

Tab 1	SPB 7024 by GO ; Retirement						
Tab 2	SB 404 by Perry ; (Identical to CS/H 00273) Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence						
Tab 3	SB 430 by Powell ; (Similar to CS/H 00049) Abandoned and Historic Cemeteries						
462086	A	S	RCS	GO, Powell	Delete L.96:	03/15	04:39 PM
203470	A	S	RCS	GO, Powell	Delete L.198 - 222.	03/15	04:39 PM
Tab 4	SB 304 by Boyd (CO-INTRODUCERS) Rodriguez ; (Similar to H 01239) United States-produced Iron and Steel in Public Works Projects						
784794	A	S	RCS	GO, Boyd	Delete L.58 - 59:	03/15	04:39 PM
Tab 5	SB 258 by Burgess ; (Compare to H 00563) Prohibited Applications on Government-issued Devices						
887954	D	S	RCS	GO, Burgess	Delete everything after	03/15	04:39 PM
623046	AA	S	RCS	GO, Burgess	Delete L.52 - 61:	03/15	04:39 PM
Tab 6	SB 742 by Grall (CO-INTRODUCERS) Hooper ; (Similar to CS/H 00713) Administrative Procedures						
Tab 7	SB 1096 by Martin ; (Similar to H 01607) Monuments and Memorials						
870980	A	S	RCS	GO, Martin	btw L.78 - 79:	03/15	04:39 PM
Tab 8	SB 668 by Collins ; (Compare to H 01011) Flags						
361184	D	S	WD	GO, Collins	Delete everything after	03/14	03:36 PM
Tab 9	SB 50 by Wright ; (Similar to CS/H 00075) Public Records/Judicial Assistants						
825732	D	S	RCS	GO, Wright	Delete everything after	03/15	04:39 PM
Tab 10	SB 1034 by Rodriguez ; (Similar to H 00613) State-administered Retirement Systems						
813240	A	S	RCS	GO, Rodriguez	btw L.144 - 145:	03/15	04:39 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Avila, Chair
Senator Polsky, Vice Chair

MEETING DATE: Wednesday, March 15, 2023
TIME: 1:00—3:00 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Avila, Chair; Senator Polsky, Vice Chair; Senators Albritton, Davis, Hooper, Rodriguez, Rouson, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed bill:			
1	SPB 7024	Retirement; Revising required employer retirement contribution rates for each membership class of the Florida Retirement System; providing a declaration of important state interest, etc.	Submitted and Reported Favorably as Committee Bill Yeas 8 Nays 0
2	SB 404 Perry (Identical CS/H 273)	Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence; Citing this act as the "Rex and Brody Act"; creating an exemption from public records requirements for autopsy reports of minors whose deaths were related to acts of domestic violence; requiring that certain surviving parents of a minor whose death was related to an act of domestic violence be given notice of petitions to view or copy the minor's autopsy report and the opportunity to be present and heard at related hearings under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/06/2023 Favorable GO 03/15/2023 Favorable RC	Favorable Yeas 8 Nays 0
3	SB 430 Powell (Similar CS/H 49)	Abandoned and Historic Cemeteries; Creating the Historic Cemeteries Program within the Division of Historical Resources of the Department of State; designating the State Historic Preservation Officer as the program's director and requiring him or her to hire employees, subject to legislative appropriation; creating the Historic Cemeteries Program Advisory Council within the division; revising the definition of the term "conservation easement" to include a right or interest in real property which is appropriate to retaining the structural integrity or physical appearance of certain cemeteries, etc. GO 03/15/2023 Fav/CS ATD AP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 15, 2023, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 304 Boyd (Similar H 1239)	United States-produced Iron and Steel in Public Works Projects; Requiring governmental entities to include a requirement in certain contracts that certain iron or steel products be produced in the United States; authorizing the use of foreign steel and iron materials in certain circumstances; requiring the Department of Management Services and the Department of Transportation to adopt rules for specified purposes, etc. GO 03/15/2023 Fav/CS AEG FP	Fav/CS Yeas 8 Nays 0
5	SB 258 Burgess (Compare H 563)	Prohibited Applications on Government-issued Devices; Requiring the Department of Management Services to compile and maintain a specified list and publish such list on its website; requiring governmental entities and public educational institutions to take certain actions relating to prohibited applications; prohibiting employees of governmental entities and public educational institutions from downloading or accessing prohibited applications on government-issued devices; providing exceptions, etc. GO 03/15/2023 Fav/CS FP	Fav/CS Yeas 8 Nays 0
6	SB 742 Grall (Similar CS/H 713)	Administrative Procedures; Applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring that a notice of withdrawal be published in the next available issue of the Florida Administrative Register if a notice of proposed rule is not filed within a certain timeframe; requiring an agency to provide a copy of a proposal for a lower cost regulatory alternative to the committee within a certain timeframe; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; requiring the Department of Environmental Protection and water management districts to conduct a holistic review of certain permitting processes, etc. GO 03/15/2023 Favorable EN FP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 15, 2023, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1096 Martin (Similar H 1607)	Monuments and Memorials; Citing this act as the "Historical Monuments and Memorials Protection Act"; defining the term "memorial"; providing that a person or an entity that damages, defaces, destroys, or removes a monument or memorial is liable for treble the costs to return, repair, or replace the monument or memorial; prohibiting the placement of specified objects on or near a memorial that existed before a specified date, etc. GO 03/15/2023 Fav/CS CA RC	Fav/CS Yeas 5 Nays 3
8	SB 668 Collins (Compare H 1011)	Flags; Prohibiting certain governmental agencies and units of local government from displaying flags that do not follow a certain protocol or comply with specified requirements, etc. GO 03/15/2023 Temporarily Postponed CA RC	Temporarily Postponed
9	SB 50 Wright (Similar CS/H 75)	Public Records/Judicial Assistants; Adding current and former judicial assistants and their spouses and children to the specified agency personnel and family members to whom an exemption from public records requirements applies; providing for retroactive application of the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 01/17/2023 Favorable GO 03/15/2023 Fav/CS RC	Fav/CS Yeas 8 Nays 0
10	SB 1034 Rodriguez (Similar H 613)	State-administered Retirement Systems; Authorizing specified correctional officers to elect to participate in the Deferred Retirement Option Program for an additional 36 months, etc. GO 03/15/2023 Fav/CS CA AP	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7024

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Retirement

DATE: March 15, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Harmsen</u>	<u>McVaney</u>	_____	GO Submitted as Comm. Bill/Fav

I. Summary:

SPB 7024 establishes the contribution rates paid by employers that participate in the Florida Retirement System (FRS) beginning July 1, 2023. These rates are intended to fund the full, normal cost and the amortization of the unfunded actuarial liability of the FRS. With these modifications to employer contribution rates, the FRS Trust Fund will receive roughly \$350.5 million more in revenue on an annual basis beginning July 1, 2023. The public employers that will incur these additional costs are state agencies, state universities and colleges, school districts, counties, municipalities, and other governmental entities that participate in the FRS.

The bill will have a fiscal impact on state funds appropriated by the Legislature for employee benefits. The bill will increase the amounts, in the aggregate, that employers participating in the FRS must pay for retiree benefits. See Section V.

The bill takes effect July 1, 2023.

II. Present Situation:

The Florida Retirement System (FRS)

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

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

The FRS is a multi-employer plan, governed by ch. 121, F.S., the “Florida Retirement System Act.” As of June 30, 2022, the FRS had 629,073 active non-retired members, 448,846 annuitants, 14,858 disabled retirees, and 28,827 active participants of the Deferred Retirement Option Program (DROP).³ As of September 2022, the FRS consisted of 990 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and includes the 180 cities and 153 special districts that have elected to join the system.⁴

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

- The Regular Class⁵ consists of 537,128 active members and 7,806 in renewed membership;
- The Special Risk Class⁶ includes 72,925 active members and 1,100 in renewed membership;
- The Special Risk Administrative Support Class⁷ has 104 active members and one in renewed membership;
- The Elected Officers’ Class⁸ has 2,075 active members and 109 in renewed membership; and
- The Senior Management Service Class⁹ has 7,610 active members and 210 in renewed membership.¹⁰

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:¹¹

¹ Florida Department of Management Services (DMS), Division of Retirement, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, 35, available at https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf. (last visited Mar. 7, 2023).

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. *See*, ch. 2011-68, s. 33, Laws of Fla. Members in the Deferred Retirement Option Program do not contribute to the system.

³ DMS, Division of Retirement, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 260, available at https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf. (last visited Mar. 7, 2023).

⁴ DMS, Division of Retirement, *Participating Employers for Fiscal Year 2022-2023* (Sept. 2022), available at <https://employer.frs.fl.gov/forms/part-emp.pdf> (last visited Mar. 7, 2023).

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 includes elected state and county officers, and 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 are from *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 263.

¹¹ Florida State Board of Administration (SBA), *Plan Comparison Chart* (Jul. 2020), available at <https://www.myfrs.com/pdf/forms/plancomparison.pdf> (last visited Mar. 7, 2023).

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

Investment Plan

In 2000, the Public Employee Optional Retirement Program (investment plan) was created as a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.¹²

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.¹³

A member vests immediately in all employee contributions paid to the investment plan.¹⁴ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹⁵ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁶ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.¹⁷ An FRS member who qualifies for disability while enrolled in the investment plan may 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.¹⁸

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁹ The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.²⁰

¹² See, ch. 2000-169, Laws of Fla.

¹³ Section 121.4501(1), F.S.

¹⁴ Section 121.4501(6)(a), F.S.

¹⁵ 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, 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.

¹⁶ Section 121.591, F.S.

¹⁷ See s. 121.4501(16), F.S.

¹⁸ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate a line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line-of-duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date.

Section 121.091(4)(f), F.S.

¹⁹ Section 121.4501(8), F.S.

²⁰ FLA. CONST. art. IV, s. 4.

Pension Plan

The pension plan is administered by the Secretary of Management Services (DMS) through the Division of Retirement.²¹ The State Board of Administration manages the pension fund's assets.²²

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.²³ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁴ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²⁵ For most current members of the pension plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.²⁶ 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 55.²⁷ Members initially enrolled in the pension plan on or after July 1, 2011, have longer service 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 60.²⁸

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;²⁹
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;³⁰ and

²¹ Section 121.025, F.S.

²² Florida SBA, *Summary Overview of the State Board of Administration of Florida*, 4, available at https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217 (last visited Mar. 7, 2023).

²³ Section 121.021(45)(a), F.S.

²⁴ Section 121.021(45)(b), F.S.

²⁵ Section 121.091, F.S. See also, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, 35-37, *supra* at 1.

²⁶ Section 121.021(29)(a)1., F.S.

²⁷ Section 121.021(29)(b)1., F.S.

²⁸ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁹ 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. Effective July 1, 2017, the SMSOAP is closed to new members. Section 121.055(6), F.S. See also, Florida DMS, *Senior Management Service Optional Annuity Program*, https://www.dms.myflorida.com/workforce_operations/retirement/optional_retirement_programs/senior_management_service_optional_annuity_program (last visited Mar. 7, 2023).

³⁰ 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.

- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.³¹

Contribution Rates

Employers that participate in the FRS must contribute a specific 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.³² The rate is determined annually based on an actuarial study by the DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2022, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan:³³

	Valuation Results (in \$ billions)			
	July 1, 2019	July 1, 2020	July 1, 2021	July 1, 2022
Actuarial Liability	\$191.3	\$200.3	\$209.6	\$217.4
Actuarial Value of Assets	\$161.0	\$164.3	\$174.9	\$179.2
Unfunded Actuarial Liability	\$30.3	\$36.0	\$34.7	\$38.3
Funded Percentage (Actuarial Value of Assets/Actuarial Liability)	84.2%	82.0%	83.4%	82.4%

The state actuary determines a rate associated with the normal cost of the pension plan (funding the prospective benefits) and a rate necessary to amortize prior unfunded actuarial liabilities (UAL) over a thirty-year period and new tranches of unfunded actuarial liabilities over a twenty-year period. The following are the current employer contribution rates³⁴ for each class and the blended rates recommended by the state actuary beginning in July 2022:³⁵

³¹ 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.

³² Section 121.70(1), F.S.

³³ *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, 150 *supra* at 1.

³⁴ Section 121.71(4) and (5), F.S.

³⁵ Letter to Andrea Simpson, Florida DMS Division of Retirement Director, from Milliman Actuarial Services, entitled “Blended Proposed Statutory Rates for the 2023-2024 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP: Table 1” Dec. 2, 2022 (on file with the Senate Committee on Governmental Oversight and Accountability).

Membership Class	Current Rates Effective July 1, 2022		Recommended Rates to be effective July 1, 2023		
	Normal Cost	UAL Rate	Normal Cost	UAL Rate	
Regular Class	5.96%	4.23%	6.14%	4.72%	
Special Risk Class	16.44%	9.67%	17.05%	10.83%	
Special Risk Administrative Support Class	10.77%	26.16%	10.75%	25.02%	
Elected Officer’s Class	9.31%	56.76%	9.69%	49.85%	
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders					
• Justices and Judges		14.41%			27.64%
• County Officers	11.30%	43.98%	11.74%	44.04%	
Senior Management Service Class	7.70%	22.15%	7.90%	23.61%	
Deferred Retirement Option Program	7.79%	9.15%	8.18%	10.01%	

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.³⁶

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.³⁷

III. Effect of Proposed Changes:

Section 1 amends s. 121.71, F.S. to set the employer-paid contribution rates to the Florida Retirement System Trust Fund for each membership class and subclass of the FRS. The bill also updates the employer-paid contribution rates for each membership class to address the unfunded actuarial liabilities of the FRS.

Section 2 provides findings that the bill fulfills an important state interest.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend

³⁶ Section 121.71(3), F.S.

³⁷ See ss. 121.4503 and 121.72(1), F.S.

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, state universities, community colleges, counties, municipalities, and special districts.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not impose, authorize to impose, or raise a state tax or fee. Thus, the requirements of Art. III, s. 19 of the State Constitution are not applicable.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The aggregate employer contributions anticipated to be paid into the FRS Trust Fund in Fiscal Year 2023-2024 will increase by approximately \$350.5 million when compared to employer contributions paid in Fiscal Year 2022-2023.³⁸ The impacts by employer group for Fiscal Year 2023-2024 are noted below.³⁹

³⁸ Milliman Actuarial Services, *Florida Retirement System Estimated 2023-2024 Employer Contribution Increases Due to Input Rate Changes* (on file with the Senate Committee on Governmental Oversight and Accountability).

³⁹ Milliman Actuarial Services, *Florida Retirement System Estimated 2023-2024 Employer Contribution Increases Due to Rate Changes* (on file with the Senate Committee on Governmental Oversight and Accountability).

Employer Group	Additional Contributions
State Agencies	\$48.0 m
Universities	\$31.2 m
Colleges	\$9.1 m
School Boards	\$114.3 m
Counties	\$126.6 m
Other	\$21.4 m
Total	\$350.5 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.71 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00403-23 20237024pb

1 A bill to be entitled
 2 An act relating to retirement; amending s. 121.71,
 3 F.S.; revising required employer retirement
 4 contribution rates for each membership class of the
 5 Florida Retirement System; providing a declaration of
 6 important state interest; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Subsections (4) and (5) of section 121.71,
 11 Florida Statutes, are amended to read:
 12 121.71 Uniform rates; process; calculations; levy.-
 13 (4) Required employer retirement contribution rates for
 14 each membership class and subclass of the Florida Retirement
 15 System for both retirement plans are as follows:
 16

	Percentage of Gross Compensation, Effective July 1, <u>2023</u> 2022
Membership Class	
Regular Class	<u>6.14%</u> 5.96%
Special Risk Class	<u>17.05%</u> 16.44%
Special Risk	<u>10.75%</u> 10.77%

585-00403-23 20237024pb

Administrative
 Support Class
 21
 Elected Officers' Class-
 Legislators, Governor,
 Lt. Governor,
 Cabinet Officers,
 State Attorneys,
 Public Defenders 9.69% ~~9.31%~~
 22
 Elected Officers' Class-
 Justices, Judges 14.64% ~~14.41%~~
 23
 Elected Officers' Class-
 County Elected Officers 11.74% ~~11.30%~~
 24
 Senior Management Service
 Class 7.90% ~~7.70%~~
 25
 DROP 8.18% ~~7.79%~~
 26
 27 (5) In order to address unfunded actuarial liabilities of
 28 the system, the required employer retirement contribution rates
 29 for each membership class and subclass of the Florida Retirement
 30 System for both retirement plans are as follows:
 31

	Percentage of Gross Compensation,
Membership Class	

585-00403-23

20237024pb

Effective
July 1, 2023 ~~2022~~

32		
33		
34	Regular Class	<u>4.72%</u> 4.23%
35	Special Risk Class	<u>10.83%</u> 9.67%
	Special Risk	
	Administrative	
36	Support Class	<u>25.02%</u> 26.16%
	Elected Officers' Class-	
	Legislators, Governor,	
	Lt. Governor,	
	Cabinet Officers,	
	State Attorneys,	
37	Public Defenders	<u>49.85%</u> 56.76%
	Elected Officers' Class-	
	Justices, Judges	<u>27.63%</u> 27.64%
38		
	Elected Officers' Class-	
	County Elected Officers	<u>44.04%</u> 43.98%
39		
	Senior Management Service	
40	Class	<u>23.61%</u> 22.15%

585-00403-23

20237024pb

DROP 10.01% ~~9.15%~~

41

42 Section 2. The Legislature finds that a proper and

43 legitimate state purpose is served when employees, officers, and

44 retirees of the state and its political subdivisions, and the

45 dependents, survivors, and beneficiaries of such employees,

46 officers, and retirees, are extended the basic protections

47 afforded by governmental retirement systems. These persons must

48 be provided benefits that are fair and adequate and that are

49 managed, administered, and funded in an actuarially sound manner

50 as required by s. 14, Article X of the State Constitution and

51 part VII of chapter 112, Florida Statutes. Therefore, the

52 Legislature determines and declares that this act fulfills an

53 important state interest.

54 Section 3. This act shall take effect July 1, 2023.



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Tel 206 624 7940

milliman.com

December 2, 2022

Andrea Simpson
State Retirement Director
Florida Department of Management Services, Division of Retirement

Re: **Blended Proposed Statutory Rates for the 2023-2024 Plan Year
Reflecting a Uniform UAL Rate for All Membership Classes and DROP**

Dear Director Simpson:

As requested, we have calculated the uniform or “blended” proposed statutory employer rates for the 2023-2024 plan year based on the statutory contributions for the FRS Investment Plan and the actuarially calculated 2023-2024 rates for the defined benefit FRS Pension Plan, as specified in the FRS 2022 Actuarial Valuation Report. The blended rates reflect a uniform Unfunded Actuarial Liability (UAL) Contribution Rate for all payroll bases on which the Blended UAL Contribution Rate is assessed.

Analysis

We determined the uniform blended 2023-2024 employer rate for each membership class and subclass of the Florida Retirement System by projecting contributions for both the FRS Pension Plan and the FRS Investment Plan. We did this by dividing the projected combined amount that would be contributed for both the FRS Pension Plan and the FRS Investment Plan by the total projected combined payroll for both plans. The uniform blended rate calculation assumes plan year 2023-2024 contributions for the FRS Pension Plan will be made at the actuarially calculated rate levels. The actuarially calculated rate levels are based on the July 1, 2022 actuarial valuation of the FRS Pension Plan, as presented in Table 4-11 of the FRS 2022 Actuarial Valuation Report. The FRS Investment Plan rates are the sum of the rates in Sections 121.72, 121.73, and 121.735 of Florida Statutes and assume those rates continue in effect during plan year 2023-2024. The employer contribution rates shown in the attached table are net of the 3% of payroll employee contribution rate.

The payroll for some employee groups is subject to only the UAL Cost component of the FRS Pension Plan’s contribution rate (e.g. participants in SUSORP, SMSOAP, and SCCORP, and reemployed retirees not eligible for renewed membership in a state-sponsored retirement program). The payroll for those employee groups is included in the calculation of the Blended UAL Contribution Rate, but is excluded from the calculation of the Blended Normal Cost Contribution Rate.

Based on the data provided to us for this study, as of July 1, 2022 FRS Investment Plan payroll comprised 24% of total payroll. On a headcount basis, FRS Investment Plan members constitute between 29% and 30% of active FRS membership. Please note, Senate Bill 7022 enacted by the 2017 Florida legislature changed the default plan for initial enrollments on and after January 1, 2018

from the FRS Pension Plan to the FRS Investment Plan for all membership classes other than Special Risk. As a result of the enactment, new entrants who would have defaulted into the FRS Pension Plan under prior statute will now default into the FRS Investment Plan in the absence of an active election. The actual levels of participation in the FRS Pension Plan and the FRS Investment Plan as of July 1, 2022 reflect that Investment Plan payroll comprises an increased percentage of total payroll than it did one year ago.

Results

Table I shows the results of our study based on actual levels of participation in the FRS Pension Plan and the FRS Investment Plan as of July 1, 2022, projected to plan year 2023-2024 using the long-term payroll growth assumption of 3.25%.

Section A of the table includes the Normal Cost Rates developed in the July 1, 2022 funding actuarial valuation of the FRS Pension Plan. Section A does not include the UAL Cost. UAL Cost Rates are applied to a larger total payroll than the Normal Cost Rates and are developed in a later section. Section A, line 3 shows the total employer Normal Cost of the FRS Pension Plan as the product of Normal Cost Rates and projected Normal Cost payroll.

Similarly, Section B calculates the total employer cost of the FRS Investment Plan as the product of applicable employer contribution rates in effect since July 1, 2022 and the projected FRS Investment Plan payroll.

Section C of the table shows the sum of the FRS Pension Plan employer Normal Cost and FRS Investment Plan employer cost as dollars and as a percentage of total projected combined payroll (FRS Pension Plan projected Normal Cost payroll plus FRS Investment Plan projected payroll).

Section D of the table shows the UAL Cost as of July 1, 2022 of the FRS Pension Plan, as shown in Table 4-11 of the FRS 2022 Actuarial Valuation Report.

Section E shows the projected payroll of the FRS Investment Plan. There is no UAL Cost attributable to the FRS Investment Plan.

Section F calculates the “Blended” UAL Cost as dollars and as a percentage of total payroll (FRS Pension Plan projected UAL payroll plus FRS Investment Plan projected payroll).

Section G shows the Total “Blended” Contribution Rates as the sum of the “Blended” Normal Cost Contribution Rates from Line (C3) and the “Blended” UAL Contribution Rates from Line (F3). The employers of employee groups subject to only the UAL Contribution Rate would contribute the “Blended” UAL Contribution Rates shown in Line (G2) of the table on applicable payroll. The Total “Blended” Contribution Rates shown in Line (G3) of the table will be applied to all other payroll subject to employer contributions.

The contribution rates shown in Table I exclude the 0.06% contribution rate for FRS Investment Plan administration and education (applied to all classes except DROP) and the 1.66% contribution rate for the Florida Retiree Health Insurance Subsidy (HIS) program, which apply across the board to the FRS Pension Plan and the FRS Investment Plan.

The calculations are based on census and payroll data provided to us by the Florida Department of Management Services, Division of Retirement for the July 1, 2022 actuarial valuation. We have not audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete. These calculations are based on the Individual Entry Age actuarial cost allocation method, as described in the FRS 2022 Actuarial Valuation Report for use in developing 2023-2024 actuarially calculated contribution rates for the FRS Pension Plan.

Certification

We performed a limited review of the data used directly in our analysis for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or for relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.

Except where otherwise noted in this letter, this analysis is based on the FRS Pension Plan provisions, actuarial methods and actuarial assumptions as summarized in the FRS 2022 Actuarial Valuation Report published on December 1, 2022. Further, the data used in these calculations were based on FRS Pension Plan data as summarized in the FRS 2022 Actuarial Valuation Report and FRS Investment Plan census data as of July 1, 2022 as provided to us by the Florida Department of Management Services, Division of Retirement. The results of our study depend on future experience conforming to those actuarial assumptions discussed earlier in this letter. Future actuarial measurements may differ significantly from the current measurements presented in this analysis due to many factors, including: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period) and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements.

Milliman's work product was prepared exclusively for the internal business use of Florida Department of Management Services, Division of Retirement. It is a complex technical analysis that assumes a high level of knowledge concerning the Florida Retirement System's operations, and uses Division data, which Milliman has not audited. To the extent that Milliman's work is not subject to disclosure under applicable public record laws, Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit or create a legal duty to any third party recipient of its work product. Milliman's consent to release its work product to any third party may be conditioned on the third party signing a Release, subject to the following exceptions:

- (a) The Florida Department of Management Services, Division of Retirement may provide a copy of Milliman's work, in its entirety, to the System's professional service advisors who are subject to a duty



of confidentiality and who agree to not use Milliman's work for any purpose other than to benefit the System.

- (b) The Florida Department of Management Services, Division of Retirement may provide a copy of Milliman's work, in its entirety, to other governmental entities, as required by law.

No third party recipient of Milliman's work product should rely upon Milliman's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

The valuation results relied upon for this work were developed using models intended for valuations that use standard actuarial techniques.

The consultants who worked on this assignment are retirement actuaries. Milliman's advice is not intended to be a substitute for qualified legal or accounting counsel.

The signing actuaries are independent of the plan sponsor. We are not aware of any relationship that would impair the objectivity of our work.

On the basis of the foregoing, we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the principles prescribed by the Actuarial Standards Board and the *Code of Professional Conduct and Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States* published by the American Academy of Actuaries.

We are consulting actuaries for Milliman, Inc. We are also members of the American Academy of Actuaries and meet their Qualification Standards to render the actuarial opinion contained herein. Please call if you would like to further discuss this project.

Respectfully submitted,

Matt Larrabee, FSA, EA, MAAA
Principal and Consulting Actuary

Daniel Wade, FSA, EA, MAAA
Principal and Consulting Actuary

Kathryn Hunter, FSA, EA, MAAA
Consulting Actuary

Enclosures

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Blended Proposed Statutory Normal Cost Plus UAL Rates for 2023-2024 Plan Year
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

Blended Proposed Statutory Normal Cost Contribution Rates	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
A. Defined Benefit FRS Pension Plan Normal Cost										
1. Employer Cost										
a. Normal Cost Rate ¹	5.96%	17.13%	11.57%	14.77%	9.54%	11.63%	7.86%	8.18%	8.18%	8.18%
b. Rate Reduction Techniques	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
c. Total Adjusted Contribution Rate ² -PYE 2024	5.96%	17.13%	11.57%	14.77%	9.54%	11.63%	7.86%	8.18%	8.18%	8.18%
2. Projected Payroll	\$19,960,194	\$4,874,192	\$3,943	\$114,631	\$6,231	\$44,770	\$573,342	\$25,577,303	\$2,396,438	\$27,973,741
3. Total Employer Normal Cost [(1c) x (2)] -PYE 2024	\$1,189,628	\$834,949	\$456	\$16,931	\$594	\$5,207	\$45,065	\$2,092,830	\$196,029	\$2,288,859
B. Defined Contribution FRS Investment Plan (IP) Employer Cost										
1. Employer Rates effective July 1, 2022 (Sec 121.72, Sec 121.73 and Sec 121.735)										
	6.60%	16.54%	8.43%	14.05%	9.94%	11.95%	7.98%	7.58%	0.00%	7.58%
2. Projected Payroll	\$7,841,985	\$812,015	\$1,385	\$24,667	\$3,884	\$23,983	\$247,878	\$8,955,797	\$0	\$8,955,797
3. Total Employer Cost [(1) x (2)] -PYE 2024	\$517,571	\$134,307	\$117	\$3,466	\$386	\$2,866	\$19,781	\$678,494	\$0	\$678,494
C. Total System Normal Cost (FRS Pension Plan + FRS Investment Plan)										
1. Total Normal Cost Contribution [(A3) + (B3)]	\$1,707,199	\$969,256	\$573	\$20,397	\$980	\$8,073	\$64,846	\$2,771,324	\$196,029	\$2,967,353
2. Total System Projected Payroll [(A2) + (B2)]	\$27,802,179	\$5,686,207	\$5,328	\$139,298	\$10,115	\$68,753	\$821,220	\$34,533,100	\$2,396,438	\$36,929,538
3. "Blended" Normal Cost Contribution Rate As a Percentage of Total Payroll [(C1) / (C2)] ²	6.14%	17.05%	10.75%	14.64%	9.69%	11.74%	7.90%	8.03%	8.18%	8.04%

¹ As reported in the July 1, 2022 actuarial valuation report Table 4-11.

² Rates shown do not include the Health Insurance Subsidy contribution rate or FRS Investment Plan education and administration assessment.

This work product was prepared solely for the Florida Department of Management Services for the purposes stated herein, and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work. Milliman recommends that third parties be aided by their own actuary or other qualified professional when reviewing the Milliman work product.

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Blended Proposed Statutory Normal Cost Plus UAL Rates for 2023-2024 Plan Year
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
Blended Proposed Statutory UAL Contribution Rates										
D. Defined Benefit FRS Pension Plan UAL Contribution										
1. Employer UAL Contribution Rate ^{1 & 2}	6.27%	12.62%	33.81%	33.52%	76.48%	64.87%	33.53%	8.09%	10.01%	8.23%
2. Projected Payroll	\$23,957,991	\$4,904,404	\$3,943	\$115,638	\$7,270	\$50,695	\$590,145	\$29,630,086	\$2,396,438	\$32,026,524
3. Total Employer UAL Contribution [(1) x (2)] -PYE 2024	\$1,502,166	\$618,936	\$1,333	\$38,762	\$5,560	\$32,886	\$197,876	\$2,397,519	\$239,883	\$2,637,402
E. Defined Contribution FRS Investment Plan Projected Payroll	\$7,841,985	\$812,015	\$1,385	\$24,667	\$3,884	\$23,983	\$247,878	\$8,955,797	\$0	\$8,955,797
F. Total System UAL Contribution (FRS Pension Plan + FRS Investment Plan)										
1. Total UAL Contribution [(D3)]	\$1,502,166	\$618,936	\$1,333	\$38,762	\$5,560	\$32,886	\$197,876	\$2,397,519	\$239,883	\$2,637,402
2. Total System Projected Payroll [(D2) + (E)]	\$31,799,976	\$5,716,419	\$5,328	\$140,305	\$11,154	\$74,678	\$838,023	\$38,585,883	\$2,396,438	\$40,982,321
3. "Blended" UAL Contribution Rate As a Percentage of Total Payroll [(F1) / (F2)] ²	4.72%	10.83%	25.02%	27.63%	49.85%	44.04%	23.61%	6.21%	10.01%	6.44%
Blended Proposed Statutory Uniform Contribution Rates ³										
G: Total Employer Contribution Rate (FRS Pension Plan + FRS Investment Plan)										
1. "Blended" Normal Cost Contribution Rate [(C3)]	6.14%	17.05%	10.75%	14.64%	9.69%	11.74%	7.90%	8.03%	8.18%	8.04%
2. "Blended" UAL Contribution Rates [(F3)]	<u>4.72%</u>	<u>10.83%</u>	<u>25.02%</u>	<u>27.63%</u>	<u>49.85%</u>	<u>44.04%</u>	<u>23.61%</u>	<u>6.21%</u>	<u>10.01%</u>	<u>6.44%</u>
3. Total Blended Contribution Rate ² -PYE 2024 [(G1) + (G2)]	10.86%	27.88%	35.77%	42.27%	59.54%	55.78%	31.51%	14.24%	18.19%	14.48%

¹ As reported in the July 1, 2022 actuarial valuation report Table 4-11.

² Rates shown do not include the Health Insurance Subsidy contribution rate or FRS Investment Plan education and administration assessment.

³ Employers of employee groups subject to only the UAL contribution rate will pay the rates shown in line (G2).

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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 404

INTRODUCER: Senator Perry

SUBJECT: Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tusznyski</u>	<u>Cox</u>	<u>CF</u>	Favorable
2.	<u>Limonos-Borja</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 404 creates the “Rex and Brody Act.” The bill makes confidential and exempt from public inspection and copying requirements an autopsy report of a minor whose death was related to an act of domestic violence held by a medical examiner. The bill allows for disclosure of the report to the surviving parent who did not commit the act of domestic violence. The bill provides for retroactive application of the exemption.

The bill conforms several provisions in s. 406.135, F.S., to incorporate the expanded exemption for autopsy reports of certain minors. Specifically:

- Certain government entities’ may access such reports in furtherance of their official duties;
- The custodian of the record, or his or her designee, may not permit any other person, except an authorized designed agent, to view or copy an autopsy report of a minor;
- A court may use its discretion to authorize the disclosure of such reports;
- Reasonable notice of a petition to view such reports must be given to certain surviving parents; they must also receive a copy of the petition to view or copy such reports; and
- Any person who willfully and knowingly violates a court order regarding the disclosure of these reports, and any custodian who willfully and knowingly discloses these reports in violation of the law, are subject to a third degree felony.

The term “minor” is defined to mean a person younger than 18 years of age who has not had the disability of nonage removed.

The bill makes findings that the new exemption from public records disclosure is a public necessity as required by the Florida Constitution. Two-thirds vote of both the House and the Senate is required for final passage.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

There is no anticipated fiscal impact on state or local governments.

The bill is effective upon becoming law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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. An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁹
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁰ or
- It protects trade or business secrets.²¹

The Act also requires specified questions to be considered during the review process.²² In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁴

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² 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?

²³ See generally s. 119.15, F.S.

²⁴ Section 119.15(7), F.S.

Exemptions related to Sensitive Photos, or Videos of Deaths

Autopsy Photographs, Videos, or Audio Depictions

Section 406.135, F.S., makes confidential and exempt a photograph, video, or audio recording of an autopsy held by a medical examiner. It does not limit the disclosure of any written autopsy report. There is an exception which allows for a surviving spouse to view and copy a photograph or video recording or listen to or copy an audio recording of the deceased spouse's autopsy.²⁵ If there is no surviving spouse, current law provides that the surviving parent must have access to such records.²⁶ If there is no surviving spouse and no surviving parent, then an adult child is required to have access to such records.²⁷ Current law also allows for the disclosure to a local, state, or federal agency if it is in furtherance of its official duties.²⁸

The custodian of the record, or his or her designee, may not allow any other person to view or copy such records unless the deceased's surviving relative who has authority to request such records designated, or his or her designated agent, grants permission to view or copy such records.²⁹

Upon a showing of good cause, a court may issue an order authorizing any person to view or copy a photograph or video recording, or listen to, or copy any audio recording of an autopsy.³⁰ The court may impose any restrictions or stipulations that it deems appropriate.³¹ The court must consider 3 factors when determining whether good cause exists, including:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records.³²

Any handling of photographs, videos, or audio recordings of an autopsy must be under the direct supervision of the custodian of record or his or her designee.³³

The surviving spouse, surviving parent, or adult children of the deceased, as appropriate, must be given:

- Reasonable notice of a petition filed with the court to view or copy a photograph or video recording, or listen to or copy an audio recording of an autopsy;
- A copy of such petition; and
- Reasonable notice of the opportunity to be present and heard at any hearing.³⁴

²⁵ Section 406.135(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 406.135(3)(b), F.S.

²⁹ Section 406.135(3)(c), F.S.

³⁰ Section 406.135(4)(a), F.S.

³¹ *Id.*

³² Section 406.135(4)(b), F.S.

³³ Section 406.135(5)(c), F.S.

³⁴ Section 406.135(5), F.S.

A custodian of a photograph, video, or audio recording of an autopsy who willfully and knowingly violates these provisions commits a felony of the third degree.³⁵ Any person who willfully and knowingly violates a court order issued after showing good cause to view or copy a photograph or video, or listen to or copy an audio recording of an autopsy commits a felony of the third degree.³⁶

A criminal or administrative proceeding is exempt from s. 406.135, F.S., and is subject to all the provisions of ch. 119, F.S., unless otherwise exempted.³⁷ A court in a criminal or administrative proceeding, however, may, upon a showing of good cause, restrict or otherwise control the disclosure of an autopsy, crime scene, or similar photograph, video, or audio recording.³⁸

The exemption under s. 406.135, F.S. is given retroactive application.³⁹ There is no provision under current law which makes confidential and exempt autopsy reports of any person that are held by a medical examiner, including autopsy reports of a minor whose death was related to an act of domestic violence.⁴⁰

³⁵ Section 406.135(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

³⁶ Section 406.135(6)(b), F.S.

³⁷ Section 406.135(7), F.S.

³⁸ *Id.*

³⁹ Section 406.135(8), F.S.

