaking: [x] For [ ] Against [ ] Information

Representing: Department of Management Services

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-21-13
Meeting Date

Topic: State-owned and State-Leased Space

Bill Number: 1074 *(if applicable)*

Name: Tom Berger

Amendment Barcode: *(if applicable)*

Job Title: Director, Division of Real Estate Development & Management

Address: 4050 Esplanade Way
Street

Tallahassee FL 32399
City *State* *Zip*

Phone: 487-9921

E-mail: tom.berger@dms.myflorida.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Dept. of Management Services

Appearing at request of Chair: [ ] Yes [ ] 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.

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 434

INTRODUCER: Committee on Education and Senator Altman

SUBJECT: Brevard Community College

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Fav/CS**
2.	McVaney	McVaney	GO	**Favorable**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	x	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 434 codifies a name change from "Brevard Community College" to "Eastern Florida State College," consistent with Florida law.

The bill provides an effective date of July 1, 2013.

The bill amends sections 288.8175 and 1000.21, Florida Statutes.

II. Present Situation:

A Florida College System (FCS) institution is authorized to change the institution's name, with the approval of that FCS institution's district board of trustees, and use the designation "college" or "state college" if the institution:[1]

- Is authorized to grant baccalaureate degrees in accordance with current law[2]; and

[1] Section 1001.60(2)(b)1., F.S.
[2] Section 1007.33, F.S.

- Is accredited as a baccalaureate-degree-granting institution by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS).

If, however, a FCS institution is not authorized to grant baccalaureate degrees and is not accredited as a baccalaureate-degree-granting institution by SACS, the FCS institution may request approval from the State Board of Education (SBE) to change the institution's name and use the designation "college" after receiving approval for such change from that FCS institution's district board of trustees. The SBE is authorized to approve the name change if the institution enters into an agreement with the SBE to do the following:[3]

- Maintain as its primary mission responsibility for responding to community needs for postsecondary academic education and career degree education;[4]
- Maintain an open-door admissions policy for associate-level degree programs and workforce education programs;
- Continue to provide outreach to underserved populations;
- Continue to provide remedial education; and
- Comply with all provisions of the statewide articulation agreement that relate to 2-year and 4-year public degree-granting institutions as adopted by the SBE.[5]

Brevard Community College meets the criteria, required under current law, for approval of the name change:

- On December 9, 2012, Brevard Community College received from SACS, accreditation as a baccalaureate-degree-granting institution.[6]
- On December 12, 2012, Brevard Community College received approval from the SBE to grant a Bachelor of Applied Science degree in Organizational Management.[7]
- On December 17, 2012, Brevard Community College's district board of trustees approved the name change from Brevard Community College to Eastern Florida State College.[8]

A FCS institution's district board of trustees that approves a change to the institution's name must seek statutory codification of such name change in law[9] during the next regular legislative session.[10]

Currently, there are 28 FCS institutions.[11] Twenty-three of the 28 FCS institutions are accredited as baccalaureate-degree-granting institutions by SACS. They are as follows:[12]

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[3] Section 1001.60(2)(b)2., F.S.
[4] Section 1004.65(5), F.S.
[5] Section 1007.23, F.S.
[6] Florida Department of Education, *2013 Agency Legislative Bill Analysis for SB 434* (Feb. 20, 2013); *see also* Southern Association of Colleges and Schools, *Actions taken by the SACSCOC Board of Trustees (Dec. 10, 2012), available at* http://www.sacscoc.org/2012%20December%20Actions%20and%20Disclosure%20Statements/12cract%20dec.pdf.
[7] Florida Department of Education, *2013 Agency Legislative Bill Analysis for SB 434* (Feb. 20, 2013); *see also* State Board of Education, *State Board of Education Meeting Archive Part Three (Dec. 12, 2012),* http://www.fldoe.org/board/meetings/2012_12_12/meetingArchive.asp.
[8] Florida Department of Education, *2013 Agency Legislative Bill Analysis for SB 434* (Feb. 20, 2013); *see also* Brevard Community College, *New College Name*, http://www.brevardcc.edu/discover-bcc/new-college-name/index.cfm (last visited March 1, 2013).
[9] Section 1000.21(3), F.S.
[10] Section 1001.60(2)(c), F.S.

1. Brevard Community College
2. Broward College
3. Chipola College
4. College of Central Florida
5. Daytona State College
6. Edison State College
7. Florida Gateway College
8. Florida State College at Jacksonville
9. Gulf Coast State College
10. Indian River State College
11. Lake-Sumter Community College
12. Miami Dade College
13. Northwest Florida State College
14. Palm Beach State College
15. Pensacola State College
16. Polk State College
17. Santa Fe College
18. Seminole State College of Florida
19. St. Johns River State College
20. St. Petersburg College
21. South Florida State College
22. State College of Florida, Manatee-Sarasota
23. Valencia College

Of the 23 FCS institutions that are accredited as baccalaureate-degree-granting institutions, 21 institutions use the designation "state college" or "college." Thirteen FCS institutions use the designation "state college" and 8 FCS institutions use the designation "college." Lake-Sumter Community College is in the process of changing its name to use the designation "state college." Five FCS institutions that are not accredited as baccalaureate-degree-granting institutions by SACS and that have not changed name to use the designation "state college" or "college" are as follows:[13]

1. Florida Keys Community College
2. Hillsborough Community College
3. North Florida Community College
4. Pasco-Hernando Community College
5. Tallahassee Community College

[11] Florida Department of Education, *Community College Campuses*, http://data.fldoe.org/workforce/contacts/default.cfm?action=showList&ListID=11 (last visited Feb. 13, 2013).
[12] E-mail, Florida Department of Education, Division of Florida Colleges (Feb. 12, 2013), on file with the Committee on Education staff.
[13] E-mail, Florida Department of Education, Division of Florida Colleges (Feb. 12, 2013), on file with the Committee on Education staff; *see also* Florida Department of Education, *Community College Campuses*, http://data.fldoe.org/workforce/contacts/default.cfm?action=showList&ListID=11 (last visited Feb. 13, 2013).

III. Effect of Proposed Changes:

CS/SB 434 codifies the name of Eastern Florida State College. This name change will increase the number of FCS institutions that use the designation "state college" or "college" from 21 to 22. As a result, fourteen of the 28 FCS institutions will use the designation "state college."

The bill provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Eastern Florida State College may incur costs related to the name change from Brevard Community College. Such costs may be associated with signage, publications, documentation, and other related items. Payment of such costs, if any, shall be the responsibility of the Eastern Florida State College.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Committee on Education on March 6, 2013:
The committee substitute differs from SB 434 in that the committee substitute:

- Adds a conforming provision that cross-references s. 288.8175, F.S., to reflect Brevard Community College's name change to Eastern Florida State College.

B. Amendments:

None.

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

By the Committee on Education; and Senator Altman

581-02007-13 2013434c1

A bill to be entitled

An act relating to Brevard Community College; amending ss. 288.8175 and 1000.21, F.S.; renaming Brevard Community College as "Eastern Florida State College"; providing an effective date.

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

Section 1. Paragraph (e) of subsection (4) of section 288.8175, Florida Statutes, is amended to read:

288.8175 Linkage institutes between postsecondary institutions in this state and foreign countries.—

(4) The institutes are:

(e) Florida-China Institute (University of West Florida, University of South Florida, and Eastern Florida State ~~Brevard Community~~ College).

Section 2. Paragraph (a) of subsection (3) of section 1000.21, Florida Statutes, is amended to read:

1000.21 Systemwide definitions.—As used in the Florida K-20 Education Code:

(3) "Florida College System institution" except as otherwise specifically provided, includes all of the following public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of the institution:

(a) Eastern Florida State ~~Brevard Community~~ College, which serves Brevard County.

Section 3. This act shall take effect July 1, 2013.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR THAD ALTMAN
16th District

March 14th, 2013

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

Dear Chairman Ring:

I respectfully request that SB 434, related to *Brevard Community College*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

Thad Altman

Thad Altman
TA/rk

CC: Joe McVaney, Staff Director, 525 Knott Building

REPLY TO:
❒ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
❒ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR THAD ALTMAN
16th District

COMMITTEES:
Military Affairs, Space, and Domestic Security, *Chair*
Budget - Subcommittee on Finance and Tax, *Vice Chair*
Budget
Budget - Subcommittee on Higher Education Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Higher Education
Reapportionment
Regulated Industries

March 21, 2013

The Honorable Jeremy Ring, Chair
Senate Committee on
Government Health Policy
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring:

Senate Bill 0434, related to *Brevard Community College,* is on the Government Oversight Committee agenda on March 21, 2013.

Because of a conflict with the Committee on Military and Veterans Affairs, Space, and Domestic Security, I will be unable to attend. Please recognize my staff member, Anthony Duarte, to present SB 0434, on my behalf.

Please feel free to contact me if you have any questions.

Sincerely,

Thad Altman

Thad Altman/svb

REPLY TO:
❒ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
❒ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5053

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1188

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Archaeological Sites and Specimens

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney	GO	**Fav/CS**
2.			ATD	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1188 expands existing restrictions on archaeological activities and makes conforming permitting and penalty changes.

Current law prohibits persons, by means other than excavation, from conducting archaeological field investigations on, removing or attempting to remove, or defacing, destroying, or otherwise altering any archaeological site or specimen that is located on land owned or controlled by the state or land within the boundaries of a designated state archaeological landmark or landmark zone, except pursuant to a permit or under procedures relating to accredited institutions granted by the Department of State's Division of Historical Resources. Current law also provides penalties for persons who violate the restrictions and a process by which a person may apply for an archaeological permit.

This bill creates a definition for "water authority" for purposes of the sections amended by the bill. It expands the area where unauthorized archaeological activity is prohibited to also include land owned by a water authority. The bill also adds land owned by a water authority to those lands which are subject to the associated penalty and permitting provisions.

This bill substantially amends sections 267.12 and 267.13 of the Florida Statutes.

II. Present Situation:

State Policy Relative to Historic Properties

The "State Policy Relative to Historic Properties"[1] acknowledges that the rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations, and that the destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is the policy of the state to:

- Provide leadership in the preservation of the state's historic resources;
- Administer state-owned or state-controlled historic resources in a spirit of stewardship and trusteeship;
- Contribute to the preservation of non-state-owned historic resources and to give encouragement to organizations and individuals undertaking preservation by private means;
- Foster conditions, using measures that include financial and technical assistance, for a harmonious coexistence of society and state historic resources;
- Encourage the public and private preservation and utilization of elements of the state's historically built environment; and
- Assist local governments to expand and accelerate their historic preservation programs and activities.[2]

This policy also provides that all treasure trove, artifacts, and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title thereto vested in the Division of Historical Resources of the Department of State for the purposes of administration and protection.[3]

State Archaeological Landmarks and Landmark Zones

The Division of Historical Resources (Division) may designate an archaeological site of significance to the scientific study or public representation of the state's historical, prehistoric, or aboriginal past as a "state archaeological landmark."[4] In addition, the Division may designate an interrelated grouping of significant archaeological sites as a "state archaeological landmark zone."[5] No site or grouping of sites can be designated without the express written consent of a private owner.[6] Upon designation of an archaeological site, the owners and occupants are given

[1] Section 267.061, F.S.
[2] Section 267.061(1)(a), F.S.
[3] Section 267.061(1)(b), F.S.
[4] Section 267.11, F.S.
[5] *Id*.
[6] *Id.*

written notification by the Division.[7] Once so designated, no person may conduct field investigation activities on the site without first securing a permit from the Division.[8]

Archaeological Research Permits

The Division may issue permits for excavation and surface reconnaissance on state lands or lands within the boundaries of designated state archaeological landmarks or landmark zones to institutions which the Division deems to be properly qualified to conduct such activity, subject to Division rules and regulations, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs.[9]

Those state institutions considered by the Division to permanently possess the required archaeological expertise to conduct the archaeological activities permissible under the provisions of a permit may be designated as accredited institutions.[10] These institutions are allowed to conduct archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or any landmark zone without obtaining an individual permit for each project.[11] The institutions are required to give prior written notice of all anticipated archaeological field activities, together with such information as may reasonably be required by the Division to ensure the proper preservation, protection, and excavation of archaeological resources.[12] However, no archaeological activity can be commenced by the accredited institution until the Division determines that the planned project is in conformity with guidelines, regulations, and criteria.[13] Such determination is made by the Division within 15 days from the date of notification.[14]

Prohibited Archaeological Practices and Penalties

Any person who by means other than excavation conducts archaeological field investigations on, or removes or attempts to remove, or defaces, destroys, or otherwise alters any archaeological site or specimen located upon land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit granted by the Division or under procedures relating to accredited institutions, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and, in addition, forfeits to the state all specimens, objects, and materials collected, together with all photographs and records relating to such material.[15]

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[7] *Id*.
[8] *Id*.
[9] Section 267.12., F.S.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] Section 267.13(1)(a), F.S.

A person who engages in the same conduct by means of excavation commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., and any vehicle or equipment used in connection with the violation is subject to forfeiture to the state. Such person may be ordered by the court to make restitution to the state for the archaeological or commercial value and cost of restoration and repair.[16] Individuals also are prohibited, and subject to criminal penalties, for selling or procuring archaeological objects which have been collected in violation of state law.[17]

The Division additionally has authority to institute administrative proceedings to impose an administrative fine of not more than $500 a day on, and apply to a court of competent jurisdiction for injunctive relief against, any person or business organization that, without written permission of the Division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located on state-owned or state-controlled lands, including state sovereignty submerged lands.[18]

Water Authorities

Current law does not define "water authority." However, the Legislature has created two independent special districts of the state that are currently titled "water authority."

The Lake County Water Authority, created as the Ocklawaha Basin Recreation and Water Conservation Control Authority,[19] was renamed to its current name in 2000.[20] Its duties include:

- Controlling and conserving the freshwater resources of Lake County (county);
- Fostering and improving the tourist business in the county by improvements to the county's streams, lakes, and canals;
- Providing recreational facilities for the county's tourists, citizens, and taxpayers by a more efficient use of the county's streams, lakes, and canals;
- Preserving, protecting, and improving the county's fish and wildlife; and
- Protecting the county's freshwater resources through assisting local governments in treatment of stormwater runoff.[21]

The Tohopekaliga Water Authority, created within Osceola County,[22] is tasked with performing such acts as shall be necessary for the sound planning, acquisition, development, operation, and maintenance of governmentally-owned potable and non-potable water and wastewater management and delivery systems within its district and its service area.[23]

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[16] Section 267.13(1)(b), F.S.
[17] Section 267.13(1)(c), F.S.
[18] Section 267.13(2), F.S.
[19] Chapter 29222, L.O.F.
[20] Chapter 2000-492, L.O.F.
[21] *Id*.
[22] Chapter 2003-368, s. 4(2), L.O.F. The chapter also authorizes expansion of water authority's boundary to include any service area within the boundaries of an affected general purpose local government upon the adoption of a resolution by the governing body of the affected general purpose local government authorizing the water authority to provide its service and facilities therein (*id*.).
[23] Chapter 2003-368, s. 5, L.O.F.

In addition to "water authority," the names of legislatively-created entities tasked with water management-related duties include, but are not limited to:

- Water *supply* authority;[24]
- Aqueduct authority;[25] and
- Water management district.[26]

The specific duties of such entities vary, but all are related to the management or provision of water resources.

III. Effect of Proposed Changes:

For purposes of the sections amended by this bill, the bill defines "water authority" to mean an independent special district created pursuant to s. 189.404, F.S.,[27] whose purpose is to control and conserve freshwater resources.

This bill expands the area where unauthorized archaeological activity is prohibited to also include land owned by a water authority. The bill also adds land owned by a water authority to those lands which are subject to the associated penalty and permitting provisions.

The bill conforms a cross-reference to numbering changes made by the bill.

The bill's effective date is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Florida Constitution provides that no county or municipality may be bound by any general law that mandates it to spend funds or to take an action requiring the expenditure of funds unless the Legislature determines that such law fulfills an important state interest *and* one of specified other requirements is met.[28] Certain laws, including those with an insignificant fiscal impact, are exempt from the mandates restrictions of the section.[29]

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[24] Section 373.713(1), F.S., provides that if certain conditions are met, regional water supply authorities may be created as voluntary cooperatives between local governments for the purpose of developing, recovering, storing, and supplying water for county or municipal purposes in such a manner as will give priority to reducing adverse environmental effects of excessive or improper of water from concentrated areas. Florida has numerous water supply authorities, including, but not limited to, the Peace River Manasota Regional Water Supply Authority (http://www.regionalwater.org/), the Withlacoochee Regional Water Supply Authority (http://www.wrwsa.org/), and the South Metro Water Supply Authority (http://www.southmetrowater.org/) (all websites last visited on March 18, 2013).

[25] *See*, for example, the Florida Keys Aqueduct Authority, created by ch. 76-441, L.O.F. The term "aqueduct authority" is not defined in the Florida Statutes.

[26] Section 373.019(23), F.S., defines "water management district" to mean any flood control, resource management, or water management district operating under the authority of the chapter. Florida has five regional water management districts: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida (*see* "*Water Management Districts*," Florida Department of Environmental Protection, http://www.dep.state.fl.us/secretary/watman/ (last visited March 18, 2013)).

[27] Section 189.404, F.S., provides requirements for the creation of independent special districts.

[28] Article VII, s. 18(a) of the Florida Constitution. The specified other requirements are:

This bill may require counties and municipalities to take actions that may require the expenditure of funds. If so, the bill may be exempt if the fiscal impact is insignificant.

If the bill has a significant fiscal impact, it may still qualify for an exception if it contains a legislative finding that it fulfills an important state interest *and* meets one of the other specified requirements. The bill does not contain a finding that it fulfills an important state interest; however, it may meet one of the other specified requirements. If the bill is interpreted to apply to all water management entities of the state, it may apply to all persons similarly situated. The bill also could meet one of the other specified requirements by passing with a two-thirds vote of the membership of each house.[30]

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.

- Funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure;
- The Legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality;
- The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; *or*
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance. *Id*.

[29] Article VII, s. 18(d) of the Florida Constitution. Other laws that are exempt from the mandates requirements are:

- Laws adopted to require funding of pension benefits existing on the effective date of Art. VII, s. 18 of the Florida Constitution;
- Criminal laws;
- Election laws;
- The general appropriations act;
- Special appropriations acts;
- Laws reauthorizing but not expanding then-existing statutory authority; and
- Laws creating, modifying, or repealing noncriminal infractions. *Id*.

[30] A two-thirds vote of the membership of each house requires a two-thirds vote of *all* members, not just of those present and voting.