⁴⁰ Section 741.28(2), F.S. defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family member or household member. A family or household member includes spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. Section 784.011(1), F.S., defines “assault” as intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Section 784.021(1), F.S., defines “aggravated assault” as an assault: (a) with a deadly weapon without the intent to kill; or (b) with an intent to commit a felony. Section 784.03(1)(a), F.S., states that the offense of battery occurs when a person: 1. Actually and intentionally touches or strikes another person against the will of the other; or 2. Intentionally causes bodily harm to another person. Section 784.045(1)(a), F.S., states a person commits aggravated battery who, in committing battery: 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or 2. Uses a deadly weapon. Section 794.011(1)(h), F.S., defines “sexual battery” as oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Section 748.048(2), F.S., states a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking. Section 784.048(3), F.S., states that a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking. Section 784.048(1)(a), F.S., states that “harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose. Section 784.048(1)(c), F.S., defines “credible threat” as a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. Section 784.048(1)(d), F.S., states “cyberstalk” means: 1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or 2. To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission. Section 784.048(1)(b), F.S., defines “course of conduct” as a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. Section 787.01(1)(a), F.S.,

Mass Killings

Section 119.071(2)(p), F.S., makes a photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties⁴¹ or the killing of a victim of mass violence confidential and exempt public records requirements.⁴² Similar to the above described public records exemption related to autopsies, a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, the surviving parents must have access to such records, and if there is no surviving spouse or parent then the adult children must have access to such records.⁴³

Additionally, access may be provided to the photograph or video or audio recordings by a court in the same circumstances as described above for autopsies.⁴⁴

As with the exemption related to autopsies, this exemption applies retroactively and to all photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence, regardless of whether the killing of the person occurred before, on, or after May 23, 2019.⁴⁵

Reinhart Case

On May 4, 2021, law enforcement began searching for Paul Reinhart and his two sons, Rex and Brody, as part of a wellness check that was requested by a family member after Mr. Reinhart posted a series of “cryptic” Facebook updates and sent family members “concerning” text messages. Authorities later found them dead inside Mr. Reinhart’s second home in Dixie County that was in flames when they arrived on scene.⁴⁶ News stations obtained a copy of the children’s

defines “kidnapping” as forcibly, secretly, or by threat confining, abducting, or imprisoning another person against her or his will and without lawful authority, with intent to: 1. Hold for ransom or reward or as a shield or hostage; 2. Commit or facilitate commission of any felony; 3. Inflict bodily harm upon or to terrorize the victim or another person; or 4. Interfere with the performance of any governmental or political function. Section 787.02(1)(a), F.S., defines “false imprisonment” as forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will.

⁴¹ Section 119.071(2)(p)1.a., F.S., defines “killing of a law enforcement officer who was acting in accordance with his or her official duties” to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

⁴² Section 119.071(2)(p)1.b., F.S., defines “killing of a victim of mass violence” as events that depict either a victim being killed or the body of a victim killed in an incident in which three or more persons, not including the perpetrator, are killed by the perpetrator of an intentional act of violence.

⁴³ Section 119.071(2)(p)2., F.S.

⁴⁴ See s. 119.071(2)(p)4.-6., F.S.

⁴⁵ Section 119.071(2)(p)7., F.S. However, the provision further states that it is not intended to, nor may be construed to, overturn or abrogate or alter any existing orders duly entered into by any Florida court, as of the effective date of the act, which restrict or limit access to any photographs or video or audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence.

⁴⁶ Syed, Camille, Autopsy Report Shows Rex and Brody Reinhart Were Shot by Father, 20WCJB, Aug. 31, 2021, available at <https://www.wcjb.com/2021/08/31/autopsy-report-shows-rex-brody-reinhart-were-shot-by-father/>; Swirko, Cindy, Paul Reinhart shot his two sons and then himself, autopsies conclude, Gainesville Sun, August 31, 2021, available at

autopsy reports. Several outlets published some of its findings in August 2021 after the surviving mother had expressed to such outlets that she did not want to know the nature of her children's deaths and requested the news stations not to publish the information contained in them.⁴⁷

III. Effect of Proposed Changes:

Section 1 creates the “Rex and Brody Act.”

Section 2 amends s. 406.135, F.S., to make confidential and exempt public records copying and inspection requirements an autopsy report of a minor whose death was related to an act of domestic violence that is held by a medical examiner. The section provides for the disclosure to the surviving parent who did not commit the act of domestic violence that led to the minor's death to view and copy the report.

Section 2 amends s. 406.135, F.S., to conform to the expanded exemption for autopsy reports of a minor whose death was related to an act of domestic violence. Specifically:

- Certain government entities' may access such reports in furtherance of their official duties;
- The custodian of the record, or his or her designee, may not permit any other person, except an authorized designed agent, to view or copy an autopsy report of a minor;
- The court may, upon a showing of good cause, issue an order authorizing any person to view or copy an autopsy report of a minor;
- The record custodian in control of an autopsy report of a minor, or his or her designee, must directly supervise anyone who views, copies, or handles the autopsy report;
- Any surviving parent who did not commit the act of domestic violence which led to the minor's death must be given reasonable notice of petition to view or copy the autopsy report, a copy of the petition, and reasonable notice of the opportunity to be heard at any hearing; and
- Any custodian of an autopsy report of a minor who willfully and knowingly violates the provisions in s. 406.135, F.S., and any person who violates a court order issued pursuant to s. 406.135, F.S., commits a third degree felony.

As used in s. 406.135, F.S., a “medical examiner” is anyone who serves the role of a district medical examiner, as well as any employee, deputy, or agent of the medical examiner, or any other person who may obtain possession of a photograph, or audio or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties. The bill amends “medical examiner” to include possession of a *report* of an autopsy. The bill also defines the term “minor” as a person younger than 18 years of age who has not had the disability of nonage removed pursuant to s. 743.01, F.S., or s. 743.015, F.S.

The exemption created by the bill must be given retroactive application.

<https://www.gainesville.com/story/news/2021/08/31/paul-reinhart-shot-sons-and-then-himself-autopsiesconclude/5668557001/>; Weber, Thomas, Dad Suspected of Killing 2 Sons, Including UF Bat Boy, Burning Home, and Killing Himself, WJCT News (May 4, 2021), available at <https://news.wjct.org/state-news/2021-05-04/dad-suspected-of-killing-2-sons-including-uf-bat-boy-burning-home-and-killing-himself> (all sites last visited March 9, 2023).

⁴⁷ *Id.*

The bill provides for repeal of the exemption on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3 provides a statement of public necessity as required by the Florida Constitution. The public necessity statement provides that if the reports are released it could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and the deceased minor's friends. The graphic and disturbing nature of the autopsy report could also result in injury to the memory of the deceased.

Section 4 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for autopsy reports of a minor whose death was related to an act of domestic violence held by a medical examiner, thus, the bill will require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Scope of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect a surviving parent of a deceased minor whose death was related to an act of domestic violence. This bill exempts only those autopsy reports of minors whose death was caused by domestic violence. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill (lines 52-58) makes confidential and exempt only an autopsy report of a minor whose death is related to an act of domestic violence. However, the bill (lines 70-75) prohibits a custodian of the record from allowing any autopsy of a minor to be viewed or copied. The bill should be amended to clarify the custodian's duty to the confidential and exempt autopsy reports.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 406.135 of the Florida Statutes,

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Perry

9-00572A-23

2023404__

1 A bill to be entitled
 2 An act relating to public records; providing a short
 3 title; amending s. 406.135, F.S.; revising the
 4 definition of the term "medical examiner"; defining
 5 the term "minor"; creating an exemption from public
 6 records requirements for autopsy reports of minors
 7 whose deaths were related to acts of domestic
 8 violence; providing exceptions; requiring that any
 9 viewing, copying, or other handling of such autopsy
 10 reports be under the direct supervision of the
 11 custodian of the record or his or her designee;
 12 requiring that certain surviving parents of a minor
 13 whose death was related to an act of domestic violence
 14 be given notice of petitions to view or copy the
 15 minor's autopsy report and the opportunity to be
 16 present and heard at related hearings under certain
 17 circumstances; providing penalties; providing
 18 construction; providing for retroactive application;
 19 providing for future legislative review and repeal of
 20 the exemption; providing a statement of public
 21 necessity; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. This act may be cited as the "Rex and Brody
 26 Act."

27 Section 2. Section 406.135, Florida Statutes, is amended to
 28 read:

29 406.135 Autopsies; confidentiality of photographs and video

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

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30 and audio recordings; confidentiality of reports of minor
 31 victims of domestic violence; exemption.-
 32 (1) ~~As used in For the purpose of~~ this section, the term:
 33 (a) "Medical examiner" means any district medical examiner,
 34 associate medical examiner, or substitute medical examiner
 35 acting pursuant to this chapter, as well as any employee,
 36 deputy, or agent of a medical examiner or any other person who
 37 may obtain possession of a report, photograph, or audio or video
 38 recording of an autopsy in the course of assisting a medical
 39 examiner in the performance of his or her official duties.
 40 (b) "Minor" means a person younger than 18 years of age who
 41 has not had the disability of nonage removed pursuant to s.
 42 743.01 or s. 743.015.
 43 (2) (a) A photograph or video or audio recording of an
 44 autopsy held by a medical examiner is confidential and exempt
 45 from s. 119.07(1) and s. 24(a), Art. I of the State
 46 Constitution, except that a surviving spouse may view and copy a
 47 photograph or video recording or listen to or copy an audio
 48 recording of the deceased spouse's autopsy. If there is no
 49 surviving spouse, then the surviving parents shall have access
 50 to such records. If there is no surviving spouse or parent, then
 51 an adult child shall have access to such records.
 52 (b) An autopsy report of a minor whose death was related to
 53 an act of domestic violence as defined in s. 741.28 held by a
 54 medical examiner is confidential and exempt from s. 119.07(1)
 55 and s. 24(a), Art. I of the State Constitution, except that a
 56 surviving parent of the deceased minor may view and copy the
 57 report if the surviving parent did not commit the act of
 58 domestic violence which led to the minor's death.

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59 (3) (a) The deceased's surviving relative, with whom
60 authority rests to obtain such records, may designate in writing
61 an agent to obtain such records.

62 (b) A local governmental entity, or a state or federal
63 agency, in furtherance of its official duties, pursuant to a
64 written request, may view or copy a photograph or video
65 recording of an autopsy or a minor's autopsy report or may
66 listen to or copy an audio recording of an autopsy, and unless
67 otherwise required in the performance of official their duties,
68 the identity of the deceased shall remain confidential and
69 exempt.

70 (c) The custodian of the record, or his or her designee,
71 may not permit any other person, except an agent designated in
72 writing by the deceased's surviving relative with whom authority
73 rests to obtain such records, to view or copy such photograph,
74 ~~or~~ video recording, or minor's autopsy report or listen to or
75 copy an audio recording without a court order.

76 (4) (a) The court, upon a showing of good cause, may issue
77 an order authorizing any person to view or copy a photograph or
78 video recording of an autopsy or a minor's autopsy report or to
79 listen to or copy an audio recording of an autopsy and may
80 prescribe any restrictions or stipulations that the court deems
81 appropriate.

82 (b) In determining good cause, the court shall consider
83 whether such disclosure is necessary for the public evaluation
84 of governmental performance; the seriousness of the intrusion
85 into the family's right to privacy and whether such disclosure
86 is the least intrusive means available; and the availability of
87 similar information in other public records, regardless of form.

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88 (c) In all cases, the viewing, copying, listening to, or
89 other handling of a photograph or video or audio recording of an
90 autopsy or a minor's autopsy report must be under the direct
91 supervision of the custodian of the record or his or her
92 designee.

93 (5) (a) A surviving spouse ~~must~~ shall be given reasonable
94 notice of a petition filed with the court to view or copy a
95 photograph or video recording of an autopsy or a petition to
96 listen to or copy an audio recording, a copy of such petition,
97 and reasonable notice of the opportunity to be present and heard
98 at any hearing on the matter. If there is no surviving spouse,
99 then such notice must be given to the parents of the deceased,
100 and if there is the deceased has no living parent, then to the
101 adult children of the deceased.

102 (b) For an autopsy report of a minor whose death was
103 related to an act of domestic violence as defined in s. 741.28,
104 any surviving parent who did not commit the act of domestic
105 violence which led to the minor's death must be given reasonable
106 notice of a petition filed with the court to view or copy the
107 report, a copy of such petition, and reasonable notice of the
108 opportunity to be present and heard at any hearing on the
109 matter.

110 (6) (a) Any custodian of a photograph or video or audio
111 recording of an autopsy or a minor's autopsy report who
112 willfully and knowingly violates this section commits a felony
113 of the third degree, punishable as provided in s. 775.082, s.
114 775.083, or s. 775.084.

115 (b) Any person who willfully and knowingly violates a court
116 order issued pursuant to this section commits a felony of the

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117 third degree, punishable as provided in s. 775.082, s. 775.083,
118 or s. 775.084.

119 (7) A criminal or administrative proceeding is exempt from
120 this section, but ~~unless otherwise exempted~~, is subject to all
121 other provisions of chapter 119 unless otherwise exempted.
122 ~~provided however that~~ This section does not prohibit a court in
123 a criminal or administrative proceeding upon good cause shown
124 from restricting or otherwise controlling the disclosure of an
125 autopsy, crime scene, or similar report, photograph, or video or
126 audio recording recordings in the manner prescribed herein.

127 (8) The exemptions in this section ~~This exemption~~ shall be
128 given retroactive application.

129 (9) This section is subject to the Open Government Sunset
130 Review Act in accordance with s. 119.15 and shall stand repealed
131 on October 2, 2028, unless reviewed and saved from repeal
132 through reenactment by the Legislature.

133 Section 3. The Legislature finds that it is a public
134 necessity that autopsy reports of minors whose deaths were
135 related to acts of domestic violence be made confidential and
136 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
137 Article I of the State Constitution. The Legislature finds that
138 autopsy reports describe the deceased in a graphic and often
139 disturbing fashion and that autopsy reports of minors whose
140 deaths were related to acts of domestic violence may describe
141 the deceased nude, bruised, bloodied, broken, with bullet or
142 other wounds, cut open, dismembered, or decapitated. As such,
143 these reports often contain highly sensitive descriptions of the
144 deceased which, if heard, viewed, copied, or publicized, could
145 result in trauma, sorrow, humiliation, or emotional injury to

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146 the immediate family and minor friends of the deceased, as well
147 as injury to the memory of the deceased. The Legislature
148 recognizes that the existence of the Internet and the
149 proliferation of websites throughout the world encourages and
150 promotes the wide dissemination of reports and publications 24
151 hours a day, and that widespread unauthorized dissemination of
152 autopsy reports of minors whose deaths were related to acts of
153 domestic violence would subject the immediate family and minor
154 friends of the deceased to continuous injury. The Legislature
155 further finds that the exemption provided in this act should be
156 given retroactive application because it is remedial in nature.

157 Section 4. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 6, 2023

I respectfully request that **Senate Bill #404**, relating to Public Records/Autopsies for Children who are Victims of Domestic Violence, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style and is positioned above a horizontal line.

Senator Keith Perry
Florida Senate, District 9

3/15

Meeting Date

The Florida Senate APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

404

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

MINDE O'SULLIVAN

Phone

Address

Street

GAINESVILLE

FL

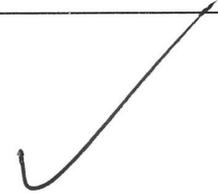
32607

City

State

Zip

Email



Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/joint-rules)

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

S-001 (08/10/2021)

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 430

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Powell

SUBJECT: Abandoned and Historic Cemeteries

DATE: March 16, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limones-Borja</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	_____	_____	<u>ATD</u>	_____
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 430 creates the Historic Cemeteries Program (Program) within the Division of Historical Resources (Division). The bill establishes the responsibilities of the Program and specifies the entities to which the Program can provide grants. The bill provides that the State Historic Preservation Officer (Officer) shall serve as the director of the Program and employ three full-time employees to operate the Program, subject to appropriation of funds.

The bill establishes the Historic Cemeteries Program Advisory Council (Council) within the Division. The bill provides that the Secretary of State will appoint members to the Council to staggered terms, who must be regionally distributed and representative of communities throughout the state. The bill establishes the duties and responsibilities of the Council and provides that the members serve without compensation, but may receive per diem and reimbursement for travel expenses.

The bill amends the definition of “legally authorized person” to include members of representative community organizations. The bill also amends the definition of “conservation easement” to include abandoned and neglected cemeteries that are 50 or more years old.

The Department of State will incur insignificant costs associated with the Historic Cemeteries Program Advisory Council. Otherwise, the bill, without an appropriation by the Legislature, is not expected to impact state and local government expenditures.

The bill takes effect July 1, 2023.

II. Present Situation:

Department of State

The Department of State (DOS), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs and Administration. The head of the DOS is the Secretary of State (Secretary). The Secretary is appointed by and serves at the pleasure of the Governor, and is confirmed by the Senate. The Secretary performs functions conferred by the State Constitution upon the custodian of state records.¹ The Secretary also serves as the state protocol officer and, in consultation with the Governor and other governmental officials, develops, maintains, publishes, and distributes the state protocol manual.²

Division of Historical Resources

The DOS's Division of Historical Resources (Division) is responsible for preserving and promoting Florida's historical, archaeological, and folk culture resources. The Division Director's Office oversees a Historic Preservation Grants program to help preserve and maintain Florida's historic buildings and archaeological sites and coordinates outreach programs. The Division Director also serves as the State Historic Preservation Officer, acting as the liaison with the national historic preservation program conducted by the National Park Service.

The Division is comprised of the following Bureaus:

- Bureau of Historic Preservation;
- Bureau of Historical Museums; and
- Bureau of Archeological Research.³

Advisory Councils

Advisory councils are an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.⁴ The Division receives assistance, guidance, and support from the following advisory councils:

- Florida Historical Commission;
- Florida National Register Review Board;
- State Historical Marker Council; and
- Great Floridian Ad Hoc Selection Committee.⁵

¹ Section 20.10(1), F.S.

² Section 15.01(1), F.S.

³ Florida Department of State, Florida Division of Historical Resources, *About*, available at <https://dos.myflorida.com/historical/about/> (Last visited Mar. 6, 2023).

⁴ Section 20.03(7), F.S.

⁵ Florida Department of State, Florida Division of Historical Resources, *Advisors*, available at <https://dos.myflorida.com/historical/about/advisors/> (Last visited Mar. 6, 2023).

Reimbursement of Travel Expenses and Per Diem for Public Officers

The rates, procedures, and limitations placed on the use of taxpayer funds for travel by state and local government employees and officers is standardized by general law.⁶ For public officers and employees, all travel must be authorized and approved by the head of the employing agency.⁷ The travel request must be accompanied by a signed statement by the traveler's supervisor stating the purpose of the travel and that such travel is for official business. The agency head may only pay for travel expenses necessary to achieve the public purpose and subject to limitations established by state law.⁸

Public officers and employees may also receive reimbursement for transportation expenses.⁹ Travel is reimbursed according to a usually traveled route, with any costs associated with deviation from that route being borne by the traveler. The agency head or designee must determine the most economical method of travel considering the nature of the business, the most efficient and economical means of travel (including a consideration of time and impact on productivity of the traveler), and the number of persons making the trip.¹⁰ If the traveler pays for the cost of official travel out of pocket, the traveler must provide documentation for reimbursement.¹¹ Use of a personal vehicle for official business is reimbursed to the traveler at the rate of 44.5 cents per mile, or at the common carrier fare for such travel.¹² Mileage is calculated based on the current map of the Department of Transportation, plus vicinity mileage traveled for the conduct of official business.¹³

Historic and Abandoned Cemeteries Regulation

Chapter 497, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (the Act), generally regulates funeral and cemetery services.¹⁴ The Act authorizes the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services to regulate cemeteries, columbaria, cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.¹⁵

⁶ Section 112.061, F.S.

⁷ Section 112.061(3)(a), F.S. (travel must be approved by "head of the agency"). The "head of the agency" is defined as the highest policymaking authority of a public agency. Section 112.061(2)(b), F.S.

⁸ Section 112.061(3)(b), F.S.

⁹ See s. 112.061(7), F.S.

¹⁰ Section 112.061(7)(a), F.S.

¹¹ Section 112.061(7)(c), F.S.

¹² Section 112.061(7)(d)1., F.S.

¹³ Section 112.061(7)(d)3., F.S.

¹⁴ See Section 497.001, F.S.

¹⁵ Sections 497.101, F.S., and 497.103, F.S.

Section 497.005(13), F.S., defines the term “cemetery” to mean:

[A] place dedicated to and used or intended to be used for the permanent interment of human remains or cremated remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places.

The Act allows graves to be moved – disinterment and reinterment.¹⁶ Disinterment and reinterment must be made in the physical presence of a licensed funeral director, unless reinterment occurs in the same cemetery.¹⁷ Further, the funeral director must obtain written authorization from a legally authorized person or court of competent jurisdiction prior to any disinterment and reinterment.

Section 497.005(43), F.S., defines the term “legally authorized person” by providing a priority listing which begins with the decedent (when written inter vivos authorizations and directions are provided by the decedent) and includes relatives of the decedent.¹⁸ Additionally, the definition provides for other persons who may qualify— such as a public health officer, medical examiner or county commission – should a family member not exist or be available.¹⁹ Thus, if a legally authorized person is not available, a court of competent jurisdiction may provide the written authorization prior to the disinterment and reinterment of a dead human body.²⁰

Section 497.284, F.S., governs abandoned cemeteries, and authorizes counties and municipalities, upon notice to the Department of Financial Services, to maintain and secure an abandoned cemetery or one that has not been maintained for more than six months. The solicitation of private funds and the expenditure of public funds are authorized for such maintenance and security.²¹ These efforts of maintenance and security are statutorily exempt from civil liabilities or penalties for damages to property at the cemetery.²² Additionally, the county or municipality is permitted to maintain an action against the cemetery owner to recover costs for maintenance or security.²³

Willfully and knowingly disturbing the contents of a grave or tomb is a second-degree felony.²⁴ The foregoing offenses do not apply to:

- Any person acting under the direction or authority of the Division within DOS;²⁵
- Cemeteries operating under ch. 497, F.S.;

¹⁶ See Section 497.384, F.S.

¹⁷ Section 487.384(1), F.S.

¹⁸ Section 497.005(43), F.S.

¹⁹ *Id.*

²⁰ Section 497.384(3), F.S.

²¹ *Id.*

²² Section 497.284(2), F.S.

²³ Section 497.284(3), F.S.

²⁴ Section 872.02(1), F.S. A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

²⁵ Section 872.02(2), F.S. A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- Any cemeteries removing or relocating the contents of a grave or tomb as a response to a natural disaster; or
- Any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents.²⁶

Abandoned Cemeteries

Zion Cemetery

Zion Cemetery was founded in 1901.²⁷ It is believed to be Tampa's first cemetery for African-Americans with room for approximately 800 graves.²⁸ Sometime after 1925, Zion Cemetery disappeared from city maps.²⁹ In 1951, the Tampa Housing Authority (THA) started construction on the Robles Park Apartments on land that includes part of the Zion Cemetery site. The construction crews found several unmarked graves and three caskets.³⁰

Upon learning that the Zion Cemetery might still lie beneath at least a portion of its Robles Park Village Apartments, the THA organized a consultation committee and hired archaeologists to survey its property. In August 2019, archeologists used ground-penetrating radar and discovered what they believe to be 126 caskets beneath the THA land.³¹ The THA spent between \$70,000 and \$80,000 to relocate about 29 families who occupied five buildings within the housing complex.³² The goal, according to the THA, is to “demolish the five buildings that sit on top of the cemetery and create a memorial park that honors those resting underground. The rest of Robles Park Village will eventually be demolished and redeveloped as a mixed-income community.”³³

²⁶ The powers and duties of the Division are set forth in s. 267.031, F.S. Subject to some limitations, a state archaeologist, as employed by the Division, may assume jurisdiction over an unmarked human burial site in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts. See ss. 872.05(4)-(6), F.S.

²⁷ Mark Schreiner, *Zion Cemetery: What's Happened So Far And What's Next*, WUSF Public Media (Oct. 16, 2019), available at <https://wusfnews.wusf.usf.edu/university-beat/2019-10-16/zion-cemetery-whats-happened-so-far-and-whats-next> (last visited Mar. 9, 2023).

²⁸ Paul Guzzo, *A community, not Just Zion Cemetery, Disappeared to Build Homes for Whites*, Tampa Bay Times, (Jan. 8, 2020), available at <https://www.tampabay.com/news/hillsborough/2019/11/04/a-community-not-just-zion-cemetery-disappeared-to-build-homes-for-whites/#talk-wrapper> (last visited Mar. 9, 2023).

²⁹ Schreiner, *supra* note 35.

³⁰ Paul Guzzo, *Key Dates in the History of Tampa's Forgotten Zion Cemetery*, Tampa Bay Times, Jun. 19, 2019 (updated Jan. 13, 2020), available at <https://www.tampabay.com/florida/2019/06/23/key-dates-in-the-history-of-tampas-forgotten-zion-cemetery> (last visited Feb. 14, 2023).

³¹ Paul Guzzo, *Richard Gonzmart Believes no Coffins will be Found on his Zion Cemetery Land*, Tampa Bay Times (Sep. 24, 2019), available at <https://www.tampabay.com/news/hillsborough/2019/09/24/richard-gonzmart-believes-no-coffins-will-be-found-on-his-zion-cemetery-land/> (last visited Mar. 9, 2023).

³² Emerald Morrow, *Lost African American Grave Discoveries Highlight the Need for Affordable Housing*, 10News WTSP (Feb. 24, 2020), available at <https://www.wtsp.com/article/news/special-reports/erased/lost-graves-from-zion-highlights-affordable-housingcrunch/67-25fe2f5e-5476-4152-823f-59280cd7fb0f> (last visited Mar. 9, 2023); *see also* Divya Kumar, *Tenant Leaders Seek Quicker Relocation for People Living Near Zion Cemetery*, Tampa Bay Times (Oct. 10, 2019), available at <https://www.tampabay.com/news/tampa/2019/10/10/tenant-leaders-seek-quicker-relocation-for-people-living-near-zion-cemetery> (last visited Mar. 9, 2023).

³³ Morrow, *supra* note 40.

Ridgewood Cemetery

In October 2019, the Hillsborough County School District (HCSD) learned that the old Ridgewood Cemetery might have been located at the southeast corner of the King High School campus, which is now occupied by a small building and open land used for the agricultural program.³⁴ Ridgewood was designated as a pauper's cemetery and at least 280 people (mostly African Americans) were buried there between 1942 and 1954.³⁵

The HCSD hired a geotechnical firm to conduct a survey using a ground penetrating radar to look for any signs of the lost Ridgewood Cemetery on the campus. On November 20, 2019, the HCSD released the results of the survey. The survey of the southern edge of the King High School campus showed evidence of burials of approximately 145 graves; however, there was no evidence of burials or graves on the northeast corner of the campus.³⁶

On November 21, 2019, the HCSD notified the county Medical Examiner in Hillsborough County and the Division of the unmarked human burials³⁷ found on the King High Campus. When an unmarked human burial is discovered (other than during an authorized archaeological excavation)³⁸ all disturbing activity of the burial must cease, and the district medical examiner must be notified.³⁹ Activity may not resume until authorized by the district medical examiner or the state archaeologist.⁴⁰

On February 15, 2021, the HCSD unveiled design plans for a monument intended to pay tribute to the deceased buried in the cemetery.⁴¹ If approved by the community, the monument will be erected on a 1-acre site on the campus of King High School.⁴²

³⁴ Paul Guzzo, Records Show King High Gym may have been Built atop Paupers Cemetery, Tampa Bay Times (Oct. 23, 2019), available at <https://www.tampabay.com/news/education/2019/10/22/map-shows-king-high-gym-may-have-been-built-atop-paupers-cemetery> (last visited Mar. 9, 2023).

³⁵ Lori Rozsa, *Lost Lives, Fresh Heartache as a Black Cemetery is Found Buried under a High School*, Washington Post (November 24, 2019), available at https://www.washingtonpost.com/national/lost-lives-fresh-heartache-as-a-black-cemetery-is-found-buried-under-a-high-school/2019/11/24/5e755e4a-0ed4-11ea-bf62-eadd5d11f559_story.html (last visited Mar. 9, 2023). Hillsborough County School District, Press Release, School District Releases Findings from Scans on King High School Property, Nov. 20, 2019, available at <https://www.sdhc.k12.fl.us/newsdesk/article/1578/school-district-releases-findings-from-scans-on-king-highschool-property> (last visited Mar. 9, 2023).

³⁶ Emerald Morrow, *145 coffins found at King High School, part of an erased African American cemetery in Tampa*, 10 Tampa Bay Times (Dec. 3, 2019) available at <https://www.wtsp.com/article/news/local/hillsboroughcounty/king-high-school-african-american-cemetery-graves-found/67-9620c608-857e-4ba4-820b-2cf53667a099> (last visited Mar. 9, 2023).

³⁷ Section 872.05(2)(f), F.S., defines the term "unmarked human burial" as any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone, or other structure or thing placed or designed as a memorial of the dead.

³⁸ Section 872.05(5), F.S., provides for a similar process if an unmarked human burial is discovered during an authorized archeological excavation.

³⁹ Section 872.05(4), F.S.

⁴⁰ *Id.*

⁴¹ D'Ann Lawrence White, *District Unveils Memorial to Lost Black Cemetery at High School*, Patch.com (Feb. 16, 2021), available at <http://www.thafl.com/docs/uploads/2021-02-16%20District%20Unveils%20Memorial.pdf> (last visited Mar. 9, 2023).

⁴² *Id.*

Memorial Park Cemetery

During segregation, the Tampa area had several burial sites for African American residents. Most were abandoned and built over; however, Memorial Park Cemetery was purchased by John Robinson in 1929 who operated the cemetery until his recent death in 2019. The City of Tampa then began maintaining the 20-acre cemetery with at least 13,000 unmarked graves and 6,000 headstones. The city hoped to take official ownership by placing a lien, foreclosing, and purchasing the property at county auction. However, the city was outbid by a company that specializes in buying and reselling foreclosed property. The company expressed its intent to maintain and ultimately sell the property.⁴³

Conservation Easements

A conservation easement is a right or interest in real property which is appropriate to retain land or water areas predominantly in their natural, scenic, open, agricultural or wooded condition. Conservation easements are meant to retain areas as suitable habitat for fish, plants or wildlife or to retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological or cultural significance. The purpose of a conservation easement is accomplished by restricting development allowed on a piece of property, limiting other land uses, and maintaining existing areas of conservation interest on a piece of property in their natural condition. A conservation easement must prohibit or limit any or all of the following:

- Construction or placement of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removing loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; and
- Acts or uses detrimental to the preservation of the structural integrity or physical appearances of sites or properties of historical, architectural, archaeological, or cultural significance.⁴⁴

Section 704.06(3), F.S., dictates that conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving sites or properties of historical, architectural, archaeological, or cultural significance.

⁴³ Paul Guzzo, *Tampa loses control of historic Black cemetery. A property flipper now owns it*, Tampa Bay Times (Jan. 31, 2023), available at <https://www.tampabay.com/life-culture/history/2023/01/30/tampa-loses-control-historic-black-cemetery-property-flipper-now-owns-it/> (last visited Mar. 9, 2023).

⁴⁴ Section 704.06(1), F.S.

Section 704.06(11), F.S., dictates that no law may prohibit or limit the owner of land or the owner of a conservation easement from voluntarily negotiating the sale or use of such land or easement for the construction and operation of linear facilities, to include; electric transmission and distribution facilities, telecommunications transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances. In any legal proceeding to condemn land for the purpose of construction and operation of a linear facility as described above, the court shall consider the public benefit provided by the conservation easement and linear facilities in determining which lands may be taken and the compensation paid.⁴⁵

III. Effect of Proposed Changes:

Section 1 creates s. 267.21, F.S., to establish the Historic Cemeteries Program within the Division. The bill designates the State Historic Preservation Officer (Officer) as the director of the Program. Subject to legislative appropriation, the section requires the Officer to employ three full-time employees to operate the program.

Section 1 provides that the program will have the following duties and responsibilities:

- Serve as the organizational center for recording and updating in the Florida Master Site File records of cemeteries established at least 50 years ago.
- Develop guidelines for use by state agencies, local governments, and developers in the identification, location, and maintenance of abandoned and historic cemeteries.
- Serve as an interagency governmental liaison to municipalities, planning departments, colleges and universities, and community organizations to facilitate collaboration and the sharing of information relating to abandoned and historic cemeteries.
- Coordinate with the University of South Florida's Black Cemetery Network to facilitate the inclusion of abandoned African-American cemeteries in the Black Cemetery Network.
- Research, identify, and record abandoned cemeteries, with an emphasis on abandoned African-American cemeteries.
- When abandoned cemeteries are located, provide notification and guidance to relevant persons and assist with efforts to identify relatives and descendants, funeral directors, religious organizations, qualified nonprofit organizations, and property owners.
- Assist constituents, descendant communities, state and federal agencies, local governments, and other stakeholders with inquiries relating to abandoned cemeteries.
- In coordination with the Department of Education, develop a curriculum relating to abandoned and historic cemeteries, with a focus on citizenship, social responsibility, and history.
- Establish a priority for the placement of historical markers for erased, forgotten, lost, or abandoned African-American cemeteries.

Section 1 also provides that the Program shall provide grants, subject to legislative appropriation to the following entities:

- Research institutions, colleges and universities, and qualified nonprofit organizations, for the purpose of conducting genealogical and historical research necessary to identify and contact the relatives and descendants of persons buried in abandoned African-American cemeteries.

⁴⁵ Section 704.06(11)(a), F.S.

- Local governments and qualified nonprofit organizations, for the purposes of repairing, restoring, and maintaining abandoned African-American cemeteries.

Section 1 grants the Division rulemaking authority to implement the Program.

Section 2 creates s. 267.22, F.S., to establish the Historic Cemeteries Program Advisory Council (Council) within the Division. The Council must be composed of members who are regionally distributed and representative of communities throughout Florida. The members shall be appointed by the Secretary of the State to serve staggered terms. Half of the members will serve 2-year terms, and the other half 4-year terms, but all subsequent appointments will be for 4-year terms. The section requires the Council to meet as soon as practicable after July 1, 2023 to elect a chair from its membership. The section requires that the Council provide guidance and recommendations to the Division regarding the duties and responsibilities of the Historic Cemeteries Program. The members will serve without compensation but may receive per diem and reimbursement for travel expenses.

Section 3 amends s. 497.005, F.S., to expand the definition of “legally authorized person” to include a member of a representative community organization. Thus allowing a member of a representative community organization to provide written authorization to a funeral director prior to the disinterment and reinternment of a dead human body.

Section 4 amends s. 704.06, F.S., to expand the definition of “conservation easement” to include abandoned and neglected cemeteries that are at least 50 years old, and prohibits acts or uses that are detrimental to the preservation of the structural integrity or physical appearance of abandoned and neglected cemeteries that are at least 50 years old. The section also authorizes any governmental body or agency or a charitable corporation or trust whose purposes include preserving sites or properties of historical, architectural, archeological, or cultural significance, including abandoned and neglected cemeteries that are at least 50 years old to acquire a conservation easement.

Section 5 provides the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 1 creates the Historic Cemeteries Program and authorizes the State Historic Preservation Officer to employ three full-time employees to operate the program, subject to legislative appropriation. The Department of State (DOS) has stated that the total costs of the three positions to be approximately \$247,301.⁴⁶

Section 1 also requires the Historic Cemeteries Program to develop a curriculum relating to abandoned and historic cemeteries, in coordination with the Department of Education (DOE). As such, the DOS and DOE may incur costs associated with developing the curriculum.

Section 1 requires, subject to legislative appropriation, the Historic Cemeteries Program to provide grants for certain entities to conduct research, repair, restore, or maintain abandoned African American cemeteries. It is unknown how many entities could be provided grants and for what amount, but there will likely be an indeterminate significant negative fiscal impact to the extent an appropriation is provided.

Section 2 creates the Historic Cemeteries Program Advisory Council (Council). The members will not be provided compensation but are authorized to receive per diem and reimbursement for travel expenses as provided in law. It is anticipated that these costs will be absorbed within the DOS's current resources.

VI. Technical Deficiencies:

The bill does not specify the amount of members to serve on the Council. Consideration should be given to specify how many members will serve on the Council.

⁴⁶ Department of State, *2022 Agency Legislative Bill Analysis* (Mar. 6, 2023) (on file with the Senate Committee on Governmental Oversight and Accountability).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 497.005 and 704.06 of the Florida Statutes.

This bill creates sections 267.21 and 267.22 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 15, 2023:

The committee substitute:

- Clarifies how to stagger the terms for the members of the Historic Cemeteries Program Advisory Council. Half of the initial members will serve 2-year terms, and the other half 4 year terms, but all subsequent appointments will be for 4-year terms.
- Deletes the provision providing the state an easement for ingress and egress.
- Removes the requirement that the Legislature appropriate funds to include abandoned African American cemeteries in the University of South Florida's Black Cemetery Network.

- B. **Amendments:**

None.



462086

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/15/2023	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 96
and insert:
shall serve 4-year terms; however for the purpose of
providing staggered terms, half of the appointees shall
initially be appointed to 2-year terms, while the other half be
appointed to 4-year terms. All subsequent appointments shall be
for 4-year terms. As soon as practicable after



203470

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/15/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 198 - 222.

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

And the title is amended as follows:

Delete lines 28 - 30

and insert:

providing an effective date.

By Senator Powell

24-01116-23

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1 A bill to be entitled
 2 An act relating to abandoned and historic cemeteries;
 3 creating s. 267.21, F.S.; creating the Historic
 4 Cemeteries Program within the Division of Historical
 5 Resources of the Department of State; designating the
 6 State Historic Preservation Officer as the program's
 7 director and requiring him or her to hire employees,
 8 subject to legislative appropriation; providing the
 9 duties and responsibilities of the program; requiring
 10 the program to provide grants, subject to legislative
 11 appropriation, to certain entities for certain
 12 purposes; authorizing the division to adopt rules;
 13 creating s. 267.22, F.S.; creating the Historic
 14 Cemeteries Program Advisory Council within the
 15 division; providing for membership, terms, and duties
 16 of the council; providing that members shall serve
 17 without compensation but may be reimbursed for per
 18 diem and travel expenses; amending s. 497.005, F.S.;
 19 revising the definition of the term "legally
 20 authorized person" to include a member of a
 21 representative community organization; amending s.
 22 704.06, F.S.; revising the definition of the term
 23 "conservation easement" to include a right or interest
 24 in real property which is appropriate to retaining the
 25 structural integrity or physical appearance of certain
 26 cemeteries; authorizing certain entities to acquire
 27 conservation easements to preserve certain cemeteries;
 28 amending s. 704.08, F.S.; providing an easement to the
 29 state for certain purposes; providing for an

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24-01116-23

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30 appropriation; providing an effective date.

31

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

33

34 Section 1. Section 267.21, Florida Statutes, is created to
 35 read:

36 267.21 Historic Cemeteries Program.—

37 (1) The Historic Cemeteries Program is created within the
 38 division. The State Historic Preservation Officer shall serve as
 39 the director of the program and shall, subject to legislative
 40 appropriation, employ three full-time employees to operate the
 41 program. The program shall have the following duties and
 42 responsibilities:

43 (a) Serve as the organizational center for recording and
 44 updating in the Florida Master Site File records of cemeteries
 45 in this state established at least 50 years ago.

46 (b) Develop guidelines for use by state agencies, local
 47 governments, and developers in the identification, location, and
 48 maintenance of abandoned and historic cemeteries.

49 (c) Serve as an interagency governmental liaison to
 50 municipalities, planning departments, colleges and universities,
 51 and community organizations to facilitate collaboration and the
 52 sharing of information relating to abandoned and historic
 53 cemeteries.

54 (d) Coordinate with the University of South Florida's Black
 55 Cemetery Network to facilitate the inclusion of abandoned
 56 African-American cemeteries in the Black Cemetery Network.

57 (e) Research, identify, and record abandoned cemeteries,
 58 with an emphasis on abandoned African-American cemeteries.

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59 (f) When abandoned cemeteries are located, provide
 60 notification and guidance to relevant persons and assist with
 61 efforts to identify relatives and descendants, funeral
 62 directors, religious organizations, qualified nonprofit
 63 organizations, and property owners.

64 (g) Assist constituents, descendant communities, state and
 65 federal agencies, local governments, and other stakeholders with
 66 inquiries relating to abandoned cemeteries.

67 (h) In coordination with the Department of Education,
 68 develop a curriculum relating to abandoned and historic
 69 cemeteries, with a focus on citizenship, social responsibility,
 70 and history.

71 (i) Establish a priority for the placement of historical
 72 markers for erased, forgotten, lost, or abandoned African-
 73 American cemeteries.

74 (2) The Historic Cemeteries Program shall, subject to
 75 legislative appropriation, provide grants to the following
 76 entities:

77 (a) Research institutions, colleges and universities, and
 78 qualified nonprofit organizations, for the purpose of conducting
 79 genealogical and historical research necessary to identify and
 80 contact the relatives and descendants of persons buried in
 81 abandoned African-American cemeteries.

82 (b) Local governments and qualified nonprofit
 83 organizations, for the purposes of repairing, restoring, and
 84 maintaining abandoned African-American cemeteries.

85 (3) The division may adopt rules to implement this section.

86 Section 2. Section 267.22, Florida Statutes, is created to
 87 read:

24-01116-23

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88 267.22 Historic Cemeteries Program Advisory Council.—

89 (1) The Historic Cemeteries Program Advisory Council, an
 90 advisory council as defined in s. 20.03(7), is created within
 91 the division and shall be composed of members appointed by the
 92 Secretary of State after considering the recommendations of the
 93 director of the division. The council shall be composed of an
 94 inclusive group of members who are regionally distributed and
 95 representative of communities throughout this state. Members
 96 shall serve 4-year staggered terms. As soon as practicable after
 97 July 1, 2023, the council shall meet to elect a chair from its
 98 membership. Except as otherwise provided in this section, the
 99 council shall operate in a manner consistent with s. 20.052.

100 (2) The council shall provide guidance and recommendations
 101 to the division regarding the duties and responsibilities of the
 102 Historic Cemeteries Program created under s. 267.21.

103 (3) Members of the council shall serve without compensation
 104 but may be reimbursed for per diem and travel expenses pursuant
 105 to s. 112.061.

106 Section 3. Subsection (43) of section 497.005, Florida
 107 Statutes, is amended to read:

108 497.005 Definitions.—As used in this chapter, the term:

109 (43) "Legally authorized person" means, in the priority
 110 listed:

111 (a) The decedent, when written inter vivos authorizations
 112 and directions are provided by the decedent;

113 (b) The person designated by the decedent as authorized to
 114 direct disposition pursuant to Pub. L. No. 109-163, s. 564, as
 115 listed on the decedent's United States Department of Defense
 116 Record of Emergency Data, DD Form 93, or its successor form, if

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117 the decedent died while in military service as described in 10
 118 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States
 119 Armed Forces, United States Reserve Forces, or National Guard;
 120 (c) The surviving spouse, unless the spouse has been
 121 arrested for committing against the deceased an act of domestic
 122 violence as defined in s. 741.28 that resulted in or contributed
 123 to the death of the deceased;
 124 (d) A son or daughter who is 18 years of age or older;
 125 (e) A parent;
 126 (f) A brother or sister who is 18 years of age or older;
 127 (g) A grandchild who is 18 years of age or older;
 128 (h) A grandparent; or
 129 (i) Any person in the next degree of kinship.

130
 131 In addition, the term may include, if no family member exists or
 132 is available, the guardian of the dead person at the time of
 133 death; the personal representative of the deceased; the attorney
 134 in fact of the dead person at the time of death; the health
 135 surrogate of the dead person at the time of death; a public
 136 health officer; the medical examiner, county commission, or
 137 administrator acting under part II of chapter 406 or other
 138 public administrator; a representative of a nursing home or
 139 other health care institution in charge of final disposition; or
 140 a friend or other person, including a member of a representative
 141 community organization, not listed in this subsection who is
 142 willing to assume the responsibility as the legally authorized
 143 person. Where there is a person in any priority class listed in
 144 this subsection, the funeral establishment shall rely upon the
 145 authorization of any one legally authorized person of that class

Page 5 of 8

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

24-01116-23

2023430__

146 if that person represents that she or he is not aware of any
 147 objection to the cremation of the deceased's human remains by
 148 others in the same class of the person making the representation
 149 or of any person in a higher priority class.

150 Section 4. Subsections (1) and (3) of section 704.06,
 151 Florida Statutes, are amended to read:

152 704.06 Conservation easements; creation; acquisition;
 153 enforcement.—

154 (1) As used in this section, "conservation easement" means
 155 a right or interest in real property which is appropriate to
 156 retaining land or water areas predominantly in their natural,
 157 scenic, open, agricultural, or wooded condition; retaining such
 158 areas as suitable habitat for fish, plants, or wildlife;
 159 retaining the structural integrity or physical appearance of
 160 sites or properties of historical, architectural,
 161 archaeological, or cultural significance, including abandoned
 162 and neglected cemeteries that are at least 50 years old; or
 163 maintaining existing land uses and which prohibits or limits any
 164 or all of the following:

165 (a) Construction or placing of buildings, roads, signs,
 166 billboards or other advertising, utilities, or other structures
 167 on or above the ground.

168 (b) Dumping or placing of soil or other substance or
 169 material as landfill or dumping or placing of trash, waste, or
 170 unsightly or offensive materials.

171 (c) Removal or destruction of trees, shrubs, or other
 172 vegetation.

173 (d) Excavation, dredging, or removal of loam, peat, gravel,
 174 soil, rock, or other material substance in such manner as to

Page 6 of 8

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175 affect the surface.

176 (e) Surface use except for purposes that permit the land or
177 water area to remain predominantly in its natural condition.

178 (f) Activities detrimental to drainage, flood control,
179 water conservation, erosion control, soil conservation, or fish
180 and wildlife habitat preservation.

181 (g) Acts or uses detrimental to such retention of land or
182 water areas.

183 (h) Acts or uses detrimental to the preservation of the
184 structural integrity or physical appearance of sites or
185 properties of historical, architectural, archaeological, or
186 cultural significance, including abandoned and neglected
187 cemeteries that are at least 50 years old.

188 (3) Conservation easements may be acquired by any
189 governmental body or agency or by a charitable corporation or
190 trust whose purposes include protecting natural, scenic, or open
191 space values of real property, assuring its availability for
192 agricultural, forest, recreational, or open space use,
193 protecting natural resources, maintaining or enhancing air or
194 water quality, or preserving sites or properties of historical,
195 architectural, archaeological, or cultural significance,
196 including abandoned and neglected cemeteries that are at least
197 50 years old.

198 Section 5. Section 704.08, Florida Statutes, is amended to
199 read:

200 704.08 Cemeteries; right of ingress and egress for visiting
201 or maintenance.—

202 (1) The relatives and descendants of any person buried in a
203 cemetery shall have an easement for ingress and egress for the

Page 7 of 8

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24-01116-23

2023430__

204 purpose of visiting the cemetery at reasonable times and in a
205 reasonable manner. The owner of the land may designate the
206 easement. If the cemetery is abandoned or otherwise not being
207 maintained, such relatives and descendants may request the owner
208 to provide for reasonable maintenance of the cemetery, and, if
209 the owner refuses or fails to maintain the cemetery, the
210 relatives and descendants shall have the right to maintain the
211 cemetery.

212 (2) If credible evidence supports a determination that
213 there is an abandoned cemetery located on, underneath, or
214 adjacent to land owned by a private owner, the state must have
215 an easement for ingress and egress for the purpose of
216 maintaining and conducting research and noninvasive searches at
217 such cemetery at reasonable times and in a reasonable manner
218 after providing the owner with reasonable notice.

219 Section 6. The Legislature shall appropriate funds for the
220 purpose of including abandoned African-American cemeteries in
221 this state in the University of South Florida's Black Cemetery
222 Network.

223 Section 7. This act shall take effect July 1, 2023.

Page 8 of 8

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2022 AGENCY LEGISLATIVE BILL ANALYSIS

Department of State

BILL INFORMATION

BILL NUMBER:	HB 49
BILL TITLE:	Abandoned & Historic Cemeteries
BILL SPONSOR:	Representative Driskell
EFFECTIVE DATE:	July 1, 2023

COMMITTEES OF REFERENCE

1) Constitutional Rights, Rule of Law & Government Operations Subcommittee
2) Infrastructure & Tourism Appropriations Subcommittee
3) State Affairs
4)
5)

CURRENT COMMITTEE

--

SIMILAR BILLS

BILL NUMBER:	SB 430
SPONSOR:	Senator Powell

PREVIOUS LEGISLATION

BILL NUMBER:	HB 1215
SPONSOR:	Representative Driskell
YEAR:	2022
LAST ACTION:	Died on Second Reading

IDENTICAL BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?

No

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	March 6, 2023
LEAD AGENCY ANALYST:	Sarah Liko
ADDITIONAL ANALYST(S):	Alissa Lotaine
LEGAL ANALYST:	Jon Morris
FISCAL ANALYST:	Antonio Murphy

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Abandoned and Historic Cemeteries: Creates Historic Cemeteries Program; provides duties & responsibilities of program; requires program to provide grants; creates Historic Cemeteries Program Advisory Council; provides membership, terms, & duties of council; authorizes certain entities to acquire conservation easements to preserve cemeteries.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Division of Historical Resources (Division), established within the Department of State (DOS), is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.

On June 4, 2021, Governor DeSantis signed into law CS/CS/HB 37 relating to Abandoned Cemeteries. The bill created a 10 member Task Force on Abandoned African-American Cemeteries (task force), adjunct to DOS, to study the extent that unmarked or abandoned African-American cemeteries and burial grounds exist throughout the state and to develop and recommend strategies for identifying and recording cemeteries and burial grounds while preserving local history and ensuring dignity and respect for the deceased. The task force met five times from July 20, 2021 to December 9, 2021, and submitted its Final Report on December 17, 2021. The recommendations of the task force are organized under four categories: Identification and Protection, Maintenance, Education, and Memorialization.

EFFECT OF THE BILL:

The bill creates the Historic Cemeteries Program within the Division. The State Historic Preservation Officer will serve as the director of the program and must, subject to legislative appropriation, employ three full-time employees to operate the program. The bill requires the Historic Cemeteries Program to provide grants for certain entities to conduct research, repair, restore, or maintain abandoned African-American cemeteries.

The bill creates the Historic Cemeteries Program Advisory Council within the Division to provide guidance and recommendations to the Division regarding the duties and responsibilities of the Historic Cemeteries Program.

The bill amends the definition of "legally authorized person" within the Florida Funeral, Cemetery, and Consumer Services Act, as well as the definition of "conservation easement."

Lastly, the bill requires the Legislature to appropriate funds for the purpose of including abandoned African-American cemeteries in Florida in the University of South Florida's Black Cemetery Network.

2. DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

If yes, explain:	The bill grants rule-making authority to the Division to implement the creation of the Historic Cemeteries Program.
What is the expected impact to the agency's core mission?	This change is consistent with the agency's core mission
Rule(s) impacted (provide references to F.A.C., etc.):	

3. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

List any known proponents and opponents:	N/A
Provide a summary of the proponents' and opponents' positions:	N/A

4. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

5. ARE THERE ANY GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL?

Board:	
Board Purpose:	
Who Appoints:	The bill creates the Historic Cemeteries Program Advisory Council within the Division, but these council members are appointed by the Secretary of State after considering the recommendations of the director of the Division.
Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. WHAT IS THE FISCAL IMPACT TO LOCAL GOVERNMENT?

Revenues:	None
Expenditures:	None
Does the legislation increase local taxes or fees?	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. WHAT IS THE FISCAL IMPACT TO STATE GOVERNMENT?

Revenues:	None
Expenditures:	<p>The bill creates the Historic Cemeteries Program and authorizes the State Historic Preservation Officer to employ three full-time employees to operate the program.</p> <p>Supervisor - \$55,000 (salary) + \$29,321 (benefits) = \$84,321</p> <p>Staff - \$45,000 (salary) + \$23,990 (benefits) = \$68,990</p> <p>Staff - \$45,000 (salary) + \$23,990 (benefits) = \$68,990</p> <p>Expense - \$25,000</p> <p>TOTAL salaries, benefits, and expense for 3 positions: \$247,301</p> <p>The bill requires the Historic Cemeteries Program to provide grants for certain entities to conduct research, repair, restore, or maintain abandoned African-American cemeteries.</p> <p>The bill creates the Historic Cemeteries Program Advisory Council composed of an inclusive group of members who are regionally distributed and representative of communities throughout this state. Members will not be entitled to compensation but are authorized to receive per diem and reimbursement for travel expenses as provided in law.</p>
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. WHAT IS THE FISCAL IMPACT TO THE PRIVATE SECTOR?

Revenues:	None
Expenditures:	None
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Does the bill increase taxes, fees or fines?	No
Does the bill decrease taxes, fees or fines?	No
What is the impact of the increase or decrease?	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

Does the legislation impact the agency's technology systems (i.e., IT support, licensing software, data storage, etc.)?	N/A N/A
If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A

FEDERAL IMPACT

Does the legislation have a federal impact (i.e. federal compliance, federal funding, federal agency involvement, etc.)?	No
If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

DHR would need additional positions to meet the requirements as outlined in this bill. Section 704.08, Florida Statutes outlines access to family cemeteries on private land.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	None
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The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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3-15-23

Meeting Date

430

Bill Number or Topic

Govt. Oversight

Committee

Amendment Barcode (if applicable)

Name Bob Holladay

Phone 850-212-7730

Address 3362 Foley Dr.

Email President@tallahasseehistoricalsociety.org

Street

Tallahassee

32309

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/15/23

Meeting Date

SB 430

Bill Number or Topic

Gov't Oversight

Committee

Amendment Barcode (if applicable)

Name David R. McCallister

Phone 813-973-4319

Address 13742 17th St.

Street

Email davidmccallister@hotmail.com

Dade City

City

FL

State

33525

Zip



Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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The Florida Senate

APPEARANCE RECORD

3-15-23

430

Meeting Date

Bill Number or Topic

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Governmental Oversight...

Committee

Amendment Barcode (if applicable)

Name Barbara Devane

Phone 850-257-4280

Address 625 E. Brevard St

Email barbadevane1@yahoo.com

Street

Tallahassee FL 32308

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

FL NOW

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

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3/15/23

Meeting Date

430

Bill Number or Topic

Govt Oversight & Accountability

Committee

Amendment Barcode (if applicable)

Name Mark Zubaly

Phone 850 443 0243

Address PO Box 10205

Email M.Zubaly@comcast.net

net

Street

Tallahassee FL 32312

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3.15.2023

SB 430

Meeting Date

Bill Number or Topic

Gov. Oversight + Accountability

Committee

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Amendment Barcode (if applicable)

Name Yasmin Khan-Hohensee

Phone (850) 224-8128

Address 906 E Park

Email ykhan-hohensee@floridatrust.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

SB 430

Bill Number or Topic

3/15/23

Meeting Date

Govt. Oversight & Accountability
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Melissa Wyllie

Phone 850-224-8128

Address 906 E Park
Street

Email mwylle@floridatrust.org

Tallahassee FL
City State

32301
Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

Florida Trust
for Historic Preservation

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

March 15, 2023

The Florida Senate APPEARANCE RECORD

430

Meeting Date

Governmental Operations

Bill Number or Topic

Committee

Pamela Burch Fort

Amendment Barcode (if applicable)

850-425-1344

Name

Phone

Address

104 South Monroe

Email

TcgLobby@aol.com

Street

Tallahassee

FL

32301

City

State

Zip

Reset Form

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

NAACP Florida State Conference

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/15/23
Meeting Date

SB 430
Bill Number (if applicable)

Topic Historic Landmarks

Amendment Barcode (if applicable)

Name JEFF KOTTKAMP

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Guardians of American History

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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3/15/23

The Florida Senate
APPEARANCE RECORD

430

Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Ho

Committee

Amendment Barcode (if applicable)

Name

LANNIE MANN

Phone

850 8782804

Address

1120 E WINDWOOD WAY

Email

BSCOTCHID
EMBAR@MAIL.COM

Street

TALLAHASSEE FL 32311

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 430

3-15-23

Meeting Date

Bill Number or Topic

Gov't Oversight & Accountability

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Annie D. Sloan

Phone 850-443-9077

Address 4420 W. Shannon Lakes Dr.

Email dsloan@miracles3.org

Tallahassee FL

City

State

Zip



Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

March 15, 2023

Meeting Date

Government Oversight And Accountability

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Senate Bill 430

Bill Number or Topic

Amendment Barcode (if applicable)

Name Gloria Jefferson Anderson

Phone (850)459-7887

Address 3515 Easter Stanley Road

Email gjjjanderson@comcast.net

Street

Tallahassee

Florida

32308

City

State

Zip



Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3-15-23

APPEARANCE RECORD

SB 430

Meeting Date

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Bill Number or Topic

Gov'tal Oversight

Committee

Amendment Barcode (if applicable)

Name Paul Owens

Phone 407-222-2301

Address 308 N. Monroe St.

Email powens@1000fof.org

Street

Tallahassee

32301

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

1000 Friends of Florida

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

The Florida Senate

APPEARANCE RECORD

March 15, 2023

Meeting Date

SB 430

Bill Number or Topic

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Governmental Oversight & Acc

Committee

Amendment Barcode (if applicable)

Name VIVIAN Lyte-Johnson

Phone 407 595 4264

Address 1884 Ibis Bay Ct

Email V3576@att.net

Street

Doole

City

FL

State

34761

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

3.15.23

Meeting Date

SB430

Bill Number or Topic

GOV OVERSIGHT & ACC

Committee

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Amendment Barcode (if applicable)

Name Yolanda Russell

Phone 407 609-3641

Address 5803 CITRUS VILLAGE BLVD #323

Email yolandarussell@earthlink

Street

Winter Garden FL 34787

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3-15-23

Meeting Date

SB430

Bill Number or Topic

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Senate professional staff conducting the meeting

6004 Oversight & Accountability

Committee

Amendment Barcode (if applicable)

Name Wilbert Ferrell

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Tallahassee

City

Fl

State

32308

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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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: CS/SB 304

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Boyd and Rodriguez

SUBJECT: United States-produced Iron and Steel in Public Works Projects

DATE: March 16, 2023 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>FP</u>	_____

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

I. Summary:

CS/SB 304 requires a governmental entity that contracts for a public works project or for the purchase of materials for a public works project to contractually require that any iron or steel product that will be permanently incorporated into the project be procured in the United States.

The bill waives this contract requirement if any of the following apply:

- The iron or steel products required are not produced in the United States in sufficient quantities, are not reasonably available, or are of an unsatisfactory quality;
- The use will increase the total cost of the project by more than 20 percent; or
- Compliance is inconsistent with the public interest.

A governmental entity may allow a minimal use of foreign iron or steel materials in the project, if they are ancillary to the primary product and the cost of the materials does not exceed 0.10 percent of the total contract cost, or \$2,500, whichever is greater.

The bill has an indeterminate negative fiscal impact on state and local expenditures.

II. Present Situation:

United States Steel

The U.S. is the fourth largest steel-producing country, producing approximately four percent of the world's total steel output. Comparatively, China is the largest global producer, and makes approximately 57 percent of the world's total steel output.¹

Steel produced in the U.S. is relatively more expensive compared to its global competitors for several reasons; the primary cause is that restrictions on steel imports into the U.S. create a more narrow market. However, the U.S. has trade agreements that allow a specified amount of duty-free steel to enter the U.S. from the EU, Japan, and the United Kingdom.² Additionally, the U.S.-Mexico-Canada Agreement allows steel mill products to move throughout the three countries duty-free.³ In 2022, the U.S. imported approximately 30 million net tons of finished steel products.⁴ In 2021, Canada accounted for 47 percent, and Mexico for 46 percent, of total imports. China accounts for approximately 2 percent of imports.⁵

Additionally, the U.S. market has transitioned to harder-to-make steel products, which ultimately incentivizes exporting those higher quality (and higher priced) items, and importing less sophisticated products, such as ingots and rebar.⁶ In 2022, the U.S. exported 8 million net tons of steel product.⁷

The price of steel has been relatively volatile in recent years, due largely to supply chain issues. The chart below represents the price for steel rebar over the last 7 years.⁸

¹ These figures represent 2021 steel outputs. See CONGRESSIONAL RESEARCH SERVICE, Christopher Watson, *Domestic Steel Manufacturing: Overview and Prospects*, pp. 3-4 <https://crsreports.congress.gov/product/pdf/R/R47107> (last visited Mar. 14, 2023).

² *Id.* at 6.

³ THE HILL, Sylvan Lane, *Canada, Mexico lift tariffs on US goods after Trump Scraps Steel, Aluminum Levies* (May 20, 2019), <https://thehill.com/policy/finance/444581-canada-mexico-lift-tariffs-on-us-goods-after-trump-scraps-steel-aluminum/> (last visited Mar. 14, 2023).

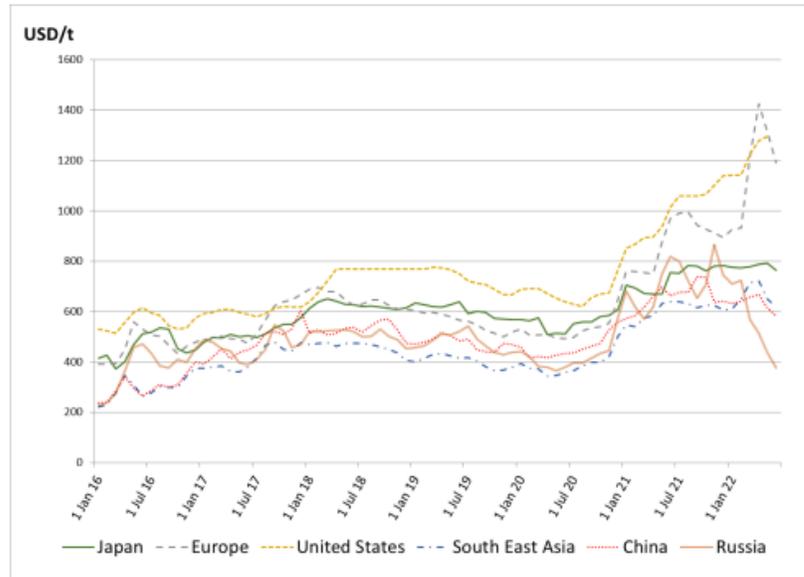
⁴ American Iron and Steel Institute, *Finished Steel Imports up 11% in 2022* (Jan. 26, 2023), <https://www.steel.org/wp-content/uploads/2023/01/IMP2212.pdf> (last visited Mar. 14, 2023).

⁵ Watson, *supra* note 1 at 4.

⁶ Watson, *supra* note 1 at 7.

⁷ OECD, *Steel Market Developments: Q4 2022*, p. 21 <https://www.oecd.org/industry/ind/steel-market-developments-Q4-2022.pdf> (last visited Mar. 14, 2023)

⁸ *Id.* at 28.



Federal Provisions

A suite of federal laws and rules require federal agencies that procure specific goods, products, and materials, and other entities that use federal financial assistance, to give preference to those goods, products, and materials manufactured primarily in the United States.⁹

Buy American Act of 1933

The Buy American Act (BAA)¹⁰ of 1933 requires federal agencies to purchase domestic end products and use domestic construction materials in any contract valued at more than \$10,000. For purposes of the BAA, iron or steel products are considered domestic if the cost of the domestic components within the iron or steel product constitute at least 95 percent of the total cost of the product.¹¹

Under the BAA, a federal agency may purchase a foreign-made product if it determines that the domestic product will cost unreasonably more.¹² A price for an end product that is not a critical item and that does not contain critical components is unreasonable under the BAA if the domestic offer is not the lowest offer after applying the following domestic preference price offsets:¹³

- 20 percent added to the low offer for end products, if the lowest domestic offer is from a large business;

⁹ General Services Administration, Made in America.gov, *Frequently Asked Questions: Are Buy America and Buy American the Same?*, <https://www.madeinamerica.gov/> (last visited Mar. 14, 2023).

¹⁰ BAA, 41 U.S.C. §§8301-8305.

¹¹ 41 U.S.C. §8302(c)(1) and 48 C.F.R. §25.003. This definition differs from that which applies to the subsequent Build America, Buy America Act.

¹² D. Carpenter and B. Murrill, Congressional Research Service, *The Buy American Act and Other Federal Procurement Domestic Content Restrictions* (Nov. 8, 2022), available at <https://crsreports.congress.gov/product/pdf/R/R46748> (last visited Mar. 6, 2023).

¹³ 48 C.F.R. §25.106

- 30 percent added to the low offer for end products, if the lowest domestic offer is from a small business; or
- 20 percent added to the low offer for construction materials.

Other exceptions to the BAA apply when:¹⁴

- The procurement of domestic goods, or the use of domestic construction materials is “impracticable” or “inconsistent with the public interest”;
- Domestic end products or construction materials are unavailable “in sufficient and reasonably available commercial quantities and of a satisfactory quality”;
- The contracting officer determines that the cost of domestic end products or construction materials would be “unreasonable”; or
- The items are procured for use outside the United States.

Build America, Buy America Act

The Build America, Buy America Act¹⁵ (BABA), enacted as part of the Infrastructure Investment and Jobs Act of 2021, amends the Build American Act and related Buy America provisions. BABA requires that all infrastructure projects that use Federal financial assistance programs use iron and steel that is produced in the United States; this includes public works projects taken on by state or local governments and even private entities that receive federal funds for the project.

BABA defines iron or steel products produced in the United States as those made, through all of their manufacturing processes (from melting through application of coatings), in the United States.¹⁶ If American made iron or steel will increase the total cost of the project by more than 25 percent, then an award may be given to a bid that uses foreign iron or steel.¹⁷ This price preference does not apply in pre- and post-disaster or emergency response expenditures, or in cases in which a treaty or WTO agreement allows the use of a foreign product.

Florida Construction Contracts

State Construction Procurement Requirements, Generally

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹⁸ The solicitation of competitive bids or proposals for such state construction projects must be publicly advertised in the Florida Administrative Register (FAR) for at least 21 days prior to the bid opening. If the project is expected to cost more than \$500,000, the advertisement must be published for 30 days in the FAR, and at least one time, at least 30 days prior to bid opening, in a newspaper of general circulation in the county where the project is located.¹⁹

¹⁴ 48 C.F.R. §25.202

¹⁵ Pub. L. 117-58, Title IX (Nov. 15, 2021).

¹⁶ Pub. L. 117-58, Title IX, s. 70912.

¹⁷ 2 C.F.R. §184.7

¹⁸ Section 255.0525, F.S.

¹⁹ Section 255.0525(1), F.S.

A county, municipality, special district, or other political subdivision that seeks to construct or improve a public building must competitively award each project estimated to cost more than \$300,000.²⁰ Like state construction project procurements, these county and municipality procurements are subject to publishing requirements.²¹

The Department of Management Services Project Management

The Department of Management Services (DMS) manages projects throughout the state, including new construction, renovations, and consulting services for various public works projects. The Bureau of Building Construction (Bureau), within the DMS, oversees public building construction statewide. The Bureau is also responsible for managing Fixed Capital Outlay funds appropriated by the Legislature and for overseeing the repair and renovation of DMS-managed facilities.²²

Chapter 255, F.S., specifies the procedures required in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., authorizes the DMS to adopt rules for bidding on building construction contracts. These rules must establish the procedures for:

- Determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts;
- Awarding each state agency construction project to the lowest qualified bidder;
- Negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.²³

Florida Department of Transportation Project Procurement

Chapter 337, F.S., governs contracts entered into by the Florida Department of Transportation (FDOT). FDOT has authority to enter into contracts for the construction and maintenance of all State Highway or State Park systems' roads, rest areas, weigh stations, parking areas, supporting facilities, and any associated building.²⁴ The FDOT must certify as qualified any bidders for a construction contract, road, bridge, or public construction project that exceeds \$250,000 in cost.²⁵ The certification process ensures that the bidders have professional and financial competence by evaluating them "with respect to the equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."²⁶

²⁰ Section 255.20, F.S.

²¹ See, s. 255.0525(2), F.S., which requires a project of \$200,000 or more to be advertised in a newspaper of general circulation in the county where the project is located at least **21** days prior to bid opening, and at least 5 days prior to any prebid conference. If the project will cost more than \$500,000, it must be advertised in a newspaper of general circulation in the county where the project is located for at least **30** days prior to bid opening, and 5 days prior to any prebid conference.

²² DMS, *Building Construction*, https://www.dms.myflorida.com/business_operations/real_estate_development_and_management/building_construction (last visited Mar. 6, 2023).

²³ See R. 60D-5.001-60D-5.010, F.A.C.

²⁴ Section 337.11, F.S.

²⁵ Section 337.14(1), F.S.

²⁶ *Id.*

III. Effect of Proposed Changes:

Section 1 creates s. 255.0993, F.S., to require a governmental entity that contracts for a public works project or for the purchase of materials for a public works project to require, by terms incorporated into the contract, that any iron or steel product that will be used permanently in the project be produced in the United States.

Governmental entities are exempt from this requirement if:

- Iron or steel products that are produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;
- The use of U.S. produced iron or steel will increase the total cost of the project by more than 20 percent; or
- It is inconsistent with public interest to comply with the requirement.

Therefore, a project manager that agrees to use domestically produced iron or steel in its public works project may be awarded up to an additional 20 percent over the next lowest bid (which does not use domestic iron or steel).

Additionally, a project may use a minimal amount of foreign steel and iron materials if the materials are incidental or ancillary to the primary product and are not separately identified in the project's specifications, or if the cost of those materials does not exceed .10 percent of the contract cost, or \$2,500—whichever is greater.

Electrical components, equipment, systems, and appurtenances (including supports, covers, shielding, and other appurtenances that are related to the electrical system and that are necessary for operation or concealment) are not considered iron or steel products for purposes of this bill. However, electrical transmission and distribution poles *are* considered iron and steel products.

Public works projects subject to this pricing preference include any activity that is paid for with state-appropriated funds or state funds administered by a governmental entity, which consists of construction, maintenance, repair, renovation, remodeling, or improvement of the following: a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned, in whole or in part, by a governmental entity.

For purposes of this bill, a “governmental entity” is the state, or any of its offices, boards, bureaus, commissions, departments, branches, divisions, or institutions, and any separate agency or unit of local government that is created or established by law or ordinance, and those entities’ officers. Therefore, counties, cities, towns, municipalities, school districts, taxing districts, water management districts, higher education institutions, and other public agencies or bodies are a “governmental entity.”

The bill also defines iron or steel that is “produced in the United States” as that which undergoes all of its manufacturing processes,²⁷ from initial melting through application of coatings, in the

²⁷ The term “manufacturing process” is also defined by the bill as the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished

United States. Mere assembly and any metallurgical process to refine steel additives are not considered manners of production under this bill.

The bill grants the DMS rulemaking authority to develop guidelines and procedures to implement the bill. It further grants the FDOT rulemaking authority to develop guidelines and procedures to implement the bill's requirements for public works projects that it administers pursuant to ch. 337, F.S.

Section 2 makes a legislative finding that the bill fulfills an important state interest.

Section 3 provides that the bill will take effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless:”

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

The bill requires a county or municipality that enters into a contract for a public works project to select bidders that agree to use iron or steel products that are produced in the United States, and pay up to 20 percent more of the total cost of the project for that preference. To the extent that a local government uses any amount of state funds, and pays for the remaining portion of the project with its own funds, this requirement could increase the local government's costs.

The bill applies to all similarly situated governmental entities in the State of Florida, including state agencies, school districts, universities, and colleges. Section 2 of the bill contains a legislative finding that the bill fulfills an important state interest. Thus, the bill appears to be binding on counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

product that is functionally different from a finished product produced only by assembling materials or elements into a product without applying such a process.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The requirement to buy American steel could increase the cost of some projects, such as building highway bridges and procuring transit railcars and buses. This may result in fewer projects being undertaken.²⁸

Private contractors that use iron or steel products that are produced in the United States may be able to seek higher payments for their work on a public works project, whether or not the materials cost more than foreign iron or steel. This may open the field to smaller contractors that require a larger margin to cover their costs on potential public works projects.

C. Government Sector Impact:

The cost to state and local governments is indeterminate. These costs, however, may be significant because the bill requires government entities to enter into contracts for public works projects that are up to 20 percent higher than the next lowest bid, based on the project's use of domestic iron or steel products.

VI. Technical Deficiencies:

The bill appears to contemplate application of its price preference to FDOT contracts. However, this preference contradicts s. 337.11(4), F.S., which requires the FDOT to award construction and maintenance work for contracts over \$250,000 to the lowest responsible bidder, or the lowest evaluated responsible bidder in the instance of a time-plus-money contract. For clarity, the Legislature may consider including the price preference in s. 337.11 as well.

VII. Related Issues:

The term “public works project” is also defined in s. 255.0992, F.S., to mean “an activity *exceeding \$1 million in value* that is paid for with any state-appropriated funds and which

²⁸ See, M. Platzer and W. Mallett, Congressional Research Service, *Effects of Buy America on Transportation Infrastructure and U.S. Manufacturing*, p. 1 (July 2, 2019), <https://crsreports.congress.gov/product/pdf/R/R44266> (last visited Mar. 6, 2023).

consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.” There will likely be instances where both definitions of “public works project” apply, and some confusion may result regarding which statutory requirements pair with each definition of the term.

It is unclear how the governmental entity will determine whether the use of domestic steel increases the cost of the total project by 20 percent or more. One possibility would be to draft the procurement for construction services to allow bidders to submit two bids—one that uses U.S. steel, and one that uses foreign steel. Alternatively, the solicitation could allow bidders to specify which type of steel they are using in their bid, and then the contract manager (if enough bids that use domestic and foreign steel are submitted) could compare the costs prior to moving on to the next phase of the bid or negotiation process.

VIII. Statutes Affected:

This bill substantially amends section 255.0993 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 15, 2023:

Replaced “state funds administered by *the state*” with “state funds administered by *a governmental entity*” to clarify that a public works project is one administered by either the state or any other governmental entity, including local governments.

- B. **Amendments:**

None.