C. Government Sector Impact:

State Government

Revenues
Expanding the prohibition of specified activities relating to archaeological sites and resources could result in the collection of additional administrative fines or restitution. The Department of State (Department) is unable to estimate the amount of such potential revenues because they would be dependent on successful prosecutions.[31]

Expenditures
In its analysis for the original bill, the Department stated that passage of the bill would double the current permitting workload and require an additional full-time equivalent position in the amount of $45,120.[32] It is unclear whether the committee substitute's creation of a definition for "water authority" would affect the Department's estimate on this issue.

Additionally, the Department states that it will incur indeterminate costs associated with collection, conservation, cataloguing, and storage for archaeological artifacts recovered on land owned by a water authority.[33]

The Department also states that state law enforcement may need to be enhanced to prevent unauthorized archaeological activities on land owned by a water authority.[34]

Local Government

Revenues
None.

Expenditures
The Department states that water authority land managers will be required to coordinate with the Department's Division of Historical Resources in the preparation of permits prior to anticipated archaeological field activities.[35]

The Department also states that local law enforcement may need to be enhanced to prevent unauthorized archaeological activities on land owned by a water authority.[36]

It is unclear whether any such effects on local government would be absorbed within existing resources.

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[31] Department of State bill analysis, dated March 14, 2013 (on file with the Senate Governmental Oversight and Accountability Committee).
[32] *Id*.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *Id*.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 21, 2013:
The CS differs from the original bill in that it creates a definition for "water authority."

B. Amendments:

None.

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

527478

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 17 - 60
and insert:
Section 1. Section 267.12, Florida Statutes, is amended to read:
267.12 Research permits; procedure.—
(1) As used in this section and s. 267.13, the term "water authority" means an independent special district created pursuant to s. 189.404 whose purpose is to control and conserve freshwater resources.
(2) The division may issue permits for excavation and

527478

surface reconnaissance on land owned or controlled by the state, land owned by a water authority, ~~lands~~ or land ~~lands~~ within the boundaries of a designated state archaeological landmark ~~landmarks~~ or landmark zone ~~zones~~ to institutions that ~~which~~ the division deems ~~shall deem~~ to be properly qualified to conduct such activity, subject to such rules and regulations as the division may prescribe, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs, such reports to be submitted to the division.

(3) ~~(2)~~ Those state institutions considered by the division permanently to possess the required archaeological expertise to conduct the archaeological activities allowed under ~~the provisions of~~ the permit may be designated as accredited institutions which will be allowed to conduct archaeological field activities on land owned or controlled by the state, land owned by a water authority, ~~state-owned or controlled lands~~ or land within the boundaries of a ~~any~~ designated state archaeological landmark or ~~any~~ landmark zone without obtaining an individual permit for each project, except that those accredited institutions will be required to give prior written notice of all anticipated archaeological field activities on land owned or controlled by the state, land owned by a water authority, ~~state-owned or controlled lands~~ or land within the boundaries of a ~~any~~ designated state archaeological landmark or

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42 landmark zone to the division, together with such information as
43 may reasonably be required by the division to ensure the proper
44 preservation, protection, and excavation of the archaeological
45 resources. However, ~~no~~ archaeological activity may not be
46 commenced by the accredited institution until the division has
47 determined that the planned project will be in conformity with
48 the guidelines, regulations, and criteria adopted pursuant to
49 ss. 267.11-267.14. Such determination will be made by the
50 division and notification to the institution given within ~~a~~
51 ~~period of~~ 15 days after ~~from the time of~~ receipt of the prior
52 notification by the division.
53 (4) ~~(3)~~ All specimens collected under a permit issued by the
54 division or under the procedures adopted for accredited
55 institutions shall belong to the state with the title thereto
56 vested in the division for the purpose of administration and
57 protection. The division may arrange for the disposition of the
58 specimens so collected by accredited state institutions at those
59 institutions and for the temporary or permanent loan of such
60 specimens at permitholding institutions for the purpose of
61 further scientific study, interpretative displays, and
62 curatorial responsibilities.
63
64 ========== T I T L E A M E N D M E N T ==========
65 And the title is amended as follows:
66 Delete line 3
67 and insert:
68 amending s. 267.12, F.S.; providing a definition for
69 "water authority"; authorizing the Division of

230270

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Between lines 156 and 157
4 insert:
5 Section 3. Subsection (1) of section 1004.56, Florida
6 Statutes, is amended to read:
7 1004.56 Florida Museum of Natural History; functions.—
8 (1) The functions of the Florida Museum of Natural History,
9 located at the University of Florida, are to make scientific
10 investigations toward the sustained development of natural
11 resources and a greater appreciation of human cultural heritage,
12 including, but not limited to, biological surveys, ecological

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13 studies, environmental impact assessments, in-depth
14 archaeological research, and ethnological analyses, and to
15 collect and maintain a depository of biological, archaeological,
16 and ethnographic specimens and materials in sufficient numbers
17 and quantities to provide within the state and region a base for
18 research on the variety, evolution, and conservation of wild
19 species; the composition, distribution, importance, and
20 functioning of natural ecosystems; and the distribution of
21 prehistoric and historic archaeological sites and an
22 understanding of the aboriginal and early European cultures that
23 occupied them. State institutions, departments, and agencies may
24 deposit type collections from archaeological sites in the
25 museum, and it shall be the duty of each state institution,
26 department, and agency to cooperate by depositing in the museum
27 voucher and type biological specimens collected as part of the
28 normal research and monitoring duties of its staff and to
29 transfer to the museum those biological specimens and
30 collections in its possession but not actively being curated or
31 used in the research or teaching of that institution,
32 department, or agency. The Florida Museum of Natural History is
33 empowered to accept, preserve, maintain, or dispose of these
34 specimens and materials in a manner which makes each collection
35 and its accompanying data available for research and use by the
36 staff of the museum and by cooperating institutions,
37 departments, agencies, and qualified independent researchers.
38 The biological, archaeological, and ethnographic collections
39 shall belong to the state with the title vested in the Florida
40 Museum of Natural History, except as provided in s. 267.12(4)
41 ~~267.12(3)~~. In collecting or otherwise acquiring these

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42 collections, the museum shall comply with pertinent state
43 wildlife, archaeological, and agricultural laws and rules.
44 However, all collecting, quarantine, and accreditation permits
45 issued by other institutions, departments, and agencies shall be
46 granted routinely for said museum research study or collecting
47 effort on state lands or within state jurisdiction which does
48 not pose a significant threat to the survival of endangered wild
49 species, habitats, or ecosystems. In addition, the museum shall
50 develop exhibitions and conduct programs which illustrate,
51 interpret, and explain the natural history of the state and
52 region and shall maintain a library of publications pertaining
53 to the work as herein provided. The exhibitions, collections,
54 and library of the museum shall be open, free to the public,
55 under suitable rules to be promulgated by the director of the
56 museum and approved by the University of Florida.
57
58 ========== T I T L E A M E N D M E N T ==========
59 And the title is amended as follows:
60 Delete line 13
61 and insert:
62 entities; amending s. 1004.56, F.S.; correcting a
63 cross-reference; providing an effective date.

By Senator Hays

11-00536A-13 20131188__

A bill to be entitled

An act relating to archeological sites and specimens; amending s. 267.12, F.S.; authorizing the Division of Historical Resources of the Department of State to issue permits for excavation, surface reconnaissance, and archaeological activities on land owned by a water authority; amending s. 267.13, F.S.; providing that specified activities relating to archaeological sites and specimens located upon land owned by a water authority are prohibited and subject to penalties; authorizing the division to impose an administrative fine on and seek injunctive relief against certain entities; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 267.12, Florida Statutes, are amended to read:

267.12 Research permits; procedure.—

(1) The division may issue permits for excavation and surface reconnaissance on land owned or controlled by the state, land owned by a water authority, ~~lands~~ or land ~~lands~~ within the boundaries of a designated state archaeological landmark ~~landmarks~~ or landmark zone ~~zones~~ to institutions that ~~which~~ the division deems ~~shall deem~~ to be properly qualified to conduct such activity, subject to such rules and regulations as the division may prescribe, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that

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

11-00536A-13 20131188__

possess or will secure the archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs, such reports to be submitted to the division.

(2) Those state institutions considered by the division permanently to possess the required archaeological expertise to conduct the archaeological activities allowed under ~~the provisions of~~ the permit may be designated as accredited institutions which will be allowed to conduct archaeological field activities on land owned or controlled by the state, land owned by a water authority, ~~state-owned or controlled lands~~ or land within the boundaries of a ~~any~~ designated state archaeological landmark or ~~any~~ landmark zone without obtaining an individual permit for each project, except that those accredited institutions will be required to give prior written notice of all anticipated archaeological field activities on land owned or controlled by the state, land owned by a water authority, ~~state-owned or controlled lands~~ or land within the boundaries of a ~~any~~ designated state archaeological landmark or landmark zone to the division, together with such information as may reasonably be required by the division to ensure the proper preservation, protection, and excavation of the archaeological resources. However, ~~no~~ archaeological activity may not be commenced by the accredited institution until the division has determined that the planned project will be in conformity with the guidelines, regulations, and criteria adopted pursuant to ss. 267.11-267.14. Such determination will be made by the division and notification to the institution given within ~~a~~

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

59 ~~period of~~ 15 days after ~~from the time of~~ receipt of the prior
60 notification by the division.
61 Section 2. Subsections (1) and (2) of section 267.13,
62 Florida Statutes, are amended to read:
63 267.13 Prohibited practices; penalties.—
64 (1)(a) Any person who by means other than excavation ~~either~~
65 conducts archaeological field investigations on, or removes or
66 attempts to remove~~,~~ or defaces, destroys, or otherwise alters
67 any archaeological site or specimen located upon, ~~any~~ land owned
68 or controlled by the state, land owned by a water authority, or
69 land within the boundaries of a designated state archaeological
70 landmark or landmark zone, except in the course of activities
71 pursued under the authority of a permit or under procedures
72 relating to accredited institutions granted by the division,
73 commits a misdemeanor of the first degree, punishable as
74 provided in s. 775.082 or s. 775.083, and, in addition, shall
75 forfeit to the state all specimens, objects, and materials
76 collected, together with all photographs and records relating to
77 such material.
78 (b) Any person who by means of excavation ~~either~~ conducts
79 archaeological field investigations on, or removes or attempts
80 to remove~~,~~ or defaces, destroys, or otherwise alters any
81 archaeological site or specimen located upon, ~~any~~ land owned or
82 controlled by the state, land owned by a water authority, or
83 land within the boundaries of a designated state archaeological
84 landmark or landmark zone, except in the course of activities
85 pursued under the authority of a permit or under procedures
86 relating to accredited institutions granted by the division,
87 commits a felony of the third degree, punishable as provided in

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88 s. 775.082, s. 775.083, or s. 775.084, and any vehicle or
89 equipment of any person used in connection with the violation is
90 subject to forfeiture to the state if it is determined by any
91 court of law that the vehicle or equipment was involved in the
92 violation. Such person shall forfeit to the state all specimens,
93 objects, and materials collected or excavated, together with all
94 photographs and records relating to such material. The court may
95 also order the defendant to make restitution to the state for
96 the archaeological or commercial value and cost of restoration
97 and repair as defined in subsection (4).
98 (c) Any person who offers for sale or exchange any object
99 with knowledge that it has previously been collected or
100 excavated in violation of any of the terms of ss. 267.11-267.14,
101 or who procures, counsels, solicits, or employs any other person
102 to violate any prohibition contained in ss. 267.11-267.14 or to
103 sell, purchase, exchange, transport, receive, or offer to sell,
104 purchase, or exchange any archaeological resource excavated or
105 removed from ~~any~~ land owned or controlled by the state, land
106 owned by a water authority, or land within the boundaries of a
107 designated state archaeological landmark or landmark zone,
108 except with the express consent of the division, commits a
109 felony of the third degree, punishable as provided in s.
110 775.082, s. 775.083, or s. 775.084, and any vehicle or equipment
111 of any person used in connection with the violation is subject
112 to forfeiture to the state if it is determined by any court of
113 law that such vehicle or equipment was involved in the
114 violation. All specimens, objects, and material collected or
115 excavated, together with all photographs and records relating to
116 such material, shall be forfeited to the state. The court may

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

also order the defendant to make restitution to the state for the archaeological or commercial value and cost of restoration and repair as defined in subsection (4).

(2)(a) The division may institute an administrative proceeding to impose an administrative fine of not more than $500 a day on any person or business organization that, without written permission of the division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located upon land owned or controlled by the state ~~on state-owned or state-controlled lands~~, including state sovereignty submerged land, or land owned by a water authority ~~lands~~.

(b) The division shall institute an administrative proceeding by serving written notice of a violation by certified mail upon the alleged violator. The notice shall specify the law or rule allegedly violated and the facts upon which the allegation is based. The notice shall also specify the amount of the administrative fine sought by the division. The fine is ~~shall~~ not ~~become~~ due until after service of notice and an administrative hearing. However, the alleged violator has ~~shall have~~ 20 days after ~~from~~ service of notice to request an administrative hearing. Failure to respond within that time constitutes ~~shall constitute~~ a waiver, and the fine becomes ~~shall become~~ due without a hearing.

(c) The division may enter its judgment for the amount of the administrative penalty imposed in a court of competent jurisdiction, pursuant to s. 120.69. The judgment may be enforced as any other judgment.

(d) The division may apply to a court of competent

jurisdiction for injunctive relief against any person or business organization that explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located upon ~~on state-owned or state-controlled~~ land owned or controlled by the state, including state sovereignty submerged land, or land owned by a water authority without the written permission of the division.

(e) The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer ~~implement the provisions of~~ this section.

Section 3. This act shall take effect July 1, 2013.

The Florida Senate

Committee Agenda Request

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

CC: Joe McVaney, Staff Director
Courtney Hicks, Administrative Assistant

Subject: Committee Agenda Request

Date: March 4, 2013

I respectfully request that **Senate Bill #1188**, relating to Archeological Sites and Specimens, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

File signed original with committee office

S-020 (03/2004)

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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.)

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

BILL: SB 832

INTRODUCER: Senator Joyner

SUBJECT: Powers of Attorney

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	**Favorable**
2.	McKay	McVaney	GO	**Favorable**
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 832 makes a number of changes to chapter 709, F.S., concerning powers of attorney, which were recommended by the Real Property, Probate, and Trust Law Section of The Florida Bar. These changes:

- Make provisions of chapter 709, F.S., which apply to financial institutions expressly applicable to broker-dealers.
- Specify three powers given by a principal to an agent in which the laws governing powers of attorney do not apply.
- Allow a notary public to sign the principal's name on a power of attorney document if the principal is physically unable to sign.
- Allow a third party to require an original power of attorney be provided for recording in official records if the power of attorney is relied on to transfer real property.
- Allow an agent with a power of attorney to delegate authority to a third person using a prescribed government form if the delegation is for a governmental purpose.
- Provide a standard for a court to award attorney fees in litigation involving a power of attorney.
- Allow a third party to require that an agent provide an affidavit stating whether the agent's authority has been terminated by the filing of an action for dissolution of marriage of the agent and principal.
- Clarify when a rejection of a power of attorney by a third party must be in writing.
- Clarify that the default cap in existing law on the amount of gifts that an agent may give under a power of attorney applies to gifts given in a single a calendar year.

This bill substantially amends the following sections of the Florida Statutes: 709.2102, 709.2103, 709.2105, 709.2106, 709.2114, 709.2116, 709.2119, 709.2120, 709.2121, 709.2202, and 709.2208.

II. Present Situation:

Powers of Attorney Generally

A power of attorney is a legal document in which the client (the principal) authorizes a person or entity (the agent or attorney-in-fact)[1] to act on his or her behalf. The authority granted depends on the specific language of the power of attorney. A person giving a power of attorney may provide very broad authority (a general power of attorney) or may limit the authority to certain specific acts (a limited power of attorney).

A power of attorney expires automatically upon the principal becoming mentally ill or otherwise incapacitated.[2] However, a durable power of attorney remains in effect if the principal subsequently becomes incapacitated, but expires immediately if the principal is adjudicated legally incapacitated.[3] Any power of attorney expires upon death of the principal or revocation by the principal.[4]

Uniform Power of Attorney Act

In 2006, the Uniform Law Commission of the National Conference of Commissioners on Uniform Laws promulgated the Uniform Power of Attorney Act (UPOAA). The catalyst for UPOAA was a national study which revealed a growing divergence in state power of attorney legislation. Since its completion thirteen states and one territory have adopted the UPOAA.[5] The goal of the UPOAA is to promote uniformity and portability of powers of attorney across state lines.

The Florida Power of Attorney Act (the "Act"), was enacted effective October 1, 2011, and substantially re-wrote ch. 709, F.S., to conform to the Uniform Power of Attorney Act, with modifications.[6]

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[1] Chapter 709, F.S., uses the term "attorney-in-fact" to describe a person granted authority pursuant to a power of attorney. This bill uses the term "agent" to describe a person granted authority pursuant to a power of attorney.
[2] A general power of attorney is the default power of attorney in this state.
[3] *See* s. 709.2121, F.S.
[4] *Id.*
[5] *See* http://www.uniformlaws.org/Act.aspx?title=Power of Attorney for information regarding the UPOAA. Thirteen states are recognized as having adopted the Act and one state has proposed legislation to adopt the act this year. (Last visited March 9, 2013).
[6] Chapter 2011-210, L.O.F.

Broker-dealers

Certain provisions of chapter 709, F.S., apply specifically to financial institutions:

- A written notice relating to the validity of a power of attorney to a financial institution must include the name, address, and last four digits of the principal's taxpayer identification number and be delivered to an officer or director of the financial institution.[7]
- A power of attorney that includes the statement that the agent has "authority to conduct investment transactions as provided in section 709.2208(2), Florida Statutes" grants general authority for a financial institution to handle, buy, and sell investment instruments.[8]
- A financial institution has 4-day limit on what is considered a reasonable time for it to reject or accept a power of attorney provided by an agent.[9]

A broker-dealer is an entity that is registered with the United States Securities and Exchange Commission or the Commodity Futures Trading Commission.[10] These entities act similarly to financial institutions in the handling, buying, and selling of investment instruments, but chapter 709, F.S., does not specifically address whether the same provisions that apply to financial institutions also apply to broker-dealers.

Exceptions to when Powers of Attorney Apply

Section 709.2103, F.S., provides for four exceptions where chapter 709, F.S., does not apply to certain powers given by a principal to an agent that are encountered in common commercial contexts:

- A power created by an entity.
- A proxy or other delegation to exercise voting rights or management rights with respect to an entity.
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.
- A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.[11]

Execution Requirements

Under s. 709.2105, F.S., a power of attorney must be signed by the principal. The statutes do not accommodate a person who is unable to sign his or her name due to a physical disability, but who otherwise has the capacity to execute a power of attorney.[12]

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[7] Section 709.2121(3), F.S.
[8] Section 709.2208(2), F.S.
[9] Section 709.2120(1)(b), F.S.
[10] U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, http://www.sec.gov/divisions/marketreg/bdguide.htm (last visited Mar. 1, 2013).
[11] Section 709.2103, F.S.
[12] Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper Chapter 709 "Glitch" Bill* (2013) (on file with the Senate Committee on Judiciary).