784794

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/15/2023	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 58 - 59
and insert:
any state-appropriated funds or state funds administered
by a governmental entity, which consists of the construction,
maintenance, repair,

By Senator Boyd

20-00398-23

2023304__

A bill to be entitled

An act relating to United States-produced iron and steel in public works projects; creating s. 255.0993, F.S.; defining terms; requiring governmental entities to include a requirement in certain contracts that certain iron or steel products be produced in the United States; providing exceptions; authorizing the use of foreign steel and iron materials in certain circumstances; exempting specified products from the requirement; providing construction; requiring the Department of Management Services and the Department of Transportation to adopt rules for specified purposes; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 255.0993, Florida Statutes, is created to read:

255.0993 Public works projects; United States-produced iron and steel products.-

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

(a) "Governmental entity" means the state, or any office, board, bureau, commission, department, branch, division, or institution thereof, or a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, a town, or other municipality; or a department, a commission, an authority, a school district, a taxing

Page 1 of 4

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

20-00398-23

2023304__

district, a water management district, a board, a public corporation, an institution of higher education, or other public agency or body thereof authorized to expend public funds for the construction, maintenance, repair, renovation, remodeling, or improvement of public works.

(b) "Iron or steel product" means any product made primarily of iron or steel, including, but not limited to, lined or unlined pipes and fittings; bars and rods; wire, wire ropes, and link chains; forgings; grating and drainage products; access covers, hatches, manhole covers, and other castings; hydrants; electric transmission and distribution poles; tanks; flanges; pipe clamps and restraints; valves; structural steel and other steel mill products; materials made primarily of iron and steel within precast concrete; and other construction materials made primarily of iron or steel.

(c) "Manufacturing process" means the application of a process to alter the form or function of materials or elements of a product in a manner that adds value and transforms the materials or elements into a new finished product that is functionally different from a finished product produced merely from assembling materials or elements into a product without applying such a process.

(d) "Produced in the United States" means that, with respect to iron and steel, all manufacturing processes, from initial melting through application of coatings, occur in the United States, other than metallurgical processes to refine steel additives.

(e) "Public works project" means an activity paid for with any state-appropriated funds or state funds administered by the

Page 2 of 4

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

20-00398-23 2023304__

59 state, which consists of the construction, maintenance, repair,
 60 renovation, remodeling, or improvement of a building, road,
 61 street, sewer, storm drain, water system, site development,
 62 irrigation system, reclamation project, gas or electrical
 63 distribution system, gas or electrical substation, or other
 64 facility, project, or portion thereof owned in whole or in part
 65 by any governmental entity.

66 (2) UNITED STATES-PRODUCED IRON AND STEEL REQUIREMENT.—

67 (a) Notwithstanding any other law, a governmental entity
 68 entering into a contract for a public works project or for the
 69 purchase of materials for a public works project must include in
 70 the contract a requirement that any iron or steel product
 71 permanently incorporated in the project be produced in the
 72 United States.

73 (b) Paragraph (a) does not apply if the governmental entity
 74 administering the funds for a public works project or the
 75 purchase of materials for a public works project solely
 76 determines that any of the following applies:

77 1. Iron or steel products produced in the United States are
 78 not produced in sufficient quantities, reasonably available, or
 79 of satisfactory quality.

80 2. The use of iron or steel products produced in the United
 81 States will increase the total cost of the project by more than
 82 20 percent.

83 3. Complying with paragraph (a) is inconsistent with the
 84 public interest.

85 (c) When steel and iron materials are used in a public
 86 works project, paragraph (a) does not prevent a minimal use of
 87 foreign steel and iron materials if:

20-00398-23 2023304__

88 1. Such materials are incidental or ancillary to the
 89 primary product and are not separately identified in the project
 90 specifications.

91 2. The cost of such materials does not exceed one-tenth of
 92 1 percent of the total contract cost or \$2,500, whichever is
 93 greater. For purposes of this subparagraph, the cost of such
 94 materials is that shown to be the value of the iron or steel
 95 products as they are delivered to the project.

96 (d) Electrical components, equipment, systems, and
 97 appurtenances, including supports, covers, shielding, and other
 98 appurtenances related to an electrical system, necessary for
 99 operation or concealment, except transmission and distribution
 100 poles, are not considered iron or steel products and are exempt
 101 from the requirements of paragraph (a).

102 (3) INTERNATIONAL AGREEMENTS.—This section shall be applied
 103 in a manner consistent with and may not be construed to impair
 104 the state's obligations under any international agreement.

105 (4) RULEMAKING.—

106 (a) Except as otherwise provided in this subsection, the
 107 Department of Management Services shall develop guidelines and
 108 procedures by rule to implement this section.

109 (b) The Department of Transportation shall develop
 110 guidelines and procedures by rule to implement this section for
 111 public works projects it administers.

112 Section 2. The Legislature determines and declares that
 113 this act fulfills an important state interest.

114 Section 3. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture, *Vice Chair*
Appropriations Committee on Agriculture,
Environment, and General Government
Finance and Tax
Fiscal Policy
Judiciary
Rules
Transportation

SENATOR JIM BOYD

20th District

January 26, 2023

Senator Bryan Avila
404 South Monroe Street
330 Knott Building
Tallahassee, FL 32399

Dear Chairman Avila:

I respectfully request Senate Bill 304: United States-produced Iron and Steel in Public Works Projects, be scheduled for a hearing in the Committee on Governmental Oversight and Accountability, at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink that reads "Jim Boyd".

Jim Boyd

cc: Joe McVaney
Tamra Redig

REPLY TO:

- 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- 418 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

3/15/23

Meeting Date

304

Bill Number or Topic

Government Oversight and
Committee accountability

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Tara Nelson

Phone

Address

1172 Tracy Dr.
Street

Email

Port Orange
City

State

32129
Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

3/15/23

Meeting Date

304

Bill Number or Topic

Government Oversight and
Committee Accountability

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Matt Nelson

Phone 386-295-4006

Address 1172 Tracy Dr.
Street

Email

Port Orange
City

FL
State

32129
Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

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compensation or sponsorship.

I am a registered lobbyist,
representing:

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something of value for my appearance
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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

03/15/23

Meeting Date

304

Bill Number or Topic

GOVERNMENT OVERSIGHT AND

Committee

ACCOUNTABILITY

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name JOSE MARIA RUIZ TORRES

Phone 863-231-4787

Address 6723 TRENT CREEK DR

Email JORUIZTORRES477@GMAIL.COM

Street

ROSKEN

City

FL

State

33573

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/15/2023

Meeting Date

The Florida Senate
APPEARANCE RECORD



SB 304

Bill Number or Topic

Gov. Oversight & Accountability

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name Tim Adams

Phone 407 760 9526

Address 30526 Saint Andrews Blvd.

Street

Email timfrom631@gmail.com

Sorrento

City

FL

State

32776

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

WFLC

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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3/15/23

The Florida Senate
APPEARANCE RECORD

304

Meeting Date

Bill Number or Topic

Governmental Oversight + Accountability
Committee

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Amendment Barcode (if applicable)

Name Kyle Milwee

Phone 727-270-5801

Address 8189 260th ter
Street

Email Kyle.Milwee@gmail.com

Brantford
City

FL
State

32008
Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by: The Laborers'
International Union 517

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/15/23

Meeting Date

60

The Florida Senate APPEARANCE RECORD

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SB 304

Bill Number or Topic

Committee

Jose Besu

Amendment Barcode (if applicable)

Name

Phone

(786) 256 2189

Address

5135 SW 129 Terr

Email

jbesu24@gmail.com

Street

Miami

FL

33027

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/15/23

Meeting Date

GO

Committee

SB 304

Bill Number or Topic

Amendment Barcode (if applicable)

Name

ADAM SAN SOLO

Phone

(886) 256-5115

Address

1230 NE 173 ST

Street

Email

adam.sansolo@groupDEI.com

MIAMI

City

FL

State

33162

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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3/15/23

Meeting Date

SB 304

Bill Number or Topic

GO

Committee

Amendment Barcode (if applicable)

Name

Chris Ketter

Phone

817-676-3083

Address

1005 E. Congress Ave

Email

cketter@theirongroup.net

Street

Austin

TX

78201

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

March 15, 2023

Meeting Date

SB 0304

Bill Number or Topic

Governmental oversight and
accountability Committee

Amendment Barcode (if applicable)

Name Lara Watkins

Phone 772 321 1137

Address 1508 Elmhurst Cir SE
Street

Email Larawatkins2013@gmail.com

Palm Bay

FL

32909

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3-15-23

The Florida Senate APPEARANCE RECORD

SB 304

Meeting Date

Deliver both copies of this form to
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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Elizabeth May Phone _____

Address 823 Ingham Rd Email _____
Street

New Smyrna Beach FL 32168
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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3/15/23

Meeting Date

APPEARANCE RECORD

SB 304

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Samuel Kirk

Phone 386 847 4691

Address 823 Ingham Rd
Street

Email _____

NSB
City

FL
State

32168
Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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15 March

APPEARANCE RECORD

304

Meeting Date

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Bill Number or Topic

Gov Oversight

Committee

Amendment Barcode (if applicable)

Name Chris Stranburg

Phone 813 767 9667

Address 107 E College Ave

Email CStranburg@alphg.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Americans for Prosperity

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

3/15/23

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB304

Bill Number or Topic

Gov. Oversight & Accountability

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name STEPHAN RAMDOHR Phone _____

Address 253 INTEGRAL SHORES DRIVE Email _____

Street

DAYTONA BEACH FL

City

State

32117

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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3-15-2023

Meeting Date

APPEARANCE RECORD

SB 304

Bill Number or Topic

Deliver both copies of this form to Senate professional staff conducting the meeting

Govt. Oversight & Accountability Committee

Amendment Barcode (if applicable)

Name Daniel Freeman

Phone 386-214-1491

Address 459 Ward Dr. Street

Email dfreeman10295@gmail.com

Oak Hill City

FL State

32759 Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[x] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

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3/15/2023

Meeting Date

SB304

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Caitlin Sutherin

Phone 386 804 3030

Address 459 Ward Dr. Street

Email Caitlin.Sutherin94@gmail.com

Oak Hill City

FL State

32759 Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

APPEARANCE RECORD

SB 304

3/15

Meeting Date

Bill Number or Topic

Gov Oversight

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Phone 850-224-6926

Address 135 S. Monroe

Email _____

Street

Tallahassee

FL

32301

City

State

Zip



Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida AFL-CIO

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 304

3/15/23

Meeting Date

Bill Number or Topic

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Governmental Oversight

Committee

Amendment Barcode (if applicable)

Name Nicholas Cromer

Phone 407-274-1309

Address 238 St John's Circle

Email

Street

Perk Park FL 32730

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[x] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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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: CS/SB 258

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Burgess

SUBJECT: Prohibited Applications on Government-issued Devices

DATE: March 16, 2023 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	Fav/CS
2.			FP	

<p>Please see Section IX. for Additional Information:</p> <p>COMMITTEE SUBSTITUTE - Substantial Changes</p>
--

I. Summary:

CS/SB 258 instructs the Department of Management Services (DMS) to create a list of prohibited applications, defined as those that (1) are created, maintained, or owned by a foreign principal and that engage in specific activities that endanger cybersecurity; or (2) present a security risk in the form of unauthorized access to or temporary unavailability of a public employer’s information technology systems or data, as determined by the DMS. This definition will likely include TikTok and WeChat.

The bill requires public employers (including state agencies, public education institutions, and local governments) to:

- Block access to prohibited applications on any wireless network or virtual private network that it owns, operates, or maintains;
- Restrict access to prohibited applications on any government-issued device; and
- Retain the ability to remotely wipe and uninstall prohibited applications from a compromised government-issued device.

All persons are prohibited from downloading prohibited applications on a government-issued device, and officers and employees of a public employer must remove any prohibited application from their government-issued device within 15 calendar days of the DMS’ issuance of a list of prohibited applications.

The bill allows the use of prohibited applications by law enforcement officers, if the use is necessary to protect the public safety or to conduct an investigation. It also allows other government employees to use a prohibited application, if they are granted a waiver by the DMS.

The bill provides emergency rulemaking authority to the DMS to adopt a list of prohibited applications, and general rulemaking authority to implement a process by which it can grant waivers from the prohibition.

The impact on state and local government expenditures is indeterminate.

The bill takes effect on July 1, 2023.

II. Present Situation:

TikTok and WeChat

TikTok is a smartphone application that allows its more than 1 billion global users, of which 113 million are U.S.-based, to share videos with each other.¹ TikTok is owned by ByteDance Ltd., a privately held company incorporated in the Cayman Islands, with a headquarters in Beijing, China.² WeChat is a smartphone application that offers multiple functions, including messaging, payment processing, ridesharing, and photo sharing with an estimated 1 billion monthly active users.³ WeChat is owned by TenCent Holdings, Ltd., a publicly traded corporation that is headquartered in China.⁴ Both applications, by permissions of their users, collect several data points from their users, including location data and internet address, and the type of device that is used to access the application. The applications share the ability to collect GPS data, network contacts, and user information (e.g., age and preferred content).⁵

These companies are under increasing scrutiny by the U.S. government as a potential privacy and security risk to U.S. citizens.⁶ This is because they, like all technology companies that do business in China, are subject to Chinese laws that require companies that operate in the country to turn over user data, intellectual property, and proprietary commercial secrets when requested

¹ DATAREPORTAL.COM, *TikTok Statistics and Trends* (Jan. 2023), <https://datareportal.com/essential-tiktok-stats> (last visited Mar. 14, 2023).

² ByteDance, Inc., *About Us*, <https://www.bytedance.com/en/> (last visited Mar. 14, 2023). See also, NEWSWEEK, Chloe Mayer, *Is TikTok Owned by the Chinese Communist Party?* (Oct. 17, 2022), available at <https://www.newsweek.com/tiktok-owned-controlled-china-communist-party-ccp-influence-1752415> (last visited Mar. 14, 2023).

³ CONGRESSIONAL RESEARCH SERVICE, Patricia Moloney Figliola, *TikTok: Technology Overview and Issues* (Dec. 4, 2020), <https://crsreports.congress.gov/product/pdf/R/R46543> (last visited Mar. 14, 2023).

⁴ BUSINESS OF APPS, Mansoor Iqbal, *WeChat Revenue and Usage Statistics* (2022) (Sept. 6, 2022) <https://www.businessofapps.com/data/wechat-statistics/> (last visited Mar. 14, 2023).

⁵ WeChat, *WeChat Privacy Policy* (Sept. 9, 2022), https://www.wechat.com/en/privacy_policy.html (last visited Mar. 14, 2023).

⁶ See, e.g., Federal Bureau of Investigation, Remarks delivered by Director Christopher Wray, *The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States* (Jul. 7, 2020), available at <https://www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese-government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states> (last visited Mar. 14, 2023).

by the government.⁷ TikTok recently moved its U.S. data servers to U.S. locations to “help to protect against unauthorized access to user data.”⁸ In one instance, confirmed by TikTok, two employees improperly used the application’s data to track the location of journalists who wrote a negative story about the business; one employee was fired and another resigned as a result of their improper actions.⁹

There are also allegations that TikTok manipulates its algorithm to provide misinformation to its users.¹⁰

Federal, State, and Local Actions

In August 2020, President Trump signed two executive orders that prohibited commercial transactions between U.S. citizens and TikTok¹¹ and required ByteDance to divest from any asset that supports TikTok’s U.S.-arm.¹² President Trump also took similar action proposing to ban transactions with WeChat.¹³ While these executive orders were subject to injunction in different courts, they were revoked ultimately by a subsequent executive order issued by President Biden.

Congress passed the “No TikTok on Government Devices Act” as part of the omnibus spending bill in December 2022.¹⁴ The law directs the Office of Management and Budget (OMB) to create standards and guidelines for the removal of TikTok from government devices. On February 27, 2023, the OMB issued guidance that requires all executive agencies and their contractors that use IT¹⁵ to remove and disallow installations of TikTok within 30 days.¹⁶ The guidance allows

⁷ Nazak Nikakhtar, U.S. *Businesses Must Navigate Significant Risk of Chinese Government Access to Their Data* (Mar. 22, 2021), <https://www.jdsupra.com/legalnews/u-s-businesses-must-navigate-3014130/> (last visited Mar. 14, 2023). *See also*, note 3, *supra* at p. 6.

⁸ TikTok, *Delivering on our US Data Governance* (Jun. 17, 2022), <https://newsroom.tiktok.com/en-us/delivering-on-our-us-data-governance> (last visited Mar. 14, 2023).

⁹ FORBES, Emily Baker-White, *Exclusive: TikTok Spied on Forbes Journalists* (Dec. 22, 2022), <https://www.forbes.com/sites/emilybaker-white/2022/12/22/tiktok-tracks-forbes-journalists-bytedance/?sh=3bd5d3327da5> (last visited Mar. 14, 2023).

¹⁰ AP NEWS, Haleluya Hadero, *Why TikTok is Being Banned on Government Phones in US and Beyond* (Feb. 28, 2023) <https://apnews.com/article/why-is-tiktok-being-banned-7d2de01d3ac5ab2b8ec2239dc7f2b20d> (last visited Mar. 14, 2023).

¹¹ President Donald J. Trump, *Executive Order on Addressing the Threat Posed by TikTok* (Aug. 6, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/> (last visited Mar. 14, 2023).

¹² President Donald J. Trump, *Executive Order Regarding the Acquisition of Musical.ly by ByteDance Ltd.* (Aug. 14, 2020), <https://home.treasury.gov/system/files/136/EO-on-TikTok-8-14-20.pdf> (last visited Mar. 14, 2023).

¹³ President Donald J. Trump, *Executive Order on Addressing the Threat Posed by WeChat* (Aug. 6, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-wechat/> (last visited Mar. 14, 2023).

¹⁴ Pub. L. No. 117-328, div. R, §§101-102.

¹⁵ “Information technology” means “any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used [...] directly or is used by a contractor under a contract with the executive agency [...]” and includes computers, peripheral equipment, software, firmware, services, and related resources. 40 U.S.C. §11101(6).

¹⁶ Office of Management and Budget, *Memorandum: No TikTok on Government Devices Implementation Guidance* (Feb. 27, 2023), https://www.whitehouse.gov/wp-content/uploads/2023/02/M-23-13-No-TikTok-on-Government-Devices-Implementation-Guidance_final.pdf (last visited Mar. 14, 2023).

exceptions to the use and installation ban for the purposes of law enforcement activities, national security interests and activities, and security research.

As of March 2023, at least 24 states have enacted, through various forms of state action (but not legislation), bans on the use of high-risk software and services on state devices or over state-owned networks.¹⁷

On March 7, 2023, the Miami-Dade County Commission voted to ban TikTok from its county's work phones.¹⁸

State Information Technology Management

The Department of Management Services (DMS) oversees information technology (IT) governance and security for the executive branch of the State government.¹⁹ The Florida Digital Service (FLDS) within the DMS was established by the Legislature in 2020;²⁰ the head of FLDS is appointed by the Secretary of DMS and serves as the state chief information officer (CIO).²¹

The FLDS was created to modernize state government technology and information services.²² Accordingly, the DMS, through the FLDS, has the following powers, duties, and functions:

- Develop IT policy for the management of the state's IT resources;
- Develop an enterprise architecture;
- Establish IT project management and oversight standards for state agencies;
- Oversee state agency IT projects that cost \$10 million or more and that are funded in the General Appropriations Act or any other law; and²³
- Standardize and consolidate IT services that support interoperability, Florida's cloud first policy, and other common business functions and operations.

¹⁷ GOVERNMENT TECHNOLOGY, Andrew Adams, *Updated; Where is TikTok Banned? Tracking State by State* (Dec. 14, 2022), <https://www.govtech.com/biz/data/where-is-tiktok-banned-tracking-the-action-state-by-state> (last visited Mar. 14, 2023).

¹⁸ NBC MIAMI, Heather Walker, *Miami-Dade Commissioners Vote to Ban TikTok on County Devices* (Mar. 7, 2023), <https://www.nbcmiami.com/news/local/miami-dade-commissioners-vote-to-ban-tiktok-on-county-devices/2988107/> (last visited Mar. 14, 2023).

¹⁹ Section 282.0051, F.S.

²⁰ Ch. 2020-161, Laws of Fla.

²¹ Section 282.0051(2)(a), F.S.

²² Section 282.0051(1), F.S.

²³ The FLDS provides project oversight on IT projects that have a total cost of \$20 million or more for the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services. Section 282.0051(1)(m), F.S.

State Cybersecurity Act

The State Cybersecurity Act²⁴ requires the DMS and the heads of state agencies to meet certain requirements to enhance state agencies' cybersecurity.²⁵ Specifically, the DMS, acting through the FLDS, must:²⁶

- Assess state agency cybersecurity risks and determine appropriate security measures consistent with generally accepted best practices for cybersecurity.
- Adopt rules to mitigate risk, support a security governance framework, and safeguard state agency digital assets, data, information, and IT resources²⁷ to ensure availability, confidentiality, and integrity.
- Designate a chief information security officer (CISO) who must develop, operate, and oversee state technology systems' cybersecurity. The CISO must be notified of all confirmed or suspected incidents or threats of state agency IT resources and must report such information to the CIO and the Governor.
- Develop and annually update a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for cyber incidents.
- Develop a cybersecurity governance framework and publish it for state agency use.
- Assist state agencies in complying with the State Cybersecurity Act.
- Train state agency information security managers and computer security incident response team members, in collaboration with the Florida Department of Law Enforcement (FDLE) Cybercrime Office, on issues relating to cybersecurity, including cybersecurity threats, trends, and best practices.
- Provide cybersecurity training to all state agency technology professionals that develop, assess, and document competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system.
- Annually review state agencies' strategic and operational cybersecurity plans.
- Track, in coordination with agency inspectors general, state agencies' implementation of remediation plans.
- Operate and maintain a Cybersecurity Operations Center led by the CISO to serve as a clearinghouse for threat information and to coordinate with the FDLE to support state agency response to cybersecurity incidents.
- Lead an Emergency Support Function under the state comprehensive emergency management plan.

²⁴ Section 282.318, F.S.

²⁵ "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources. Section 282.0041(8), F.S.

²⁶ Section 282.318(3), F.S.

²⁷ "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. Section 282.0041(22), F.S.

The State Cybersecurity Act requires the head of each state agency to designate an information security manager to administer the cybersecurity program of the state agency.²⁸ In addition, agency heads must:

- Establish an agency cybersecurity incident response team, which must report any confirmed or suspected cybersecurity incidents to the CISO.
- Submit an annual strategic and operational cybersecurity plan to the DMS.
- Conduct a triennial comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency.
- Develop and update internal policies and procedures, including procedures for reporting cybersecurity incidents and breaches to the FLDS and the Cybercrime Office.
- Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the DMS to address identified risks to the data, information, and IT resources of the agency.
- Ensure periodic internal audits and evaluations of the agency's cybersecurity program.
- Ensure that cybersecurity contract requirements of IT and IT resources and services meet or exceed applicable state and federal laws, regulations, and standards for cybersecurity, including the NIST cybersecurity framework.
- Provide cybersecurity awareness training to all state agency employees concerning cybersecurity risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system.
- Develop a process, consistent with FLDS rules and guidelines, to detect, report, and respond to threats, breaches, or cybersecurity incidents.

Florida Cybersecurity Advisory Council

The Florida Cybersecurity Advisory Council (Advisory Council) within the DMS²⁹ protects IT resources from cyber threats and incidents.³⁰ The Advisory Council must assist the FLDS with the implementation of best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force – a task force created to review and assess the state's cybersecurity infrastructure, governance, and operations.³¹ The Advisory Council meets at least quarterly to:³²

- Review existing state agency cybersecurity policies.
- Assess ongoing risks to state agency IT.
- Recommend a reporting and information sharing system to notify state agencies of new risks.
- Recommend data breach simulation exercises.

²⁸ Section 282.318(4)(a), F.S.

²⁹ Section 282.319(1), F.S.

³⁰ Section 282.319(2), F.S.

³¹ Section 282.319(3), F.S. The Cybersecurity Task Force is no longer active. *See*, Florida DMS, *Cybersecurity Task Force Overview*, https://www.dms.myflorida.com/other_programs/cybersecurity_advisory_council/cybersecurity_task_force (last visited Mar. 14, 2023).

³² Section 282.319(9), F.S.

- Develop cybersecurity best practice recommendations for state agencies, including continuous risk monitoring, password management, and protecting data in legacy and new systems.
- Examine inconsistencies between state and federal law regarding cybersecurity.

Beginning June 30, 2022, and each June 30 thereafter, the Advisory Council must submit cybersecurity recommendations to the Legislature.³³

III. Effect of Proposed Changes:

The bill bans the use of prohibited applications on devices issued to an employee or officer by a public employer, or otherwise used on a network that is owned, operated, or maintained by a public employer.

Section 1 creates s. 112.22, F.S., to require the Department of Management Services (DMS) to create and maintain a list of prohibited applications of any Internet application that it deems to present a security risk in the form of unauthorized access to, or temporary unavailability of the public employer's records, digital assets, systems, networks, servers, or information. A "prohibited application" is alternatively defined as any that participates in certain activities, such as conducting cyber-espionage against a public employer, and that is created, maintained, or owned by a foreign principal.

The DMS must adopt this list of prohibited applications through rulemaking, publish the list on its website, and disseminate it to public employers.

A foreign principal includes only the following:

- The government or any official of the government of a foreign country of concern;
- A political party or member of a political party in a foreign country of concern;
- A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country of concern, or an affiliate or subsidiary thereof; or
- Any person domiciled in a foreign country of concern who is not a citizen of the United States.

Public employers must:

- Block access to any prohibited application via their wireless networks and virtual private networks;
- Restrict access to any prohibited application on any government cell phone, laptop, desktop computer, tablet computer, or other electronic device that can connect to the Internet that has been issued to an employee or officer for a work-related purpose; and
- Retain the ability to remotely wipe and uninstall any prohibited application from any such device that is believed to have been adversely impacted by a prohibited application.

Additionally, the bill prohibits all persons from downloading or accessing any prohibited application on a government-issued device. However, officers and employees may procure a

³³ Section 282.319(11), F.S.

waiver to access a prohibited application from the DMS. Law enforcement officers are wholly exempted from the applications ban if their use of the application is necessary to protect the public safety or to conduct an investigation.

The bill requires an employee or officer to remove any prohibited application from his or her government-issued device within 15 days of the DMS' publication of its list of prohibited applications, and within 15 days of any subsequent update to the list of prohibited applications.

The bill grants the DMS rulemaking authority to administer these provisions. Specifically, the DMS is vested with emergency rulemaking authority to adopt the list of prohibited applications into rule. The DMS's determination of a prohibited application must be on the basis of an application's engagement in specific activities, or on the basis of the presentation of a security risk in the form of unauthorized access to or temporary unavailability of the state's digital assets, systems, networks, servers, or information.

The bill also grants the DMS authority to adopt rules that specify the waiver process, which must require all of the following:

- A description that the employee or officer will conduct, and the state interest that is furthered by the activity;
- The maximum number of government-issued devices and employees or officers to which the waiver will apply;
- The length of time necessary for the waiver, which cannot exceed 1 year (but may be extended through another waiver);
- Risk mitigation strategies that will be instituted to protect state systems, networks, and servers from malicious activity; and
- A description of the circumstances under which the waiver applies.

Section 2 provides a declaration of an important state interest that its information technology resources be protected from security breaches.

Section 3 provides that the bill will take effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless:"

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments.

The bill requires a county or municipality to take certain actions regarding the security of its IT network and government-issued devices. To comply with this law, the county or

municipality may be required to spend funds. The bill applies to all similarly situated governmental agencies that have IT networks and issue devices, including state agencies, counties, municipalities, special districts, school districts, universities, and colleges. At this time, the bill does not include a legislative finding that the bill fulfills an important state interest. The bill may not be binding on counties and municipalities unless the bill exempt from the mandates requirements because the overall fiscal impact is insignificant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The Legislature may not delegate its constitutional duties to another branch of government.³⁴ While the Legislature must make fundamental policy decisions, it may delegate the task of implementing that policy to executive agencies with “some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.”³⁵ Moreover, the Legislature can permit “administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions.”³⁶

Florida courts have found an unlawful delegation of legislative authority in the following instances:

- Where the Legislature allowed the Department of State to “in its discretion allow such a candidate to withdraw...”;³⁷ and
- Where the Legislature created a criminal penalty for escape from certain classifications of juvenile detention facilities, but delegated the classification (or determination whether to classify at all) to an agency.³⁸

Comparatively, the Legislature’s delegation of rulemaking authority to the Florida Game and Freshwater Fish Commission (FWC) to implement the Legislature’s ban on owning wildlife was deemed a proper delegation. The Legislature’s provision of a statutory definition of the term “wildlife” as those animals that posed a “real or potential threat to

³⁴ See FLA. CONST. art. II, s. 3.

³⁵ *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).

³⁶ *Microtel, Inc. v. Fla. Public Serv. Comm’n.*, 464 So.2d 1189, 1191 (Fla. 1991).

³⁷ *Fla. Dep’t. of State, Div. of Elections v. Martin*, 916 So.2d 763 (Fla. 2005).

³⁸ *D.P. v. State*, 597 So.2d 952 (Fla. 1st DCA, 1992)(disapproved on other grounds).

human safety” provided sufficient confines to the FWC’s duty to further define the term by rulemaking.³⁹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DMS will be required to conduct research into a large number of existing applications offered to create a list of prohibited applications. This will be an ongoing effort, as new applications are created and offered daily.

Additionally, the DMS will be required to create rules associated with the implementation of this bill, in particular to provide agency procedures regarding the waiver process, and to create and update the list of prohibited applications.

State agencies and local government entities may incur indeterminate costs to comply with the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is no penalty stated in the bill; however, an employer may fire an employee on the basis of his or her violation of law.

The bill provides for a waiver process, administered by the DMS. This will result in government entities creating, and the DMS holding specific information that could reveal what government employees are using a prohibited application, and which may explain their purpose for the use. If this information were obtained for insidious purposes, the government user’s legitimate purpose could be undermined, and the user could be targeted for data mining or other illegitimate purposes.

³⁹ *State v. Cumming*, 365 So.2d. 153, 155 (Fla. 1978). While the Court further found the Legislature’s delegation of wildlife permitting authority to the FWC to be an appropriate delegation of authority, they overturned the particular application of the law because the rules adopted by the FWC were overbroad and vague, so a reasonable purchaser could not reasonably interpret the guidelines applied to them.

VIII. Statutes Affected:

This bill creates section 112.22, F.S.

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

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

CS by Governmental Oversight and Accountability on March 15, 2023:

- Defines a prohibited application as one that poses a security risk, either on the basis of specific activities, or as a result of a finding by the DMS, based on the application’s risk of unauthorized access to or temporary unavailability of the public employer’s records, digital assets, systems, networks, servers, or information;
- Prohibits any person, not just employees, from downloading or accessing a prohibited application on a government-issued device;
- Provides emergency rulemaking authority to the DMS to institute a rule that identifies prohibited applications, and general rulemaking authority to update it thereafter;
- Requires the DMS to update the list of prohibited applications at least quarterly, and to distribute it to public employers;
- Allows officers or employees of a public employer 15 days from the publication or provision of an update of the DMS’ list of prohibited applications to comply therewith;
- Specifies certain requirements that the DMS must incorporate into its waiver process; and
- Replaces the term “employee” with “officer and employee” and “governmental entity or public education institution” with “public employer,” which includes schools, local governments, state agencies, and charter school governing boards.

B. Amendments:

None.



887954

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/15/2023	.	
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The Committee on Governmental Oversight and Accountability
(Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 112.22, Florida Statutes, is created to
read:

112.22 Use of applications from foreign countries of
concern prohibited.—

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

(a) "Department" means the Department of Management



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11 Services.

12 (b) "Employee or officer" means a person who performs labor
13 or services for a public employer in exchange for salary, wages,
14 or other remuneration.

15 (c) "Foreign country of concern" means the People's
16 Republic of China, the Russian Federation, the Islamic Republic
17 of Iran, the Democratic People's Republic of Korea, the Republic
18 of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian
19 Arab Republic, including any agency of or any other entity under
20 significant control of such foreign country of concern.

21 (d) "Foreign principal" means:

22 1. The government or an official of the government of a
23 foreign country of concern;

24 2. A political party or a member of a political party or
25 any subdivision of a political party in a foreign country of
26 concern;

27 3. A partnership, an association, a corporation, an
28 organization, or another combination of persons organized under
29 the laws of or having its principal place of business in a
30 foreign country of concern, or an affiliate or a subsidiary
31 thereof; or

32 4. Any person who is domiciled in a foreign country of
33 concern and is not a citizen of the United States.

34 (e) "Government-issued device" means a cellular telephone,
35 desktop computer, laptop computer, computer tablet, or other
36 electronic device capable of connecting to the Internet which is
37 owned or leased by a public employer and issued to an employee
38 or officer for work-related purposes.

39 (f) "Prohibited application" means an application that



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40 meets the following criteria:

41 1. Any Internet application that is created, maintained, or
42 owned by a foreign principal and that participates in activities
43 that include, but are not limited to:

44 a. Collecting keystrokes or sensitive personal, financial,
45 proprietary, or other business data;

46 b. Compromising e-mail and acting as a vector for
47 ransomware deployment;

48 c. Conducting cyber-espionage against a public employer;

49 d. Conducting surveillance and tracking of individual
50 users; or

51 e. Using algorithmic modifications to conduct
52 disinformation or misinformation campaigns; and

53 2. Any Internet application the department deems to present
54 a security risk in the form of unauthorized access to or
55 temporary unavailability of the public employer's records,
56 digital assets, systems, networks, servers, or information.

57 (g) "Public employer" means the state or any agency,
58 authority, branch, bureau, commission, department, division,
59 special district, institution, university, institution of higher
60 education, or board thereof; or any county, district school
61 board, or municipality, or any agency, branch, department,
62 board, or metropolitan planning organization thereof.

63 (2) (a) A public employer shall do all of the following:

64 1. Block all prohibited applications from public access on
65 any network and virtual private network that it owns, operates,
66 or maintains.

67 2. Restrict access to any prohibited application on a
68 government-issued device.



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69 3. Retain the ability to remotely wipe and uninstall any
70 prohibited application from a government-issued device that is
71 believed to have been adversely impacted, either intentionally
72 or unintentionally, by a prohibited application.

73 (b) A person, including an employee or officer of a public
74 employer, may not download or access any prohibited application
75 on any government-issued device.

76 1. This paragraph does not apply to a law enforcement
77 officer as defined in s. 943.10(1) if the use of the prohibited
78 application is necessary to protect the public safety or conduct
79 an investigation within the scope of his or her employment.

80 2. A public employer may request a waiver from the
81 department to allow designated employees or officers to download
82 or access a prohibited application on a government-issued
83 device.

84 (c) Within 15 calendar days after the department issues or
85 updates its list of prohibited applications pursuant to
86 paragraph (3) (a), an employee or officer of a public employer
87 who uses a government-issued device must remove, delete, or
88 uninstall any prohibited applications from his or her
89 government-issued device.

90 (3) The department shall do all of the following:

91 (a) Compile and maintain a list of prohibited applications
92 and publish the list on its website. The department shall update
93 this list quarterly and shall provide notice of any update to
94 public employers.

95 (b) Establish procedures for granting or denying requests
96 for waivers pursuant to subparagraph (2) (b)2. The request for a
97 waiver must include all of the following:



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98 1. A description of the activity to be conducted and the
99 state interest furthered by the activity.

100 2. The maximum number of government-issued devices and
101 employees or officers to which the waiver will apply.

102 3. The length of time for necessary for the waiver. Any
103 waiver granted pursuant to subparagraph (2) (b)2. must be limited
104 to a timeframe of no more than 1 year, but the department may
105 approve an extension.

106 4. Risk mitigation actions that will be taken to prevent
107 access to sensitive data, including methods to ensure that the
108 activity does not connect to a state system, network, or server.

109 5. A description of the circumstances under which the
110 waiver applies.

111 (4) (a) Notwithstanding s. 120.74(4) and (5), the department
112 is authorized, and all conditions are deemed met, to adopt
113 emergency rules pursuant to s. 120.54(4) and to implement
114 paragraph (3) (a). Such rulemaking must occur initially by filing
115 emergency rules within 30 days after July 1, 2023.

116 (b) The department shall adopt rules necessary to
117 administer this section.

118 Section 2. The Legislature finds that a proper and
119 legitimate state purpose is served when efforts are taken to
120 secure a public employer's system, network, or server.
121 Therefore, the Legislature determines and declares that this act
122 fulfills an important state interest.