Validity of Power of Attorney

Section 709.2106(5), F.S., allows a copy of a power of attorney to have the same effect as the original.[13] However, title insurance agents are concerned that an original copy of the power of attorney must be recorded in the public records when real estate transfers are completed via a power of attorney.[14] Section 709.2106, F.S., prevents title agents from requiring an original.

Delegation of Agent's Duties

A principal delegates authority to an agent to act for the principal by execution of the power of attorney. There are limited circumstances in which the agent is allowed to further delegate his or her authority to another person. Currently, an agent with a power of attorney is only allowed to delegate authority to act under the power of attorney to a third person for purposes of managing financial investments.[15]

Awarding Attorney Fees

Section 709.2116(3), F.S., allows a court to award attorney fees in proceedings involving disputes over a power of attorney. However, it does not provide guidance for a court to apply if making such an award.

Reliance on a Power of Attorney

Currently, before relying on a power of attorney, a third party may request that an agent provide an affidavit as to the validity of the power of attorney. The third party may require that the affidavit state, among other things, where the principal is domiciled, that the principal is not deceased, and that there has been no suspension of powers of attorney by the initiation of proceedings to determine incapacity.[16] However, whether the agent's authority has been terminated by the filing of an action for dissolution of marriage between the agent and principal is not among the items a third party may require in an affidavit from an agent.

Refusal to Accept a Power of Attorney

Section 709.2120, F.S., identifies certain situations in which a third party may reject a power of a power of attorney. It also requires that any such rejection must be in writing and state the reason for rejection of the power of attorney.[17] Based on the wording of s. 709.2120, F.S., the statute does not clearly indicate whether the requirement that the rejection be in writing apply to any of those situations.[18] This leads to a possible interpretation that a written rejection is not required if a valid reason for rejection exists.

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[13] Section 709.2106(5), F.S.
[14] Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.
[15] Sections 709.2114 F.S., and 518.112, F.S.
[16] Section 709.2119, F.S.
[17] *Id*.
[18] Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.

Authority to Make Gifts

A power of attorney may grant an agent the authority to make a gift of the principal's property to another individual. Unless the power of attorney otherwise provides, the agent's ability to make a gift of the principal's property is limited by a default amount equal to the annual exclusion amount for federal gift tax purposes.[19]

III. Effect of Proposed Changes:

Definitions

Section 1 amends s. 709.2102, F.S., to define the term "broker-dealer." The bill also amends ss. 709.2120 (**Section 8)**, 709.2121 (**Section 9)**, and 709.2208 (**Section 11)**, F.S., to clarify that those sections apply to both financial institutions and broker-dealers.

The definition of "sign" is modified to clarify that the principal may use either a signature or a mark as evidence of execution.

A definition of "another state" has also been included as it relates to acceptance of powers of attorney executed in compliance with the laws of another state, territory, or insular possession of the United States.[20]

Exceptions to when Powers of Attorney Apply

Section 2 amends s. 709.2103, F.S., creating three additional powers of attorney that chapter 709, F.S., does not apply to:

- A power given to a transfer agent to facilitate a specific transfer of stocks, bonds, or other financial instrument.
- A power authorizing a financial institution or broker-dealer to act as agent for the account owner in executing transfers of cash, securities, commodities, or other financial assets.
- A delegation of powers by a trustee as regulated by chapter 736, F.S., the Florida Trust Code.

Execution Requirements

Sections 3 and 10 amends ss. 703.2105 and 709.2202, F.S., respectively, to allow a notary public to sign a principal's name on a power of attorney document if the principal is physically unable to sign as long as the requirements for a notary providing services under s. 117.05(14), F.S., are met. These requirements include:

- The person with a disability directs the notary to sign in his or her presence.
- The document signing is witnessed by two disinterested persons.

[19] Section 709.2202(3), F.S.
[20] "Insular" is defined as "of islands." http://www.merriam-webster.com/dictionary/insular (Last visited March 18, 2013). Currently, the insular possessions of the United States are the U.S. Virgin Islands, American Samoa, and Guam.

- The notary writes below the signature the following statement: "Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes," and states the circumstances of the signing in the notarial certificate.[21]

Validity of Power of Attorney

Section 4 amends s. 709.2106, F.S., to allow a third party to require that an original power of attorney be provided for recording in official records if the power of attorney is relied on to transfer real property. The bill specifies the process by which a power of attorney can be recorded by the clerk of courts.

Delegation of Agent's Duties

Section 5 amends s. 709.2114, F.S., to allow an agent with power of attorney to delegate authority to a third person using a prescribed government form if the delegation is for a governmental purpose. An example is the appointment of an agent for communication with the Internal Revenue Service using IRS Form 2848.[22]

Awarding Attorney Fees

Section 6 amends s. 709.2116(3), F.S., to provide a standard for awarding attorney fees as in a chancery action. This standard provides that "a court of equity may, as justice requires, order that costs follow the result of the suit, apportion the costs between the parties, or require all costs be paid by the prevailing party."[23] This standard gives a court full discretion in determining whether to make an award.

Reliance on a Power of Attorney

Section 7 amends s. 709.2119, F.S., to allow a third party, relying on a power of attorney, to require an affidavit from an agent stating whether the agent's authority has been terminated by the filing of an action for dissolution or annulment of marriage of the agent and principal.

The bill also corrects a cross-reference.

Refusal to Accept a Power of Attorney

Section 8 amends s. 709.2120, F.S., to clarify that written notice of rejection is not required when the third person would not otherwise be required to engage in a transaction with the principal in the same circumstances and that written notice is required in all other circumstances.

[21] Section 117.05(14), F.S.
[22] Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.
[23] *Dayton v. Conger*, 448 So. 2d 609, 612 (Fla. 3d DCA 1984).

Authority to Make Gifts

Section 10 amends s. 709.2202, F.S., to clarify that the default cap amount of gifts is measured on a calendar year basis, the same as it is measured for federal gift tax purposes, which is $14,000 per donee in 2013.[24]

Effective Date

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[24] American Taxpayer Relief Act of 2012, Pub. Law No. 112-240, H.R. 8, 112th Cong. (Jan. 2, 2013).

VIII. 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.

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

By Senator Joyner

19-00525A-13 2013832__

A bill to be entitled

An act relating to powers of attorney; amending s. 709.2102, F.S.; adding definitions; revising the definition of "sign"; amending s. 709.2103, F.S.; adding certain powers of attorney to which this part does not apply; amending s. 709.2105, F.S.; authorizing a notary public to sign the principal's name to the power of attorney under certain circumstances; amending s. 709.2106, F.S.; clarifying and revising language; providing that an original power of attorney, rather than a photocopy or electronic copy, may be required under certain circumstances; providing that an original power of attorney may be presented for recording in the official records for a fee; amending s. 709.2114, F.S.; adding exceptions to a provision that prohibits an agent who has accepted appointment from delegating authority to a third person; amending s. 709.2116, F.S.; providing for attorney fees and costs as in chancery actions; amending s. 709.2119, F.S.; authorizing a third person to require an agent to execute an affidavit stating that the agent's authority was not terminated because of certain circumstances; revising a sample form of an affidavit; revising a cross-reference; amending s. 709.2120, F.S.; revising language; providing a presumption of reasonable time to accept or reject a power of attorney for a broker-dealer; requiring a third person who rejects a power of attorney to state the reason in

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

19-00525A-13 2013832__

writing unless a certain circumstance applies; amending s. 709.2121, F.S.; providing for notice to a broker-dealer; amending s. 709.2202, F.S.; conforming a cross-reference; authorizing a notary public to sign the principal's name to documents, other than the power of attorney, under certain circumstances; clarifying that certain gift amounts are based on the calendar year; specifying that a broker-dealer does not have a duty to inquire into certain actions by an agent and is not liable for relying in good faith on an agent's actions; amending s. 709.2208, F.S.; providing that an agent acquires general authority regarding securities held by a broker-dealer under certain circumstances; providing an effective date.

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

Section 1. Present subsections (2) through (12) of section 709.2102, Florida Statutes, are redesignated as subsections (3) through (13), respectively, present subsection (13) of that section is redesignated as subsection (15), a new subsection (2) and a new subsection (14) are added to that section, and present subsection (12) of that section is amended to read:

709.2102 Definitions.—As used in this part, the term:

(2) "Broker-dealer" means a broker-dealer registered with the United States Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting in that capacity.

(13) ~~(12)~~ "Sign" means having present intent to authenticate

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59 or adopt a record to:
60 (a) Execute by signature or mark ~~adopt a tangible symbol~~;
61 or
62 (b) Attach to, or logically associate with the record an
63 electronic sound, symbol, or process.
64 (14) "Another state" means a state of the United States,
65 the District of Columbia, Puerto Rico, the United States Virgin
66 Islands, or any territory or insular possession subject to the
67 jurisdiction of the United States.
68 Section 2. Section 709.2103, Florida Statutes, is amended
69 to read:
70 709.2103 Applicability.—This part applies to all powers of
71 attorney except:
72 (1) A proxy or other delegation to exercise voting rights
73 or management rights with respect to an entity;
74 (2) A power created on a form prescribed by a government or
75 governmental subdivision, agency, or instrumentality for a
76 governmental purpose;
77 (3) A power to the extent it is coupled with an interest in
78 the subject of the power, including a power given to or for the
79 benefit of a creditor in connection with a credit transaction;
80 ~~and~~
81 (4) A power created by a person other than an individual;
82 (5) A power given to a transfer agent to facilitate a
83 specific transfer or disposition of one or more identified
84 stocks, bonds, or other financial instruments;
85 (6) A power authorizing a financial institution or broker-
86 dealer, or an employee of the financial institution or broker-
87 dealer, to act as agent for the account owner in executing

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88 trades or transfers of cash, securities, commodities, or other
89 financial assets in the regular course of business; and
90 (7) A delegation of powers by a trustee in accordance with
91 s. 736.0807.
92 Section 3. Subsection (3) is added to section 709.2105,
93 Florida Statutes, to read:
94 709.2105 Qualifications of agent; execution of power of
95 attorney.—
96 (3) If the principal is physically unable to sign the power
97 of attorney, the notary public before whom the principal's oath
98 or acknowledgment is made may sign the principal's name on the
99 power of attorney pursuant to s. 117.05(14).
100 Section 4. Subsections (3) and (5) of section 709.2106,
101 Florida Statutes, are amended, and subsection (6) is added to
102 that section, to read:
103 709.2106 Validity of power of attorney.—
104 (3) A power of attorney executed in another state which
105 does not comply with the execution requirements of this part is
106 valid in this state if, when the power of attorney was executed,
107 the power of attorney and its execution complied with the law of
108 the state of execution. A third person who is requested to
109 accept a power of attorney that is valid in this state solely
110 because of this subsection may in good faith request, and rely
111 upon, without further investigation, an opinion of counsel as to
112 any matter of law concerning the power of attorney, including
113 the due execution and validity of the power of attorney. An
114 opinion of counsel requested under this subsection must be
115 provided at the principal's expense. A third person may reject
116 ~~accept~~ a power of attorney that is valid in this state solely

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because of this subsection if the agent does not provide the requested opinion of counsel, and in such case, a third person has no liability for rejecting ~~refusing to accept~~ the power of attorney. This subsection does not affect any other rights of a third person who is requested to accept the power of attorney under this part, or any other provisions of applicable law.

(5) Except as otherwise provided in the power of attorney, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. Notwithstanding the provisions of this subsection, an original power of attorney that is relied upon to affect the title to real property may be required for recording in the official records.

(6) An original of a properly executed power of attorney may be presented to the clerk of the circuit court for recording in the official records, as provided under s. 28.222, upon payment of a service charge, as provided under s. 28.24.

Section 5. Subsection (1) of section 709.2114, Florida Statutes, is amended to read:

709.2114 Agent's duties.—

(1) An agent is a fiduciary. Notwithstanding the provisions in the power of attorney, an agent who has accepted appointment:

(a) Must act only within the scope of authority granted in the power of attorney. In exercising that authority, the agent:

1. May not act contrary to the principal's reasonable expectations actually known by the agent;

2. Must act in good faith;

3. May not act in a manner that is contrary to the principal's best interest, except as provided in paragraph

(2)(d) and s. 709.2202; and

4. Must attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

a. The value and nature of the principal's property;

b. The principal's foreseeable obligations and need for maintenance;

c. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

d. Eligibility for a benefit, a program, or assistance under a statute or rule; and

e. The principal's personal history of making or joining in making gifts;

(b) May not delegate authority to a third person except as authorized under ~~provided in~~ s. 518.112 or this part, or by executing a power of attorney on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;

(c) Must keep a record of all receipts, disbursements, and transactions made on behalf of the principal; and

(d) Must create and maintain an accurate inventory each time the agent accesses the principal's safe-deposit box, if the power of attorney authorizes the agent to access the box.

Section 6. Subsection (3) of section 709.2116, Florida Statutes, is amended to read:

709.2116 Judicial relief; conflicts of interests.—

(3) In any proceeding commenced by filing a petition under this section, including, but not limited to, the unreasonable

175 refusal of a third person to allow an agent to act pursuant to
176 the power of attorney, and in challenges to the proper exercise
177 of authority by the agent, the court shall award reasonable
178 attorney ~~attorney's~~ fees and costs as in chancery actions.
179 Section 7. Subsections (2) and (3) of section 709.2119,
180 Florida Statutes, are amended to read:
181 709.2119 Acceptance of and reliance upon power of
182 attorney.—
183 (2) A third person may require:
184 (a) An agent to execute an affidavit stating where the
185 principal is domiciled; that the principal is not deceased; that
186 there has been no revocation, or partial or complete termination
187 by adjudication of incapacity or by the occurrence of an event
188 referenced in the power of attorney; that there has been no
189 suspension by initiation of proceedings to determine incapacity,
190 or to appoint a guardian, of the principal; that the agent's
191 authority has not been terminated by the filing of an action for
192 dissolution or annulment of marriage, or legal separation of the
193 agent and principal; and, if the affiant is a successor agent,
194 the reasons for the unavailability of the predecessor agents, if
195 any, at the time the authority is exercised.
196 (b) An officer of a financial institution acting as agent
197 to execute a separate affidavit, or include in the form of the
198 affidavit, the officer's title and a statement that the officer
199 has full authority to perform all acts and enter into all
200 transactions authorized by the power of attorney for and on
201 behalf of the financial institution in its capacity as agent.
202 (c) A written affidavit executed by the agent under this
203 subsection may, but need not, be in the following form:

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204
205 STATE OF.....
206 COUNTY OF.....
207
208 Before me, the undersigned authority, personally appeared
209 ...(agent)~~(attorney in fact)~~... ("Affiant"), who swore or
210 affirmed that:
211 1. Affiant is the agent ~~attorney in fact~~ named in the
212 ~~Durable~~ Power of Attorney executed by ...(principal)...
213 ("Principal") on ...(date)....
214 2. This Power of Attorney is currently exercisable by
215 Affiant. The principal is domiciled in ...(insert name of state,
216 territory, or foreign country)....
217 3. To the best of Affiant's knowledge after diligent search
218 and inquiry:
219 a. The Principal is not deceased;
220 b. Affiant's authority has not been suspended by initiation
221 of proceedings to determine incapacity or to appoint a guardian
222 or a guardian advocate;
223 c. Affiant's authority has not been terminated by the
224 filing of an action for dissolution or annulment of Affiant's
225 marriage to the principal, or their legal separation; and
226 d.~~c.~~ There has been no revocation, or partial or complete
227 termination, of the power of attorney or of Affiant's authority.
228 4. Affiant is acting within the scope of authority granted
229 in the power of attorney.
230 5. Affiant is the successor to ...(insert name of
231 predecessor agent)..., who has resigned, died, become
232 incapacitated, is no longer qualified to serve, has declined to

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serve as agent, or is otherwise unable to act, if applicable.

6. Affiant agrees not to exercise any powers granted by the ~~Durable~~ Power of Attorney if Affiant attains knowledge that the power of attorney ~~it~~ has been revoked, has been partially or completely terminated or suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.

.....

...(Affiant)...

Sworn to (or affirmed) and subscribed before me this .... day of ...(month)..., ...(year)..., by ...(name of person making statement)...

...(Signature of Notary Public-State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification
...(Type of Identification Produced)...

(3) A third person who is asked to accept a power of attorney that appears to be executed in accordance with s. 709.2105 ~~s. 709.2103~~ may in good faith request, and rely upon, without further investigation:

(a) A certified ~~verified~~ English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English;

(b) An opinion of counsel as to any matter of law concerning the power of attorney if the third person making the request provides in a writing or other record the reason for the request; or

(c) The affidavit described in subsection (2).

Section 8. Section 709.2120, Florida Statutes, is amended to read:

709.2120 Rejecting a ~~Refusal to accept~~ power of attorney.—

(1) ~~Except as provided in subsection (2):~~

~~(a)~~ A third person must accept or reject a power of attorney within a reasonable time. ~~A third person who rejects a power of attorney must state in writing the reason for the rejection.~~

~~(b)~~ Four days, excluding Saturdays, Sundays, and legal holidays, are presumed to be a reasonable time for a financial institution or broker-dealer to accept or reject a power of attorney with respect to:

(a)~~1.~~ A banking transaction, if the power of attorney expressly contains authority to conduct banking transactions pursuant to s. 709.2208(1); or

(b)~~2.~~ An investment ~~A security~~ transaction, if the power of attorney expressly contains authority to conduct investment ~~security~~ transactions pursuant to s. 709.2208(2).

(2)~~(c)~~ A third person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(3) A third person who rejects a power of attorney for any reason other than as provided in paragraph (4)(a) must state in writing the reason for the rejection.

291 (4) ~~(2)~~ A third person is not required to accept a power of
292 attorney if:
293 (a) The third person is not otherwise required to engage in
294 a transaction with the principal in the same circumstances;
295 (b) The third person has knowledge of the termination or
296 suspension of the agent's authority or of the power of attorney
297 before exercising the power;
298 (c) A timely request by the third person for an affidavit,
299 English translation, or opinion of counsel under s. 709.2119(4)
300 is refused by the agent;
301 (d) Except as provided in paragraph (b), the third person
302 believes in good faith that the power is not valid or that the
303 agent does not have authority to perform the act requested; or
304 (e) The third person makes, or has knowledge that another
305 person has made, a report to the local adult protective services
306 office stating a good faith belief that the principal may be
307 subject to physical or financial abuse, neglect, exploitation,
308 or abandonment by the agent or a person acting for or with the
309 agent.
310 (5) ~~(3)~~ A third person who, in violation of this section,
311 rejects ~~refuses to accept~~ a power of attorney is subject to:
312 (a) A court order mandating acceptance of the power of
313 attorney; and
314 (b) Liability for damages, including reasonable attorney's
315 fees and costs, incurred in any action or proceeding that
316 confirms, for the purpose tendered, the validity of the power of
317 attorney or mandates acceptance of the power of attorney.
318 Section 9. Subsection (3) of section 709.2121, Florida
319 Statutes, is amended to read:

320 709.2121 Notice.—
321 (3) Notice to a financial institution or broker-dealer must
322 contain the name, address, and the last four digits of the
323 principal's taxpayer identification number and be directed to an
324 officer or a manager of the financial institution or broker-
325 dealer in this state.
326 Section 10. Present subsections (2) through (5) of section
327 709.2202, Florida Statutes, are redesignated as subsections (3)
328 through (6), respectively, a new subsection (2) is added to that
329 section, and present subsections (1), (3), and (4) of that
330 section are amended to read:
331 709.2202 Authority that requires separate signed
332 enumeration.—
333 (1) Notwithstanding s. 709.2201, an agent may exercise the
334 following authority only if the principal signed or initialed
335 next to each specific enumeration of the authority, the exercise
336 of the authority is consistent with the agent's duties under s.
337 709.2114, and the exercise is not otherwise prohibited by
338 another agreement or instrument:
339 (a) Create an inter vivos trust;
340 (b) With respect to a trust created by or on behalf of the
341 principal, amend, modify, revoke, or terminate the trust, but
342 only if the trust instrument explicitly provides for amendment,
343 modification, revocation, or termination by the settlor's agent;
344 (c) Make a gift, subject to subsection (4) ~~(3)~~;
345 (d) Create or change rights of survivorship;
346 (e) Create or change a beneficiary designation;
347 (f) Waive the principal's right to be a beneficiary of a
348 joint and survivor annuity, including a survivor benefit under a

349 retirement plan; or
350 (g) Disclaim property and powers of appointment.
351 (2) In addition to signing the power of attorney on behalf
352 of the principal pursuant to s. 709.2105(3), if the principal is
353 physically unable to sign or initial next to any enumerated
354 authority for which subsection (1) requires the principal to
355 sign or initial, the notary public before whom the principal's
356 oath or acknowledgment is made may sign the principal's name or
357 initials if:
358 (a) The principal directs the notary to sign the
359 principal's name or initials on the power of attorney next to
360 any enumerated authority for which subsection (1) requires the
361 principal to sign or initial;
362 (b) The signing or initialing by the notary is done in the
363 presence of the principal and witnessed by two disinterested
364 subscribing witnesses; and
365 (c) The notary writes the statement "Signature or initials
366 affixed by notary, pursuant to s. 709.2202(2), Florida Statutes"
367 below each signature or initial that the notary writes on behalf
368 of the principal. Only one notarial certificate, in
369 substantially the same form as provided in s. 117.05(14), which
370 states the circumstances of all signatures and initials written
371 by the notary public, is required to be completed by the notary
372 public.
373 (4) ~~(3)~~ Unless the power of attorney otherwise provides, a
374 provision in a power of attorney granting general authority with
375 respect to gifts authorizes the agent to only:
376 (a) Make outright to, or for the benefit of, a person a
377 gift of any of the principal's property, including by the

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378 exercise of a presently exercisable general power of appointment
379 held by the principal, in an amount per donee per calendar year,
380 not to exceed the annual dollar limits of the federal gift tax
381 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard
382 to whether the federal gift tax exclusion applies to the gift,
383 or if the principal's spouse agrees to consent to a split gift
384 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per
385 donee per calendar year, not to exceed twice the annual federal
386 gift tax exclusion limit; and
387 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to
388 the splitting of a gift made by the principal's spouse in an
389 amount per donee per calendar year, not to exceed the aggregate
390 annual gift tax exclusions for both spouses.
391 (5) ~~(4)~~ Notwithstanding subsection (1), if a power of
392 attorney is otherwise sufficient to grant an agent authority to
393 conduct banking transactions, as provided in s. 709.2208(1),
394 conduct investment transactions as provided in s. 709.2208(2),
395 or otherwise make additions to or withdrawals from an account of
396 the principal, making a deposit to or withdrawal from an
397 insurance policy, retirement account, individual retirement
398 account, benefit plan, bank account, or any other account held
399 jointly or otherwise held in survivorship or payable on death,
400 is not considered to be a change to the survivorship feature or
401 beneficiary designation, and no further specific authority is
402 required for the agent to exercise such authority. A ~~bank or~~
403 ~~other~~ financial institution or broker-dealer does not have a
404 duty to inquire as to the appropriateness of the agent's
405 exercise of that authority and is not liable to the principal or
406 any other person for actions taken in good faith reliance on the

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407 appropriateness of the agent's actions. This subsection does not
408 eliminate the agent's fiduciary duties to the principal with
409 respect to any exercise of the power of attorney.
410 Section 11. Subsection (2) of section 709.2208, Florida
411 Statutes, is amended to read:
412 709.2208 Banks and other financial institutions.—
413 (2) A power of attorney that specifically includes the
414 statement that the agent has "authority to conduct investment
415 transactions as provided in section 709.2208(2), Florida
416 Statutes" grants general authority to the agent with respect to
417 securities held by financial institutions <u>or broker-dealers</u> to
418 take the following actions without additional specific
419 enumeration in the power of attorney:
420 (a) Buy, sell, and exchange investment instruments.
421 (b) Establish, continue, modify, or terminate an account
422 with respect to investment instruments.
423 (c) Pledge investment instruments as security to borrow,
424 pay, renew, or extend the time of payment of a debt of the
425 principal.
426 (d) Receive certificates and other evidences of ownership
427 with respect to investment instruments.
428 (e) Exercise voting rights with respect to investment
429 instruments in person or by proxy, enter into voting trusts, and
430 consent to limitations on the right to vote.
431 (f) Sell commodity futures contracts and call and put
432 options on stocks and stock indexes.
433
434 For purposes of this subsection, the term "investment
435 instruments" means stocks, bonds, mutual funds, and all other

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436 types of securities and financial instruments, whether held
437 directly, indirectly, or in any other manner, including shares
438 or interests in a private investment fund, including, but not
439 limited to, a private investment fund organized as a limited
440 partnership, a limited liability company, a statutory or common
441 law business trust, a statutory trust, or a real estate
442 investment trust, joint venture, or any other general or limited
443 partnership; derivatives or other interests of any nature in
444 securities such as options, options on futures, and variable
445 forward contracts; mutual funds; common trust funds; money
446 market funds; hedge funds; private equity or venture capital
447 funds; insurance contracts; and other entities or vehicles
448 investing in securities or interests in securities whether
449 registered or otherwise, except commodity futures contracts and
450 call and put options on stocks and stock indexes.
451 Section 12. This act shall take effect upon becoming a law.

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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)

3/21/13
Meeting Date

Topic: Powers of Attorney

Bill Number: 832 *(if applicable)*

Name: Kenneth Pratt

Amendment Barcode: _____ *(if applicable)*

Job Title: VP of Governmental Affairs

Address: 1001 Thomasville Rd Ste. 201
Street

Tallahassee, FL 32303
City, State, Zip

Phone: 850-509-8020

E-mail: Kpratt@floridabankers.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: Florida Bankers Association

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-21-13
Meeting Date

Topic: Power of Attorney

Bill Number: 832 *(if applicable)*

Name: Martha Edenfield

Amendment Barcode: _____ *(if applicable)*

Job Title: Attorney

Address: PO Box 10095
Street

Tallahassee, FL 32302
City, State, Zip

Phone: 850-222-3533

E-mail: _____

Speaking: [X] For [ ] Against [ ] Information Support the Bill

Representing: The Real Property, Probate & Trust Law Section of the Florida Bar

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ARTHENIA L. JOYNER
19th District

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 21, 2013

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

Dear Chairman Ring:

This is to request that my Legislative Assistant, Randi Rosete, be permitted to present Senate Bill 832 regarding Powers of Attorney to the Committee on Government Oversight and Accountability on March 21. Allowing my assistant to present this bill will be greatly appreciated since I may not be able to personally present it during that time.

Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
Senator, District 19

ALJ/rr

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

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR ARTHENIA L. JOYNER
19th District

March 6, 2013

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

Dear Mr. Chairman:

This is to request that Senate Bill 832 related to Powers of Attorney be placed on the agenda for the Committee on Governmental Oversight and Accountability. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

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

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

He The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 556

INTRODUCER: Governmental Oversight and Accountability Committee, Judiciary Committee and Senator Ring

SUBJECT: Clerks of the Court

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.	Naf	McVaney	GO	**Fav/CS**
3.			AFT	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... [X] Statement of Substantial Changes
B. AMENDMENTS..... [ ] Technical amendments were recommended
[ ] Amendments were recommended
[ ] Significant amendments were recommended

I. Summary:

CS/CS/SB 556 amends laws relating to clerks of circuit courts.

The bill authorizes or requires a clerk to electronically perform existing duties. Specifically, the bill:

- Requires a clerk to maintain electronic filings as it does paper filings.
- Specifies that a clerk may provide, and charge for, services manually or electronically.
- Authorizes a clerk to electronically affix a date and time stamp to filings in lieu of an ink stamp.

The bill makes other changes as follows:

- Requires a county recorder to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.
- Increases the threshold overpayment amount for which a clerk must make an automatic refund from $5 to $10.

- Limits the state agency court-related fee exemption to the agency itself and the party the agency is representing.
- Requires requests for maintenance of a public records exemption to include the document type, name, identification number, and page number of the court record or official record that contains the exempt information.
- During an administrative review of property taxes, requires a property appraiser, rather than a clerk, to provide a copy of a property record card to a petitioner upon receipt of the petition from the clerk, unless the card is available online, and specifies that the property appraiser must provide the copy regardless of whether the petitioner initiates evidence exchange.
- Provides that governmental entities do not have to pay judgment enforcement fees to initiate supplemental proceedings to collect a judgment.

This bill substantially amends the following sections of the Florida Statutes: 28.13, 28.222, 28.24, 28.244, 28.345, 57.081, 57.082, 101.151, 119.0714, 194.032, and 938.30.

II. Present Situation:

Filings

The clerk of the circuit court is required to keep all papers with the maximum care and security, arranged in appropriate files.[1] The clerk is also required to ensure that the papers do not leave the office without permission from the court.[2] Current law does not address requirements to maintain electronic filings.

Clerk as County Recorder

Pursuant to statute, the clerk of the circuit court generally acts as the county recorder.[3] Current law does not require a clerk to remove recorded court documents from the Official Records pursuant to a sealing or expunction order as part of his or her duties.

Charges

Current law authorizes a clerk to charge for services rendered by the clerk's office in recording documents and instruments and in performing the clerk's duties.[4]

Refunds

If a clerk of court determines that an overpayment is made, the clerk must make a refund if the overpayment exceeds $5.[5] If the amount of the overpayment is $5 or less, the clerk need only refund the amount if the person who made the overpayment submits a written request.[6]

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[1] Section 28.13, F.S.
[2] *Id*.
[3] Section 28.222(1), F.S. As county recorder, the clerk of the circuit court must record all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk (*id*.). Such instruments include, but are not limited to, deeds, leases, bills of sale, agreements, mortgages, notices or claims of lien, notices of levy, tax warrants, tax executions, notices of lis pendens, judgments, notices of liens for taxes payable to the United States, and certified copies of death certificates (s. 28.222(3), F.S.).
[4] Section 28.24, F.S.

Fee Exemption

Certain individuals and groups, such as judges, state attorneys, and public defenders, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts, when acting in their official capacity.[7] State agencies are also exempt from all court-related fees and charges assessed by the clerks.[8]

Public Records

The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[9] In addition, the Public Records Act[10] guarantees every person a right to inspect and copy any state, county, or municipal record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.[11] Only the Legislature may create a general exemption to public records access requirements.[12]

A clerk of court is a custodian of public records. As custodian, clerks are required to provide access and copies of public records, if the requesting party is entitled by law to view a given record.[13] The clerk may charge a fee to certify or furnish copies of requested public records, but specified governmental entities are exempt from such fees if they are entitled by law to view the exempt or confidential record.[14]

Certain records are confidential or exempt[15] from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.[16] An individual whose information is exempt must submit a written request for exemption with any agency that holds an exempt record.[17] There is no uniform, statewide process, but a clerk of court

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[5] Section 28.244, F.S.
[6] *Id.*
[7] Section 28.345, F.S.
[8] *Id.*
[9] FLA. CONST., art. I, s. 24(a).
[10] Chapter 119, F.S.
[11] Section 119.07(1)(a), F.S.
[12] FLA. CONST., art. I, s. 24(c).
[13] Section 119.011(5), F.S., provides that the "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.
[14] Section 119.07(4), F.S.
[15] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[16] Section 28.24, F.S. The exempt governmental entities are the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, private court-appointed counsel paid by the state, and authorized staff of an y of the specified governmental entities acting on their behalf.
[17] Section 119.071(4)(d)2., F.S.

usually requires a person requesting maintenance of the exemption to specify the document type, name, identification number, and page number of the court record or official record that contains the confidential or exempt information.[18]

Value Adjustment Board Hearing Records

Each county in Florida has a value adjustment board that hears objections to ad valorem tax assessments.[19] The clerk of the court usually serves as the county clerk and schedules appearances before the value adjustment board.[20] The petitioner may request a copy of the property record card containing relevant information used in computing the current assessment, which the clerk is required to provide.[21]

Financial Obligations Stemming from a Criminal Case

A court may require a person that owes money for a criminal case, which may include restitution, court costs, cost of prosecution, and cost of a public defender, to appear before the court to determine the person's financial ability to pay the obligation.[22] The court may impose a judgment which operates as a civil lien against the debtor's property.[23] A governmental entity that attempts to satisfy such a judgment may do so without bond.[24]

III. Effect of Proposed Changes:

This bill amends laws relating to the clerks of court.

Electronic Filings and Charges

This bill authorizes or requires a clerk to electronically perform existing duties. Specifically, the bill:

- Requires a clerk to maintain electronic filings as it does paper filings.
- Specifies that a clerk may provide, and charge for, services manually or electronically.
- Authorizes a clerk to electronically affix a date and time stamp to filings in lieu of an ink stamp.

Clerk as County Recorder

This bill requires a county recorder to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

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[18] Telephone call between Senate Governmental Oversight and Accountability staff and Florida Association of Court Clerks staff (March 18, 2013).
[19] Section 194.011, F.S.
[20] Section 194.015, F.S.
[21] Section 194.032, F.S.
[22] Section 938.30(2), F.S.
[23] Section 938.30(6), F.S.
[24] *Id*.

Refunds

This bill increases the threshold overpayment amount for which a clerk must make an automatic refund from $5 to $10.

Fee Exemption

This bill limits the state agency court-related fee exemption to the agency itself and the party the agency is representing.

Public Records

This bill:

- Relocates and amends the exemption from public records fees for specified governmental entities to delete the requirement that such entities be entitled by law to view the exempt or confidential record.
- Requires requests for maintenance of public records exemptions to specifically include the document type, name, identification number, and page number of the court record or official record where the confidential or exempt information appears.

Value Adjustment Board Hearing Records

Regarding challenges to a property assessment or the denial of a property exemption, this bill:

- Changes the entity that must provide the petitioner a copy of the property record card from the clerk to the property appraiser, and exempts the property appraiser from that requirement if the property appraiser makes the property record card available online.
- Specifies that the requirement that a copy of the property record card be provided applies regardless of whether the petitioner has initiated an evidence exchange.

Financial Obligations Stemming from a Criminal Case

This bill:

- Specifies that the current authority of the court to convert a financial obligation into community service is subject to a traffic infraction statute that prescribes a specific process and conditions applicable to community service based on inability to pay a civil traffic penalty.
- Authorizes a governmental entity to initiate supplemental proceedings to collect a judgment for fees and costs without having to pay judgment enforcement fees.

Clarifying Changes

This bill makes clarifying drafting changes.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to impact county or municipal government.

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 net fiscal impact on clerks of court is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Governmental Oversight and Accountability on March 21, 2013:
The CS/CS:

- Removes from the CS a provision that would an exemption for indigent persons from payment of a charge for issuance of a summons.
- Removes from the CS a provision that would allow filing fees waived based on a determination of indigence to be included in the calculation of a payment plan.
- Amends the provision that requires the property appraiser to provide a copy of the property record card to the petitioner in certain hearings to exempt the property appraiser from providing a copy of the property record card if it is available online.

CS by Judiciary on March 6, 2013:
The CS removes from the bill:

- All references to the tax lien process.
- A provision that allowed the Florida Rules of Judicial Administration to specify entities authorized to access public records that are exempt or confidential.

B. Amendments:

None.

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

813512

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 293 - 341.
4
5 ========== T I T L E A M E N D M E N T ==========
6 And the title is amended as follows:
7 Delete lines 18 - 23
8 and insert:
9 circumstances; amending s. 101.151, F.S.;

382538

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 494
and insert:
initiates evidence exchange, unless the property record card is available online from the property appraiser ~~clerk shall provide the copy of the~~

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 32
and insert:

382538

13 initiates evidence exchange, unless the property
14 record card is available online from the property
15 appraiser; amending s. 938.30, F.S.;

544120

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/21/2013	.	
	.	
	.	
	.	