123 Section 3. This act shall take effect July 1, 2023.

124
125 ===== T I T L E A M E N D M E N T =====
126 And the title is amended as follows:



887954

127 Delete everything before the enacting clause
128 and insert:

129 A bill to be entitled
130 An act relating to prohibited applications on
131 government-issued devices; creating s. 112.22, F.S.;
132 defining terms; requiring public employers to take
133 certain actions relating to prohibited applications;
134 prohibiting employees and officers of public employers
135 from downloading or accessing prohibited applications
136 on government-issued devices; providing exceptions;
137 providing a deadline by which specified employees must
138 remove, delete, or uninstall a prohibited application;
139 requiring the Department of Management Services to
140 compile a specified list and establish procedures for
141 a specified waiver; authorizing the department to
142 adopt emergency rules; requiring that such rulemaking
143 occur within a specified timeframe; requiring the
144 department to adopt specified rules; providing a
145 declaration of important state interest; providing an
146 effective date.



623046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/15/2023	.	
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The Committee on Governmental Oversight and Accountability
(Burgess) recommended the following:

Senate Amendment to Amendment (887954)

Delete lines 52 - 61

and insert:

disinformation or misinformation campaigns; or

2. Any Internet application the department deems to present
a security risk in the form of unauthorized access to or
temporary unavailability of the public employer's records,
digital assets, systems, networks, servers, or information.

(g) "Public employer" means the state or any agency,



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11 authority, branch, bureau, commission, department, division,
12 special district, institution, university, institution of higher
13 education, or board thereof; or any county, district school
14 board, charter school governing board, or municipality, or any
15 agency, branch, department,

By Senator Burgess

23-00730D-23

2023258__

1 A bill to be entitled
 2 An act relating to prohibited applications on
 3 government-issued devices; creating s. 112.22, F.S.;
 4 defining terms; requiring the Department of Management
 5 Services to compile and maintain a specified list and
 6 publish such list on its website; requiring
 7 governmental entities and public educational
 8 institutions to take certain actions relating to
 9 prohibited applications; prohibiting employees of
 10 governmental entities and public educational
 11 institutions from downloading or accessing prohibited
 12 applications on government-issued devices; providing
 13 exceptions; providing a date by which specified
 14 employees must remove, delete, or uninstall a
 15 prohibited application; requiring the department to
 16 adopt specified rules; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Section 112.22, Florida Statutes, is created to
 21 read:
 22 112.22 Use of applications from foreign countries of
 23 concern prohibited.—
 24 (1) As used in this section, the term:
 25 (a) "Department" means the Department of Management
 26 Services.
 27 (b) "Employee" means a person who performs labor or
 28 services for a governmental entity or a public educational
 29 institution in exchange for salary, wages, or other

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

23-00730D-23

2023258__

30 remuneration.
 31 (c) "Entity" has the same meaning as in s. 607.01401.
 32 (d) "Foreign country of concern" has the same meaning as in
 33 s. 288.860(1).
 34 (e) "Foreign principal" means:
 35 1. The government or any official of the government of a
 36 foreign country of concern;
 37 2. A political party or member of a political party in a
 38 foreign country of concern. For purposes of this subparagraph,
 39 the term "political party" means an organization or a
 40 combination of individuals whose aim or purpose is, or who are
 41 engaged in any activity devoted in whole or in part to, the
 42 establishment, administration, control, or acquisition of
 43 administration or control of a government of a foreign country
 44 of concern or a subdivision thereof, or the furtherance or
 45 influencing of the political or public interest, policies, or
 46 relations of a government of a foreign country of concern or a
 47 subdivision thereof;
 48 3. A partnership, association, corporation, organization,
 49 or other combination of persons organized under the laws of or
 50 having its principal place of business in a foreign country of
 51 concern; or
 52 4. Any person who is domiciled in a foreign country of
 53 concern and is not a citizen of the United States.
 54 (f) "Governmental entity" has the same meaning as in s.
 55 163.035(1).
 56 (g) "Government-issued device" means cellular phones,
 57 laptops, or other electronic devices capable of connecting to
 58 the Internet which are owned or leased by a governmental entity

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

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2023258__

59 or a public educational institution and issued to employees for
60 work-related purposes.

61 (h) "Prohibited application" means:

62 1. Any Internet application that enables users to socially
63 interact with one another and that is created, maintained, or
64 owned by a foreign principal; or

65 2. Any Internet application deemed to present a security
66 risk by the department.

67 (i) "Public educational institution" means:

68 1. A state college or state university as defined in s.
69 288.860(1); or

70 2. A school as defined in s. 1003.01(2).

71 (2) The department shall compile and maintain a list of
72 prohibited applications and publish the list on its website.

73 (3) (a) A governmental entity and a public educational
74 institution are required to do all of the following:

75 1. Block all prohibited applications from public access on
76 any wireless network and virtual private network owned,
77 operated, or maintained by the governmental entity or public
78 educational institution.

79 2. Restrict access to any prohibited application on a
80 government-issued device.

81 3. Retain the ability to remotely wipe and uninstall any
82 prohibited application from a compromised government-issued
83 device.

84 (b) An employee of a governmental entity or a public
85 educational institution may not download or access any
86 prohibited application on any government-issued device.

87 1. This paragraph does not apply to law enforcement

23-00730D-23

2023258__

88 officers as defined in s. 943.10(1) if the use of the prohibited
89 application is necessary to protect the public safety or conduct
90 an investigation.

91 2. A governmental entity or a public educational
92 institution may request a waiver from the department to allow
93 designated employees to access a prohibited application on a
94 government-issued device if the access is deemed necessary to
95 conduct governmental or educational business.

96 (c) An employee of a governmental entity or a public
97 educational institution who has already downloaded a prohibited
98 application to his or her government-issued device in violation
99 of paragraph (b) must remove, delete, or uninstall such
100 application by August 1, 2023.

101 (4) The department shall adopt rules necessary to
102 administer this section.

103 Section 2. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 27, 2023

I respectfully request that **Senate Bill #258**, relating to Prohibited Applications on Government-issued Devices, be placed on the:

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

A handwritten signature in blue ink that reads "Danny".

Senator Danny Burgess
Florida Senate, District 23

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 742

INTRODUCER: Senators Grall and Hooper

SUBJECT: Administrative Procedures

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	_____	_____	<u>EN</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 742 amends the Administrative Procedures Act (APA). The APA contains a uniform set of procedures that agencies must follow when exercising rulemaking authority delegated by the Legislature. This bill amends the APA rulemaking process and provides a new mechanism for an agency to review, revise, and repeal its rules. The bill:

- Requires each agency to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines that substantive changes to update a rule are not required, the agency must repromulgate the rule.
- Specifies the economic impacts and compliance costs an agency must consider in creating a statement of estimated regulatory costs (SERC). Each agency is required to have a website where each of its SERCs may be viewed in its entirety.
- Authorizes an agency to hold workshops and to survey the public to gather information pertinent to the creation of a SERC.
- Requires an agency, in all notices of rulemaking which include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to the Department of State with the full text available on the Internet for free public access.
- Requires changes to material incorporated by reference to be in a strike-through and underline format.
- Requires annual regulatory plans to identify and describe each rule, by rule number or proposed rule number that the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30. The bill also requires the annual regulatory plan to contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the integrity of state government and are working to lower the total number of rules adopted.
- Specifies that an adverse impact on small business exists if certain specific criteria are met.
- Specifies that a lower cost regulatory alternative may be submitted after a notice of proposed rule *or* a notice of change.

- Defines the term “technical change” and requires technical changes to be documented in the history of the rule.
- Requires a notice of rule development and a notice of proposed rule to include the proposed rule number.
- Requires at least 7 days to pass between the publication of a notice of rule development and a notice of proposed rule.
- Requires the Joint Administrative Procedures Committee to review all existing rules.
- Requires the Department of Environmental Protection and Water Management Districts to review and report on their permitting processes.

The bill may have a negative fiscal impact on state government. However, the impact is indeterminate and not expected to impact agencies until a later date. See Section V. Fiscal Impact Statement.

The bill will take effect July 1, 2023.

II. Present Situation:

The Administrative Procedures Act - Overview

The Administrative Procedure Act, which is commonly referred to as the “APA,” is contained in ch. 120, F.S. The first version of the APA was adopted in 1961 in an attempt to produce a comprehensive and uniform administrative process to govern executive branch agency actions. The “modern version” of the APA was adopted in 1974 and is amended almost every year. In addition to creating a standardized process for agencies to enact rules and issue orders, the APA also provides citizens the opportunity to be involved and challenge agency decisions.¹

The Florida Constitution vests in the Legislature the sole authority to create laws.² However, the Legislature may delegate to agencies in the executive branch the quasi-legislative authority to create rules and not be in violation of the separation of powers doctrine. Almost 100 years ago, in 1930, the Florida Supreme Court noted:

The Legislature is in session only during limited periods, and statutes cannot always anticipate and provide for complicated and contingent conditions in governmental affairs; therefore functions that are quasi legislative in their nature are with appropriate limitations conferred by statute upon administrative officers to effectuate the statutory purpose.³

The Legislature establishes the regulatory program to be implemented and the agencies supply the details. Even though rules are created by executive agencies, it is the legislative branch that maintains ownership over the product that is eventually adopted and promulgated.⁴ When the

¹ Joint Administrative Procedures Committee, *A Pocket Guide to Florida’s Administrative Procedure Act*, 1 (2020), <https://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf> (last visited Mar. 14, 2023).

² FLA. CONST. art. III, s. 1.

³ *Florida Motor Lines, Inc., v. Railroad Commissioners*, 129 So. 876, 881 (Fla. 1930), and note 1, *supra*.

⁴ Joint Administrative Procedures Committee, The Florida Legislature, *An Overview of Chapter 120 Rulemaking*, (Jan. 28, 2021) (on file with the Senate Committee on Governmental Oversight).

Legislature enacts statutes granting power to the executive branch, the statutes “must clearly announce adequate standards to guide...in the execution of the powers delegated.”⁵

The First District Court of Appeal noted in *Gopman v. Department of Education*⁶ that the APA “presumptively governs the exercise of all authority statutorily vested in the executive branch of state government.” Accordingly, the APA is the “mechanism used by state agencies to adopt rules.”⁷

A discussion of the present situation for each section of the bill is included in the “Effect of Proposed Changes” section of this bill analysis.

III. Effect of Proposed Changes:

Rulemaking Procedures

Present Situation

Delegation of Authority

The Legislature, as the sole branch of government having the inherent power to create laws,⁸ may delegate to agencies in the executive branch the quasi-legislative ability, or authority, to create rules.⁹ As the Florida Supreme Court has noted:

Rulemaking is a derivative of lawmaking. An agency is empowered to adopt rules if two requirements are satisfied. First, there must be a statutory grant of rulemaking authority, and second, there must be a specific law to be implemented.¹⁰

The Administrative Procedure Act (APA)¹¹ sets forth the uniform set of procedures agencies must follow when exercising delegated rulemaking authority.

Rules

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹²

Rulemaking Authority

Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to “adopt, develop, establish, or otherwise create”¹³ rules. Usually, the Legislature delegates rulemaking authority to a given agency because an agency has “expertise in a particular area for

⁵ *Bush v. Schiavo*, 885 So. 2d 321, 332 (Fla. 2004) quoting *Lewis v. Bank of Pasco County*, 346 So. 2d 53, 55-56 (Fla 1976).

⁶ *Gopman v. Dep’t of Educ.*, 908 So. 2d 1118, 1120 (Fla. 1st DCA 2005).

⁷ See *supra* note 4.

⁸ FLA. CONST. art. III, s. 1; see also FLA. CONST. art. II, s. 3.

⁹ See *Whiley v. Scott*, 79 So. 3d 702, 710 (Fla. 2011),

¹⁰ *Id.*

¹¹ Chapter 120, F.S.

¹² Section 120.52(16), F.S.

¹³ Section 120.52(17), F.S.

which they are charged with oversight.”¹⁴ Agencies do not have the discretion in and of themselves to engage in rulemaking.¹⁵ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.¹⁶ The grant of rulemaking authority itself need not be detailed. However, the specific statute being interpreted or implemented through agency rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.¹⁷

Rulemaking Process – Filing a Notice of Rule Development

An agency begins the formal rulemaking process¹⁸ by filing a notice of rule development of a proposed rule in the Florida Administrative Register (FAR), which must indicate the subject area that will be addressed by the rule development and include a short, plain explanation of the purpose and effect of the proposed rule.¹⁹ The notice may include the preliminary text of the proposed rule, but it is not necessary. Such notice is required for all rulemaking, except for rule repeals.

Rulemaking Process – Filing a Notice of Proposed Rule

Next, an agency must file, upon approval of the agency head, a notice of proposed rule.²⁰ The notice of proposed rule is published by the Department of State (DOS) in the FAR²¹ and must contain the full text of the proposed rule or amendment and a summary thereof.²²

Before 2012, the FAR was published weekly, which could result in a period of at least 7 days between the publication of a notice of rule development and actual notice of the proposed rule.²³ In 2012, the Legislature changed the FAR from a weekly publication to a publication that is continuously revised and, as a result, eliminated the 7-day period between the two notices.²⁴

Agency Hearing

An agency must hold a hearing on the proposed rule if a person requests one within 21 days of publication of the notice of proposed rule in the FAR.²⁵ If the agency does not substantively change the rule after the hearing (or if no hearing was timely requested), the agency must file a notice with the Joint Administrative Procedures Committee (JAPC) stating that it did not make any changes to the rule. This notice must be filed at least 7 days before the agency can file the rule for adoption with the DOS.²⁶ However, if a hearing is requested, the agency may, based upon the comments received at the hearing, publish a notice of change.²⁷ Any notice of

¹⁴ *Whiley v. Scott*, 79 So. 3d 702, 711 (Fla. 2011).

¹⁵ Section 120.54(1)(a), F.S.

¹⁶ Sections 120.52(8) and 120.536(1), F.S.

¹⁷ *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

¹⁸ Alternatively, a person regulated by an agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. Section 120.54(7)(a), F.S.

¹⁹ Section 120.54(2)(a), F.S.

²⁰ Section 120.54(3), F.S.

²¹ Section 120.55(1)(b), F.S.

²² Section 120.54(3)(a)1., F.S.

²³ Chapter 2012-63, Laws of Fla.

²⁴ *Id.*

²⁵ Section 120.54(3)(c), F.S.

²⁶ Section 120.54(3)(d)1., F.S.

²⁷ *Id.*

substantive change triggers a 21-day waiting period before the agency may file the rule for adoption with the DOS, thereby allowing further input from the public.²⁸

Alternatively, if a person whose substantial interests will be affected by the agency action cannot be provided adequate opportunity to protect his or her interests in the agency hearing described above (or otherwise), and if the agency agrees, then the agency must suspend the rulemaking proceeding and initiate a hearing at DOAH pursuant to ss. 120.569 and 120.57, F.S. The rulemaking proceeding cannot be resumed until this separate hearing is concluded.²⁹

Petition Alternative

As an alternative to the agency initiated process delineated above, a person who is regulated by the agency or who has a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule.³⁰ The petitioner must specify the proposed rule and action requested.³¹ The agency can initiate rulemaking or decline to do so; however, if the agency chooses the latter, it must issue a written statement of its reasons for the denial.³²

Rule Adoption

Once an agency has completed the steps of rulemaking, the agency may file the rule for adoption with the DOS, and the rule becomes effective 20 days later, unless a different date is indicated in the rule.³³ Most adopted rules are published in the Florida Administrative Code (FAC).³⁴

Challenging a Rule for Invalid Delegation of Authority

An interested party may challenge the validity of a rule or a proposed rule at the Division of Administrative Hearings (DOAH)³⁵ as an invalid delegation of legislative authority.³⁶ An invalid delegation of legislative authority is an action that goes beyond the powers, functions, and duties delegated by the Legislature.³⁷ A rule or proposed rule is an invalid delegation of legislative authority if any of the following applies:³⁸

- The agency has materially failed to follow the rulemaking procedures or requirements in the APA.
- The agency has exceeded its grant of rulemaking authority.
- The rule enlarges, modifies, or contravenes the specific provisions of the law implemented.

²⁸ *Id.*

²⁹ Section 120.54(3)(c)2., F.S.

³⁰ Section 120.54(7)(a), F.S.

³¹ *Id.*

³² *Id.*

³³ Section 120.54(3)(e)6., F.S.

³⁴ Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or a state university rules relating to internal personnel or business and finance are not published in the Florida Administrative Code (FAC). Forms are not published in the FAC. Section 120.55(1)(a), F.S. Emergency rules are also not published in the FAC.

³⁵ Division of Administrative Hearings (DOAH) is an agency in the executive branch, administratively housed under the Department of Management Services (DMS) but not subject to its control. The DOAH employs administrative law judges who serve as neutral arbiters presiding over disputes arising under the Administrative Procedures Act (APA).

Section 120.65, F.S.

³⁶ Section 120.56(1), F.S.

³⁷ Section 120.52(8), F.S.

³⁸ Section 120.52(8)(a)-(f), F.S.

- The rule is vague, fails to establish adequate standards for agency decisions, or vests the agency with unbridled discretion.
- The rule is arbitrary or capricious.
- The rule imposes regulatory costs on the regulated person, county, or municipality that could have been reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

Hearing Before an Administrative Law Judge

An administrative law judge (ALJ) at the DOAH hears the rule challenge in a de novo proceeding and, within 30 days after the hearing, makes a determination on the rule's validity based upon a preponderance of the evidence standard. The petitioner and the agency whose rule is challenged are adverse parties.³⁹ The ALJ's decision constitutes final agency action, which means an agency may not alter the decision after its issuance,⁴⁰ but an agency may appeal the decision to the District Court of Appeal where the agency maintains its headquarters.⁴¹

Effect of Proposed Changes (Section 2)

The bill requires a notice of proposed rule to be filed within 12 months after a notice of rule development. If not, the agency must withdraw the rule and give notice of the withdrawal in the next issue of the FAR. The bill also reestablishes the mandatory 7-day period between the publication of a notice of rule development and the publication of a notice of proposed rule in the FAR.

The bill further requires that a proposed rule be withdrawn if, *after issuing a notice of proposed rule*, the agency fails to adopt it within the APA's prescribed timeframes. Although not clearly stated, the bill appears to contemplate that *once an agency has exceeded the timeframe to adopt the rule, the bill requires the JAPC to notify the agency of the failure*. If the agency has not withdrawn the rule within 30 days following the notice, the JAPC must notify the DOS that the date for adoption of the rule has expired. The DOS must then publish a notice of withdrawal of the proposed rule.

The bill requires a notice of rule development and a notice of proposed rule to include the proposed rule number.

The bill also requires an agency to file a copy of a petition to initiate rulemaking with the JAPC.

The bill amends the separate hearing process provided for in s. 120.54(3)(c)2., F.S., for those individuals whose substantial interests will be affected by the rulemaking, but who are not provided adequate protection by the proceeding. Specifically, the agency must publish a notice in the FAR that it is convening a separate proceeding. The bill also clarifies that all timelines in s. 120.54, F.S., regarding rulemaking procedures, are tolled beginning on the date of publication of a separate proceeding in the FAR, and ending the day after the separate proceeding finishes.

³⁹ Section 120.56(1)(e), F.S.

⁴⁰ *Id.*

⁴¹ Section 120.68(2)(a), F.S.

Finally, section 1 of the bill defines the term “technical change” to mean a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of the rule.

Statement of Estimated Regulatory Cost

Present Situation

A statement of estimated regulatory cost (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs of complying with and implementing the rule.⁴² Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.⁴³ The agency must seek public input in its creation of the SERC. For example, in its notice of proposed rule, an agency must give notice that the public may submit information relating to the agency SERC.⁴⁴ A SERC is required if the proposed rule will have an adverse impact on small businesses or increase regulatory costs by more than \$200,000 in the aggregate in this state within 1 year after implementation of the rule.⁴⁵ If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.⁴⁶

A SERC must include:⁴⁷

- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;
- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule’s impact on small businesses, small counties, and small municipalities.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years after implementation on:⁴⁸

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.⁴⁹

An agency’s failure to prepare an SERC can be raised in a proceeding at the DOAH to invalidate a rule as an invalid exercise of delegated legislative authority, if it is raised within 1 year after

⁴² Section 120.541(2), F.S.

⁴³ Section 120.54(3)(b)1., F.S.

⁴⁴ Section 120.54(3)(a)1., F.S.

⁴⁵ *Id.*

⁴⁶ Section 120.541(1)(c), F.S.

⁴⁷ Section 120.541(2)(b)-(e), F.S.

⁴⁸ Section 120.541(2)(a), F.S.

⁴⁹ Section 120.541(3), F.S.

the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.⁵⁰

Effect of Proposed Changes (Sections 2 and 3)

The bill mandates a SERC before an agency may adopt or amend a rule, other than an emergency rule. An agency's failure to publish a SERC constitutes a material failure to meet the requirements of the APA. However, an agency is not required to prepare a SERC for a rule repeal process unless the repeal would impose a regulatory cost. The bill creates a presumption in rule repeals challenges before the DOAH or in any court of competent jurisdiction that a rule repeal that exclusively reduces or eliminates regulations on currently regulated individuals or entities is correct.

The bill allows agencies to hold public workshops for the purpose of gathering information pertinent to its preparation of the SERC. An agency may hold such a workshop at its own discretion, but it must hold one if so requested in writing by any affected person. Additionally, agencies can survey individuals, businesses, business organizations, counties, and municipalities to collect helpful data and to analyze the impacts of the proposed rule.

The bill clarifies the elements an agency must consider in a SERC when evaluating the economic impacts of the rule. Specifically, the bill requires agency estimates of economic, market, and small business impacts likely to result from compliance with the proposed rule. The agency must include elements such as:

- Increased or decreased consumer prices or value of goods and services;
- The value of time, training, or testing, or education, expended by business owners and other business personnel to comply with the proposed rule;
- Capital costs incurred to comply with the proposed rule; and
- Any other impacts suggested by the rules ombudsman or an interested person.

In addition, the bill replaces the term "transactional costs" with "compliance costs," and requires agencies to consider all direct and indirect compliance costs, including but not limited to, costs relating to:

- Filing and licensing fees;
- Expense of necessary equipment, and the installation and maintenance thereof;
- Costs related to necessary operations and procedures, including accounting, financial, information management, and other administrative processes;
- Labor, materials, and supply costs;
- Capital expenditures;
- Professional and technical services, including monitoring and reporting;
- Qualifying and recurring education, training and testing;
- Travel;
- Insurance and surety requirements;
- Allocation of administrative and other overhead costs;
- Reduced sales or other revenues; and
- Other items suggested by the rules ombudsman or any interested person, or business.

⁵⁰ Section 120.541(1)(f), F.S.

The bill requires each agency to have a website where each of its SERCs may be viewed in their entirety; the DOS must include a link to this website on any related FAR notice. If an agency revises a SERC, it must provide a notice that a revision has been made and include a link to the revised SERC on the FAR website.

The bill requires an agency notice of rule development to include a request for information that would be helpful in the agency's preparation of the SERC, and clear instructions for the submission of such information. If an agency holds a hearing on a proposed rule, the bill requires the agency to ensure that the person responsible for preparing the SERC be made available to respond to questions or comments.

The bill amends the information required in a notice of proposed rule to include (1) a summary of the SERC describing the regulatory impact of the proposed rule in readable language, (2) a web address where the SERC can be viewed in full, and (3) a request for submission of any information that could help the agency regarding the SERC.

The bill makes conforming changes throughout to reflect that a SERC must be performed in all rule amendments or proposed rulemaking, and to accommodate the SERC public workshops that are now permitted.

Small Business Impact in Rulemaking

Present Situation

Each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small businesses.⁵¹ If the agency determines that the proposed action will affect small businesses, the agency must send written notice to the rules ombudsman⁵² in the Executive Office of the Governor at least 28 days before the intended action.⁵³ The agency must adopt the regulatory alternatives that the rules ombudsman offers if the alternatives are feasible and consistent with the stated objectives of the proposed rule, and would reduce the impact on small businesses.⁵⁴

If the agency does not adopt the alternatives offered, before rule adoption or amendment, the agency must file a detailed written statement with the JAPC explaining the reasons for failure to adopt such alternatives.⁵⁵

⁵¹ Section 120.54(3)(b)2., F.S.

⁵² The Governor must appoint a rules ombudsman in the Executive Office of the Governor for purposes of considering the impact of agency rules on the state citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each agency must cooperate fully with the rules ombudsman in identifying such rules and take the necessary steps to waive, modify, or otherwise minimize the adverse effects of any such rules. Section 288.7015, F.S.

⁵³ Section 120.54(3)(b)2.b.(I), F.S.

⁵⁴ Section 120.54(3)(b)2.b.(II), F.S.

⁵⁵ Section 120.54(3)(b)2.b.(III), F.S.

Effect of Proposed Changes (Section 2)

The bill declares that an adverse impact on small business exists if, in order to comply with the rule:

- An owner, officer, operator, or manager of a small business must complete any education, training, or testing to comply with the proposed rule in the first year;
- An owner, officer, operator, or manager of a small business is likely to expend 10 hours or purchase professional advice to understand and comply with the rule in the first year;
- Taxes or fees assessed on transactions are likely to increase by \$500 or more in the aggregate in one year because of the rule;
- Prices charged for goods and services are restricted or are likely to increase because of the rule;
- Specially trained, licensed, or tested employees will be required;
- Operating costs are expected to increase by at least \$1,000 annually; or
- Capital expenditures in excess of \$1,000 are necessary to comply with the rule.

If the rules ombudsman of the Executive Office of the Governor provides a regulatory alternative to the agency to lessen the impact of the rule on small businesses, the bill requires the agency to provide the regulatory alternative to the JAPC at least 21 days before filing the rule for adoption.

Lower Cost Regulatory Alternative

Present Situation

A person substantially affected by a proposed rule may, within 21 days after the publication of a notice of adoption, amendment, or repeal of a rule, submit a lower cost regulatory alternative (LCRA).⁵⁶ The LCRA must be a written proposal, made in good faith, which substantially accomplishes the objectives of the law being implemented.⁵⁷ A LCRA may recommend that a rule not be adopted at all, if it explains how the “lower costs and objectives of the law will be achieved by not adopting any rule.”⁵⁸ If a LCRA is submitted to an agency, the agency must prepare an SERC if one has not been previously prepared, or revise its prior SERC, and either adopt the LCRA or provide a statement to explain the reasons for rejecting the LCRA.⁵⁹ Additionally, if a LCRA is submitted, the 90-day period for filing a rule is extended an additional 21 days.⁶⁰ At least 21 days before filing a rule for adoption, an agency that is required to revise an SERC in response to a LCRA must provide the SERC to the person who submitted the LCRA and to the JAPC and must provide notice on the agency’s website that it is available to the public.⁶¹

Just as in the case of an agency’s failure to prepare a SERC, an agency’s failure to respond to a LCRA may be raised in a proceeding at the DOAH to invalidate a rule as an invalid delegation of

⁵⁶ Section 120.541(1)(a), F.S.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Section 120.541(1)(d), F.S.

legislative authority if it is raised within one year after the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.⁶²

Effect of Proposed Changes (Section 3)

The bill specifies that a LCRA may be submitted after a notice of proposed rule or a notice of change. If submitted after the latter, the LCRA is deemed to have been made in good faith only if the person reasonably believes, and the proposal states the reasons for believing, that the proposed rule as *changed by the notice of change* increases the regulatory costs or creates an adverse impact on small business.

The bill allows an agency that receives a LCRA to choose whether to (1) modify the proposed rule to reduce regulatory costs, (2) adopt the LCRA, or (3) reject the LCRA. If the agency rejects or modifies the LCRA, it must state its reasons doing so. If the rule is modified in response to an LCRA, the agency must revise its SERC. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a LCRA, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the bill, the revised SERC must be provided to the rules ombudsman, the party that submitted the LCRA, and the JAPC, and must be published in the same manner as the original SERC.

Section 2 of the bill requires an agency to provide a copy of a LCRA to the JAPC at least 21 days before filing the rule for adoption.

Additionally, an agency must ensure that a person who is responsible for preparing the proposed rule and the SERC are present to respond to questions or comments regarding the agency's decision to adopt or reject a submitted LCRA.

Joint Administrative Procedures Committee

Present Situation

Background

The JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.⁶³ Specifically, the JAPC may examine existing rules and must examine each proposed rule to determine whether:⁶⁴

- The rule is an invalid exercise of delegated legislative authority.
- The statutory authority for the rule has been repealed.
- The rule reiterates or paraphrases statutory material.
- The rule is in proper form.
- The notice given prior to adoption was sufficient.
- The rule is consistent with expressed legislative intent.

⁶² Section 120.541(1)(f), F.S.

⁶³ Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.

⁶⁴ Section 120.545(1), F.S.

- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements.
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.
- The rule could be made less complex or more easily comprehensible to the general public.
- The rule's statement of estimated regulatory cost complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.
- The rule will require additional appropriations.

Effect of Proposed Changes (Section 6)

The bill removes the permissive authority of the JAPC to examine existing rules and makes such examination mandatory to align with the JAPC's mandate to examine proposed rules.

Annual Regulatory Review

Present Situation

Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months, which creates or modifies the duties or authority of the agency, and state whether the agency must adopt rules to implement the newly adopted laws.⁶⁵ The plan must also include a list of each additional law not otherwise listed that the agency expects to implement by rulemaking before the following July 1, except emergency rules.⁶⁶ The plan must include a certification by the agency head or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan, verifying the agency regularly reviews all of its rules, and identifying the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.⁶⁷ By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan.⁶⁸ The agency must also deliver a copy of the certification to the JAPC and publish a notice in the FAR identifying the date of publication of the agency's regulatory plan.⁶⁹

Effect of Proposed Changes (Section 9)

The bill replaces the s. 120.74, F.S., requirement that the annual regulatory plan include a listing of each law it expects to implement with rulemaking with a requirement that the plan identify and describe each rule, by rule number or proposed rule number, that the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30. The annual regulatory plan must identify any rules required to be repromulgated for the 12-month period. These publishing requirements do not apply to emergency rules.

⁶⁵ Section 120.74(1)(a), F.S.

⁶⁶ Section 120.74(1)(b), F.S.

⁶⁷ Section 120.74(1)(d), F.S.

⁶⁸ Section 120.74(2)(a)1., F.S.

⁶⁹ Sections 120.74(2)(a)2. and 120.74(2)(a)3., F.S.

The bill also requires that the annual regulatory plan contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted. The bill requires the declaration to contain the total number of rules adopted and repealed during the previous 12 months.

Repromulgation

Present Situation

The APA requires each agency to annually review its rules.⁷⁰ Although an agency may amend or repeal the rule, rules generally do not expire or sunset and many agencies have adopted rules that have not been updated in years.

Effect of Proposed Changes (Section 4)

The bill creates a process called “repromulgation,” whereby each agency is required to review its rules for consistency with the powers and duties granted by the agency’s enabling statutes. If, after reviewing the rule, the agency determines that substantive changes are not required, the agency must repromulgate the rule to reflect the date of the review. Section 1 of the bill defines the term “repromulgation” to mean the publication and adoption of an existing rule following an agency’s review of the rule for consistency with the powers and duties granted by its enabling statute. Each agency must review its rules according to the following schedule:

- If the rule was adopted *before* January 1, 2010, within five years after July 1, 2023; or
- If the rule was adopted on or *after* January 1, 2010, within 10 years after the rule is adopted.

An agency, before repromulgation of a rule and upon approval of its agency head, must:

- Publish a notice of repromulgation in the FAR, which is not required to include the text of the rule; and
- File the rule with the DOS. The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice.

An agency must file a notice of repromulgation with the JAPC at least 14 days before filing the rule with the DOS. The JAPC must certify at the time of filing whether the agency has responded to all of the JAPC’s material or written inquiries. The bill specifies that a repromulgated rule is not subject to the hearing requirements of the APA, nor is it subject to challenge as a proposed rule.

The bill requires each agency, upon approval of the agency head, to submit three certified copies of the repromulgated rule it proposes to adopt with the DOS and one certified copy of any material incorporated by reference in the rule. The repromulgated rule is adopted upon its filing with the DOS and becomes effective 20 days later. The DOS must then update the history note of the rule in the FAC to reflect the new effective date. The bill requires the DOS to adopt rules to implement the bill’s repromulgation provision by December 31, 2023.

⁷⁰ See s. 120.74, F.S.

If an agency fails to meet the deadline to review the rule or the timeframe to file the rule for repromulgation, the rule is subject to petition for request to review the rule by any person who is regulated by the agency, or who otherwise has a substantial interest in the agency rule. The agency has 30 days from such a petition to conduct a repromulgation review or deny the petition on the basis that no duty of repromulgation applies to that rule at that time, with an explanation to the petitioner of the basis for the denial.

If an agency does not repromulgate a rule, it must be submitted to the President of the Senate and the Speaker of the House of Representatives within 7 days of such a decision. The agency decision not to repromulgate may not become effective until the Legislature adjourns its next regular session sine die, following the agency decision.

Incorporation by Reference

Present Situation

The APA allows an agency to incorporate material external to the text of the rule by reference.⁷¹ The material to be incorporated must exist on the date the rule is adopted.⁷² If after the rule has been adopted the agency wishes to alter the material incorporated by reference, the rule itself must be amended for the change to be effective.⁷³ However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.⁷⁴ A rule cannot be amended by reference only.⁷⁵ An agency may not incorporate a rule by reference unless:

- The material has been submitted in the prescribed electronic format to the DOS and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the address of locations at the DOS and the agency at which the material is available for public inspection and examination, must be included in the notice.⁷⁶

The DOS has adopted a rule governing the requirements for materials incorporated by reference through an adopted rule.⁷⁷ The rule requires each agency incorporating material by reference in an administrative rule to certify that the materials incorporated have been filed with the DOS electronically or, if the agency claims the posting of the material would constitute a violation of federal copyright law, the location where the public may view the material.⁷⁸

⁷¹ Section 120.54(1)(i)1., F.S.; *see also* r. 1-1.013, F.A.C.

⁷² Section 120.54(1)(i)1., F.S.

⁷³ *Id.*

⁷⁴ Section 120.54(1)(i)2., F.S.

⁷⁵ Section 120.54(1)(i)4., F.S.

⁷⁶ Section 120.54(1)(i)3., F.S.

⁷⁷ Rule 1-1.013, F.A.C.

⁷⁸ Rule 1-1.013(5)(d), F.A.C.

Effect of Proposed Changes (Section 2)

Beginning July 1, 2023, the bill requires an agency, in all notices of rulemaking, repromulgated rules, or rule modifications which include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to the DOS with the full text available for free public access through an electronic hyperlink. Alternatively, if an agency determines that posting the incorporated material on the Internet would constitute a violation of federal copyright law, the agency must include in the notice a statement to that effect, along with the addresses of locations at the DOS and the agency at which the material is available for public inspection and examination.

The bill requires the DOS to prescribe by rule that material incorporated by reference included in a notice of proposed rule and a notice of change be formatted in such a way that additions to the text appear underlined and deletions appear as text stricken through.

Emergency Rules

Present Situation

Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare by adopting emergency rules.⁷⁹ Emergency rules are not adopted using the same procedures required of other rules.⁸⁰ The notice of the emergency rule and the text of the rule is published in the first available issue of the FAR, however, there is no requirement that an emergency rule be published in the FAC.⁸¹ The agency must publish prior to, or contemporaneous with, the rule's promulgation the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.⁸² The agency's findings of immediate danger are judicially reviewable.⁸³ Emergency rules are effective immediately, or on a date less than 20 days after filing if specified in rule,⁸⁴ but are only effective for a period of no longer than 90 days.⁸⁵ An emergency rule is not renewable, except when the agency has initiated rulemaking to adopt rules relating to the subject of the emergency rule and a challenge to the proposed rules has been filed and remains pending or the proposed rules are awaiting ratification by the Legislature.⁸⁶

Effect of Proposed Changes (Sections 2 and 3)

The bill requires emergency rules to be published in the FAC. The bill also allows an agency to make technical changes to the emergency rule within the first seven days after adoption and prohibits an agency from superseding an emergency rule currently in effect. The bill clarifies that an emergency rule is not subject to the legislative ratification process.⁸⁷

⁷⁹ Section 120.54(4), F.S.

⁸⁰ Section 120.54(4)(a), F.S.

⁸¹ Section 120.54(4)(a)3., F.S.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Section 120.54(4)(d), F.S.

⁸⁵ Section 120.54(4)(c), F.S.