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

1 **Senate Amendment (with title amendment)**
2
3 Between lines 523 and 524
4 insert:
5 Section 12. Subsection (2) of section 985.045, Florida
6 Statutes, is amended to read:
7 985.045 Court records.—
8 (2) The clerk shall keep all official records required by
9 this section separate from other records of the circuit court,
10 except those records pertaining to motor vehicle violations,
11 which shall be forwarded to the Department of Highway Safety and
12 Motor Vehicles. Except as provided in ss. 943.053 and

544120

13 985.04(6)(b) and (7), official records required by this chapter
14 are not open to inspection by the public, but may be inspected
15 only upon order of the court by persons deemed by the court to
16 have a proper interest therein, except that a child and the
17 parents, guardians, or legal custodians of the child and their
18 attorneys, law enforcement agencies, the Department of Juvenile
19 Justice and its designees, the Parole Commission, the Department
20 of Corrections, and the Justice Administrative Commission shall
21 always have the right to inspect and copy any official record
22 pertaining to the child. Public defender offices shall
23 additionally have access to the juvenile records, including
24 electronic records, of all juveniles scheduled for detention
25 hearings. The court may permit authorized representatives of
26 recognized organizations compiling statistics for proper
27 purposes to inspect, and make abstracts from, official records
28 under whatever conditions upon the use and disposition of such
29 records the court may deem proper and may punish by contempt
30 proceedings any violation of those conditions.
31
32 ========== T I T L E A M E N D M E N T ==========
33 And the title is amended as follows:
34 Delete line 34
35 and insert:
36 to enforce judgment for costs and fines; amending s.
37 985.045, F.S.; providing that the office of the public
38 defender shall have access to certain juvenile
39 records; providing an

By the Committee on Judiciary; and Senator Ring

A bill to be entitled

An act relating to clerks of the court; amending s. 28.13, F.S.; providing requirements for the storage of papers and electronic filings and requiring that they be stamped with the date and time of submission; requiring the clerk to retain control and custody of filed documents; amending s. 28.222, F.S.; authorizing the clerk to remove certain court records from the Official Records; amending s. 28.24, F.S.; deleting provisions exempting specified persons from service fees; amending s. 28.244, F.S.; increasing the threshold amount for automatic repayment of overpayments; amending s. 28.345, F.S.; requiring that the clerk provide access to public records without charge to certain persons, subject to a limitation and an exception; authorizing the clerk to provide public records in an electronic format under certain circumstances; amending s. 57.081, F.S.; clarifying that, with the exception of charges for issuance of a summons, the prepayment of costs is not required upon a certification of indigence; amending s. 57.082, F.S.; providing for the inclusion of certain filing fees in payment plans; amending s. 101.151, F.S.; clarifying when the office title "Clerk of the Circuit Court and Comptroller" may be used; amending s. 119.0714, F.S.; requiring that certain requests for maintenance of a public record exemption specify certain information; amending s. 194.032, F.S.; requiring that the property appraiser, rather than the

clerk, provide the property record card to a petitioner regardless of whether the petitioner initiates evidence exchange; amending s. 938.30, F.S.; providing that the state is not required to pay fees to enforce judgment for costs and fines; providing an effective date.

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

Section 1. Section 28.13, Florida Statutes, is amended to read:

28.13 ~~To keep~~ Papers and electronic filings.—The clerk of the circuit court must maintain ~~shall keep~~ all papers and electronic filings ~~filed~~ in the clerk's office with the utmost care and security, storing them with related case ~~arranged in appropriate~~ files and affixing a stamp, which may be electronic, to each submission indicating ~~(endorsing upon each~~ the date and time that ~~when~~ the submission ~~same~~ was filed. The clerk may~~),~~ ~~and shall~~ not permit any attorney or other person to remove filed documents from the control or custody ~~take papers once filed out of the office~~ of the clerk without leave of the court, except as otherwise ~~is hereinafter~~ provided by law.

Section 2. Present subsections (4) through (6) of section 28.222, Florida Statutes, are renumbered as subsections (5) through (7), respectively, and a new subsection (4) is added to that section to read:

28.222 Clerk to be county recorder.—

(4) The county recorder shall remove recorded court documents from the Official Records pursuant to a sealing or

59 expunction order.
60 Section 3. Section 28.24, Florida Statutes, is amended to
61 read:
62 28.24 Service charges ~~by clerk of the circuit court~~.~~—~~The
63 clerk of the circuit court shall charge for services rendered
64 manually or electronically by the clerk's office in recording
65 documents and instruments and in performing other specified ~~the~~
66 duties. These charges may ~~enumerated in amounts~~ not ~~to~~ exceed
67 those specified in this section, except as provided in s.
68 28.345. ~~Notwithstanding any other provision of this section, the~~
69 ~~clerk of the circuit court shall provide without charge to the~~
70 ~~state attorney, public defender, guardian ad litem, public~~
71 ~~guardian, attorney ad litem, criminal conflict and civil~~
72 ~~regional counsel, and private court appointed counsel paid by~~
73 ~~the state, and to the authorized staff acting on behalf of each,~~
74 ~~access to and a copy of any public record, if the requesting~~
75 ~~party is entitled by law to view the exempt or confidential~~
76 ~~record, as maintained by and in the custody of the clerk of the~~
77 ~~circuit court as provided in general law and the Florida Rules~~
78 ~~of Judicial Administration. The clerk of the circuit court may~~
79 ~~provide the requested public record in an electronic format in~~
80 ~~lieu of a paper format when capable of being accessed by the~~
81 ~~requesting entity.~~
82
83 Charges
84
85 (1) For examining, comparing, correcting, verifying, and
86 certifying transcripts of record in appellate proceedings,
87 prepared by attorney for appellant or someone else other than

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88 clerk, per page.....5.00
89 (2) For preparing, numbering, and indexing an original
90 record of appellate proceedings, per instrument.....3.50
91 (3) For certifying copies of any instrument in the public
92 records.....2.00
93 (4) For verifying any instrument presented for
94 certification prepared by someone other than clerk, per page.3.50
95 (5)(a) For making copies by photographic process of any
96 instrument in the public records consisting of pages of not more
97 than 14 inches by 8 1/2 inches, per page.....1.00
98 (b) For making copies by photographic process of any
99 instrument in the public records of more than 14 inches by 8 1/2
100 inches, per page.....5.00
101 (6) For making microfilm copies of any public records:
102 (a) 16 mm 100' microfilm roll.....42.00
103 (b) 35 mm 100' microfilm roll.....60.00
104 (c) Microfiche, per fiche.....3.50
105 (7) For copying any instrument in the public records by
106 other than photographic process, per page.....6.00
107 (8) For writing any paper other than herein specifically
108 mentioned, same as for copying, including signing and sealing7.00
109 (9) For indexing each entry not recorded.....1.00
110 (10) For receiving money into the registry of court:
111 (a)1. First $500, percent.....3
112 2. Each subsequent $100, percent.....1.5
113 (b) Eminent domain actions, per deposit.....170.00
114 (11) For examining, certifying, and recording plats and for
115 recording condominium exhibits larger than 14 inches by 8 1/2
116 inches:

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

117 (a) First page.....30.00
118 (b) Each additional page.....15.00
119 (12) For recording, indexing, and filing any instrument not
120 more than 14 inches by 8 1/2 inches, including required notice
121 to property appraiser where applicable:
122 (a) First page or fraction thereof.....5.00
123 (b) Each additional page or fraction thereof.....4.00
124 (c) For indexing instruments recorded in the official
125 records which contain more than four names, per additional name1.00
126 (d) An additional service charge must ~~shall~~ be paid to the
127 clerk of the circuit court to be deposited in the Public Records
128 Modernization Trust Fund for each instrument listed in s.
129 28.222, except judgments received from the courts and notices of
130 lis pendens, recorded in the official records:
131 1. First page.....1.00
132 2. Each additional page.....0.50
133
134 Said fund must ~~shall~~ be held in trust by the clerk and used
135 exclusively for equipment and maintenance of equipment,
136 personnel training, and technical assistance in modernizing the
137 public records system of the office. In a county where the duty
138 of maintaining official records exists in an office other than
139 the office of the clerk of the circuit court, the clerk of the
140 circuit court is entitled to 25 percent of the moneys deposited
141 into the trust fund for equipment, maintenance of equipment,
142 training, and technical assistance in modernizing the system for
143 storing records in the office of the clerk of the circuit court.
144 The fund may not be used for the payment of travel expenses,
145 membership dues, bank charges, staff-recruitment costs, salaries

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146 or benefits of employees, construction costs, general operating
147 expenses, or other costs not directly related to obtaining and
148 maintaining equipment for public records systems or for the
149 purchase of furniture or office supplies and equipment not
150 related to the storage of records. On or before December 1,
151 1995, and on or before December 1 of each year immediately
152 preceding each year during which the trust fund is scheduled for
153 legislative review under s. 19(f)(2), Art. III of the State
154 Constitution, each clerk of the circuit court shall file a
155 report on the Public Records Modernization Trust Fund with the
156 President of the Senate and the Speaker of the House of
157 Representatives. The report must itemize each expenditure made
158 from the trust fund since the last report was filed; each
159 obligation payable from the trust fund on that date; and the
160 percentage of funds expended for each of the following:
161 equipment, maintenance of equipment, personnel training, and
162 technical assistance. The report must indicate the nature of the
163 system each clerk uses to store, maintain, and retrieve public
164 records and the degree to which the system has been upgraded
165 since the creation of the trust fund.
166 (e) An additional service charge of $4 per page shall be
167 paid to the clerk of the circuit court for each instrument
168 listed in s. 28.222, except judgments received from the courts
169 and notices of lis pendens, recorded in the official records.
170 From the additional $4 service charge collected:
171 1. If the counties maintain legal responsibility for the
172 costs of the court-related technology needs as defined in s.
173 29.008(1)(f)2. and (h), 10 cents shall be distributed to the
174 Florida Association of Court Clerks and Comptrollers, Inc., for

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175 the cost of development, implementation, operation, and
176 maintenance of the clerks' Comprehensive Case Information
177 System; $1.90 shall be retained by the clerk to be deposited in
178 the Public Records Modernization Trust Fund and used exclusively
179 for funding court-related technology needs of the clerk as
180 defined in s. 29.008(1)(f)2. and (h); and $2 shall be
181 distributed to the board of county commissioners to be used
182 exclusively to fund court-related technology, and court
183 technology needs as defined in s. 29.008(1)(f)2. and (h) for the
184 state trial courts, state attorney, public defender, and
185 criminal conflict and civil regional counsel in that county. If
186 the counties maintain legal responsibility for the costs of the
187 court-related technology needs as defined in s. 29.008(1)(f)2.
188 and (h), notwithstanding any other provision of law, the county
189 is not required to provide additional funding beyond that
190 provided herein for the court-related technology needs of the
191 clerk as defined in s. 29.008(1)(f)2. and (h). All court records
192 and official records are the property of the State of Florida,
193 including any records generated as part of the Comprehensive
194 Case Information System funded pursuant to this paragraph and
195 the clerk of court is designated as the custodian of such
196 records, except in a county where the duty of maintaining
197 official records exists in a county office other than the clerk
198 of court or comptroller, such county office is designated the
199 custodian of all official records, and the clerk of court is
200 designated the custodian of all court records. The clerk of
201 court or any entity acting on behalf of the clerk of court,
202 including an association, may ~~shall~~ not charge a fee to any
203 agency as defined in s. 119.011, the Legislature, or the State

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

204 Court System for copies of records generated by the
205 Comprehensive Case Information System or held by the clerk of
206 court or any entity acting on behalf of the clerk of court,
207 including an association.
208 2. If the state becomes legally responsible for the costs
209 of court-related technology needs as defined in s.
210 29.008(1)(f)2. and (h), whether by operation of general law or
211 by court order, $4 shall be remitted to the Department of
212 Revenue for deposit into the General Revenue Fund.
213 (13) Oath, administering, attesting, and sealing, not
214 otherwise provided for herein.....3.50
215 (14) For validating certificates, any authorized bonds,
216 each.....3.50
217 (15) For preparing affidavit of domicile.....5.00
218 (16) For exemplified certificates, including signing and
219 sealing.....7.00
220 (17) For authenticated certificates, including signing and
221 sealing.....7.00
222 (18)(a) For issuing and filing a subpoena for a witness,
223 not otherwise provided for herein (includes writing, preparing,
224 signing, and sealing).....7.00
225 (b) For signing and sealing only.....2.00
226 (19) For approving bond.....8.50
227 (20) For searching of records, for each year's search...2.00
228 (21) For processing an application for a tax deed sale
229 (includes application, sale, issuance, and preparation of tax
230 deed, and disbursement of proceeds of sale), other than excess
231 proceeds.....60.00
232 (22) For disbursement of excess proceeds of tax deed sale,

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233 first $100 or fraction thereof.....10.00
234 (23) Upon receipt of an application for a marriage license,
235 for preparing and administering of oath; issuing, sealing, and
236 recording of the marriage license; and providing a certified
237 copy.....30.00
238 (24) For solemnizing matrimony.....30.00
239 (25) For sealing any court file or expungement of any
240 record.....42.00
241 (26)(a) For receiving and disbursing all restitution
242 payments, per payment.....3.50
243 (b) For receiving and disbursing all partial payments,
244 other than restitution payments, for which an administrative
245 processing service charge is not imposed pursuant to s. 28.246,
246 per month.....5.00
247 (c) For setting up a payment plan, a one-time
248 administrative processing charge in lieu of a per month charge
249 under paragraph (b).....25.00
250 (27) Postal charges incurred by the clerk of the circuit
251 court in any mailing by certified or registered mail must ~~shall~~
252 be paid by the party at whose instance the mailing is made.
253 (28) For furnishing an electronic copy of information
254 contained in a computer database: a fee as provided for in
255 chapter 119.
256 Section 4. Section 28.244, Florida Statutes, is amended to
257 read:
258 28.244 Refunds.—A clerk of the circuit court or a filing
259 officer of another office where records are filed who receives
260 payment for services provided and thereafter determines that an
261 overpayment has occurred shall refund to the person who made the

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

262 payment the amount of any overpayment that exceeds $10 ~~$5~~. If
263 the amount of the overpayment is $10 ~~$5~~ or less, the clerk of
264 the circuit court or a filing officer of another office where
265 records are filed is not required to refund the amount of the
266 overpayment unless the person who made the overpayment makes a
267 written request.
268 Section 5. Section 28.345, Florida Statutes, is amended to
269 read:
270 28.345 State access to records; exemption from court-
271 related fees and charges.—
272 (1) Notwithstanding any other provision of law, the clerk
273 of the circuit court shall, upon request, provide access to
274 public records without charge to the state attorney, public
275 defender, guardian ad litem, public guardian, attorney ad litem,
276 criminal conflict and civil regional counsel, and private court-
277 appointed counsel paid by the state, and to authorized staff
278 acting on their behalf. The clerk of court may provide the
279 requested public record in an electronic format in lieu of a
280 paper format if the requesting entity is capable of accessing
281 such public record electronically.
282 (2) Notwithstanding any other provision of this chapter or
283 law to the contrary, judges and those court staff acting on
284 behalf of judges, state attorneys, guardians ad litem, public
285 guardians, attorneys ad litem, court-appointed private counsel,
286 criminal conflict and civil regional counsel, ~~and~~ public
287 defenders, and state agencies, while acting in their official
288 capacity, ~~and state agencies,~~ are exempt from all court-related
289 fees and charges assessed by the clerks of the circuit courts.
290 (3) The exemptions from fees or charges provided in this

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291 section apply only to state agencies and state entities and the
292 party represented by the agency or entity.
293 Section 6. Subsection (1) of section 57.081, Florida
294 Statutes, is amended to read:
295 57.081 Costs; right to proceed where prepayment of costs
296 and payment of filing fees waived.—
297 (1) Any indigent person, except a prisoner as defined in s.
298 57.085, who is a party or intervenor in any judicial or
299 administrative agency proceeding or who initiates such
300 proceeding shall receive the services of the courts, sheriffs,
301 and clerks, with respect to such proceedings, despite his or her
302 present inability to pay for these services. Such services are
303 limited to filing fees; service of process; certified copies of
304 orders or final judgments; a single photocopy of any court
305 pleading, record, or instrument filed with the clerk; examining
306 fees; mediation services and fees; private court-appointed
307 counsel fees; subpoena fees and services; service charges for
308 collecting and disbursing funds; and any other cost or service
309 arising out of pending litigation. In any appeal from an
310 administrative agency decision, for which the clerk is
311 responsible for preparing the transcript, the clerk shall record
312 the cost of preparing the transcripts and the cost for copies of
313 any exhibits in the record. Prepayment of costs to any court,
314 clerk, or sheriff is not required and payment of filing fees is
315 not required in any action if the party has obtained in each
316 proceeding a certification of indigence in accordance with s.
317 27.52 or s. 57.082 ~~A party who has obtained a certification of~~
318 ~~indigence pursuant to s. 27.52 or s. 57.082 with respect to a~~
319 ~~proceeding is not required to prepay costs to a court, clerk, or~~

320 ~~sheriff and is not required to pay filing fees or charges for~~
321 ~~issuance of a summons~~.
322 Section 7. Subsection (6) of section 57.082, Florida
323 Statutes, is amended to read:
324 57.082 Determination of civil indigent status.—
325 (6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the
326 clerk or the court determines is indigent for civil proceedings
327 under this section shall be enrolled in a payment plan under s.
328 28.246 and shall be charged a one-time administrative processing
329 charge under s. 28.24(26)(c). A monthly payment amount,
330 calculated based upon all fees and all anticipated costs, is
331 presumed to correspond to the person's ability to pay if it does
332 not exceed 2 percent of the person's annual net income, as
333 defined in subsection (1), divided by 12. The person may seek
334 review of the clerk's decisions regarding a payment plan
335 established under s. 28.246 in the court having jurisdiction
336 over the matter. A case may not be impeded in any way, delayed
337 in filing, or delayed in its progress, including the final
338 hearing and order, due to nonpayment of any fees or costs by an
339 indigent person. ~~Filing fees waived from payment under s. 57.081~~
340 ~~may not be included in the calculation related to a payment plan~~
341 ~~established under this section.~~
342 Section 8. Paragraph (a) of subsection (2) of section
343 101.151, Florida Statutes, is amended to read:
344 101.151 Specifications for ballots.—
345 (2)(a) The ballot must include ~~shall have~~ the following
346 office titles above ~~under which shall appear~~ the names of the
347 candidates for the respective offices in the following order:
348 1. The office titles of President and Vice President above

349 ~~and thereunder~~ the names of the candidates for President and
350 Vice President of the United States nominated by the political
351 party that received the highest vote for Governor in the last
352 general election of the Governor in this state, followed by~~.~~
353 ~~Then shall appear~~ the names of other candidates for President
354 and Vice President of the United States who have been properly
355 nominated.
356 2. The office titles of United States Senator and
357 Representative in Congress.
358 3. The office titles of Governor and Lieutenant Governor;
359 Attorney General; Chief Financial Officer; Commissioner of
360 Agriculture; State Attorney, with the applicable judicial
361 circuit; and Public Defender, with the applicable judicial
362 circuit.
363 4. The office titles of State Senator and State
364 Representative, with the applicable district for the office
365 printed beneath.
366 5. The office titles of Clerk of the Circuit Court~~,~~ or,
367 when the Clerk of the Circuit Court also serves as the County
368 Comptroller, Clerk of the Circuit Court and Comptroller,
369 ~~(whichever is applicable and~~ when authorized by law;~~),~~ Clerk of
370 the County Court, ~~(~~when authorized by law;~~),~~ Sheriff;~~,~~ Property
371 Appraiser;~~,~~ Tax Collector;~~,~~ District Superintendent of Schools;~~,~~
372 and Supervisor of Elections.
373 6. The office titles of Board of County Commissioners, with
374 the applicable district printed beneath each office, and such
375 other county and district offices as are involved in the
376 election, in the order fixed by the Department of State,
377 followed, in the year of their election, by "Party Offices," and

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378 thereunder the offices of state and county party executive
379 committee members.
380 Section 9. Paragraph (f) is added to subsection (2) of
381 section 119.0714, Florida Statutes, and section (3) is amended,
382 to read:
383 119.0714 Court files; court records; official records.—
384 (2) COURT RECORDS.—
385 (f) A request for maintenance of a public records exemption
386 in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must
387 specify the document type, name, identification number, and page
388 number of the court record that contains the exempt information.
389 (3) OFFICIAL RECORDS.—
390 ~~(a)~~ A ~~Any~~ person who prepares or files a record for
391 recording in the official records as provided in chapter 28 may
392 not include in that record a social security number or a bank
393 account, debit, charge, or credit card number unless otherwise
394 expressly required by law.
395 (a)~~(b)1.~~ If a social security number or a bank account,
396 debit, charge, or credit card number is included in an official
397 record, such number may be made available as part of the
398 official records available for public inspection and copying
399 unless redaction is requested by the holder of such number or by
400 the holder's attorney or legal guardian.
401 1.~~2.~~ If such record is in electronic format, on January 1,
402 2011, and thereafter, the county recorder must use his or her
403 best effort, as provided in paragraph (d)~~(h)~~, to keep social
404 security numbers confidential and exempt as provided for in s.
405 119.071(5)(a), and to keep complete bank account, debit, charge,
406 and credit card numbers exempt as provided for in s.

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407 119.071(5)(b), without any person having to request redaction.
408 2.~~3.~~ Section 119.071(5)(a)7. and 8. does not apply to the
409 county recorder with respect to official records.
410 (b)~~(c)~~ The holder of a social security number or a bank
411 account, debit, charge, or credit card number, or the holder's
412 attorney or legal guardian, may request that a county recorder
413 redact from an image or copy of an official record placed on a
414 county recorder's publicly available Internet website or on a
415 publicly available Internet website used by a county recorder to
416 display public records, or otherwise made electronically
417 available to the public, his or her social security number or
418 bank account, debit, charge, or credit card number contained in
419 that official record.
420 1.~~(d)~~ A request for redaction must be a signed, legibly
421 written request and must be delivered by mail, facsimile,
422 electronic transmission, or in person to the county recorder.
423 The request must specify the identification page number of the
424 record that contains the number to be redacted.
425 2.~~(e)~~ The county recorder does not have a duty to inquire
426 beyond the written request to verify the identity of a person
427 requesting redaction.
428 3.~~(f)~~ A fee may not be charged for redacting a social
429 security number or a bank account, debit, charge, or credit card
430 number.
431 (c)~~(g)~~ A county recorder shall immediately and
432 conspicuously post signs throughout his or her offices for
433 public viewing, and shall immediately and conspicuously post on
434 any Internet website or remote electronic site made available by
435 the county recorder and used for the ordering or display of

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436 official records or images or copies of official records, a
437 notice stating, in substantially similar form, the following:
438 1. On or after October 1, 2002, any person preparing or
439 filing a record for recordation in the official records may not
440 include a social security number or a bank account, debit,
441 charge, or credit card number in such document unless required
442 by law.
443 2. Any person has a right to request a county recorder to
444 remove from an image or copy of an official record placed on a
445 county recorder's publicly available Internet website or on a
446 publicly available Internet website used by a county recorder to
447 display public records, or otherwise made electronically
448 available to the general public, any social security number
449 contained in an official record. Such request must be made in
450 writing and delivered by mail, facsimile, or electronic
451 transmission, or delivered in person, to the county recorder.
452 The request must specify the identification page number that
453 contains the social security number to be redacted. A fee may
454 not be charged for the redaction of a social security number
455 pursuant to such a request.
456 (d)~~(h)~~ If the county recorder accepts or stores official
457 records in an electronic format, the county recorder must use
458 his or her best efforts to redact all social security numbers
459 and bank account, debit, charge, or credit card numbers from
460 electronic copies of the official record. The use of an
461 automated program for redaction is ~~shall be~~ deemed to be the
462 best effort in performing the redaction and is ~~shall be~~ deemed
463 in compliance with the requirements of this subsection.
464 (e)~~(i)~~ The county recorder is not liable for the

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465 inadvertent release of social security numbers, or bank account,
466 debit, charge, or credit card numbers, filed with the county
467 recorder.
468 (f) A request for maintenance of a public records exemption
469 in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must
470 specify the document type, name, identification number, and page
471 number of the official record that contains the exempt
472 information.
473 Section 10. Paragraph (a) of subsection (2) of section
474 194.032, Florida Statutes, is amended to read:
475 194.032 Hearing purposes; timetable.—
476 (2)(a) The clerk of the governing body of the county shall
477 prepare a schedule of appearances before the board based on
478 petitions timely filed with him or her. The clerk shall notify
479 each petitioner of the scheduled time of his or her appearance
480 at least 25 calendar days before the day of the scheduled
481 appearance. The notice must ~~shall~~ indicate whether the petition
482 has been scheduled to be heard at a particular time or during a
483 block of time. If the petition has been scheduled to be heard
484 within a block of time, the beginning and ending of that block
485 of time must ~~shall~~ be indicated on the notice; however, as
486 provided in paragraph (b), a petitioner may not be required to
487 wait for more than a reasonable time, not to exceed 2 hours,
488 after the beginning of the block of time. If the petitioner
489 checked the appropriate box on the petition form to request a
490 copy of the property record card containing relevant information
491 used in computing the current assessment, the property appraiser
492 must provide the copy to the petitioner upon receipt of the
493 petition from the clerk regardless of whether the petitioner

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494 initiates evidence exchange ~~clerk shall provide the copy of the~~
495 ~~card along with the notice~~. Upon receipt of the notice, the
496 petitioner may reschedule the hearing a single time by
497 submitting to the clerk a written request to reschedule, at
498 least 5 calendar days before the day of the originally scheduled
499 hearing.
500 Section 11. Subsections (2) and (6) of section 938.30,
501 Florida Statutes, are amended to read:
502 938.30 Financial obligations in criminal cases;
503 supplementary proceedings.—
504 (2) The court may require a person liable for payment of an
505 obligation to appear and be examined under oath concerning the
506 person's financial ability to pay the obligation. The judge may
507 convert the statutory financial obligation into a court-ordered
508 obligation to perform community service, subject to the
509 provisions of s. 318.18(8), after examining a person under oath
510 and determining the ~~a~~ person's inability to pay. Any person who
511 fails ~~failing~~ to attend a hearing may be arrested on warrant or
512 capias ~~which may be~~ issued by the clerk upon order of the court.
513 (6) If judgment has not been previously entered on any
514 court-imposed financial obligation, the court may enter judgment
515 thereon and issue any writ necessary to enforce the judgment in
516 the manner allowed in civil cases. Any judgment issued under
517 this section constitutes a civil lien against the judgment
518 debtor's presently owned or after-acquired property, when
519 recorded pursuant to s. 55.10. Supplementary proceedings
520 undertaken by any governmental entity to satisfy a judgment
521 imposed pursuant to this section may proceed without bond and
522 without the payment of statutory fees associated with judgment

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523 enforcement.

524 Section 12. This act shall take effect July 1, 2013.

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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)

3/21/13
Meeting Date

Topic: Access to Juvenile Records

Bill Number: CS/SB 556 (if applicable)

Name: Nancy Daniels

Amendment Barcode: 544120 (if applicable)

Job Title: Public Defender, 2nd Circuit

Address: Leon County Courthouse, 301 S. Monroe #401
Street

Tallahassee FL 32301
City State Zip

Phone: 850 606-1010

E-mail: nancydaniels@flpd2.com

Speaking: [x] For [ ] Against [ ] Information

Representing: Florida Public Defender Association

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 21, 2013
Meeting Date

Topic: Clerks of Court

Bill Number: SB 556 (if applicable)

Name: Dorene Barker

Amendment Barcode: 813512 (if applicable)

Job Title: Legislative Director

Address: 2425 Torreya Dr.
Street

Tal FL 32303
City State Zip

Phone: 850 509-3631

E-mail: dorene@floridalegal.org

Speaking: [x] For [ ] Against [ ] Information amendment 813512

Representing: Florida Legal Services, Inc.

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 58

INTRODUCER: Governmental Oversight and Accountability Committee, Judiciary Committee, and Senators Hays and Evers

SUBJECT: Application of Foreign Law in Certain Cases

DATE: March 21, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	**Fav/CS**
2.	McKay	McVaney	GO	**Fav/CS**
3.			CF	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 58 restricts courts from applying foreign law, legal codes, and systems to disputes brought under chapters 61 and 88, F.S., relating to divorce, alimony, division of marital assets, child support, and child custody.

The bill restricts courts from applying foreign laws that do not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

Specifically, under the bill, the courts of this state may not:

- Base a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

- Enforce a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Grant a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

The bill authorizes a party to a contract to waive his or her rights but requires the court to narrowly construe the scope of a waiver.

This bill does not apply to the following:

- Corporations, partnerships, and other types of business associations;
- Ecclesiastical matters; and
- Matters governed by federal treaty or international agreements to which the United States is a party and which preempt state law.

This bill creates section 45.022 of the Florida Statutes.

II. Present Situation:

Choice of Law and Choice of Forum

Questions of choice of law or forum generally arise when a case involves parties or situations with connections to multiple states or countries.

Choice of Law

Domestic Law

The Full Faith and Credit Clause, found in section 1, Article IV of the U.S. Constitution, provides, in part: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The question of full faith and credit may arise after a state refuses to enforce another state's judgment, considered to be a "sister state."[1] Full faith and credit may also arise when a party to a case involving contacts in one state seeks to have the law of another state apply.

In choice of law cases, a court typically requires proof of sufficient contacts to a state, such as through residency, home ownership, or place of work to apply the law of that state. This test remains the prevailing standard in choice of law cases.[2]

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[1] William B. Sohn, *Supreme Court Review of Misconstructions of Sister State Law*, 98 VA. L. REV. 1861, 1864-65 (Dec. 2012).

[2] In the seminal case of *Allstate Insurance Co. v. Hague*, the Supreme Court considered whether Minnesota law could apply where the widow established the following state ties to Minnesota: the decedent's long-term workplace, a daily commute between states, the insurer's place of operation, and the wife's new place of residency. The Court required proof of a singular or aggregate significant contact to a state so that choice of its law is not arbitrary or fundamentally unfair. Here, the court determined that the aggregate of contacts justified application of Minnesota law. 449 U.S. 302, 313-319 (1981).

Foreign Law

Some contracts stipulate a choice of law, defined as "a contractual provision by which the parties designate the jurisdiction whose law will govern any disputes that may arise between the parties."[3]

Numerous policies exist that favor the application of foreign law to U.S. state and federal courts.[4] These policies are based on principles of international comity, reciprocity, predictability, fairness, and disapproval of forum shopping.[5] The term "comity" is defined as "a practice among political entities (as nations, states, or courts of different jurisdictions), involving esp[ecially] mutual recognition of legislative, executive, and judicial acts."[6] Principles of comity are the international equivalent of full faith and credit.[7]

A court does not take judicial notice of the law of another country.[8] Instead, if relevant to a case, a court conducts a review of foreign statutes, case law, and secondary sources and heavily relies on expert testimony.[9]

Choice of Forum

The term "forum non conveniens" is defined as:

> The doctrine that an appropriate forum – even though competent under the law – may divest itself of jurisdiction if, for the convenience of the litigants and the witnesses, it appears that the action should proceed in another forum in which the action might also have been properly brought in the first place.[10]

Courts apply a strong presumption in favor of a plaintiff's choice of forum.[11] Still, the proponent must firmly establish bona fide connections to the forum choice to outweigh perceptions of forum shopping.[12] Courts typically allow a U.S. citizen to choose a U.S. forum, rather than have the case heard in a foreign jurisdiction. However, if a U.S.

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[3] BLACK'S LAW DICTIONARY (9th ed. 2009).

[4] Nicholas M. McLean, *Intersystemic Statutory Interpretation in Transnational Litigation*, 122 YALE L.J. 303, 304 (Oct. 2012). "A court sitting in diversity might apply a state choice-of-law rule that requires the court to apply the tort law of a foreign nation. In a contract dispute, a federal court might apply foreign substantive law pursuant to an international agreement's choice-of-law clause. In the realm of corporate law, a court might find, based on an application of the internal affairs doctrine, that a foreign nation's procedural requirements govern a shareholder derivative suit (citation omitted)." *Id*.

[5] *Id*. at 304.

[6] BLACK'S LAW DICTIONARY (9th ed. 2009).

[7] James Botsford and Paul Stenzel, *The Wisconsin Way Forward with Comity: A Legal Term for Respect*, 47 TULSA L. REV. 659 (Spring 2012). "Full faith and credit is a constitutional principle requiring states to enforce fully the judgments and orders of other states. Comity is the principle of international law by which a sovereign gives deference to the judgments of another due to mutual respect." *Id*. at 660.

[8] Determination of question relating to foreign law as one of law or fact, 34 A.L.R. 1447.5

[9] McLean, *supra* note 4, at 306-307.

[10] BLACK'S LAW DICTIONARY (9th ed. 2009).

[11] Plaintiff's choice of forum, 32A AM. JUR. 2D FED. CTS. § 1364.

[12] Forum Non Conveniens – Deference to Plaintiff's Forum Choice, 14D FED. PRAC. & PROC. JURIS. §3828.2 (3d ed.)

corporation operates in international commerce, not all litigation will be heard in the U.S.[13]

Courts place a high burden on a defendant who seeks dismissal of a case based on forum non conveniens. Although international treaty requirements promote the principle "equal access to courts," in practice, courts do not accord foreign plaintiffs the same deference to move a case to another jurisdiction as U.S. citizens.[14]

Validity of Judgment

U.S. courts are generally not bound by foreign judgments. Still, principles of comity dictate strong consideration of another country's judicial orders, based on deference and mutual respect.

Criteria that courts apply in accepting a foreign judgment include proof that:

- The parties had access to a full and fair trial.
- The proceeding took place after due notice and voluntary appearance.
- The jurisdiction operates under impartiality, rather than prejudice, between its own citizens and those of other countries.
- No evidence of fraud existed in securing the judgment.[15]

Chapter 61, F.S.

Chapter 61, F.S., addresses dissolution of marriage including the distribution of assets and liabilities, alimony, and child support and child custody arrangements. Regarding child support, the public policy of the state is that each parent has a fundamental obligation towards dependent children.[16] Child support is based in part on a parent's income and the child's needs.[17]

Child custody arrangements, whether developed by the parents or by a court, must comply with state law and international treaties.[18]

Florida courts distribute assets and liabilities through equitable distribution, rather than, say, community property, as is done in California and a handful of other Western states. Under equitable distribution, a court considers various factors including contributions to the marriage, economic circumstances of the parties, and the length of marriage.[19] The court also

[13] American citizenship of party; suits by aliens, 32A AM. JUR. 2D FED. CTS. §1365.
[14] 14D FED. PRAC. & PROC. JURIS. §3828.2 (3d ed.)
[15] 9 AM. JUR. *Proof of Facts* 3D 687 §1.5. Comity (Dec. 2012).
[16] Section 61.29, F.S.
[17] Section 61.30, F.S.
[18] These laws include the Uniform Child Custody Jurisdiction and Enforcement Act, the International Child Abduction Remedies Act, the Parental Kidnapping Prevention Act, and the Convention on the Civil Aspects of International Child Abduction.
[19] Section 61.075(1), F.S.

considers various factors in awarding alimony and awards it on different bases, such as, monthly, lump sum, temporary, or permanent.[20]

Florida recognizes written, signed premarital agreements as enforceable contracts.[21] These agreements may include choice of law clauses.[22] However, an agreement cannot negatively affect the rights of a child to support.[23] Grounds for unenforceability of a premarital agreement include coercion, fraud, duress, or overreaching or that the agreement is unconscionable.[24]

To relocate with a child, absent an agreement between the parents, the relocating parent must petition the court or face contempt charges.[25]

Chapter 88, F.S.

Federal law required each state to adopt the Uniform Interstate Family Support Act (UIFSA), codified in chapter 88, F.S.[26] The purpose of the UIFSA is to unify state law among the states regarding child support obligations, reconcile child support orders issued by more than one state, and streamline procedures for out-of-state petitioners.[27] Under the Act, only one court possesses jurisdiction and only one order is in effect at any given time.[28] This can change, however, to another court for modification, if that court has personal jurisdiction.[29]

The UIFSA applies to support proceedings involving a foreign support order (meaning an order entered into out-of-state), a foreign tribunal, or a case in which an obligee, obligor, or child lives in a foreign country.[30]

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[20] The law recognizes bridge-the-gap, rehabilitative, durational, and permanent forms of alimony. Section 61.08(1) and (2), F.S.
[21] Section 61.079, F.S.
[22] Section 61.079(4)(a)7., F.S.
[23] Section 61.079(4) (b), F.S.
[24] Section 61.079(7), F.S.
[25] Section 61.13001(3), F.S.
[26] Building on earlier federal efforts to address the complications of enforcing child support across state lines, Congress passed the original UIFSA in 1992, and later amended it in 1996 and 2001. Kimball Denton, *A Brief History of Uniform Laws for Private Interstate Support Enforcement*, 20 J. CONTEMP. LEGAL ISSUES 323, 326 (2011-12). "[T]he Act innovatively created a one-order system by including a long-arm jurisdiction provision, which provided that a case should be kept in the obligee's home state as often as possible. The long-arm provision called for 'extended personal jurisdiction over nonresidents'… ." This was thought to remove the noncustodial parent's advantage of having automatic case transfer to his or her home state. Nicole K. Bridges, *The "Strengthen and Vitalize Enforcement of Child Support (Save Child Support) Act: Can the Save Child Support Act Save Child Support from the Recent Economic Downturn?,"* 36 OKLA. CITY U.L. REV. 679, 692-93 (Fall 2011).
[27] 23 AM. JUR. 2D *Desertion and Nonsupport* § 73; 67A C.J.S. Parent and Child §247.
[28] Denton, *supra* note 26 at 327.
[29] *Id*. at 327. In Florida, a court may establish personal jurisdiction over an individual based on any of the following: The individual is served with citation, summons, or notice in-state; the individual consents to jurisdiction in the state; the individual lived with the child in-state and provided prenatal expenses or child support; the child lives in the state as a result of the acts or directives of the individual; the individual had sexual intercourse in this state which may have resulted in the conception of the child; the individual asserted parentage in a court or putative father registry in the state; or any other basis which is constitutional for the exercise of personal jurisdiction. Section 88.2011, F.S.
[30] Section 88.1041(1), F.S.