⁸⁶ *Id.*

⁸⁷ In 2011, the Legislature passed two bills, CS/CS/CS/HB 993 (2011) and CS/CS/CS/HB 849 (2011) that contained conflicting provisions concerning the exemption of emergency rules from the legislative ratification process. In one bill, CS/CS/CS/HB 993 (2011), the provision exempting emergency rules in s. 120.54(4), F.S., from the legislative ratification process was expressly included in the bill. In the other, CS/CS/CS/HB 849 (2011), the provision was erroneously deleted,

Florida Administrative Code

Present Situation

The FAC is an electronic compilation of all rules adopted by each agency and maintained by the DOS.⁸⁸ The DOS retains the copyright over the FAC.⁸⁹

Each rule in the FAC must cite the grant of rulemaking authority and the specific law implemented.⁹⁰ Rules applicable to only one school district, community college district, or county or state university rules relating to internal personnel or business and finance are not required to be included in the FAC.⁹¹ The DOS is required to publish the following information at the beginning of each section of the code concerning an agency:

- The address and telephone number of the executive offices of the agency.
- The manner by which the agency indexes its rules.
- A listing of all rules of that agency excluded from publication in the FAC and a statement as to where those rules may be inspected.⁹²

The DOS is required to adopt rules allowing adopted rules and materials incorporated by reference to be filed in electronic form.⁹³ Further, the DOS is required to prescribe by rule the style and form required for rules, notices, and other materials submitted for filing in the FAC.⁹⁴ The rule the DOS has adopted requires rules that are being amended to be coded by underlining new text and by striking through deleted text.⁹⁵

Effect of Proposed Changes (Section 7)

The bill requires the FAC be published once daily, by no later than 8 a.m. If, after publication, a rule is corrected and replaced, the FAC must indicate the rule has been republished and indicate the DOS has corrected it. The bill also requires the history note appended to each rule include the date of any technical changes to the rule and provides such change does not affect the rule's effective date.

leading to a statutory conflict. In 2013, the Legislature passed CS/CS/SB 1410 (2013), which amended s. 120.541(4), F.S., to correct a cross reference and in the process the bill erroneously continued the omission of the provision exempting emergency rules. This bill corrects those previous errors by reinstating the provision exempting emergency rules from the legislative ratification process.

⁸⁸ Section 120.55(1)(a)1., F.S.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Section 120.55(1)(a)2., F.S.

⁹² Section 120.55(1)(a)3., F.S.

⁹³ Section 120.55(1)(a)5., F.S.

⁹⁴ Section 120.55(1)(c), F.S.

⁹⁵ Rule 1-1.010(5)(a), F.A.C. *referencing* r. 1-1.011(3)(c), F.A.C.

Infrastructure Permitting Process Review

Present Situation

Coastal Construction Permits

Coastal construction is regulated by the Department of Environmental Protection (DEP) in order to protect Florida's beaches and dunes from imprudent construction that may jeopardize the stability of Florida's natural resources.⁹⁶ The coastal construction control line (CCCL) defines the portion of the beach-dune system that is subject to severe fluctuations caused by a 100-year storm surge, storm waves, or other forces such as wind, wave, or water level changes.⁹⁷ Seaward of the CCCL, new construction and improvements to existing structures require a CCCL permit from DEP.⁹⁸ The line defines the landward limit of DEP's authority to regulate construction.⁹⁹ DEP's CCCL Program regulates structures and activities which can cause beach erosion, destabilize dunes, damage upland properties, or interfere with public access.¹⁰⁰ CCCLs currently exist for large portions of Florida's coast.¹⁰¹

Due to the potential environmental impacts and greater risk of hazards from wind and flood, the standards for construction seaward of the CCCL are often more stringent than those applied in the rest of the coastal building zone.¹⁰² Approval or denial of a permit application is based upon a review of factors such as the location of structures and their potential impacts on the surrounding area.¹⁰³ CCCLs are established by DEP on a county basis, but only after such a line has been determined necessary for protecting upland structures and controlling beach erosion, and after a public hearing has been held in the affected county.¹⁰⁴ These hearings are conducted in the manner described in s. 120.54(3)(c), F.S., must be published in the FAR in the same manner as a rule, and are subject to an invalidity challenge as described in s. 120.56(3), F.S. A petitioner may challenge a rule under s. 120.56(3), F.S., on the basis that it is an invalid delegation of legislative authority, and must substantiate this allegation by a preponderance of the evidence.

Environmental Resource Permits

Part IV of ch. 373 F.S., regulates the construction, alteration, operation, maintenance, abandonment, and removal of stormwater management systems, dams, impoundments, reservoirs, works, and appurtenant works. DEP regulates activities in, on, or over surface waters, as well as any activity that alters surface water flows, through environmental resource permits (ERPs). ERPs are required for development or construction activities that usually involve the

⁹⁶ Section 161.053(1)(a), F.S.

⁹⁷ Section 161.053, F.S.; r. 62B-33.005(1), F.A.C; DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program* p. 3 (2017),

https://floridadep.gov/sites/default/files/Homeowner%27s%20Guide%20to%20the%20CCCL%20Program%206_2012%20%28002%29_0.pdf (last visited Mar. 14, 2023).

⁹⁸ DEP, *The Homeowner's Guide to the Coastal Construction Control Line Program*, 2 (2017).

⁹⁹ *Id.*

¹⁰⁰ DEP, *Coastal Construction Control Line Program*, <https://floridadep.gov/water/coastal-construction-control-line> (last visited Mar. 9, 2019).

¹⁰¹ DEP Geospatial Open Data, *Coastal Construction Control Lines (CCCL)*, http://geodata.dep.state.fl.us/datasets/4674ee6d93894168933e99aa2f14b923_2?geometry=-102.41%2C25.011%2C-60.596%2C31.77 (last visited Mar. 9, 2019).

¹⁰² Fla. Admin. Code Ch. 62B-33.

¹⁰³ Fla. Admin. Code Ch. 62B-33.005.

¹⁰⁴ Section 161.053(2), F.S.

dredging or filling of surface waters, construction of flood protection facilities, building dams or reservoirs, or any other activities that affect state waters.¹⁰⁵ A water management district (WMD) or the DEP may require an ERP and impose conditions necessary to assure that the construction or alteration of any water management system¹⁰⁶ complies with state law and rules, and will not be harmful to water resources.¹⁰⁷ Pursuant to statutory authority,¹⁰⁸ the DEP adopted a comprehensive chapter of rules that govern the permitting process.¹⁰⁹

Generally, to receive a permit for a proposed use of water resources, an applicant must demonstrate that the proposed activity is a reasonable-beneficial use, will not interfere with any existing legal use of water, and is consistent with the public interest.¹¹⁰

State Administered Federal Section 404 Dredge and Fill Permits

In 2018, Florida assumed responsibility under section 404 of the federal Clean Water Act¹¹¹ for dredge and fill permitting.¹¹² DEP adopted rules to implement the section 404 program.¹¹³ The State 404 Program is responsible for overseeing the permitting for any project that proposes dredge or fill activities within state assumed waters.¹¹⁴

Permitting Process

Upon receiving a permit application for use of water resources, DEP or the WMD evaluates the material to determine if the application is complete.¹¹⁵ If it is incomplete, DEP or the WMD must request additional information within 30 days after its receipt of the application.¹¹⁶ DEP's rules allow an applicant up to 90 days to respond to such a request.¹¹⁷ Within 30 days after its receipt of additional information, the DEP or the WMD must review the submissions.¹¹⁸ If the application is complete, the DEP or WMD must decide whether to issue or deny the ERP within 60 days.¹¹⁹ Any application that the DEP or WMD does not approve or deny within 60 days of completion of the application is deemed approved by default.¹²⁰

¹⁰⁵ See, s. 373.413(1), F.S.

¹⁰⁶ Section 373.403(10), F.S.

¹⁰⁷ Section 373.413(1), F.S.

¹⁰⁸ Section 373.4131, F.S.

¹⁰⁹ Ch. 62-330, F.A.C.

¹¹⁰ Section 373.223(1), F.S.

¹¹¹ 33 U.S.C. s. 1251 et seq.

¹¹² Section 373.4146, F.S.

¹¹³ See ch. 62-330, F.A.C.

¹¹⁴ Florida DEP, *State 404 Program*, <https://floridadep.gov/water/submerged-lands-environmental-resources-coordination/content/state-404-program> (last visited Mar. 14, 2023).

¹¹⁵ DEP, *Environmental Resource Permit Applicant's Handbook, Vol. 1*, AH 5.5.3, incorporated by reference in r. 62-330.010(4), F.A.C. (Oct. 1, 2013), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-03174> (last visited Mar. 14, 2023).

¹¹⁶ Section 373.4141(1), F.S.

¹¹⁷ *Supra*, note 115 at AH 5.5.3.5.

¹¹⁸ Section 373.4141(1), F.S.

¹¹⁹ Section 373.4141(2), F.S. Most state licensure decisions must be made within 90 days. Section 120.60(1), F.S.

¹²⁰ Section 120.60(1), F.S.

Effect of Proposed Changes (Section 5)

The bill directs the DEP and WMDs to conduct a holistic review of their current coastal permitting programs and other permit programs in order to increase efficiency within each process. These reviews must consider:

- Requirements to obtain a permit;
- Time periods for permit review and approval process;
- Areas for improved efficiency and consolidation of decisions;
- Whether there are areas of duplication across one or more permit programs;
- The methods required to request a permit; and
- Any other factors that can increase permitting efficiency, especially to allow for improved storm recovery.

The DEP and WMDs must submit a report with their findings to the Governor, President of the Senate, and Speaker of the House of Representatives by December 31, 2023.

Remaining Sections

Sections 6, 8, 10, 11, 12, 13, and 14 are amended to incorporate non-substantive, conforming changes and to incorporate cross-references in the bill.

The bill takes effect July 1, 2023.

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

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate, negative fiscal impact on state government. The bill requires each agency to review and repromulgate its rules, includes additional requirements to comply with notice, publication, and hearing requirements of rules, and includes additional requirements for SERCs. Agencies will likely be required to spend funds to implement the requirements of the bill. Whether these new requirements could be absorbed within each agency's existing resources is not known.

However, the bill specifies that agencies have to complete rule review within 5 years for rules adopted before January 1, 2010, and within 10 years for rules adopted after January 1, 2010. Agencies should have sufficient time to request additional funding or personnel through the Legislative Budget Request process should it be determined additional funding or personnel will be required to implement the provisions of the bill.

The Department of State may have additional costs associated with publishing the specified material in the bill.

VI. Technical Deficiencies:

The bill's change to s. 120.54(2)(a)2., F.S., requires an agency to file a notice of proposed rule in the FAR within 12 months after the most recent notice of rule development; if it fails to, the bill requires the agency to withdraw the rule. There may not be a rule to withdraw at this point. From context, it appears that the agency should instead be directed to withdraw its notice of rule development (however, the JAPC states that, "as a general rule, notices of rule development are not withdrawn, nor do they always contain the language of the proposed rule...").¹²¹

VII. Related Issues:

The bill's amendment to s. 120.54(3)(d)3., F.S., requires the JAPC to notify the DOS of the expiration of an agency's timeframe in which it may act to adopt a rule *if* the agency fails to withdraw its notice of a proposed rule within 30 days of a notice from the JAPC about the expiration. However, the bill does not direct the JAPC to send any notice to delinquent agencies.

The bill requires emergency rules to be published in the Florida Administrative Code. They may be better situated in the Florida Administrative Register.

¹²¹ JAPC, *SB 742 JAPC Reviews/Comments/Recommendations* (on file with the Governmental Oversight and Accountability Committee).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.52, 120.54, 120.541, 120.545, 120.55, 120.56, 120.74, 120.80, 120.81, 420.9072, 420.9075, and 443.091.

This bill creates the following sections of the Florida Statutes: 120.5435, and 120.5436.

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

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

None.

B. Amendments:

None.

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

By Senator Grall

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1 A bill to be entitled
 2 An act relating to administrative procedures; amending
 3 s. 120.52, F.S.; defining the terms "repromulgation"
 4 and "technical change"; amending s. 120.54, F.S.;
 5 applying certain provisions applicable to all rules
 6 other than emergency rules to repromulgated rules;
 7 requiring that a notice of rule development cite the
 8 grant of rulemaking authority; requiring a notice of
 9 rule development to contain a proposed rule number and
 10 specified statements; requiring that a notice of
 11 withdrawal be published in the next available issue of
 12 the Florida Administrative Register if a notice of
 13 proposed rule is not filed within a certain timeframe;
 14 revising the scope of public workshops to include
 15 information gathered for the preparation of statements
 16 of estimated regulatory costs; requiring that a notice
 17 of proposed rule include a website address where a
 18 statement of regulatory costs can be viewed; requiring
 19 that a notice of proposed rule include a request for
 20 the submission of any helpful information regarding
 21 the statement of estimated regulatory costs; revising
 22 the timeframe within which the notice must be
 23 published in the Florida Administrative Register;
 24 requiring that material proposed to be incorporated by
 25 reference and the statement of estimated regulatory
 26 costs be available to the public; requiring that
 27 material proposed to be incorporated by reference be
 28 made available in a specified manner; authorizing
 29 electronic delivery of notices to persons who have

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30 requested advance notice of agency rulemaking
 31 proceedings; requiring an agency to prepare a
 32 statement of estimated regulatory costs before
 33 adopting or amending any rule other than an emergency
 34 rule; providing that an agency is not required to
 35 prepare a statement of estimated regulatory costs
 36 before repealing a rule; providing an exception;
 37 requiring that certain rule repeals be considered
 38 presumptively correct in a proceeding before the
 39 Division of Administrative Hearings or a court of
 40 competent jurisdiction; revising the criteria under
 41 which a proposed rule's adverse impact on small
 42 businesses is deemed to exist; requiring an agency to
 43 provide notice of a regulatory alternative to the
 44 Administrative Procedures Committee within a certain
 45 timeframe; requiring certain agency personnel to
 46 attend public hearings on proposed rules; requiring an
 47 agency to publish a notice of convening a separate
 48 proceeding in certain circumstances; providing that
 49 rulemaking deadlines are tolled during such separate
 50 proceedings; revising the requirements for the
 51 contents of a notice of change; requiring the
 52 committee to notify the Department of State that the
 53 date for an agency to adopt a rule has expired under
 54 certain circumstances; requiring the department to
 55 publish a notice of withdrawal under certain
 56 circumstances; requiring emergency rules to be
 57 published in the Florida Administrative Code;
 58 prohibiting agencies from making changes to emergency

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59 rules by superseding the rule; authorizing an agency
 60 to make technical changes to an emergency rule during
 61 a specified timeframe; requiring an agency to file a
 62 copy of a certain petition with the committee; making
 63 technical changes; amending s. 120.541, F.S.;
 64 requiring an agency to provide a copy of a proposal
 65 for a lower cost regulatory alternative to the
 66 committee within a certain timeframe; specifying the
 67 circumstances under which such proposal is deemed to
 68 be made in good faith; revising requirements for an
 69 agency's consideration of a lower cost regulatory
 70 alternative; providing for an agency's revision and
 71 publication of a revised statement of estimated
 72 regulatory costs in response to such alternatives;
 73 requiring that the revised statement of estimated
 74 regulatory costs be made available in the same manner
 75 as the original; deleting the definition of the term
 76 "transactional costs"; revising the applicability of
 77 specified provisions; providing additional
 78 requirements for the calculation of estimated
 79 regulatory costs; making technical changes; conforming
 80 provisions to changes made by the act; conforming a
 81 cross-reference; creating s. 120.5435, F.S.; providing
 82 legislative intent; requiring agency review of rules
 83 and repromulgation of rules that do not require
 84 substantive changes within a specified timeframe;
 85 providing that the failure of an agency to adhere to
 86 specified deadlines is a basis for certain persons to
 87 petition the agency for review of the rule; requiring

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88 the agency to act within a specified timeframe upon
 89 receiving such petition; requiring a denial to include
 90 a specified statement; requiring an agency to publish
 91 a notice of repromulgation in the Florida
 92 Administrative Register and file a rule for
 93 promulgation with the department within a specified
 94 timeframe; requiring an agency to file a notice of
 95 repromulgation with the committee within a specified
 96 timeframe; providing that an agency's failure to
 97 repromulgate a rule within a specified timeframe
 98 constitutes repeal of the rule; requiring the
 99 committee to provide the department a certain notice;
 100 requiring the department to publish the notice in the
 101 Florida Administrative Register; providing that a
 102 notice of repromulgation is not required to include
 103 the text of the rule being repromulgated; requiring
 104 the committee to certify if the agency has provided
 105 certain responses to the committee; providing that a
 106 repromulgated rule is not subject to challenge as a
 107 proposed rule and that certain hearing requirements do
 108 not apply; requiring an agency to file a specified
 109 number of certified copies of a proposed repromulgated
 110 rule and any material incorporated by reference;
 111 providing that a repromulgated rule is adopted upon
 112 filing with the department and becomes effective after
 113 a specified time; requiring the department to update
 114 certain information in the Florida Administrative
 115 Code; requiring any rule that is not repromulgated to
 116 be submitted to the Legislature within a specified

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117 timeframe after the decision to not repromulgate is
 118 made; providing that such decision is not effective
 119 until the conclusion of the next legislative session
 120 following the decision; requiring the department to
 121 adopt rules by a certain date; creating s. 120.5436,
 122 F.S.; providing legislative intent; requiring the
 123 Department of Environmental Protection and water
 124 management districts to conduct a holistic review of
 125 certain permitting processes; providing the scope and
 126 purpose of the review; providing the factors the
 127 department and districts must consider when conducting
 128 the review; requiring the department and districts to
 129 submit a specified report to the Governor and
 130 Legislature by a specified date; amending s. 120.545,
 131 F.S.; requiring the committee to examine certain
 132 existing rules; amending s. 120.55, F.S.; requiring
 133 the Department of State to publish the Florida
 134 Administrative Code daily at a specified time;
 135 requiring the department to indicate a rule was
 136 corrected or replaced by republishing the code and
 137 noting the rule was corrected; requiring materials
 138 incorporated by reference to be filed in a specified
 139 manner; requiring the department to include the date
 140 of a technical rule change in the Florida
 141 Administrative Code; providing that a technical change
 142 does not affect the effective date of a rule;
 143 requiring the department to adopt specified rules;
 144 amending s. 120.56, F.S.; conforming a cross-
 145 reference; amending s. 120.74, F.S.; requiring an

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146 agency to list each rule it plans to develop, adopt,
 147 or repeal during the forthcoming year in the agency's
 148 annual regulatory plan; requiring that an agency's
 149 annual regulatory plan identify any rules that are
 150 required to be repromulgated during the forthcoming
 151 year; requiring the agency to make certain
 152 declarations concerning the annual regulatory plan;
 153 amending ss. 120.80, 120.81, 420.9072, 420.9075, and
 154 443.091, F.S.; conforming cross-references; providing
 155 an effective date.
 156
 157 Be It Enacted by the Legislature of the State of Florida:
 158
 159 Section 1. Present subsections (16) through (19) and
 160 subsections (20), (21), and (22) of section 120.52, Florida
 161 Statutes, are redesignated as subsections (17) through (20) and
 162 (22), (23), and (24), respectively, and new subsections (16) and
 163 (21) are added to that section, to read:
 164 120.52 Definitions.—As used in this act:
 165 (16) "Repromulgation" means the publication and adoption of
 166 an existing rule following an agency's review of the rule for
 167 consistency with the powers and duties granted by its enabling
 168 statute.
 169 (21) "Technical change" means a change limited to
 170 correcting grammatical, typographical, and similar errors not
 171 affecting the substance of a rule.
 172 Section 2. Paragraph (i) of subsection (1), subsections (2)
 173 and (3), and paragraph (a) of subsection (7) of section 120.54,
 174 Florida Statutes, are amended, and paragraphs (e) and (f) are

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175 added to subsection (4) of that section, to read:

176 120.54 Rulemaking.—

177 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
178 EMERGENCY RULES.—

179 (i)1. A rule may incorporate material by reference but only
180 as the material exists on the date the rule is adopted. For
181 purposes of the rule, changes in the material are not effective
182 unless the rule is amended to incorporate the changes.

183 2. An agency rule that incorporates by specific reference
184 another rule of that agency automatically incorporates
185 subsequent amendments to the referenced rule unless a contrary
186 intent is clearly indicated in the referencing rule. A notice of
187 amendments to a rule that has been incorporated by specific
188 reference in other rules of that agency must explain the effect
189 of those amendments on the referencing rules.

190 3. In rules adopted after December 31, 2010, and rules
191 repromulgated on or after July 1, 2023, material may not be
192 incorporated by reference unless:

193 a. The material has been submitted in the prescribed
194 electronic format to the Department of State and the full text
195 of the material can be made available for free public access
196 through an electronic hyperlink from the rule making the
197 reference in the Florida Administrative Code; or

198 b. The agency has determined that posting the material on
199 the Internet for purposes of public examination and inspection
200 would constitute a violation of federal copyright law, in which
201 case a statement to that effect, along with the address of
202 locations at the Department of State and the agency at which the
203 material is available for public inspection and examination,

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204 must be included in the notice required by subparagraph (3) (a)1.

205 4. A rule may not be amended by reference only. Amendments
206 must set out the amended rule in full in the same manner as
207 required by the State Constitution for laws.

208 5. Notwithstanding any contrary provision in this section,
209 when an adopted rule of the Department of Environmental
210 Protection or a water management district is incorporated by
211 reference in the other agency's rule to implement a provision of
212 part IV of chapter 373, subsequent amendments to the rule are
213 not effective as to the incorporating rule unless the agency
214 incorporating by reference notifies the committee and the
215 Department of State of its intent to adopt the subsequent
216 amendment, publishes notice of such intent in the Florida
217 Administrative Register, and files with the Department of State
218 a copy of the amended rule incorporated by reference. Changes in
219 the rule incorporated by reference are effective as to the other
220 agency 20 days after the date of the published notice and filing
221 with the Department of State. The Department of State shall
222 amend the history note of the incorporating rule to show the
223 effective date of such change. Any substantially affected person
224 may, within 14 days after the date of publication of the notice
225 of intent in the Florida Administrative Register, file an
226 objection to rulemaking with the agency. The objection must
227 ~~shall~~ specify the portions of the rule incorporated by reference
228 to which the person objects and the reasons for the objection.
229 The agency does ~~shall~~ not have the authority under this
230 subparagraph to adopt those portions of the rule specified in
231 such objection. The agency shall publish notice of the objection
232 and of its action in response in the next available issue of the

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233 Florida Administrative Register.

234 6. The Department of State may adopt by rule requirements
235 for incorporating materials pursuant to this paragraph.

236 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

237 (a) 1. Except when the intended action is the repeal of a
238 rule, agencies shall provide notice of the development of
239 proposed rules by publication of a notice of rule development in
240 the Florida Administrative Register before providing notice of a
241 proposed rule as required by paragraph (3) (a). The notice of
242 rule development must ~~shall~~ indicate the subject area to be
243 addressed by rule development, provide a short, plain
244 explanation of the purpose and effect of the proposed rule, cite
245 the grant of rulemaking authority for the proposed rule and the
246 law being implemented ~~specific legal authority for the proposed~~
247 ~~rule~~, and include the proposed rule number and the preliminary
248 text of the proposed rules, if available, or a statement of how
249 a person may promptly obtain, without cost, a copy of any
250 preliminary draft, when ~~if~~ available. The notice must also
251 include a request for the submission of any information that
252 would be helpful to the agency in preparing the statement of
253 estimated regulatory costs required pursuant to paragraph (3) (b)
254 and a statement of how a person may submit comments to the
255 proposal and how a person may provide information regarding the
256 potential regulatory costs.

257 2. If a notice of a proposed rule is not filed within 12
258 months after the most recent notice of rule development, the
259 agency must withdraw the rule and publish notice of the
260 withdrawal in the next available issue of the Florida
261 Administrative Register.

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262 (b) All rules should be drafted in readable language. The
263 language is readable if it:

264 1. ~~It~~ Avoids the use of obscure words and unnecessarily
265 long or complicated constructions; and

266 2. ~~It~~ Avoids the use of unnecessary technical or
267 specialized language that is understood only by members of
268 particular trades or professions.

269 (c) An agency may hold public workshops for purposes of
270 rule development and information gathering for the preparation
271 of the statement of estimated regulatory costs. If requested in
272 writing by any affected person, an agency must hold public
273 workshops, including workshops in various regions of the state
274 or the agency's service area, for purposes of rule development
275 and information gathering for the preparation of the statement
276 of estimated regulatory costs if requested in writing by any
277 affected person, unless the agency head explains in writing why
278 a workshop is unnecessary. The explanation is not final agency
279 action subject to review pursuant to ss. 120.569 and 120.57. The
280 failure to provide the explanation when required may be a
281 material error in procedure pursuant to s. 120.56(1) (c). When a
282 workshop or public hearing is held, the agency must ensure that
283 the persons responsible for preparing the proposed rule and the
284 statement of estimated regulatory costs are available to receive
285 public input, to explain the agency's proposal, and to respond
286 to questions or comments regarding the rule being developed and
287 the statement of estimated regulatory costs. The workshop may be
288 facilitated or mediated by a neutral third person, or the agency
289 may employ other types of dispute resolution alternatives for
290 the workshop that are appropriate for rule development and for

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291 preparation of the statement of estimated regulatory costs.
 292 Notice of a workshop for rule development and for preparation of
 293 the statement of estimated regulatory costs must ~~workshop shall~~
 294 be by publication in the Florida Administrative Register not
 295 less than 14 days ~~before~~ prior to the date on which the workshop
 296 is scheduled to be held and ~~must~~ shall indicate the subject area
 297 ~~that which~~ will be addressed; the agency contact person; and the
 298 place, date, and time of the workshop.

299 (d)1. An agency may use negotiated rulemaking in developing
 300 and adopting rules. The agency should consider the use of
 301 negotiated rulemaking when complex rules are being drafted or
 302 strong opposition to the rules is anticipated. The agency should
 303 consider, but is not limited to considering, whether a balanced
 304 committee of interested persons who will negotiate in good faith
 305 can be assembled, whether the agency is willing to support the
 306 work of the negotiating committee, and whether the agency can
 307 use the group consensus as the basis for its proposed rule.
 308 Negotiated rulemaking uses a committee of designated
 309 representatives to draft a mutually acceptable proposed rule and
 310 to develop information necessary to prepare a statement of
 311 estimated regulatory costs, when applicable.

312 2. An agency that chooses to use the negotiated rulemaking
 313 process described in this paragraph shall publish in the Florida
 314 Administrative Register a notice of negotiated rulemaking that
 315 includes a listing of the representative groups that will be
 316 invited to participate in the negotiated rulemaking process. Any
 317 person who believes that his or her interest is not adequately
 318 represented may apply to participate within 30 days after
 319 publication of the notice. All meetings of the negotiating

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320 committee shall be noticed and open to the public pursuant to
 321 ~~the provisions of~~ this chapter. The negotiating committee shall
 322 be chaired by a neutral facilitator or mediator.

323 3. The agency's decision to use negotiated rulemaking, its
 324 selection of the representative groups, and approval or denial
 325 of an application to participate in the negotiated rulemaking
 326 process are not agency action. ~~Nothing in~~ This subparagraph is
 327 not intended to affect the rights of a substantially ~~an~~ affected
 328 person to challenge a proposed rule developed under this
 329 paragraph in accordance with s. 120.56(2).

330 (3) ADOPTION PROCEDURES.—

331 (a) Notices.—

332 1. ~~Before~~ Prior to the adoption, amendment, or repeal of
 333 any rule other than an emergency rule, an agency, upon approval
 334 of the agency head, shall give notice of its intended action,
 335 setting forth a short, plain explanation of the purpose and
 336 effect of the proposed action; the rule number and full text of
 337 the proposed rule or amendment and a summary thereof; a
 338 reference to the grant of rulemaking authority pursuant to which
 339 the rule is adopted; and a reference to the section or
 340 subsection of the Florida Statutes or the Laws of Florida being
 341 implemented or interpreted. The notice must include a concise
 342 summary of the agency's statement of the estimated regulatory
 343 costs, ~~if one has been prepared~~, based on the factors set forth
 344 in s. 120.541(2), which describes the regulatory impact of the
 345 rule in readable language; an agency website address where the
 346 statement of estimated regulatory costs can be viewed in its
 347 entirety; a statement that any person who wishes to provide the
 348 agency with information regarding the statement of estimated

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349 regulatory costs, or to provide a proposal for a lower cost
 350 regulatory alternative as provided by s. 120.541(1), must do so
 351 in writing within 21 days after publication of the notice; a
 352 request for the submission of any information that could be
 353 helpful to the agency regarding the statement of estimated
 354 regulatory costs; and a statement as to whether, based on the
 355 statement of the estimated regulatory costs ~~or other information~~
 356 ~~expressly relied upon and described by the agency if no~~
 357 ~~statement of regulatory costs is required~~, the proposed rule is
 358 expected to require legislative ratification pursuant to s.
 359 120.541(3). The notice must state the procedure for requesting a
 360 public hearing on the proposed rule. Except when the intended
 361 action is the repeal of a rule, the notice must include a
 362 reference both to the date on which and to the place where the
 363 notice of rule development that is required by subsection (2)
 364 appeared.

365 2. The notice must shall be published in the Florida
 366 Administrative Register at least 7 days after the publication of
 367 the notice of rule development and at least not less than 28
 368 days before prior to the intended action. The proposed rule,
 369 including all materials proposed to be incorporated by reference
 370 and the statement of estimated regulatory costs, must shall be
 371 available for inspection and copying by the public at the time
 372 of the publication of notice. Material proposed to be
 373 incorporated by reference in the notice must be made available
 374 in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-
 375 subparagraph (1)(i)3.b.

376 3. The notice must shall be mailed to all persons named in
 377 the proposed rule and mailed or delivered electronically to all

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378 persons who, at least 14 days before publication of the notice
 379 ~~prior to such mailing~~, have made requests of the agency for
 380 advance notice of its proceedings. The agency shall also give
 381 such notice as is prescribed by rule to those particular classes
 382 of persons to whom the intended action is directed.

383 4. The adopting agency shall file with the committee, at
 384 least 21 days before prior to the proposed adoption date, a copy
 385 of each rule it proposes to adopt; a copy of any material
 386 incorporated by reference in the rule; a detailed written
 387 statement of the facts and circumstances justifying the proposed
 388 rule; a copy of the any statement of estimated regulatory costs
 389 ~~that has been~~ prepared pursuant to s. 120.541; a statement of
 390 the extent to which the proposed rule relates to federal
 391 standards or rules on the same subject; and the notice required
 392 by subparagraph 1.

393 (b) *Special matters to be considered in rule adoption.*—

394 1. Statement of estimated regulatory costs.—Before the
 395 adoption ~~or~~ amendment, ~~or repeal~~ of any rule, other than an
 396 emergency rule, an agency must is encouraged to prepare a
 397 statement of estimated regulatory costs of the proposed rule, as
 398 provided by s. 120.541. However, an agency is not required to
 399 prepare a statement of estimated regulatory costs for a rule
 400 repeal unless such repeal would impose a regulatory cost. In any
 401 challenge to a rule repeal, a rule repeal that only reduces or
 402 eliminates regulations on those individuals or entities
 403 presently regulated by the rule must be considered presumptively
 404 correct in any proceeding before the division or in any
 405 proceeding before a court of competent jurisdiction ~~However, an~~
 406 ~~agency must prepare a statement of estimated regulatory costs of~~

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407 the proposed rule, as provided by s. 120.541, if:

408 a. ~~The proposed rule will have an adverse impact on small~~
409 ~~business; or~~

410 b. ~~The proposed rule is likely to directly or indirectly~~
411 ~~increase regulatory costs in excess of \$200,000 in the aggregate~~
412 ~~in this state within 1 year after the implementation of the~~
413 ~~rule.~~

414 2. Small businesses, small counties, and small cities.—

415 a. For purposes of this subsection and s. 120.541(2), an
416 adverse impact on small businesses, as defined in s. 288.703 or
417 sub-subparagraph b., exists if, for any small business:

418 (I) An owner, officer, operator, or manager must complete
419 any education, training, or testing to comply, or is likely to
420 spend at least 10 hours or purchase professional advice to
421 understand and comply, with the rule in the first year;

422 (II) Taxes or fees assessed on transactions are likely to
423 increase by \$500 or more in the aggregate in 1 year;

424 (III) Prices charged for goods and services are restricted
425 or are likely to increase because of the rule;

426 (IV) Specially trained, licensed, or tested employees will
427 be required because of the rule;

428 (V) Operating costs are expected to increase by at least
429 \$1,000 annually because of the rule; or

430 (VI) Capital expenditures in excess of \$1,000 are necessary
431 to comply with the rule.

432 b. Each agency, before the adoption, amendment, or repeal
433 of a rule, shall consider the impact of the rule on small
434 businesses as defined in ~~by~~ s. 288.703 and the impact of the
435 rule on small counties or small cities as defined in ~~by~~ s.

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436 120.52. Whenever practicable, an agency shall tier its rules to
437 reduce disproportionate impacts on small businesses, small
438 counties, or small cities to avoid regulating small businesses,
439 small counties, or small cities that do not contribute
440 significantly to the problem the rule is designed to address. An
441 agency may define "small business" to include businesses
442 employing more than 200 persons, may define "small county" to
443 include those with populations of more than 75,000, and may
444 define "small city" to include those with populations of more
445 than 10,000, if it finds that such a definition is necessary to
446 adapt a rule to the needs and problems of small businesses,
447 small counties, or small cities. The agency shall consider each
448 of the following methods for reducing the impact of the proposed
449 rule on small businesses, small counties, and small cities, or
450 any combination of these entities:

451 (I) Establishing less stringent compliance or reporting
452 requirements in the rule.

453 (II) Establishing less stringent schedules or deadlines in
454 the rule for compliance or reporting requirements.

455 (III) Consolidating or simplifying the rule's compliance or
456 reporting requirements.

457 (IV) Establishing performance standards or best management
458 practices to replace design or operational standards in the
459 rule.

460 (V) Exempting small businesses, small counties, or small
461 cities from any or all requirements of the rule.

462 ~~c.b.~~(I) If the agency determines that the proposed action
463 will affect small businesses as defined by the agency as
464 provided in sub-subparagraph b. a., the agency must ~~shall~~ send

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465 written notice of the rule to the rules ombudsman in the
466 Executive Office of the Governor at least 28 days before the
467 intended action.

468 (II) Each agency shall adopt those regulatory alternatives
469 offered by the rules ombudsman in the Executive Office of the
470 Governor and provided to the agency no later than 21 days after
471 the rules ombudsman's receipt of the written notice of the rule
472 which it finds are feasible and consistent with the stated
473 objectives of the proposed rule and which would reduce the
474 impact on small businesses. When regulatory alternatives are
475 offered by the rules ombudsman in the Executive Office of the
476 Governor, the 90-day period for filing the rule in subparagraph
477 (e)2. is extended for a period of 21 days. The agency shall
478 provide notice to the committee of any regulatory alternative
479 offered to the agency pursuant to this sub-subparagraph at least
480 21 days before filing the rule for adoption.

481 (III) If an agency does not adopt all alternatives offered
482 pursuant to this sub-subparagraph, it must shall, before rule
483 adoption or amendment and pursuant to subparagraph (d)1., file a
484 detailed written statement with the committee explaining the
485 reasons for failure to adopt such alternatives. Within 3 working
486 days after the filing of such notice, the agency shall send a
487 copy of such notice to the rules ombudsman in the Executive
488 Office of the Governor.

489 (c) *Hearings.*—

490 1. If the intended action concerns any rule other than one
491 relating exclusively to procedure or practice, the agency must
492 shall, on the request of any affected person received within 21
493 days after the date of publication of the notice of intended

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494 agency action, give affected persons an opportunity to present
495 evidence and argument on all issues under consideration. The
496 agency may schedule a public hearing on the proposed rule and,
497 if requested by any affected person, must shall schedule a
498 public hearing on the proposed rule. When a public hearing is
499 held, the agency must ensure that the persons responsible for
500 preparing the proposed rule and the statement of estimated
501 regulatory costs ~~staff~~ are in attendance available to explain
502 the agency's proposal and to respond to questions or comments
503 regarding the proposed rule, the statement of estimated
504 regulatory costs, and the agency's decision on whether to adopt
505 a lower cost regulatory alternative submitted pursuant to s.
506 120.541(1)(a). If the agency head is a board or other collegial
507 body created under s. 20.165(4) or s. 20.43(3)(g), and one or
508 more requested public hearings is scheduled, the board or other
509 collegial body must shall conduct at least one of the public
510 hearings itself and may not delegate this responsibility without
511 the consent of those persons requesting the public hearing. Any
512 material pertinent to the issues under consideration submitted
513 to the agency within 21 days after the date of publication of
514 the notice or submitted to the agency between the date of
515 publication of the notice and the end of the final public
516 hearing must shall be considered by the agency and made a part
517 of the record of the rulemaking proceeding.

518 2. Rulemaking proceedings are shall be governed solely by
519 the provisions of this section unless a person timely asserts
520 that the person's substantial interests will be affected in the
521 proceeding and affirmatively demonstrates to the agency that the
522 proceeding does not provide adequate opportunity to protect

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523 those interests. If the agency determines that the rulemaking
 524 proceeding is not adequate to protect the person's interests, it
 525 ~~must shall~~ suspend the rulemaking proceeding and convene a
 526 separate proceeding under ~~the provisions of~~ ss. 120.569 and
 527 120.57. The agency shall publish notice of convening a separate
 528 proceeding in the Florida Administrative Register. Similarly
 529 situated persons may be requested to join and participate in the
 530 separate proceeding. Upon conclusion of the separate proceeding,
 531 the rulemaking proceeding shall be resumed. All timelines in
 532 this section are tolled during any suspension of the rulemaking
 533 proceeding under this subparagraph, beginning on the date the
 534 notice of convening a separate proceeding is published and
 535 resuming on the day after conclusion of the separate proceeding.