The UIFSA governs the:

- Establishment of a spousal or child support order.
- Enforcement of support orders and income-withholding orders without the registration of an order from out-of-state with a court in this state.
- Registration of a support order of another state for enforcement in this state.
- Modification of a child support order issued by a court of the state in which the support obligations originated.
- Registration of an order of another state for modification.
- Determination of parentage as it relates to child support.[31]

Jurisdiction
Section 88.2011, F.S., addresses a court's jurisdiction over parties to a support order or parentage determination. When a court exercises personal jurisdiction over a nonresident, in some circumstances, the state procedural and substantive laws apply, including choice of law rules, unless specified otherwise in the UIFSA:

> Under … choice of law … the substantive law of an issuing state applies to petitions filed in a responding state to enforce the existing … orders of the issuing state; … the substantive law of the issuing state does not apply to petitions filed in a [subsequent] responding state to modify the existing child support orders of the issuing state.
>
> A foreign country may be a "state" for purposes of application of the UIFSA, but the Act does not apply to obligations established under the law of a foreign country where there is no state law or contravening treaty or federal statute recognizing the enforcement of support orders from the foreign country … .[32]

Enforcement of Income-Withholding Orders Without Registration
Part V of chapter 88, F.S., provides for income-withholding orders issued by another state to be self-executing and treated as if a Florida court issued them.[33] However, a Florida court can enforce out-of-state support and income-withholding orders once a party registers the order with the Florida court.[34]

Choice of Law
Under the UIFSA, the law of the issuing or originating state applies regarding the nature, extent, amount and duration of payments and other support obligations, including arrearages. In proceedings to collect arrearages under support orders, the statute of limitation that applies is whichever is longer, this state's or the issuing state's.[35]

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[31] 23 AM. JUR. 2D *Desertion and Nonsupport* § 73.
[32] Section 88.2021, F.S.; 67A C.J.S. *Parent and Child* §247.
[33] Sections 88.5011 and 88.50211(2), F.S.
[34] Section 88.6011, F.S.
[35] Section 88.6041(1) and (2), F.S.

Enforcement and Modification of Support Order after Registration
Under the UIFSA, jurisdiction to enforce or modify another state's child support order in a registration proceeding in this state is proper if all parties, including children, reside here.[36]

To modify a support order from another state, an agency or party must register it in Florida.[37] Once the recipient meets personal jurisdiction and other factors, the court can enforce the order just as if it had been issued in-state.[38]

To enforce orders involving a foreign country, the UIFSA authorizes:

- A tribunal of this state to assume jurisdiction to modify an order and make it the controlling order if a foreign country lacks or refuses jurisdiction to modify its own order.[39]
- A party or support enforcement agency seeking to modify or enforce a foreign order which is not governed by an international convention to register the order in this state.[40]

The UIFSA requires courts to recognize and enforce foreign support orders and agreements, unless:

- A court finds that a registered convention support order is manifestly incompatible with public policy. Incompatibility with public policy includes the failure of the issuing court to maintain minimum standards of due process such as notice and an opportunity to be heard.[41]
- A court finds that a registered foreign support agreement is manifestly incompatible with public policy.[42]

Use and Acceptance of Religious Law by U.S. Courts
The U.S. Constitution does not permit official adoption of religious law by federal, state, or local governments.[43] Examples exist, however, of judicial deference to religious edicts.

In the seminal case of *Wisconsin v. Yoder*, the U.S. Supreme Court reviewed a challenge by Amish parents of a Wisconsin law requiring mandatory school attendance.[44] At the time, the law did not recognize home schooling as an alternative education. The parents asserted that high school would negatively impact their children through exposure to "worldly" views, self-distinction, and social life, all antithetical to Amish religion.[45] The Court noted the reputable work ethic, law-abiding nature, and potentially-compromised

[36] Section 88.6131(1), F.S.
[37] Section 88.6091, F.S.
[38] Section 88.6101, F.S.; Requirements for modification of child support orders issued out-of-state are provided in s. 88.6111, F.S.
[39] Section 88.6151(1) and (2), F.S.
[40] Section 88.6161, F.S.
[41] Section 88.7081(1) and (2)(a), F.S.
[42] Section 88.7101(3), F.S.
[43] Jaron Ballou, *Sooners vs. Shari'a: The Constitutional and Societal Problems Raised by the Oklahoma State Ban on Islamic Shari'a Law*, 30 LAW & INEQ. 309, 314 (Summer 2012).
[44] *Wisconsin v. Yoder*, 406 U.S. 205 (1972).
[45] *Id*. at 210-11 (1972).

survival of the Amish.[46] The Court found the parents' violation of compulsory school attendance to be firmly rooted in Amish religion.[47] Requiring high school attendance would violate the defendants' rights to religious Free Exercise, under the First Amendment of the U.S. Constitution.[48]

Scholars suggest that the Court is inclined to uphold a religious practice that violates a law if the statute unduly burdens religious First Amendment rights. This is particularly so where the practice cannot be said to harm others.[49] Still, "American laws impose behavioral mandates on all citizens, regardless of faith, and to the extent that religious regimes tolerate behaviors that fall outside those mandates, the secular court system will always come down on the side of secular laws."[50]

Another group that the Court recognizes is the Beth Din of America (BDA), or a Jewish rabbinic court. The BDA established itself as a limited court alternative to civil disputes.[51] Functioning primarily as a court of arbitration, the court has undergone significant changes since its inception 50 years ago.[52] Present day proceedings before the BDA include:

- A detailed and standardized rules of procedure.
- An internal appellate process.
- Consideration of choice of law.
- Testimony from experts on secular law and commercial practice.
- Recognition of common commercial custom.
- Belief in communal governance, as reflected in multiple individual arbitration.[53]

As noted, the BDA incorporated these features over time. "Recognizing this secular focus on procedure and procedural fairness, the BDA adopted detailed rules and procedures that contributed tremendously to the eventual secular acceptance of BDA decisions."[54] To date, no U.S. court has overturned a BDA case.[55]

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[46] *Id*. at 212-13.
[47] *Id*. at 213-16.
[48] *Id*. at 234.
[49] Omar T. Mohammedi, *Sharia-compliant Wills: Principles, Recognition, and Enforcement*, 57 N.Y.L. SCH. L. REV. 259, 280 (2012-13).
[50] Michael J. Broyde, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of American Precedent*, 57 N.Y.L. SCH. L. REV. 287, 303 (2012-13).
[51] *Id*. at 288.
[52] *Id*. at 288.
[53] Broyde, *supra* note 50, at 288-89. "Traditionally, Jewish law did not offer an appellate process like the American secular court system … . Over time, however, the BDA came to find that if it did not provide an internal mechanism by which parties could appeal perceived errors, secular judges would interject and substitute their own judgment. Because the ultimate goal for litigants submitting to a religious tribunals' jurisdiction (and for the tribunal itself) is to have matters resolved internally from start to finish, the BDA added an appellate process to its arbitration services." *Id*. at 293.
[54] *Id*. at 290.
[55] *Id*. at 288.

BDA cases apply to situations in which:

- A contract contains an arbitration provision that designates the BDA as the preferred forum for arbitration; or
- A party to a dispute invites an opposing party to bring the case to the BDA.[56]

Anti-Foreign Law

In recent years, state legislatures have moved to limit Sharia law, or the applicability of foreign law through choice of law and choice of forum clauses in contracts. Starting with Louisiana and Tennessee, 21 states have considered some limits on the application of foreign law, either through legislation or ballot initiative.[57]

Scholars generally classify initiatives or legislation in one of three ways:

- Bills that singularly restrict the use of Sharia law;[58]
- Bills that include Sharia as one of several banned types of law or tradition;[59] or
- Prohibitions on foreign law generally, commonly known as a foreign or international law bill.[60]

Proposals passed through initiative or legislation in Arizona,[61] Kansas,[62] Louisiana,[63] Oklahoma, and Tennessee.

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[56] *Id.* at 291-92.

[57] Asma T. Uddin and Dave Pantzer, *A First Amendment Analysis of Anti-Sharia Initiatives*, 10 FIRST AMEND. L. REV. 363, 370 (Winter 2012).

[58] Alabama's proposed language read, in part: "The courts shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia." H.R. 597 (Ala. 2011). Iowa, Missouri, and New Mexico proposed virtually the same language. Language before the Wyoming legislature would ban both direct use of Sharia law, and citing other states that use Sharia law. H.R. 8, (Wyo. 2011). Udder and Pantzer, *supra* note 57, at 371-73.

[59] An example of this was the language initially proposed in Arizona, which provided, in part: "… court shall not use, implement, refer to or incorporate [a] tenet of any body of religious sectarian law in to any decision, finding or opinion as controlling or influential authority." And further, the bill defines "religious sectarian law", as "a tenet or body of law evolving within and binding a specific religious sect or tribe. Religious sectarian law includes sharia law, canon law, halacha and karma … ." H.R. 2582 (Ariz. 2011). Udder and Pantzer, *supra* note 58, at 373-74.

[60] *Id*. at 373-74. An example of the more generalist approach was tried in Michigan. It defined foreign law as "any law, rule or legal code or system other than the constitution, laws and ratified treaties of the United States and the territories of the United States, or the constitution and laws of this state …. a court … shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution of this state or of the United States, or the constitution and laws of this state." *Id*. at 375.

[61] Ariz.Rev.Stat. §12-3103, provides, in part: "A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this state or of the United States … ."

[62] Kan. Stats. §§60-5103, 60-5104, and 60-5105 (a) and (b), provide, in part: "Any court, arbitration, tribunal or administrative agency ruling … shall violate the public policy of this state and be void and unenforceable if the court … bases its rulings … on any foreign law, legal code or system that would not grant the parties affected … the same fundamental liberties, rights and privileges granted under the … constitutions, including … equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. … . A contract or … provision … which provides for the choice of a foreign law, legal code or system to govern … shall violate the public policy of this state and be void and unenforceable if the foreign law, legal code or system chosen … would not grant the parties the same fundamental liberties, rights and privileges granted under the … constitutions, including … equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. … . A contract or … provision … which provides for a jurisdiction for … in personam

Perhaps the most notable attempt to limit court use of foreign law was the constitutional amendment placed on the ballot in Oklahoma in 2010. The amendment restricted courts to the use of federal and state law, and expressly banned consideration of international and Sharia laws. The initiative defined Sharia law as Islamic law, based on the Koran and the teachings of Mohammed.[64] Fewer than 1 percent of Oklahoma's population self-identifies as Muslim.[65] Known as the "Save our State" amendment, the measure passed handily both in the legislature and through adoption by voters.[66]

A Muslim Oklahoma resident challenged the amendment on the basis that it violated his First Amendment rights under the Establishment Clause and the Free Exercise Clause of the U.S. Constitution. The U.S. District Court for the Western District of Oklahoma ruled in favor of the plaintiff. The plaintiff argued that the initiative unconstitutionally interfered with his ability to indicate his wishes as detailed in his will. Specifically, the will provided for:

> charitable allotments to be made "in a manner that does not exceed the proscribed limitations found in Sahih Bukhari … a highly respected collection of the "sayings and deeds of Prophet Muhammed," and the cited provision appears to set a cap on the amount of property that a decedent may give to charity by will. It also provides for the preparation of Awad's body in a manner that "comports precisely with … Sahih Bukhari" … and for "a burial

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jurisdiction … shall violate the public policy of this state and be void and unenforceable if the jurisdiction … includes any foreign law, legal code or system … that would not grant the parties the same fundamental liberties, rights and privileges granted under the … constitutions, including … equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. … . If a resident … subject to personal jurisdiction in this state, seeks to maintain litigation, … in this state and if the courts … find that granting … forum non conveniens or a related claim violates … the fundamental liberties, rights and privileges granted under the United States and Kansas constitutions of the nonclaimant in the foreign forum … including … equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage … the claim shall be denied.

[63] La. Rev. Stat. §9:6001B, provides: " … it shall be the public policy of this state to protect its citizens from the application of foreign laws when the application … will result in the violation of a right guaranteed by the constitution ... including … due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state. … A court, arbitrator, administrative agency, or other adjudicative, mediation, or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution. … If any contractual provision or agreement provides for the choice of a foreign law … would result in a violation of a right guaranteed by the constitution …, the agreement or contractual provision shall be modified or amended … to preserve the constitutional rights of the parties. … If any contractual provision or agreement provides for the choice of venue or forum outside of the states or territories of the United States, and if the enforcement or interpretation … would result in a violation of any right guaranteed by the constitution … that contractual provision or agreement shall be interpreted … to preserve the constitutional rights of the person against whom enforcement is sought. … if a natural person subject to personal jurisdiction in this state seeks to maintain litigation … in this state, and … granting a claim of forum non conveniens or a related claim violates or would likely lead to the violation of the constitutional rights of the nonclaimant in the foreign forum with respect to the matter in dispute, the claim shall be denied.

[64] *Id*. at 367-68.

[65] Ballou, *supra* note 43, at 310.

[66] Udder and Pantzer, *supra* note 57, at 377-78.

> plot that allows my body to be interned [sic] with my head pointed in the direction of Mecca."[67]

His will, the plaintiff argued, would be rendered unenforceable under the amendment.[68]

The court noted that the amendment language subjected the plaintiff and other Muslims in the state to disfavored treatment.[69] In determining the proper test to apply, the Court reviewed the principles of the tests established in *Lemon v. Kurtzman*[70] and *Larson v. Valente*.[71] The Court cited *Larson* for the proposition that *Lemon* applies to laws providing a uniform benefit to all religions, while *Larson* applies in instances where a law discriminates among religions. Therefore, *Larson* provided the proper test in the Oklahoma challenge.[72] The *Larson* test requires both strict scrutiny, and more narrowly, language "closely fitting" to a compelling interest.[73]

> This case presents even stronger 'explicit and deliberate distinctions' among religions than the provision that warranted strict scrutiny in *Larson* …. *Larson* involved a … statute that imposed certain registration and reporting requirements upon only those religious organizations that solicited more than 50 percent of their funds from nonmembers …. Unlike the provision in *Larson*, the Oklahoma amendment specifically names the target of its discrimination.[74]

The court selected the *Larson* test as the proper test. To satisfy strict scrutiny, the state must show that the interest addresses a real, identified problem, rather than a mere perception of harm.[75] As the state could not identify even a single time when an Oklahoma court applied Sharia law, the court found that the state failed to illustrate an actual problem, and therefore, failed to show a compelling state interest.[76] As the state failed the first prong, the court did not reach whether the state complied with the "close fit" required of the second prong.[77]

Of the four states having laws in this area, Kansas and Louisiana are the most similar to SB 58.

Constitutional Impairment of Contracts

Article 1, Section 10, of the Florida Constitution provides, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed."

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[67] *Id*. at 390.
[68] *Id.* at 390.
[69] *Awad v. Ziriax*, 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).
[70] 403 U.S. 602 (1971). The *Lemon* test of constitutionality requires the language in question to have a secular legislative purpose, a primary effect that neither advances nor inhibits religion, and that does not foster an excessive government entanglement with religion. *Id.* at 612-13.
[71] *Larson v. Valente*, 456 U.S. 228 (1982).
[72] *Awad*, 670 F.3d at 1126-27, 1128.
[73] *Larson*, 456 U.S. at 246-47.
[74] *Awad*, 670 F.3d at 1128.
[75] *Awad*, 670 F.3d at 1129-30.
[76] *Awad*, 670 F.3d at 1111.
[77] *Awad*, 670 F.3d at 1130-31.

As a result of the constitutional limitation, the courts typically invalidate statutes that retroactively apply to existing contracts. In a 1940 Florida Supreme Court case, the Court ruled any statute enacted by the Legislature void which would impair the obligation of a contract.[78] Subsequent courts, however, carved out limited exceptions.

In *Pomponio v. Claridge of Pompano Condo, Inc.*, the Florida Supreme Court recognized that the state may have a legitimate interest in amending a law that impacts existing contracts based on its police power.[79] In determining legitimacy, the Court employed a balancing test to "weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy."[80]

The Court then applied the test established in the U.S. Supreme Court case of *Allied Structural Steel Co. v. Spannaus* to determine whether a law may apply to existing contracts.[81] Under the test, a law is more likely to be upheld if it meets the following three prongs of the test, which are, cumulatively that:

- The law was enacted to deal with a broad, generalized economic or social problem.
- The law operates in an area already subject to state regulation at the time the parties' contractual obligations were originally undertaken, rather than invading an area not previously subject to regulation by the state.
- The law effects a temporary alteration of the contractual relationships of those within its coverage, instead of working a severe, permanent, and immediate change in those relationships irrevocably and retroactively.[82]

In an impairment of contracts challenge to a municipal ordinance, the Fifth District Court of Appeal reiterated the principle that laws that are reasonable and necessary to preserve public health, safety, and welfare are constitutional even if obligations of a private contract are impaired.[83] However, "the government's authority in this regard is not unrestrained."[84]

In *Cohn v. Grand Condominium Association, Inc.*, the statute changed voting arrangements in condominium governance. In employing the *Pomponio* test, the court determined that the state failed to identify a current social problem, the law did not regulate the specific area at issue at the time that the condo organized, and the

[78] *Bedell v. Lassiter*, 143 Fla. 43 (Fla. 1940).
[79] *Pomponio v. Claridge of Pompano Condo, Inc.*, 378 So. 2d 774 (Fla. 1979).
[80] *Id*. at 780.
[81] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978). "Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation." *Id.* at 245.
[82] *Pomponio*, 378 So. 2d at 779.
[83] *Brevard County v. Florida Power & Light Co*., 693 So. 2d 77, 81 (Fla. 5th DCA 1997).
[84] *Id*. at 81.

resulting change from the law would be severe, permanent, and immediate.[85] Therefore, the state failed to meet its burden.[86] On appeal, the Florida Supreme Court affirmed but recognized that new laws apply to related contracts with provisions which incorporate future changes to the law.[87]

III. Effect of Proposed Changes:

This bill restricts courts from applying foreign law to dissolution of marriage cases and issues involving multiple-state child support enforcement actions.

Specifically, under the bill, the courts of this state may not:

- Base a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Grant a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

This bill does not apply to:

- Corporations, partnerships, and other types of business associations (except as necessary to provide relief in proceedings brought under chapters 61 and 88, F.S.); and
- Ecclesiastical matters.

Although this bill recognizes that a party may waive his or her rights through a contract, the bill requires a court to narrowly construe the scope of the waiver.

The bill does not identify any laws or conduct authorized under foreign laws within the family law context which would deny a person's fundamental liberties, rights, and privileges. As such, courts will likely determine the impact of the bill on a case-by-case basis.

The bill requires a court to invalidate contractual provisions or judgments not based on laws that provide the parties with the "same" constitutional protections as the state and federal constitutions. As the "same" standard appears inflexible, the bill may result in the invalidation of contractual provisions or judgments based on foreign laws that grant the parties similar rights, privileges, and immunities as those granted by this country.

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[85] *Cohn v. Grand Condominium Assoc.*, 26 So. 3d 8, 11 (Fla. 3d DCA 2009).
[86] *Id.* at 11.
[87] *Cohn v. Grand Condominium Assoc.*, 62 So. 3d 1120 (Fla. 2011).