536 (d) *Modification or withdrawal of proposed rules.-*

537 1. After the final public hearing on the proposed rule, or
 538 after the time for requesting a hearing has expired, if the
 539 proposed rule has not been changed from the proposed rule as
 540 previously filed with the committee, or contains only technical
 541 changes, the adopting agency shall file a notice to that effect
 542 with the committee at least 7 days before prior to filing the
 543 proposed rule for adoption. Any change, other than a technical
 544 change that does not affect the substance of the rule, must be
 545 supported by the record of public hearings held on the proposed
 546 rule, must be in response to written material submitted to the
 547 agency within 21 days after the date of publication of the
 548 notice of intended agency action or submitted to the agency
 549 between the date of publication of the notice and the end of the
 550 final public hearing, or must be in response to a proposed
 551 objection by the committee. Any change, other than a technical

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552 change, to a statement of estimated regulatory costs requires a
 553 notice of change. In addition, ~~when~~ any change, other than a
 554 technical change, to is made in a proposed rule text or any
 555 material incorporated by reference requires, other than a
 556 technical change, the adopting agency to shall provide a copy of
 557 a notice of change by certified mail or actual delivery to any
 558 person who requests it in writing no later than 21 days after
 559 the notice required in paragraph (a). The agency shall file the
 560 notice of change with the committee, along with the reasons for
 561 the change, and provide the notice of change to persons
 562 requesting it, at least 21 days ~~before~~ prior to filing the
 563 proposed rule for adoption. The notice of change must shall be
 564 published in the Florida Administrative Register at least 21
 565 days ~~before~~ prior to filing the proposed rule for adoption. The
 566 notice of change must include a summary of any revision of the
 567 statement of estimated regulatory costs required by s.
 568 120.541(1)(c). This subparagraph does not apply to emergency
 569 rules adopted pursuant to subsection (4). Material proposed to
 570 be incorporated by reference in the notice required by this
 571 subparagraph must be made available in the manner prescribed by
 572 sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

573 2. After the notice required by paragraph (a) and ~~before~~
 574 ~~prior to~~ adoption, the agency may withdraw the proposed rule in
 575 whole or in part.

576 3. After the notice required by paragraph (a), the agency
 577 must withdraw the proposed rule if the agency has failed to
 578 adopt it within the prescribed timeframes in this chapter. If
 579 the agency, 30 days after notice by the committee that the
 580 agency has failed to adopt the proposed rule within the

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581 prescribed timeframes in this chapter, has not given notice of
 582 the withdrawal of the rule, the committee must notify the
 583 Department of State that the date for adoption of the rule has
 584 expired, and the Department of State must publish a notice of
 585 withdrawal of the proposed rule.

586 4. After adoption and before the rule becomes effective, a
 587 rule may be modified or withdrawn only in the following
 588 circumstances:

589 a. When the committee objects to the rule;

590 b. When a final order, which is not subject to further
 591 appeal, is entered in a rule challenge brought pursuant to s.
 592 120.56 after the date of adoption but before the rule becomes
 593 effective pursuant to subparagraph (e)6.;

594 c. If the rule requires ratification, when more than 90
 595 days have passed since the rule was filed for adoption without
 596 the Legislature ratifying the rule, in which case the rule may
 597 be withdrawn but may not be modified; or

598 d. When the committee notifies the agency that an objection
 599 to the rule is being considered, in which case the rule may be
 600 modified to extend the effective date by not more than 60 days.

601 ~~5.4-~~ The agency shall give notice of its decision to
 602 withdraw or modify a rule in the first available issue of the
 603 publication in which the original notice of rulemaking was
 604 published, shall notify those persons described in subparagraph
 605 (a)3. in accordance with the requirements of that subparagraph,
 606 and shall notify the Department of State if the rule is required
 607 to be filed with the Department of State.

608 ~~6.5-~~ After a rule has become effective, it may be repealed
 609 or amended only through the rulemaking procedures specified in

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610 this chapter.

611 (e) *Filing for final adoption; effective date.*—

612 1. If the adopting agency is required to publish its rules
 613 in the Florida Administrative Code, the agency, upon approval of
 614 the agency head, must ~~shall~~ file with the Department of State
 615 three certified copies of the rule it proposes to adopt; one
 616 copy of any material incorporated by reference in the rule,
 617 certified by the agency; a summary of the rule; a summary of any
 618 hearings held on the rule; and a detailed written statement of
 619 the facts and circumstances justifying the rule. Agencies not
 620 required to publish their rules in the Florida Administrative
 621 Code shall file one certified copy of the proposed rule, and the
 622 other material required by this subparagraph, in the office of
 623 the agency head, and such rules must ~~shall~~ be open to the
 624 public.

625 2. A rule may not be filed for adoption less than 28 days
 626 or more than 90 days after the notice required by paragraph (a),
 627 until 21 days after the notice of change required by paragraph
 628 (d), until 14 days after the final public hearing, until 21 days
 629 after a statement of estimated regulatory costs required under
 630 s. 120.541 has been provided to all persons who submitted a
 631 lower cost regulatory alternative and made available to the
 632 public at a readily accessible page on the agency's website, or
 633 until the administrative law judge has rendered a decision under
 634 s. 120.56(2), whichever applies. When a required notice of
 635 change is published before ~~prior to~~ the expiration of the time
 636 to file the rule for adoption, the period during which a rule
 637 must be filed for adoption is extended to 45 days after the date
 638 of publication. If notice of a public hearing is published

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639 ~~before~~ ~~prior to~~ the expiration of the time to file the rule for
 640 adoption, the period during which a rule must be filed for
 641 adoption is extended to 45 days after adjournment of the final
 642 hearing on the rule, 21 days after receipt of all material
 643 authorized to be submitted at the hearing, or 21 days after
 644 receipt of the transcript, if one is made, whichever is latest.
 645 The term "public hearing" includes any public meeting held by
 646 any agency at which the rule is considered. If a petition for an
 647 administrative determination under s. 120.56(2) is filed, the
 648 period during which a rule must be filed for adoption is
 649 extended to 60 days after the administrative law judge files the
 650 final order with the clerk or until 60 days after subsequent
 651 judicial review is complete.

652 3. At the time a rule is filed, the agency shall certify
 653 that the time limitations prescribed by this paragraph have been
 654 complied with, that all statutory rulemaking requirements have
 655 been met, and that there is no administrative determination
 656 pending on the rule.

657 4. At the time a rule is filed, the committee shall certify
 658 whether the agency has responded in writing to all material and
 659 timely written comments or written inquiries made on behalf of
 660 the committee. The Department of State shall reject any rule
 661 that is not filed within the prescribed time limits; that does
 662 not comply with all statutory rulemaking requirements and rules
 663 of the Department of State; upon which an agency has not
 664 responded in writing to all material and timely written
 665 inquiries or written comments; upon which an administrative
 666 determination is pending; or which does not include a statement
 667 of estimated regulatory costs, if required.

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668 5. If a rule has not been adopted within the time limits
 669 imposed by this paragraph or has not been adopted in compliance
 670 with all statutory rulemaking requirements, the agency proposing
 671 the rule ~~must~~ ~~shall~~ withdraw the proposed rule and give notice
 672 of its action in the next available issue of the Florida
 673 Administrative Register.

674 6. The proposed rule shall be adopted on being filed with
 675 the Department of State and becomes ~~become~~ effective 20 days
 676 after being filed, on a later date specified in the notice
 677 required by subparagraph (a)1., on a date required by statute,
 678 or upon ratification by the Legislature pursuant to s.
 679 120.541(3). Rules not required to be filed with the Department
 680 of State ~~shall~~ become effective when adopted by the agency head,
 681 on a later date specified by rule or statute, or upon
 682 ratification by the Legislature pursuant to s. 120.541(3). If
 683 the committee notifies an agency that an objection to a rule is
 684 being considered, the agency may postpone the adoption of the
 685 rule to accommodate review of the rule by the committee. When an
 686 agency postpones adoption of a rule to accommodate review by the
 687 committee, the 90-day period for filing the rule is tolled until
 688 the committee notifies the agency that it has completed its
 689 review of the rule.

691 For the purposes of this paragraph, the term "administrative
 692 determination" does not include subsequent judicial review.

693 (4) EMERGENCY RULES.—

694 (e) Emergency rules must be published in the Florida
 695 Administrative Code.

696 (f) An agency may not supersede an emergency rule currently

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697 in effect. Technical changes to an emergency rule may be made
 698 within the first 7 days after adoption of the rule.

699 (7) PETITION TO INITIATE RULEMAKING.—

700 (a) Any person regulated by an agency or having substantial
 701 interest in an agency rule may petition an agency to adopt,
 702 amend, or repeal a rule or to provide the minimum public
 703 information required by this chapter. The petition must shall
 704 specify the proposed rule and action requested. The agency shall
 705 file a copy of the petition with the committee. No Not later
 706 than 30 calendar days after following the date of filing a
 707 petition, the agency shall initiate rulemaking proceedings under
 708 this chapter, otherwise comply with the requested action, or
 709 deny the petition with a written statement of its reasons for
 710 the denial.

711 Section 3. Section 120.541, Florida Statutes, is amended to
 712 read:

713 120.541 Statement of estimated regulatory costs.—

714 (1) (a) Within 21 days after publication of the notice of a
 715 proposed rule or notice of change required under s.
 716 120.54(3)(a), a substantially affected person may submit to an
 717 agency a good faith written proposal for a lower cost regulatory
 718 alternative to a proposed rule which substantially accomplishes
 719 the objectives of the law being implemented. The agency shall
 720 provide a copy of any proposal for a lower cost regulatory
 721 alternative to the committee at least 21 days before filing the
 722 rule for adoption. The proposal may include the alternative of
 723 not adopting any rule if the proposal explains how the lower
 724 costs and objectives of the law will be achieved by not adopting
 725 any rule. If submitted after a notice of change, a proposal for

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726 a lower cost regulatory alternative is deemed to be made in good
 727 faith only if the person reasonably believes, and the proposal
 728 states the person's reasons for believing, that the proposed
 729 rule as changed by the notice of change increases the regulatory
 730 costs or creates an adverse impact on small businesses that was
 731 not created by the previous proposed rule. If such a proposal is
 732 submitted, the 90-day period for filing the rule is extended 21
 733 days. Upon the submission of the lower cost regulatory
 734 alternative, the agency shall ~~prepare a statement of estimated~~
 735 ~~regulatory costs as provided in subsection (2), or shall revise~~
 736 ~~its prior statement of estimated regulatory costs,~~ and either
 737 adopt the alternative proposal, reject the alternative proposal,
 738 or modify the proposed rule to reduce the regulatory costs. If
 739 the agency rejects the alternative proposal or modifies the
 740 proposed rule, the agency shall ~~or~~ provide a statement of the
 741 reasons for rejecting the alternative in favor of the proposed
 742 rule.

743 ~~(b) If a proposed rule will have an adverse impact on small~~
 744 ~~business or if the proposed rule is likely to directly or~~
 745 ~~indirectly increase regulatory costs in excess of \$200,000 in~~
 746 ~~the aggregate within 1 year after the implementation of the~~
 747 ~~rule, the agency shall prepare a statement of estimated~~
 748 ~~regulatory costs as required by s. 120.54(3)(b).~~

749 ~~(b)(e)~~ The agency ~~must shall~~ revise a statement of
 750 estimated regulatory costs if any change to the rule made under
 751 s. 120.54(3)(d) increases the regulatory costs of the rule or if
 752 the rule is modified in response to the submission of a lower
 753 cost regulatory alternative. A summary of the revised statement
 754 must be included with any subsequent notice published under s.

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755 120.54(3).

756 ~~(c)(d)~~ At least 21 days before filing the proposed rule for
 757 adoption, an agency that is required to revise a statement of
 758 estimated regulatory costs shall provide the statement to the
 759 person who submitted the lower cost regulatory alternative, to
 760 the rules ombudsman in the Executive Office of the Governor, and
 761 to the committee. The revised statement must be published and
 762 made available in the same manner as the original statement of
 763 estimated regulatory costs and shall provide notice on the
 764 agency's website that it is available to the public.

765 ~~(d)(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the
 766 agency to prepare and publish a statement of estimated
 767 regulatory costs or to respond to a written lower cost
 768 regulatory alternative as provided in this subsection is a
 769 material failure to follow the applicable rulemaking procedures
 770 or requirements set forth in this chapter.

771 ~~(e)(f)~~ An agency's failure to prepare a statement of
 772 estimated regulatory costs or to respond to a written lower cost
 773 regulatory alternative may not be raised in a proceeding
 774 challenging the validity of a rule pursuant to s. 120.52(8)(a)
 775 unless:

776 1. Raised in a petition filed no later than 1 year after
 777 the effective date of the rule; and

778 2. Raised by a person whose substantial interests are
 779 affected by the rule's regulatory costs.

780 ~~(f)(g)~~ A rule that is challenged pursuant to s.
 781 120.52(8)(f) may not be declared invalid unless:

782 1. The issue is raised in an administrative proceeding
 783 within 1 year after the effective date of the rule;

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784 2. The challenge is to the agency's rejection of a lower
 785 cost regulatory alternative offered under paragraph (a) or s.
 786 120.54(3)(b)2.c. s. 120.54(3)(b)2.b.; and

787 3. The substantial interests of the person challenging the
 788 rule are materially affected by the rejection.

789 (2) A statement of estimated regulatory costs must ~~shall~~
 790 include:

791 (a) An economic analysis showing whether the rule directly
 792 or indirectly:

793 1. Is likely to have an adverse impact on economic growth,
 794 private sector job creation or employment, or private sector
 795 investment in excess of \$1 million in the aggregate within 5
 796 years after the implementation of the rule;

797 2. Is likely to have an adverse impact on business
 798 competitiveness, including the ability of persons doing business
 799 in the state to compete with persons doing business in other
 800 states or domestic markets, productivity, or innovation in
 801 excess of \$1 million in the aggregate within 5 years after the
 802 implementation of the rule; or

803 3. Is likely to increase regulatory costs, including all
 804 ~~any transactional~~ costs and impacts estimated in the statement,
 805 in excess of \$1 million in the aggregate within 5 years after
 806 the implementation of the rule.

807 (b) A good faith estimate of the number of individuals,
 808 small businesses, and other entities likely to be required to
 809 comply with the rule, together with a general description of the
 810 types of individuals likely to be affected by the rule.

811 (c) A good faith estimate of the cost to the agency, and to
 812 any other state and local government entities, of implementing

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813 and enforcing the proposed rule, and any anticipated effect on
814 state or local revenues.

815 (d) A good faith estimate of the compliance transactional
816 costs likely to be incurred by individuals and entities,
817 including local government entities, required to comply with the
818 requirements of the rule. ~~As used in this section,~~
819 ~~"transactional costs" are direct costs that are readily~~
820 ~~ascertainable based upon standard business practices, and~~
821 ~~include filing fees, the cost of obtaining a license, the cost~~
822 ~~of equipment required to be installed or used or procedures~~
823 ~~required to be employed in complying with the rule, additional~~
824 ~~operating costs incurred, the cost of monitoring and reporting,~~
825 ~~and any other costs necessary to comply with the rule.~~

826 (e) An analysis of the impact on small businesses as
827 defined by s. 288.703, and an analysis of the impact on small
828 counties and small cities as defined in s. 120.52. The impact
829 analysis for small businesses must include the basis for the
830 agency's decision not to implement alternatives that would
831 reduce adverse impacts on small businesses.

832 (f) Any additional information that the agency determines
833 may be useful.

834 (g) In the ~~statement or~~ revised statement, ~~whichever~~
835 ~~applies~~, a description of any regulatory alternatives submitted
836 under paragraph (1) (a) and a statement adopting the alternative
837 or a statement of the reasons for rejecting the alternative in
838 favor of the proposed rule.

839 (3) If the adverse impact or regulatory costs of the rule
840 exceed any of the criteria established in paragraph (2) (a), the
841 rule must ~~shall~~ be submitted to the President of the Senate and

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842 Speaker of the House of Representatives no later than 30 days
843 before ~~prior to~~ the next regular legislative session, and the
844 rule may not take effect until it is ratified by the
845 Legislature.

846 (4) Subsection (3) does not apply to the adoption of:

847 (a) Federal standards pursuant to s. 120.54(6).

848 (b) Triennial updates of and amendments to the Florida
849 Building Code which are expressly authorized by s. 553.73.

850 (c) Triennial updates of and amendments to the Florida Fire
851 Prevention Code which are expressly authorized by s. 633.202.

852 (d) Emergency rules adopted pursuant to s. 120.54(4).

853 (5) For purposes of subsections (2) and (3), adverse
854 impacts and regulatory costs likely to occur within 5 years
855 after implementation of the rule include adverse impacts and
856 regulatory costs estimated to occur within 5 years after the
857 effective date of the rule. However, if any provision of the
858 rule is not fully implemented upon the effective date of the
859 rule, the adverse impacts and regulatory costs associated with
860 such provision must be adjusted to include any additional
861 adverse impacts and regulatory costs estimated to occur within 5
862 years after implementation of such provision.

863 (6) (a) In evaluating the impacts described in paragraphs
864 (2) (a) and (e), an agency shall include good faith estimates of
865 market impacts likely to result from compliance with the
866 proposed rule, including:

867 1. Increased customer charges for goods or services.

868 2. Decreased market value of goods or services produced,
869 provided, or sold.

870 3. Increased costs resulting from the purchase of

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871 substitute or alternative goods or services.
 872 4. The reasonable value of time to be spent by owners,
 873 officers, operators, and managers to understand and comply with
 874 the proposed rule, including, but not limited to, time to be
 875 spent to complete required education, training, or testing.
 876 5. Capital costs.
 877 6. Any other impacts suggested by the rules ombudsman in
 878 the Executive Office of the Governor or by any interested
 879 persons.
 880 (b) In estimating the information required in paragraphs
 881 (2)(b)-(e), the agency may use surveys of individuals,
 882 businesses, business organizations, counties, and municipalities
 883 to collect data helpful to estimate the costs and impacts.
 884 (c) In estimating compliance costs under paragraph (2)(d),
 885 the agency shall consider, among other matters, all direct and
 886 indirect costs necessary to comply with the proposed rule which
 887 are readily ascertainable based upon standard business
 888 practices, including, but not limited to, costs related to:
 889 1. Filing fees.
 890 2. Expenses to obtain a license.
 891 3. Necessary equipment.
 892 4. Installation, utilities, and maintenance of necessary
 893 equipment.
 894 5. Necessary operations and procedures.
 895 6. Accounting, financial, information management, and other
 896 administrative processes.
 897 7. Other processes.
 898 8. Labor based on relevant rates of wages, salaries, and
 899 benefits.

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900 9. Materials and supplies.
 901 10. Capital expenditures, including financing costs.
 902 11. Professional and technical services, including
 903 contracted services necessary to implement and maintain
 904 compliance.
 905 12. Monitoring and reporting.
 906 13. Qualifying and recurring education, training, and
 907 testing.
 908 14. Travel.
 909 15. Insurance and surety requirements.
 910 16. A fair and reasonable allocation of administrative
 911 costs and other overhead.
 912 17. Reduced sales or other revenues.
 913 18. Other items suggested by the rules ombudsman in the
 914 Executive Office of the Governor or by any interested person,
 915 business organization, or business representative.
 916 (7) (a) The Department of State shall include on the Florida
 917 Administrative Register website the agency website addresses
 918 where statements of estimated regulatory costs can be viewed in
 919 their entirety.
 920 (b) An agency that prepares a statement of estimated
 921 regulatory costs must provide, as part of the notice required
 922 under s. 120.54(3)(a), the agency website address where the
 923 statement of estimated regulatory costs can be read in its
 924 entirety to the Department of State for publication in the
 925 Florida Administrative Register.
 926 (c) If an agency revises its statement of estimated
 927 regulatory costs, the agency must provide notice that a revision
 928 has been made. Such notice must include the agency website

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929 address where the revision can be viewed in its entirety.

930 Section 4. Section 120.5435, Florida Statutes, is created
931 to read:

932 120.5435 Repromulgation of rules.—

933 (1) It is the intent of the Legislature that each agency
934 periodically review its rules for consistency with the powers
935 and duties granted by its enabling statutes.

936 (2) If an agency determines after review that substantive
937 changes to update a rule are not required, such agency must
938 repromulgate the rule to reflect the date of the review. Each
939 agency shall review its rules pursuant to this section either 5
940 years after July 1, 2023, if the rule was adopted before January
941 1, 2010, or 10 years after the rule is adopted, if the rule was
942 adopted on or after January 1, 2010. Failure of an agency to
943 adhere to the deadlines imposed in this section shall be a basis
944 for any person regulated by the agency or having substantial
945 interest in the agency rule to petition the agency requesting a
946 review of the rule in accordance with this section. Upon receipt
947 of the petition, the agency shall have 30 days to either comply
948 with the requirements of this section or, if the agency
949 determines that the duties imposed on the agency are not
950 applicable to the specified rule at that time, deny the petition
951 with a statement explaining the basis for the denial.

952 (3) Before repromulgation of a rule, the agency must, upon
953 approval by the agency head or his or her designee:

954 (a) Publish a notice of repromulgation in the Florida
955 Administrative Register. A notice of repromulgation is not
956 required to include the text of the rule being repromulgated.

957 (b) File the rule for repromulgation with the Department of

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958 State. A rule may not be filed for repromulgation less than 28
959 days, and not more than 90 days, after the date of publication
960 of the notice required by paragraph (a).

961 (4) The agency must file a notice of repromulgation with
962 the committee at least 14 days before filing the rule for
963 repromulgation. At the time the rule is filed for
964 repromulgation, the committee shall certify whether the agency
965 has responded in writing to all material and timely written
966 comments or written inquiries made on behalf of the committee.

967 (5) A repromulgated rule is not subject to challenge as a
968 proposed rule pursuant to s. 120.56(2).

969 (6) The hearing requirements of s. 120.54 do not apply to
970 repromulgation of a rule.

971 (7) (a) The agency, upon approval of the agency head or his
972 or her designee, shall file with the Department of State three
973 certified copies of the repromulgated rule it proposes to adopt
974 and one certified copy of any material incorporated by reference
975 in the rule.

976 (b) The repromulgated rule shall be adopted upon filing
977 with the Department of State and becomes effective 20 days after
978 the date it is filed.

979 (c) The Department of State shall update the history note
980 of the rule in the Florida Administrative Code to reflect the
981 effective date of the repromulgated rule.

982 (8) Any rule that is not repromulgated in accordance with
983 this section must be submitted to the President of the Senate
984 and the Speaker of the House of Representatives within 7 days
985 after the decision to not repromulgate the rule. The decision to
986 not repromulgate may not become effective until adjournment sine

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987 die of the next regular session of the Legislature following
 988 such decision.

989 (9) The Department of State shall adopt rules to implement
 990 this section by December 31, 2023.

991 Section 5. Section 120.5436, Florida Statutes, is created
 992 to read:

993 120.5436 Infrastructure and environmental permitting
 994 review.—

995 (1)(a) It is the intent of the Legislature to build a more
 996 resilient and responsive government infrastructure to allow for
 997 quick recovery after natural disasters, including hurricanes and
 998 tropical storms.

999 (b) It is further the intent of the Legislature to promote
 1000 efficiency in state government across all branches, agencies,
 1001 and other governmental entities and to identify any areas of
 1002 improvement that would allow for the quick and effective
 1003 delivery of services.

1004 (c) Further, it is intended that the state seek out ways to
 1005 improve its administrative procedures in relevant fields to
 1006 build a streamlined permitting process that withstands
 1007 disruptions caused by natural disasters, including hurricanes
 1008 and tropical storms.

1009 (2)(a) The Department of Environmental Protection and each
 1010 water management district shall conduct a holistic review of the
 1011 current coastal permitting processes and other permit programs.
 1012 These permitting processes must include, but need not be limited
 1013 to, the coastal construction control line permits, joint coastal
 1014 permits, environmental resource permits, and, consistent with
 1015 the terms of the Environmental Protection Agency's approval,

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1016 state administered section 404 permits.

1017 (b) The scope and purpose of the review must be to identify
 1018 areas of improvement and to increase efficiency within each
 1019 process. The review must consider the following factors:

1020 1. The requirements to obtain a permit;
 1021 2. Time periods for review, including review by commenting
 1022 agencies, and the approval process of the permit application;
 1023 3. Areas for improved efficiency and decision-point
 1024 consolidation within a single project's process;
 1025 4. Areas of duplication across one or more permit programs;
 1026 5. The methods of requesting permits; and
 1027 6. Any other factors that can increase the efficiency of
 1028 the permit processes to allow for improved storm recovery.

1029 (c) By December 31, 2023, the department and each water
 1030 management district shall provide their findings and proposed
 1031 solutions in a report to the Governor, the President of the
 1032 Senate, and the Speaker of the House of Representatives.

1033 Section 6. Subsection (1) of section 120.545, Florida
 1034 Statutes, is amended to read:

1035 120.545 Committee review of agency rules.—

1036 (1) As a legislative check on legislatively created
 1037 authority, the committee shall examine each existing rule and
 1038 proposed rule, except for those proposed rules exempted by s.
 1039 120.81(1)(e) and (2), and its accompanying material, and each
 1040 emergency rule, ~~and may examine any existing rule,~~ for the
 1041 purpose of determining whether:

1042 (a) The rule is an invalid exercise of delegated
 1043 legislative authority.

1044 (b) The statutory authority for the rule has been repealed.

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- 1045 (c) The rule reiterates or paraphrases statutory material.
- 1046 (d) The rule is in proper form.
- 1047 (e) The notice given ~~before~~ ~~prior~~ to its adoption was
- 1048 sufficient to give adequate notice of the purpose and effect of
- 1049 the rule.
- 1050 (f) The rule is consistent with expressed legislative
- 1051 intent pertaining to the specific provisions of law which the
- 1052 rule implements.
- 1053 (g) The rule is necessary to accomplish the apparent or
- 1054 expressed objectives of the specific provision of law which the
- 1055 rule implements.
- 1056 (h) The rule is a reasonable implementation of the law as
- 1057 it affects the convenience of the general public or persons
- 1058 particularly affected by the rule.
- 1059 (i) The rule could be made less complex or more easily
- 1060 comprehensible to the general public.
- 1061 (j) The rule's statement of estimated regulatory costs
- 1062 complies with the requirements of s. 120.541 and whether the
- 1063 rule does not impose regulatory costs on the regulated person,
- 1064 county, or city which could be reduced by the adoption of less
- 1065 costly alternatives that substantially accomplish the statutory
- 1066 objectives.
- 1067 (k) The rule will require additional appropriations.
- 1068 (l) If the rule is an emergency rule, there exists an
- 1069 emergency justifying the adoption of such rule, the agency is
- 1070 within its statutory authority, and the rule was adopted in
- 1071 compliance with the requirements and limitations of s.
- 1072 120.54(4).
- 1073 Section 7. Paragraphs (a) and (c) of subsection (1) of

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- 1074 section 120.55, Florida Statutes, are amended to read:
- 1075 120.55 Publication.—
- 1076 (1) The Department of State shall:
- 1077 (a)1. Through a continuous revision and publication system,
- 1078 compile and publish electronically, on a website managed by the
- 1079 department, the "Florida Administrative Code." The Florida
- 1080 Administrative Code ~~must~~ ~~shall~~ contain all rules adopted by each
- 1081 agency, citing the grant of rulemaking authority and the
- 1082 specific law implemented pursuant to which each rule was
- 1083 adopted, all history notes as authorized in s. 120.545(7),
- 1084 complete indexes to all rules contained in the code, and any
- 1085 other material required or authorized by law or deemed useful by
- 1086 the department. The electronic code ~~must~~ ~~shall~~ display each rule
- 1087 chapter currently in effect in browse mode and allow full text
- 1088 search of the code and each rule chapter. The department may
- 1089 contract with a publishing firm for a printed publication;
- 1090 however, the department shall retain responsibility for the code
- 1091 as provided in this section. The electronic publication ~~is~~ ~~shall~~
- 1092 ~~be~~ the official compilation of the administrative rules of this
- 1093 state. The Florida Administrative Code must be published daily
- 1094 by 8 a.m. If a rule, after publication, is corrected and
- 1095 replaced, the Florida Administrative Code must indicate:
- 1096 a. That the Florida Administrative Code has been
- 1097 republished; and
- 1098 b. That the rule that has been corrected by the Department
- 1099 of State.
- 1100
- 1101 The Department of State ~~retains~~ ~~shall retain~~ the copyright over
- 1102 the Florida Administrative Code.

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1103 2. Not publish rules in the Florida Administrative Code
 1104 which are general in form but applicable to only one school
 1105 district, community college district, or county, or a part
 1106 thereof, or state university rules relating to internal
 1107 personnel or business and finance ~~shall not be published in the~~
 1108 ~~Florida Administrative Code~~. Exclusion from publication in the
 1109 Florida Administrative Code does shall not affect the validity
 1110 or effectiveness of such rules.

1111 3. At the beginning of the section of the code dealing with
 1112 an agency that files copies of its rules with the department,
 1113 ~~the department shall~~ publish the address and telephone number of
 1114 the executive offices of each agency, the manner by which the
 1115 agency indexes its rules, a listing of all rules of that agency
 1116 excluded from publication in the code, and a statement as to
 1117 where those rules may be inspected.

1118 4. Not publish forms ~~shall not be published~~ in the Florida
 1119 Administrative Code; but any form which an agency uses in its
 1120 dealings with the public, along with any accompanying
 1121 instructions, shall be filed with the committee before it is
 1122 used. Any form or instruction which meets the definition of
 1123 "rule" provided in s. 120.52 must shall be incorporated by
 1124 reference into the appropriate rule. The reference must shall
 1125 specifically state that the form is being incorporated by
 1126 reference and must shall include the number, title, and
 1127 effective date of the form and an explanation of how the form
 1128 may be obtained. Each form created by an agency which is
 1129 incorporated by reference in a rule notice of which is given
 1130 under s. 120.54(3)(a) after December 31, 2007, must clearly
 1131 display the number, title, and effective date of the form and

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1132 the number of the rule in which the form is incorporated.

1133 5. Require all materials incorporated by reference in any
 1134 part of an adopted rule and in any part of a repromulgated rule
 1135 ~~The department shall allow adopted rules and material~~
 1136 ~~incorporated by reference~~ to be filed in the manner prescribed
 1137 by s. 120.54(1)(i)3.a. or b. electronic form as prescribed by
 1138 ~~department rule~~. When a rule is filed for adoption or
 1139 repromulgation with incorporated material in electronic form,
 1140 the department's publication of the Florida Administrative Code
 1141 on its website must contain a hyperlink from the incorporating
 1142 reference in the rule directly to that material. The department
 1143 may not allow hyperlinks from rules in the Florida
 1144 Administrative Code to any material other than that filed with
 1145 and maintained by the department, but may allow hyperlinks to
 1146 incorporated material maintained by the department from the
 1147 adopting agency's website or other sites.

1148 6. Include the date of any technical changes to a rule in
 1149 the history note of the rule in the Florida Administrative Code.
 1150 A technical change does not affect the effective date of the
 1151 rule.

1152 (c) Prescribe by rule the style and form required for
 1153 rules, notices, and other materials submitted for filing,
 1154 including a rule requiring documents created by an agency that
 1155 are proposed to be incorporated by reference in notices
 1156 published pursuant to s. 120.54(3)(a) and (d) to be coded in the
 1157 same manner as notices published pursuant to s. 120.54(3)(a)1.

1158 Section 8. Paragraph (a) of subsection (2) of section
 1159 120.56, Florida Statutes, is amended to read:
 1160 120.56 Challenges to rules.—

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1161 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.-
 1162 (a) A petition alleging the invalidity of a proposed rule
 1163 shall be filed within 21 days after the date of publication of
 1164 the notice required by s. 120.54(3)(a); within 10 days after the
 1165 final public hearing is held on the proposed rule as provided by
 1166 s. 120.54(3)(e)2.; within 20 days after the statement of
 1167 estimated regulatory costs or revised statement of estimated
 1168 regulatory costs, if applicable, has been prepared and made
 1169 available as provided in s. 120.54(1)(c) ~~s. 120.54(1)(d)~~; or
 1170 within 20 days after the date of publication of the notice
 1171 required by s. 120.54(3)(d). The petitioner has the burden to
 1172 prove by a preponderance of the evidence that the petitioner
 1173 would be substantially affected by the proposed rule. The agency
 1174 then has the burden to prove by a preponderance of the evidence
 1175 that the proposed rule is not an invalid exercise of delegated
 1176 legislative authority as to the objections raised. A person who
 1177 is not substantially affected by the proposed rule as initially
 1178 noticed, but who is substantially affected by the rule as a
 1179 result of a change, may challenge any provision of the resulting
 1180 proposed rule.

1181 Section 9. Subsection (1) and paragraph (a) of subsection
 1182 (2) of section 120.74, Florida Statutes, are amended to read:
 1183 120.74 Agency annual rulemaking and regulatory plans;
 1184 reports.-

1185 (1) REGULATORY PLAN.-By October 1 of each year, each agency
 1186 shall prepare a regulatory plan.

1187 (a) The plan must include a listing of each law enacted or
 1188 amended during the previous 12 months which creates or modifies
 1189 the duties or authority of the agency. If the Governor or the

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1190 Attorney General provides a letter to the committee stating that
 1191 a law affects all or most agencies, the agency may exclude the
 1192 law from its plan. For each law listed by an agency under this
 1193 paragraph, the plan must state:

1194 1. Whether the agency must adopt rules to implement the
 1195 law.

1196 2. If rulemaking is necessary to implement the law:

1197 a. Whether a notice of rule development has been published
 1198 and, if so, the citation to such notice in the Florida
 1199 Administrative Register.

1200 b. The date by which the agency expects to publish the
 1201 notice of proposed rule under s. 120.54(3)(a).

1202 3. If rulemaking is not necessary to implement the law, a
 1203 concise written explanation of the reasons why the law may be
 1204 implemented without rulemaking.

1205 (b) The plan must also identify and describe each rule,
 1206 including each rule number or proposed rule number, that include
 1207 a listing of each law not otherwise listed pursuant to paragraph
 1208 (a) which the agency expects to develop, adopt, or repeal for
 1209 the 12-month period beginning on October 1 and ending on
 1210 September 30 ~~implement by rulemaking before the following July~~
 1211 ~~1, excluding emergency rules except emergency rulemaking.~~ For
 1212 each rule law listed under this paragraph, the plan must state
 1213 whether the rulemaking is intended to simplify, clarify,
 1214 increase efficiency, improve coordination with other agencies,
 1215 reduce regulatory costs, or delete obsolete, unnecessary, or
 1216 redundant rules.

1217 (c) The plan must include any desired update to the prior
 1218 year's regulatory plan or supplement published pursuant to

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1219 subsection (7). If, in a prior year, a law was identified under
 1220 this paragraph or under subparagraph (a)1. as a law requiring
 1221 rulemaking to implement but a notice of proposed rule has not
 1222 been published:

1223 1. The agency ~~must shall~~ identify and again list such law,
 1224 noting the applicable notice of rule development by citation to
 1225 the Florida Administrative Register; or

1226 2. If the agency has subsequently determined that
 1227 rulemaking is not necessary to implement the law, the agency
 1228 ~~must shall~~ identify such law, reference the citation to the
 1229 applicable notice of rule development in the Florida
 1230 Administrative Register, and provide a concise written
 1231 explanation of the reason why the law may be implemented without
 1232 rulemaking.

1233 (d) The plan must identify any rules that are required to
 1234 be repromulgated pursuant to s. 120.5435 for the 12-month period
 1235 beginning on October 1 and ending on September 30.

1236 (e) The plan must include a certification executed on
 1237 behalf of the agency by both the agency head, or, if the agency
 1238 head is a collegial body, the presiding officer; and the
 1239 individual acting as principal legal advisor to the agency head.
 1240 The certification must declare:

1241 1. ~~Verify~~ That the persons executing the certification have
 1242 reviewed the plan.

1243 2. ~~Verify~~ That the agency regularly reviews all of its
 1244 rules and identify the period during which all rules have most
 1245 recently been reviewed to determine if the rules remain
 1246 consistent with the agency's rulemaking authority and the laws
 1247 implemented.

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1248 3. That the agency understands that regulatory
 1249 accountability is necessary to ensure public confidence in the
 1250 integrity of state government and, to that end, the agency is
 1251 diligently working toward lowering the total number of rules
 1252 adopted.

1253 4. The total number of rules adopted and repealed during
 1254 the previous 12 months.

1255 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

1256 (a) By October 1 of each year, each agency shall:

1257 1. Publish its regulatory plan on its website or on another
 1258 state website established for publication of administrative law
 1259 records. A clearly labeled hyperlink to the current plan must be
 1260 included on the agency's primary website homepage.

1261 2. Electronically deliver to the committee a copy of the
 1262 certification required in paragraph (1)(e) ~~(1)(d)~~.

1263 3. Publish in the Florida Administrative Register a notice
 1264 identifying the date of publication of the agency's regulatory
 1265 plan. The notice must include a hyperlink or website address
 1266 providing direct access to the published plan.