The bill declares in s. 45.022(4), F.S., that court orders based on disfavored foreign laws are void and unenforceable. However, the bill does not specifically address a situation in which a person seeks to enforce in this state a court order from a sister state which is based on a disfavored foreign law. In those situations, a court may likely rule that the Full Faith and Credit Clause of the U.S. Constitution requires enforcement of the order.

Similarly, the bill does not specifically address how a court would reconcile the bill with chapter 88, F.S., the Uniform Interstate Family Support Act, which was mandated by Congress. Under the bill, a support order entered in a foreign nation whose laws are inconsistent with this nation's constitutional "fundamental liberties, rights, and privileges" is unenforceable. In contrast, chapter 88, F.S., renders foreign support orders and agreements unenforceable if they are "manifestly incompatible with public policy." Although the two provisions appear to overlap (for example, manifest incompatibility includes due process and opportunity to be heard), the scope of the bill is likely broader than the restrictions on foreign law under the UIFSA.

The bill requires 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 this act becomes a law.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Four constitutional issues may potentially be raised:

First Amendment
States that have proposed legislation to restrict courts from applying foreign law have banned the use of Sharia law, banned several types of law or tradition including Sharia law, or prohibited the use of foreign law generally. Of the three types of initiatives, this bill comes under the third category, as it contains no mention of Sharia or another specific type of banned law other than foreign law in general. In contrast to the law at issue in *Awad v. Ziriax*,[88] the bill appears to carry the greatest merit constitutionally, as it

[88] 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).

does not specifically single out a particular religion for disfavor or preference. If this bill is challenged based on First Amendment grounds, a court following past precedents will initially review the language for facial discrimination. Again, as religion is not mentioned at all, the court will deem it facially neutral. A court will then apply the *Lemon* test, and likely find both a secular government purpose and that the law does not facilitate excessive governmental entanglement with religion. Because of this, a court will likely uphold the law.

Impairment of Contracts

The bill takes effect upon becoming a law and provides that it applies to actions filed after the effective date of the act. Still, if a party attempts to apply the law to invalidate provisions in existing contracts, he or she must demonstrate that the law is a legitimate use of the state's police power and that the change operates in less than a severe, permanent, and immediate fashion, as required under *Pomponio v. Claridge of Pompano Condo, Inc*.[89] This test places a very high burden on the state. Alternatively, this bill may reach back to existing contracts, if a contractual provision expressly incorporates future changes to the law.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"[90] and the action must pose a "great potential for disruption or embarrassment"[91] to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as the United States' perception abroad. Due to the fact that these factors could only be evaluated if and when a challenge to this bill was brought, an assessment of the likelihood for success that such an action would have is not practical at this time.

Separation of Powers

The first three articles of the U.S. Constitution define the powers given to the three branches of government in the United States.[92] Article I defines the legislative branch and vests with it all power to make law. Article II defines the executive branch and vest in it the power to enforce the law. Article III defines the judicial branch and vests in it all judicial power. For time immemorial, that power has been understood to mean the power to interpret and apply the law.[93]

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[89] 378 So. 2d 774 (Fla. 1979).
[90] *Zschernig v. Miller*, 389 U.S. 429, 433 (1968).
[91] *Id*. at 435.
[92] Articles I, II, III, U.S. Const.
[93] *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

As discussed above, to the extent that this bill directs Florida courts to consider and interpret foreign decisions and law in a certain manner, it may interfere with the federal government's ability to govern foreign policy with one voice. As such, this bill could be challenged as preempted by the federal government. Similarly, as previously stated, the judiciary's constitutional role is to act as the sole interpreter of laws; therefore, the bill could be challenged as an infringement on the essential role of the judicial branch in violation of the constitutional separation of powers. Similarly, the Florida Constitution explicitly mandates separation of powers between branches of the Florida government. Article II, section 3 of the Florida Constitution specifically states: "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

Because of this language, Florida's separation of powers doctrine is even stronger than the federal concept of separation of powers. Therefore, the bill may face an additional separation of powers inquiry.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although private parties will be impacted by the bill, the extent of the impact is unknown at this time.

C. Government Sector Impact:

The Office of the State Courts Administrator anticipates that the bill will not have a fiscal impact on judicial workloads. However, the bill may require the drafting of new or amended jury instructions in family law cases, but no significant impact is expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Governmental Oversight and Accountability on March 21, 2013:
The CS:

- Clarifies what constitutes a "foreign law, legal code, or system."
- Specifies that the act applies to proceedings under Chapters 61 and 88, F.S., filed after the effective date of the bill.
- Requires the Division of Law Revision and Information to replace the phrase 'the effective date of this act" with the date the act becomes law.

CS by Judiciary on March 6, 2013:
This CS:

- Adds liberties granted under the State and Federal Constitution to the list of the state's interests to be upheld by the bill.
- Makes a choice of venue or choice of forum clause in a contract void and unenforceable if the clause would violate constitutional liberties, rights, or protections. This provision makes the remedy the same for choice of venue or choice of forum clause violations as that of choice of foreign law clauses.

B. Amendments:

None.

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

923478

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
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The Committee on Governmental Oversight and Accountability (Hays) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 53 - 55
4 and insert:
5 foreign country, or a state, nation, or subdivision
6 thereof, outside of the United States or its territories,
7 including, but not limited to, a foreign or international
8 organization claiming the status of a country, state, or nation
9 or asserting legal authority to act on behalf of one or more
10 foreign countries, states, nations, or any other similar
11 international organization or tribunal, which is applied by that
12 jurisdiction's

217066

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
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The Committee on Governmental Oversight and Accountability (Hays) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete lines 64 - 66
4 and insert:
5 code, or system in actions or proceedings brought under,
6 pursuant to, or pertaining to the subject matter of chapter 61
7 or chapter 88 and filed after the effective date of this act.
8 (b) Except as necessary to provide effective relief in
9 actions or
10
11 ========== T I T L E A M E N D M E N T ==========
12 And the title is amended as follows:

217066

13 Delete lines 9 - 12
14 and insert:
15 States Constitution in certain proceedings or actions
16 brought after the act becomes a law; providing that
17 the act does not apply to a corporation, partnership,
18 or other form of business association, except when
19 necessary to provide effective relief in actions or
20 proceedings under or relating to

175708

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/21/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Before line 138
insert:
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.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Between lines 36 and 37

175708

13 insert:
14 providing a directive to the Division of Law Revision
15 and Information;

By the Committee on Judiciary; and Senators Hays and Evers

590-01986-13 201358c1

A bill to be entitled

An act relating to application of foreign law in certain cases; creating s. 45.022, F.S.; providing intent; defining the term "foreign law, legal code, or system"; clarifying that the public policies expressed in the act apply to violations of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; providing that the act does not apply to a corporation, partnership, or other form of business association, except when necessary to provide effective relief in proceedings under or relating to chapters 61 and 88, F.S.; specifying the public policy of this state in applying the choice of a foreign law, legal code, or system under certain circumstances in proceedings brought under or relating to chapters 61 and 88, F.S., which relate to dissolution of marriage, support, time-sharing, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act; declaring that certain decisions rendered under such laws, codes, or systems are void; declaring that certain choice of venue or forum provisions in a contract are void; providing for the construction of a waiver by a natural person of the person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; declaring that claims of forum non conveniens or related claims must be denied under certain circumstances; providing that the act

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

590-01986-13 201358c1

may not be construed to require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters in violation of specified constitutional provisions or to conflict with any federal treaty or other international agreement to which the United States is a party to a specified extent; providing for severability; providing an effective date.

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

Section 1. Section 45.022, Florida Statutes, is created to read:

45.022 Application of foreign law contrary to public policy in certain cases.—

(1) While the Legislature fully recognizes the right to contract freely under the laws of this state, it also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state's interest to protect and promote liberties, rights, and privileges granted under the State Constitution or the United States Constitution.

(2) As used in this section, the term "foreign law, legal code, or system" means any law, legal code, or system of a jurisdiction outside any state or territory of the United States, including, but not limited to, international organizations or tribunals, and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals. The term does not include the common law and statute laws of England as described in s. 2.01 or any laws of the

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

59 Native American tribes in this state.
60 (3)(a) This section applies only to actual or foreseeable
61 denials of a natural person's fundamental liberties, rights, and
62 privileges guaranteed by the State Constitution or the United
63 States Constitution from the application of a foreign law, legal
64 code, or system in proceedings brought under, pursuant to, or
65 pertaining to the subject matter of chapter 61 or chapter 88.
66 (b) Except as necessary to provide effective relief in
67 proceedings brought under, pursuant to, or pertaining to the
68 subject matter of chapter 61 or chapter 88, this section does
69 not apply to a corporation, partnership, or other form of
70 business association.
71 (4) Any court, arbitration, tribunal, or administrative
72 agency ruling or decision violates the public policy of this
73 state and is void and unenforceable if the court, arbitration,
74 tribunal, or administrative agency bases its ruling or decision
75 in the matter at issue in whole or in part on any foreign law,
76 legal code, or system that does not grant the parties affected
77 by the ruling or decision the same fundamental liberties,
78 rights, and privileges guaranteed by the State Constitution or
79 the United States Constitution.
80 (5)(a) A contract or contractual provision, if severable,
81 that provides for the choice of a foreign law, legal code, or
82 system to govern some or all of the disputes between the parties
83 to be adjudicated by a court of law or by an arbitration panel
84 arising from the contract violates the public policy of this
85 state and is void and unenforceable if the foreign law, legal
86 code, or system chosen includes or incorporates any substantive
87 or procedural law, as applied to the dispute at issue, which

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

88 would not grant the parties the same fundamental liberties,
89 rights, and privileges guaranteed by the State Constitution or
90 the United States Constitution.
91 (b) This subsection does not limit the right of a natural
92 person in this state to voluntarily restrict or limit his or her
93 fundamental liberties, rights, and privileges guaranteed by the
94 State Constitution or the United States Constitution by contract
95 or specific waiver consistent with constitutional principles,
96 but the language of any such contract or other waiver must be
97 strictly construed in favor of preserving such liberties,
98 rights, and privileges.
99 (6)(a) A contract or contractual provision, if severable,
100 that provides for the choice of venue or choice of forum outside
101 a state or territory of the United States violates the public
102 policy of this state and is void and unenforceable if the
103 enforcement of the choice of venue or forum provision would
104 result in a violation of any fundamental liberties, rights, and
105 privileges guaranteed by the State Constitution or the United
106 States Constitution.
107 (b) If a natural person who is subject to personal
108 jurisdiction in this state seeks to maintain litigation,
109 arbitration, agency, or similarly binding proceedings in this
110 state and the courts of this state find that granting a claim of
111 forum non conveniens or a related claim denies or would likely
112 lead to the denial of any fundamental liberties, rights, and
113 privileges guaranteed by the State Constitution or the United
114 States Constitution of the nonclaimant in the foreign forum with
115 respect to the matter in dispute, it is the public policy of
116 this state that the claim be denied.

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

117 (7) This section may not be construed to:
118 (a) Require or authorize any court to adjudicate, or
119 prohibit any religious organization from adjudicating,
120 ecclesiastical matters, including, but not limited to, the
121 election, appointment, calling, discipline, dismissal, removal,
122 or excommunication of a member, officer, official, priest, nun,
123 monk, pastor, rabbi, imam, or member of the clergy of the
124 religious organization, or determination or interpretation of
125 the doctrine of the religious organization, if such adjudication
126 or prohibition would violate s. 3, Art. I of the State
127 Constitution or the First Amendment to the United States
128 Constitution; or
129 (b) Conflict with any federal treaty or other international
130 agreement to which the United States is a party to the extent
131 that such federal treaty or international agreement preempts or
132 is superior to state law on the matter at issue.
133 (8) If any provision of this section or its application to
134 any natural person or circumstance is held invalid, the
135 invalidity does not affect other provisions or applications of
136 this section which can be given effect, and to that end the
137 provisions of this section are severable.
138 Section 2. This act shall take effect upon becoming a law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/12
Meeting Date

Topic _____ Bill Number SB 58 *(if applicable)*

Name Jerome B. Gordon Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 615 Bayshore Drive Phone 850-456-8821
Street

Pensacola E-mail jerry_gordon38@yahoo.com
City *State* *Zip*

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

Representing Christian Family Coalition

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.

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-21-13
Meeting Date

Topic APPLICATION OF FOREIGN LAW Bill Number SB 58 *(if applicable)*

Name MOAZZAM ADNAN RAJA Amendment Barcode _____ *(if applicable)*

Job Title MARKETING DIRECTOR

Address 211 SPRING RUN CIRCLE Phone (407) 452-4527
Street

LONGWOOD FL 32779 E-mail ADNANRAJA@GMAIL.COM
City *State* *Zip*

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

Representing CENTRAL FLORIDA BUSINESSMEN

Appearing at request of Chair: [ ] Yes [X] 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-21-13
Meeting Date

Topic: Application of foreign law

Bill Number: SB58 *(if applicable)*

Name: Atif Fareed

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 175 E. Tradewinds rd
Street

Winterspring FL 32708
City *State* *Zip*

Phone: 321 356 3058

E-mail: Atif737@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/2013
Meeting Date

Topic: Application of Foreign Law

Bill Number: SB 58 *(if applicable)*

Name: Laila Abdelaziz

Amendment Barcode: _____ *(if applicable)*

Job Title: Emerge USA Regional Coordinator

Address: 5031 Sunridge Palms Drive
Street

Tampa, Fl 33617
City *State* *Zip*

Phone: 352-361-1808

E-mail: labdelaziz@emerge-usa.org

Speaking: ☐ For ☒ Against ☐ Information

Representing: Emerge USA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/13
Meeting Date

Topic: FOREIGN LAW

Bill Number: SB 58 (if applicable)

Name: CHRIS RUMBAUGH

Amendment Barcode: (if applicable)

Job Title: ATTORNEY

Address: 2636 NE 9TH AVE
Street

FORT LAUDERDALE FL 33334
City State Zip

Phone: 954-761-9994

E-mail: CWR@RWPA.COM

Speaking: ☐ For ☑ Against ☑ Information

Representing: FAMILY SECTION OF FLORIDA BAR

Appearing at request of Chair: ☑ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/2013
Meeting Date

Topic:

Bill Number: SB 58 (if applicable)

Name: Zoheb Nensey

Amendment Barcode: (if applicable)

Job Title: Graduate Assistant

Address: 8932 Magnolia Chase Circle
Street

Tampa FL 33647
City State Zip

Phone: 813-951-4068

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-21-13
Meeting Date

Topic: SB 58

Bill Number: _____ *(if applicable)*

Name: Saif Hamideh

Amendment Barcode: _____ *(if applicable)*

Job Title: Student

Address: 1340A Hancock St
Street

Tallahassee Fl
City *State* *Zip*

Phone: 954-817-2047

E-mail: Hamideh.saif@gmail.c

Speaking: ☐ For ☑ Against ☐ Information

Representing: N/A

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/21/13
Meeting Date

Topic: Application of foreign Law

Bill Number: SB 58 *(if applicable)*

Name: Ron Bilbao

Amendment Barcode: _____ *(if applicable)*

Job Title: SR. Legislative Assoc.

Address: 4500 Biscayne #340
Street

Miami FL 33137
City *State* *Zip*

Phone: 919-923-7288

E-mail: rbilbao@aclufl.org

Speaking: ☐ For ☑ Against ☐ Information

Representing: ACLU of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

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

CC: Joe McVaney, Staff Director
Courtney Hicks, Administrative Assistant

Subject: Committee Agenda Request

Date: March 7, 2013

I respectfully request that **Senate Bill #58**, relating to Application of Foreign Law in Certain Cases, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

File signed original with committee office

S-020 (03/2004)

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Governmental Oversight and Accountability Committee **Judge:**

Started: 3/21/2013 10:06:55 AM
Ends: 3/21/2013 11:49:41 AM Length: 01:42:47

10:07:26 AM	Meeting to Order Roll Call
10:08:15 AM	Confirmation Hearing for Kenneth Detzner
10:27:24 AM	Roll Call
10:28:11 AM	Confirmation Hearing for Craig Nichols
10:29:29 AM	Roll Call
10:30:11 AM	Confirmation for Investment Advisory Council Members
10:30:33 AM	Roll Call
10:31:38 AM	Tab 8 SPB 7122 by GO
10:32:35 AM	Amendment 600326
10:33:11 AM	Roll Call
10:33:45 AM	Tab 9 SPB 7120 by GO
10:34:46 AM	Amendment 424488
10:35:06 AM	Amendment 283766
10:35:37 AM	Roll Call
10:36:43 AM	Tab 13 SB 474 by Military Affairs
10:38:37 AM	PCS 586578
10:39:15 AM	Roll Call
10:39:46 AM	Tab 14 SB 1768 by Transportation
10:40:02 AM	Caitlin Murray, aide to Sen. Brandes
10:40:29 AM	Roll Call
10:41:22 AM	Tab 15 SB 376 by Hays
10:41:41 AM	Roll Call
10:43:07 AM	Tab 16 SB 1074 by Hays
10:44:30 AM	Roll Call
10:44:59 AM	Tab 17 CS/SB 434 by Altman
10:45:49 AM	Anthony Duarte, aide to Sen. Altman
10:48:55 AM	Roll Call
10:49:40 AM	Tab 18 SB 1188 by Hays
10:50:04 AM	Amendment 527478
10:50:18 AM	Amendment 230270
10:50:29 AM	Roll Call
10:51:19 AM	Tab 19 SB 832 by Joyner
10:52:16 AM	Roll Call
10:52:40 AM	Tab 12 SPB 7124 by GO
10:53:10 AM	Roll Call
10:53:53 AM	Tab 11 CS/SB 134 by Ring
10:55:46 AM	William Hutchinson III, Avon Park, FL
10:58:28 AM	Roll Call
10:59:19 AM	Tab 20 CS/SB 556 by Ring
11:00:24 AM	Amendment 382538
11:01:03 AM	Late Filed Amendment 813512
11:01:52 AM	Late Filed Amendment 544120
11:02:43 AM	Roll Call
11:04:21 AM	Tab 21 CS/SB 58 by Hays
11:05:26 AM	Amendment 923478
11:05:41 AM	Amendment 217066
11:05:56 AM	Amendment 175708
11:10:37 AM	Moazzam Adwan Raja, Central Florida Businessmen
11:15:14 AM	Atif Fareed, Winter Springs, FL
11:19:08 AM	Laila Abdelaziz, Emerge USA
11:21:25 AM	Chris Rumbard, Family Section of Florida Bar, Ft. Lauderdale, FL
11:33:07 AM	Zoheb Nensey, Tampa, FL

11:36:31 AM Saif Hamideh, Tallahassee, FL
11:42:27 AM Ron Bilbao, ACLU of Florida, Miami, FL
11:49:01 AM Ron Bilbao, ACLU at Florida
11:49:02 AM Roll Call
11:49:16 AM Meeting Adjourned