1267 Section 10. Subsection (11) of section 120.80, Florida
 1268 Statutes, is amended to read:

1269 120.80 Exceptions and special requirements; agencies.—

1270 (11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~or~~
 1271 ~~120.52(16)~~, the enlistment, organization, administration,
 1272 equipment, maintenance, training, and discipline of the militia,
 1273 National Guard, organized militia, and unorganized militia, as
 1274 provided by s. 2, Art. X of the State Constitution, are not
 1275 rules as defined by this chapter.

1276 Section 11. Paragraph (c) of subsection (1) of section

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1277 120.81, Florida Statutes, is amended to read:
 1278 120.81 Exceptions and special requirements; general areas.—
 1279 (1) EDUCATIONAL UNITS.—
 1280 (c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any tests,
 1281 test scoring criteria, or testing procedures relating to student
 1282 assessment which are developed or administered by the Department
 1283 of Education pursuant to s. 1003.4282, s. 1008.22, or s.
 1284 1008.25, or any other statewide educational tests required by
 1285 law, are not rules.

1286 Section 12. Paragraph (a) of subsection (1) of section
 1287 420.9072, Florida Statutes, is amended to read:
 1288 420.9072 State Housing Initiatives Partnership Program.—The
 1289 State Housing Initiatives Partnership Program is created for the
 1290 purpose of providing funds to counties and eligible
 1291 municipalities as an incentive for the creation of local housing
 1292 partnerships, to expand production of and preserve affordable
 1293 housing, to further the housing element of the local government
 1294 comprehensive plan specific to affordable housing, and to
 1295 increase housing-related employment.

1296 (1) (a) In addition to the legislative findings set forth in
 1297 s. 420.6015, the Legislature finds that affordable housing is
 1298 most effectively provided by combining available public and
 1299 private resources to conserve and improve existing housing and
 1300 provide new housing for very-low-income households, low-income
 1301 households, and moderate-income households. The Legislature
 1302 intends to encourage partnerships in order to secure the
 1303 benefits of cooperation by the public and private sectors and to
 1304 reduce the cost of housing for the target group by effectively
 1305 combining all available resources and cost-saving measures. The

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1306 Legislature further intends that local governments achieve this
 1307 combination of resources by encouraging active partnerships
 1308 between government, lenders, builders and developers, real
 1309 estate professionals, advocates for low-income persons, and
 1310 community groups to produce affordable housing and provide
 1311 related services. Extending the partnership concept to encompass
 1312 cooperative efforts among small counties as defined in s.
 1313 120.52(20) ~~s. 120.52(19)~~, and among counties and municipalities
 1314 is specifically encouraged. Local governments are also intended
 1315 to establish an affordable housing advisory committee to
 1316 recommend monetary and nonmonetary incentives for affordable
 1317 housing as provided in s. 420.9076.

1318 Section 13. Subsection (7) of section 420.9075, Florida
 1319 Statutes, is amended to read:

1320 420.9075 Local housing assistance plans; partnerships.—
 1321 (7) The moneys deposited in the local housing assistance
 1322 trust fund shall be used to administer and implement the local
 1323 housing assistance plan. The cost of administering the plan may
 1324 not exceed 5 percent of the local housing distribution moneys
 1325 and program income deposited into the trust fund. A county or an
 1326 eligible municipality may not exceed the 5-percent limitation on
 1327 administrative costs, unless its governing body finds, by
 1328 resolution, that 5 percent of the local housing distribution
 1329 plus 5 percent of program income is insufficient to adequately
 1330 pay the necessary costs of administering the local housing
 1331 assistance plan. The cost of administering the program may not
 1332 exceed 10 percent of the local housing distribution plus 5
 1333 percent of program income deposited into the trust fund, except
 1334 that small counties, as defined in s. 120.52(20) ~~s. 120.52(19)~~,

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1335 and eligible municipalities receiving a local housing
1336 distribution of up to \$350,000 may use up to 10 percent of
1337 program income for administrative costs.

1338 Section 14. Paragraph (d) of subsection (1) of section
1339 443.091, Florida Statutes, is amended to read:

1340 443.091 Benefit eligibility conditions.—

1341 (1) An unemployed individual is eligible to receive
1342 benefits for any week only if the Department of Economic
1343 Opportunity finds that:

1344 (d) She or he is able to work and is available for work. In
1345 order to assess eligibility for a claimed week of unemployment,
1346 the department shall develop criteria to determine a claimant's
1347 ability to work and availability for work. A claimant must be
1348 actively seeking work in order to be considered available for
1349 work. This means engaging in systematic and sustained efforts to
1350 find work, including contacting at least five prospective
1351 employers for each week of unemployment claimed. The department
1352 may require the claimant to provide proof of such efforts to the
1353 one-stop career center as part of reemployment services. A
1354 claimant's proof of work search efforts may not include the same
1355 prospective employer at the same location in 3 consecutive
1356 weeks, unless the employer has indicated since the time of the
1357 initial contact that the employer is hiring. The department
1358 shall conduct random reviews of work search information provided
1359 by claimants. As an alternative to contacting at least five
1360 prospective employers for any week of unemployment claimed, a
1361 claimant may, for that same week, report in person to a one-stop
1362 career center to meet with a representative of the center and
1363 access reemployment services of the center. The center shall

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1364 keep a record of the services or information provided to the
1365 claimant and shall provide the records to the department upon
1366 request by the department. However:

1367 1. Notwithstanding any other provision of this paragraph or
1368 paragraphs (b) and (e), an otherwise eligible individual may not
1369 be denied benefits for any week because she or he is in training
1370 with the approval of the department, or by reason of s.
1371 443.101(2) relating to failure to apply for, or refusal to
1372 accept, suitable work. Training may be approved by the
1373 department in accordance with criteria prescribed by rule. A
1374 claimant's eligibility during approved training is contingent
1375 upon satisfying eligibility conditions prescribed by rule.

1376 2. Notwithstanding any other provision of this chapter, an
1377 otherwise eligible individual who is in training approved under
1378 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be
1379 determined ineligible or disqualified for benefits due to
1380 enrollment in such training or because of leaving work that is
1381 not suitable employment to enter such training. As used in this
1382 subparagraph, the term "suitable employment" means work of a
1383 substantially equal or higher skill level than the worker's past
1384 adversely affected employment, as defined for purposes of the
1385 Trade Act of 1974, as amended, the wages for which are at least
1386 80 percent of the worker's average weekly wage as determined for
1387 purposes of the Trade Act of 1974, as amended.

1388 3. Notwithstanding any other provision of this section, an
1389 otherwise eligible individual may not be denied benefits for any
1390 week because she or he is before any state or federal court
1391 pursuant to a lawfully issued summons to appear for jury duty.

1392 4. Union members who customarily obtain employment through

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1393 a union hiring hall may satisfy the work search requirements of
1394 this paragraph by reporting daily to their union hall.

1395 5. The work search requirements of this paragraph do not
1396 apply to persons who are unemployed as a result of a temporary
1397 layoff or who are claiming benefits under an approved short-time
1398 compensation plan as provided in s. 443.1116.

1399 6. In small counties as defined in s. 120.52(20) ~~s-~~
1400 ~~120.52(19)~~, a claimant engaging in systematic and sustained
1401 efforts to find work must contact at least three prospective
1402 employers for each week of unemployment claimed.

1403 7. The work search requirements of this paragraph do not
1404 apply to persons required to participate in reemployment
1405 services under paragraph (e).

1406 Section 15. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 2, 2023

I respectfully request that **Senate Bill #742**, relating to Administrative Procedures, be placed on the:

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

A handwritten signature in blue ink that reads "Erin K. Grall".

Senator Erin Grall
Florida Senate, District 29

March 15

The Florida Senate APPEARANCE RECORD

742

Meeting Date

Bill Number or Topic

Gov Oversight

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Chad Kunde

Phone _____

Address _____

Email _____

Street

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
Florida Chamber of Commerce

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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

15 March 2023

APPEARANCE RECORD

742

Meeting Date

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Gov Oversight

Committee

Amendment Barcode (if applicable)

Name Chris Stranburg

Phone 813 767 9667

Address 107 E College Ave

Email cstranburg@afphq.org

Tallahassee FL 32301
Street City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
Americans for Prosperity

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1096

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Martin

SUBJECT: Monuments and Memorials

DATE: March 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limones-Borja</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1096 creates the “Historical Monuments and Memorials Protection Act.” The bill defines the term “memorial” to mean a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed, placed or located with the intent of being permanently displayed or perpetually maintained, that is dedicated to a historical person, entity, event, or series of events, and that honors or recounts the military service of any past or present military personnel or the past or present public service of a resident of the geographical area comprising this state or the United States of America. The bill defines the term “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, places in remembrance or recognition of a significant person or event in Florida History.

The bill provides that any person or entity that damages, defaces, destroys, or removes a monument or memorial located on publicly owned property may be subject to civil liability, and for which they may be required to pay treble damages and punitive damages. A person or entity authorized to alter, move, repair, or replace the monument or memorial is exempt from punitive liability.

Any public entity that owns a monument or memorial, any legal resident of this state, or any entity whose purpose is historic preservation is granted standing to bring a civil action for its damages relating to the damage, defacement, destruction, or removal of a monument or

memorial or for the willful and malicious destruction or demolition a memorial or historic property.

The bill does not prevent an agency from relocating a monument or memorial when relocation is necessary for the construction, expansion, or alternation of any publicly owned building, roads, streets, highways, or other transportation projects. However, if a monument or memorial is relocated, it must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality in which it was originally.

The bill requires any plaque, sign, picture, notice or any other object used to convey information to have written approval by the Secretary before being placed on or near a monument or memorial in existence on or before January 1, 2022.

The bill takes effect July 1, 2023.

II. Present Situation:

Memorials

The Florida Arts and Culture Act¹ (Act) recognizes the vast cultural resources available in the state and is intended to provide state support for, and gain national and international recognition of, efforts, works, and performances of Florida artists, agencies, museums, and nonprofits.² The Act designates the Secretary of State as chief cultural officer of the state, and creates the division of state arts administrative agency (Division) to administer federal arts funding, award grants, and consult with and advise individuals, groups, organizations, and agencies and officials concerning the acquisition of fine arts.³ The Division also sponsors and promotes performances and exhibits, conducts cultural programs and exchanges, and accept funding and support for its purposes.⁴

Criminal Penalty for Destruction of a Memorial

Section 806.135, F.S., provides that it is a second degree felony⁵ for any person to willfully and maliciously destroy or demolish any memorial or historic property, or willfully and maliciously pull down a memorial or historic property, unless authorized by the owner of the memorial or the historic property.

The term “historic property” is defined as any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. A “memorial” is defined as a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of

¹ Sections 265.281-265.703, F.S., comprise the Florida Arts and Culture Act. *See*, s. 265.281, F.S.

² Section 265.282, F.S.

³ Section 265.284, F.S.

⁴ *Id.*

⁵ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082(9)(a)3.c. and 775.083(1)(b), F.S.

events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- Florida Women’s Hall of Fame;
- Florida Medal of Honor Wall;
- Florida Veterans’ Hall of Fame;
- POW-MIA Chair of Honor Memorial;
- Florida Veterans’ Walk of Honor and Florida Veterans’ Memorial Garden;
- Florida Law Enforcement Officers’ Hall of Fame;
- Florida Holocaust Memorial;
- Florida Slavery Memorial; and
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

Section 806.135, F.S, also requires the payment of restitution, which includes the full cost of repair or replacement of such memorial or historic property.

Standing in Litigation

For standing, Florida courts require the party prosecuting the claim to be the real party in interest or be expressly authorized by statute to bring the claim on behalf of the real party in interest. Rule 1.210 of the Florida Rules of Civil Procedure provides, in pertinent part, as follows:

(a) Parties Generally. Every action may be prosecuted in the name of the real party in interest, but . . . a party expressly authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs and any person may be made a defendant who has or claims an interest adverse to the plaintiff. Any person may at any time be made a party if that person's presence is necessary or proper to a complete determination of the cause. Persons having a united interest may be joined on the same side as plaintiffs or defendants, and anyone who refuses to join may for such reason be made a defendant.

Civil Liability and Damages

The State Constitution provides that “the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.”⁶ In most instances, the aggrieved party is limited to sue for the actual damages incurred.⁷

⁶ FLA. CONST. art. I, s. 21.

⁷ See, e.g., *Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So.3d 261, 282 (Fla. 2013).

Treble damages

A statute may subject a person to civil liability for damages caused by the person's criminal behavior. "Civil liability" is defined by Black's Law Dictionary as the "debt or legal obligation from a private wrong amounting to the damage done."⁸ "Treble damages" are damages provided by statute in certain cases found by a jury, where the damages to be paid are triple the amount of damage actually caused.⁹

Punitive damages

In any civil action, no claim for punitive damages is permitted unless there is a reasonable showing by evidence in the record, or proffered by the claimant, which would provide a reasonable basis for recovery of such damages.¹⁰ A defendant may only be held liable for punitive damages if the trier of fact finds the defendant was personally guilty of intentional misconduct¹¹ or gross negligence.^{12,13} Punitive damages may not exceed the greater of:

- Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
- The sum of \$500,000.¹⁴

If the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain the court may award an amount of punitive damages not to exceed the greater of:

- Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or
- The sum of \$2 million.¹⁵

If the fact finder determines that, at the time of injury, the defendant had a specific intent to harm the claimant and the defendant's conduct did in fact harm the claimant, then there shall be no cap on punitive damages.¹⁶

Monuments

Section 265.111, F.S., defines "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history.

⁸ "Civil Liability," Black's Law Dictionary 435 (9th ed. 2009).

⁹ "Treble Damages," Black's Law Dictionary 435 (9th ed. 2009).

¹⁰ Section 768.72(1), F.S.

¹¹ "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage. Section 768.72(2)(a), F.S.

¹² "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. Section 768.72(2)(b), F.S.

¹³ Section 768.72(2), F.S.

¹⁴ Section 768.72(1)(a), F.S.

¹⁵ Section 768.73(1)(b), F.S.

¹⁶ Section 768.73(1)(c), F.S.

III. Effect of Proposed Changes:

Section 1 creates the “Historical Monuments and Memorials Protection Act.”

Section 2 amends s. 265.283, F.S., to define the term “memorial” to mean a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that:

- Is constructed, placed or located with the intent of being permanently displayed or perpetually maintained;
- Is dedicated to a historical person, entity, event, or series of events; and
- Honors or recounts:
 - The military service of any past or present military personnel; or
 - The past or present public service of a resident of the geographical area comprising this state or the United States of America.

Section 2 also defines the term “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, places in remembrance or recognition of a significant person or event in Florida History.

Section 3 creates s. 265.710, F.S., to allow a civil action against a person or entity that damages, defaces, destroys, or removes a monument or memorial that is displayed on publically owned property or for willfully and maliciously destroying or demolishing a memorial or historic property. The person or entity who commits such act may be liable for three times the full cost to return, repair, or replace the monument or memorial, and may be subject to punitive damages; unless the person or entity was authorized to alter, move, repair, or replace the monument or memorial by the public entity that owns it. Although it is not specifically stated in the bill, the right to collect such damages is generally limited to a harmed party—such as the owner of the monument or memorial that is damaged or destroyed.

Section 3 also grants any public entity that owns a monument or memorial (not necessarily the monument or memorial damaged, defaced, destroyed, or removed), any legal resident of this state, or any entity whose purpose is historic preservation the right to bring a civil action for damages in the circuit court in the county in which the monument or memorial was damaged, defaced, destroyed, or removed or for any act prohibited by s. 806.135, F.S. But see VII. Related Issues below.

A person may be found guilty of a criminal and civil violation based on the same underlying facts. Therefore, a person or entity who damages, defaces, destroys, or removes a monument or memorial may be subject to both a criminal penalty and restitution pursuant to s. 806.135, F.S., and the civil penalties imposed pursuant to this bill.

Section 3 does not prevent an agency from relocating a monument or memorial when relocation is necessary for the construction, expansion, or alteration of any publicly owned building, roads, streets, highways, or other transportation projects. Section 3 requires that the monument or memorial that is relocated must be relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality as its original placement.

Section 3 requires any plaque, sign, picture, notice or any other object used to convey information must have written approval by the Secretary of State before being placed on or near a monument or memorial in existence on or before January 1, 2022.

Section 4 provides the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Lines 130 through 133 requires a monument or memorial to be relocated to certain types of locations. If the memorial or monument is owned by a private party, this requirement may infringe upon the property owner's rights of possession. This may be deemed a "taking" by the government and be subject to "just compensation."

Lines 134 through 137 require express written approval by the Secretary of State prior to a plaque, sign, picture, notice, or any other object used to convey information being placed on or near a monument or memorial in existence on or before January 1, 2022. Not all monuments and memorial are owned by governmental entities or located on public property. Thus, this requirement may infringe upon the property rights of the owner of the monument or memorial or the owner of the property upon which the monument or memorial is located.

Moreover, monuments and memorials are typically located in parks and other public places. These parks and public areas may be deemed "public forums" for free speech considerations. Thus, the requirement of the Secretary of State's approval may infringe upon a citizen's free speech rights.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State may incur workload costs associated with any requests to place a plaque, sign, picture, notice, or any other object used to convey information on or near a monument or memorial in existence on or before January 1, 2022. This increased workload should be absorbed within current agency resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 109 through 121 addresses potential litigation against persons who damage, deface, destroy or remove a monument displayed on publicly owned property. Subsection (1) (lines 109 through 115) increases the civil liability of the “bad actor” to treble damages (based on the full cost to return, repair, or replace the monument, and punitive damages). If the person is found liable for these damages, the damages appear to be payable to the owner of the monument or memorial.

Subsection (2) (lines 116 through 121) grants standing to parties other than the injured property owner. This language could be interpreted two ways. The first interpretation is that these parties are granted standing to sue on behalf of the injured property owner. This appears consistent with Rule 1.210 of the Florida Rules of Civil Procedure. If the party is successful in the suit, the damages would be payable to the injured property owner. The second interpretation is that these parties are granted standing to seek redress based on the damages to those particular parties (rather than the injured property owner). In this case, the treble and punitive damages may not apply. Given that (at least) two interpretations can be made, consideration should be given to clarifying the language so that the intended interpretation is understood.

Lines 113 through 117 makes a person or entity liable for treble damages and punitive damages for any act that damages, defaces, destroys, or removes certain monuments or memorials. This liability does not distinguish between negligent acts and intentional acts. Typically, Florida law imposes treble or punitive damages when the act is criminal, gross negligence, or performed with knowledge or intention. This bill appears to subject a negligent act to treble damages.

Lines 117 through 119 provides an exception to a party’s punitive liability if the public entity owning the monument or memorial authorized certain actions. This exception to punitive

damages suggests that even a person or entity authorized to alter, move, repair, or replace the monument or memorial may be liable for treble damages (rather than actual damages) if the person or entity (regardless of intent) damages, defaces, destroys, or removes a monument or memorial. In most instances, such damages would be addressed in a contract between the parties.

VIII. Statutes Affected:

This bill substantially amends section 265.283 of the Florida Statutes.

This bill creates section 265.710 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 15, 2023:

The committee substitute defines the term “monument” to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, places in remembrance or recognition of a significant person or event in Florida History.

- B. **Amendments:**

None.



870980

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/15/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 78 and 79
insert:

(13) "Monument" means a permanent structure such as a
marker, statue, sculpture, plaque, or other artifice, including
living plant material, placed in remembrance or recognition of a
significant person or event in Florida History.

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



870980

11 And the title is amended as follows:
12 Delete line 4
13 and insert:
14 terms "memorial" and "monument"; conforming a
15 provision to changes

By Senator Martin

33-00987-23

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A bill to be entitled

An act relating to monuments and memorials; providing a short title; amending s. 265.283, F.S.; defining the term "memorial"; conforming a provision to changes made by the act; creating s. 265.710, F.S.; providing that a person or an entity that damages, defaces, destroys, or removes a monument or memorial is liable for treble the costs to return, repair, or replace the monument or memorial; providing an exception; declaring that specified persons or entities have standing to bring a civil action against a person or entity that damages, defaces, destroys, removes, or performs other specified actions toward a monument or memorial; providing applicability; prohibiting the placement of specified objects on or near a memorial that existed before a specified date; providing an effective date.

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

Section 1. This act may be cited as the "Historical Monuments and Memorials Protection Act."

Section 2. Section 265.283, Florida Statutes, is amended to read:

265.283 Definitions.—The following definitions ~~shall~~ apply to ss. 265.281-265.710 ~~ss. 265.281-265.703~~:

(1) "Arts and cultural disciplines" include, but are not limited to, music, dance, theatre, creative writing, literature, architecture, painting, sculpture, folk arts, photography,

Page 1 of 5

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crafts, media arts, visual arts, programs of museums, and other such allied, major art forms.

(2) "Arts in education grants" means grants used to cultivate the learning and artistic development of all students and teachers by promoting, encouraging, and supporting arts and culture as an integral part of education and lifelong learning for residents and visitors.

(3) "Council" means the Florida Council on Arts and Culture.

(4) "Cultural support grants" means grants that provide support for general programs and specific cultural projects.

(5) "Culture Builds Florida grants" means grants used for the purpose of connecting the arts to key areas of the division's long-term strategic plan.

(6) "Department" means the Department of State.

(7) "Director" means the Director of the Division of Arts and Culture of the Department of State.

(8) "Division" means the Division of Arts and Culture of the Department of State.

(9) "Folklife" means the traditional expressive culture shared within the various groups in Florida: familial, ethnic, occupational, religious, and regional. Expressive culture includes a wide range of creative and symbolic forms such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, and handicraft, which forms are generally learned orally, by imitation, or in performance and are maintained or perpetuated without formal instruction or institutional direction.

(10) "Historical museum" means a department or agency of

Page 2 of 5

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

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59 state or local government or a public or private nonprofit
60 organization located in Florida and operating on a permanent
61 basis for the primary purpose of sponsoring, producing, and
62 exhibiting educational programs that are related to the
63 historical resources of Florida.

64 (11) "Local arts agency" means a public or private
65 nonprofit organization located in Florida and operating on a
66 permanent basis for the primary purpose of strengthening,
67 supporting, and stabilizing the activities of one or more county
68 art and cultural constituencies.

69 (12) "Memorial" means a plaque, statue, marker, flag,
70 banner, cenotaph, religious symbol, painting, seal, tombstone,
71 structure name, or display that is constructed, placed or
72 located with the intent of being permanently displayed or
73 perpetually maintained, that is dedicated to a historical
74 person, entity, event, or series of events, and that honors or
75 recounts the military service of any past or present military
76 personnel or the past or present public service of a resident of
77 the geographical area comprising this state or the United States
78 of America.

79 (13) "Panel" means a grant review panel.

80 (14)~~(13)~~ "Science museum" means a public or private
81 nonprofit organization located in Florida and operating on a
82 permanent basis for the primary purpose of sponsoring,
83 producing, and exhibiting programs for the observation and study
84 of various types of natural science and science technology.

85 (15)~~(14)~~ "Secretary" means the Secretary of State.

86 (16)~~(15)~~ "State service organization" means a public or
87 private nonprofit organization located in Florida operating on a

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88 permanent basis for the primary purpose of implementing programs
89 that have cultural significance and that emphasize American
90 creativity and the maintenance and encouragement of professional
91 excellence.

92 (17)~~(16)~~ "State touring program grants" means grants used
93 to provide performances, activities, and exhibitions by Florida
94 artists to communities.

95 (18)~~(17)~~ "Underserved arts community assistance program
96 grants" means grants used by qualified organizations under the
97 Rural Economic Development Initiative, pursuant to ss. 288.0656
98 and 288.06561, for the purpose of economic and organizational
99 development for underserved cultural organizations.

100 (19)~~(18)~~ "Youth and children's museum" means a public or
101 private nonprofit organization located in Florida and operating
102 on a permanent basis for the primary purpose of sponsoring,
103 producing, and exhibiting multidisciplinary and participatory
104 programs for visitors who are 6 months to 15 years old, and
105 their families, teachers, and caregivers.

106 Section 3. Section 265.710, Florida Statutes, is created to
107 read:

108 265.710 Civil liability.-

109 (1) Any person or entity that damages, defaces, destroys,
110 or removes a monument or memorial displayed on publicly owned
111 property is liable for treble the amount of the full cost to
112 return, repair, or replace the monument or memorial and may be
113 subject to punitive damages unless the person or entity was
114 authorized to alter, move, repair, or replace the monument or
115 memorial by the public entity that owns it.

116 (2) A public entity that owns a monument or memorial, any

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117 legal resident of this state, or any entity whose purpose is
118 historic preservation has standing to bring a civil action for
119 damages in the circuit court in the county in which a monument
120 or memorial has been damaged, defaced, destroyed, or removed or
121 for any act prohibited by s. 806.135.

122 (3) This section does not prevent an agency from relocating
123 a monument or memorial when relocation is necessary for the
124 construction, expansion, or alteration of publicly owned
125 buildings, roads, streets, highways, or other transportation
126 projects. Any monument or memorial relocated for such purpose
127 must be relocated to a site of similar prominence, honor,
128 visibility, and access within the same county or municipality in
129 which the monument or memorial was originally placed or located.

130 (4) A plaque, sign, picture, notice, or any other object
131 used to convey information may not be placed on or near a
132 monument or memorial in existence on or before January 1, 2022,
133 without the express written approval of the secretary.

134 Section 4. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Health and Human Services
Community Affairs
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR JONATHAN MARTIN

33rd District

March 6, 2023

The Honorable Bryan Avila
Senate Governmental Oversight and Accountability Committee, Chair
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1096 - An act relating to Monuments and Memorials

Dear Chair Avila:

Please allow this letter to serve as my respectful request to place SB 1096, relating to Monuments and Memorials, on the next committee agenda.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Martin".

Jonathan Martin
Senate District 33

Cc: Joe McVaney, Staff Director
Tamra Redig, Administrative Assistant

REPLY TO:

- 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

SB 1096

March 15, 2023

Meeting Date

Bill Number or Topic

Governmental Oversight & Acc

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Vivian Lyte-Johnson

Phone 407 595 4264

Address 1884 Ibis Bay Ct

Email v3516@att.net

Street

Dcoee

FL

34761

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [] In Support [x] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

SB 1096

Bill Number or Topic

3.15.23

Meeting Date

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GOV. O'DONOHUE & AOC

Committee

Amendment Barcode (if applicable)

Name

YOLANDA RUSSELL

Phone

407-619-3641

Address

5803 CITRUS VILLAGE BLVD #323

Email

yolandarussell@earthlink

Street

WINTER GARDEN

State

FL 34787

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

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3/15/2023

Meeting Date

SB 1096

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Ned Shelton

Phone

Address

Street

Plant City FL 33566

City

State

Zip

Email

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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SB 1094

Bill Number or Topic

3/15/23

Meeting Date

Govt Oversight

Committee

Amendment Barcode (if applicable)

Name Jamie Merchant

Phone

Address

Email

Street
Bonita Springs

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

03-15-23

Meeting Date

1096

Bill Number or Topic

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Governmental Oversight

Committee

Amendment Barcode (if applicable)

Name Carmen Martinez

Phone 904 612 0403

Address 3685 Coastal View Dr

Email cmdoctora@yahoo.com

Street

Jacksonville FL 32250

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [x] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[x] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB1096

3-15-23

Meeting Date

Bill Number or Topic

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Committee

Amendment Barcode (if applicable)

Name

Bob Holladay

Phone

870-212-17730

Address

3362 Foley Dr.

Email

Street

Tall.

32309

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022JointRules.pdf)

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The Florida Senate

APPEARANCE RECORD

3/15/23

Meeting Date

SB 1096

Bill Number or Topic

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Committee

Amendment Barcode (if applicable)

Name

JEFF KOTTKAMP

Phone

Address

Street

TALLOHASSEE

City

State

FL

Zip

Email



Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Guardians of American History

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

3-15-23

Meeting Date

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SB 1096

Bill Number or Topic

Committee

Name Jill Pacetti

Phone _____

Amendment Barcode (if applicable)

Address _____

Email _____

Street

ST. AUGUSTINE FL 32084

City

State

Zip



Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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3/15/2023

Meeting Date

SB 1096

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Judy Hoffman

Phone

Address

Street

Plant City, FL 33566

City

State

Zip

Email

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB 1096

3/15/23

Meeting Date

Bill Number or Topic

Gov't Oversight

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name DAVID R. McCallister

Phone 813-973-4319

Address 13742 17th St.

Street

Email david.mccallister@hotmail.com

DADE CITY

City

FL

State

33525

Zip



Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3/15/23

Meeting Date

1096

Bill Number or Topic

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Government Oversight & Accountability
Committee

Amendment Barcode (if applicable)

Name Marshall Clayton Newsom

Phone 352-514-8568

Address 10528 US HWY 301
Street

Email marshallclaytonnewsom@gmail.com

Hampton Florida 32044
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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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 668

INTRODUCER: Senator Collins

SUBJECT: Flags

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Limonos-Borja</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 668 prohibits a governmental agency, local government, or other unit of local government from publicly displaying any flag that does not follow the protocol adopted by the Governor pursuant to s. 256.015 or comply with ss. 256.032, 256.11-256.14, 256.16, and 1000.06 F.S.

The bill takes effect July 1, 2023.

II. Present Situation:

Display of Flags

Flag of the United States

The flag of the United States of America should be displayed daily on or near the main administration building of every public institution, in or near every polling place on election days, and during school days in or near every school house.¹

State law requires the flag of the United States to be displayed:

- Daily, when the weather permits, from a staff upon the state capitol and upon each county courthouse;²
- At all designated polling places on all days when an election is being held;³
- Daily, when the weather permits, at each publicly supported and controlled auditorium in a separate building;⁴

¹ 4 U.S.C. § 6.

² Section 256.01, F.S.

³ Section 256.011, F.S.

⁴ Section 256.11, F.S.

- Inside each publicly supported and controlled auditorium within a part of a building when the auditorium is open;⁵
- Daily, when the weather permits, on the grounds of each public K-20 educational institution and district school board building;⁶ and
- Within each classroom of a public K-20 educational institution.⁷

Further guidance on the protocol and display of the U.S. flag is provided by the Florida Department of State.⁸

State of Florida Flag

Section 256.015, F.S., directs the Governor to adopt a protocol on flag display. The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.⁹ The state flag must be displayed on the grounds of every public K-20 educational institution.¹⁰

POW-MIA Flag

The National League of Families POW-MIA flag is designated as the symbol of our nation's concern and commitment to resolving as fully as possible the fates of Americans still prisoner, missing, and unaccounted for in Southeast Asia.¹¹ A POW-MIA flag must be displayed at:

- Each state-owned building at which the U.S. flag is displayed, if the POW-MIA flag is available free of charge to the agency that occupies the building and if the display is in accordance with federal laws and regulations.¹²
- Each rest area along an interstate highway in the state.¹³
- Each state park where the U.S. flag is displayed.¹⁴

Honor and Remember Flag

The mission of the Honor and Remember Flag is “to perpetually recognize the sacrifice of America’s military fallen service members and their families.”¹⁵ The state designated the Honor

⁵ *Id.*

⁶ Section 1000.06(1), F.S.

⁷ Section 1000.06(2), F.S.

⁸ Florida Department of State, *Flag Protocols and Display*, available at <https://dos.myflorida.com/about-the-department/flag-and-seal-protocol/flag-protocols-and-display/#:~:text=Chapter%20256%20of%20the%20Florida,be%20exposed%20to%20public%20view> (last visited Mar. 9, 2023).

⁹ Section 256.015(1), F.S. See also Executive Office of the Governor, *Flag Protocol*, available at <https://www.flgov.com/wp-content/uploads/2022/11/2022-EOG-Flag-Protocol.pdf> (last visited Mar. 10, 2023).

¹⁰ Sections 256.032 and 1000.06(1), F.S.

¹¹ 36 U.S.C. § 902(2).

¹² Section 256.12, F.S.

¹³ Section 256.13, F.S.

¹⁴ Section 256.14, F.S.

¹⁵ Honor and Remember, *Our Mission*, available at <https://honorandremember.org/mission> (last visited Mar. 10, 2023).

and Remember Flag as its emblem of service and sacrifice of the brave men and women of the United States Armed Forces.¹⁶ The flag may be displayed in the following locations:

- Any state-owned building at which the United States flag is displayed;
- Any state-owned military memorials; and
- Any other state-owned location.¹⁷

The flag must be displayed on the following days:

- Veterans Day;
- Gold Star Mother's Day; and
- A day on which a member of the United States Armed Forces who is a resident of this state loses his or her life in the line of duty.

Firefighter Memorial Flag

The Division of State Fire Marshal of the Department of Financial Services is directed by law to design, produce, and implement the creation and distribution of an official state Firefighter Memorial Flag to honor firefighters who died in the line of duty.¹⁸ The flag may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.¹⁹

Other Government Sponsored Flags

Various counties, municipalities, universities, colleges, and K-12 schools have adopted “flags” in an attempt to garner support for the various institutions. Cities that have their own flags include Orlando,²⁰ Mount Dora,²¹ Jacksonville,²² and Tampa.²³ Florida counties that have their own flags includes Orange County²⁴ and Osceola County.²⁵ These flags are a symbol of the local history and a source of pride to help individuals feel more connected to their city and county.

¹⁶ Section 256.16, F.S.

¹⁷ Section 256.16(2), F.S.

¹⁸ Section 256.15, F.S.

¹⁹ Section 256.15(1), F.S. See also R. 69A-62.050(6), F.A.C.

²⁰ City of Orlando, *Flag*, available at <http://www.cityoforlando.net/flag/> (last visited Mar. 12, 2023).

²¹ City of Mount Dora, *City Flag*, available at <https://ci.mount-dora.fl.us/854/City-Flag> (last visited Mar. 12, 2023).

²² City of Jacksonville, *More Jax Facts*, available at <https://www.coj.net/about-jacksonville/more-jax-facts.aspx> (last visited Mar. 12, 2023).

²³ City of Tampa, *Flag*, available at <https://www.tampa.gov/city-clerk/info/archives/city-of-tampa-flag> (last visited Mar. 12, 2023).

²⁴ Orange County Government, *A Story Worth Flagging: The Origination of Orange County's Official Flag*, available at <https://newsroom.ocfl.net/2020/06/a-story-worth-flagging-the-origination-of-orange-countys-official-flag/> (last visited Mar. 13, 2023).

²⁵ Osceola County, *History of Osceola County*, available at <https://www.osceola.org/about-osceola-county/history/> (last visited Mar. 13, 2023).

Other government-sponsored flags include the warning and safety flags displayed at public beaches.²⁶ The purpose of the flags are to improve public safety. The flags provide general warnings about the overall conditions of the water.²⁷

Governmental agency, local government or other unit of local government

Chapter 256, F.S., relating to flags, does not define the terms “governmental agency,” “local government,” or “other unit of local government.”

“Governmental agency” is defined in s. 215.58(12), F.S., to mean:

- (a) The state or any department, commission, agency, or other instrumentality thereof.
- (b) Any county or municipality or any department, commission, agency, or other instrumentality thereof.
- (c) Any school board or special district, authority, or governmental entity.

While the term “local government” is not defined by statute, section 1.01(8), F.S., defines “political subdivision” to include counties, cities, towns, villages, special tax school districts, . . . , and all other districts in this state.

Freedom of Speech

The First Amendment protects freedom of speech, the press, assembly, and the right to petition the Government for redress of grievances.²⁸ A government cannot restrict speech on the basis of the message expressed;²⁹ content-based restrictions are presumptively invalid.³⁰

A flag may be deemed symbolic speech. Regulations that cover symbolic content will be upheld if they:³¹

- Are within the constitutional power of the government;
- Further an important or substantial governmental interest;
- Are based on a governmental interest that is unrelated to the suppression of free expression; or
- Are narrowly tailored so the incidental restriction on alleged First Amendment freedoms is no greater than is essential to further the state interest.

III. Effect of Proposed Changes:

Section 1 only allows a governmental agency, local government, or other units of local government to display the following flags under specific circumstances:

- The state flag at public schools.

²⁶ Section 380.276, F.S.

²⁷ Florida Department of Environmental Protection, *Beach Warning Flag Program*, available at <https://floridadep.gov/rcp/fcmp/content/beach-warning-flag-program> (last visited Mar. 13, 2023).

²⁸ U.S. CONST. Amend. I

²⁹ *Texas v. Johnson*, 491 U.S. 397 (1989); *State v. T.B.D.*, 656 So.2d 479 (Fla. 1995).

³⁰ See, e.g., *Police Dept. of Chicago v. Mosely*, 408 U.S. 92 (1972).

³¹ *United States v. O'Brien*, 391 U.S. 367, 377 (1968). See also, *Firestone v. News-Press Pub. Co.*, 538 So.2d 457, 459 (Fla. 1989).

- The United States flag at public auditoriums; near the main entrance of the main administration building of every public institution; in or near every schoolhouse on school days; and in or near every polling place on Election Day.
- The POW-MIA flag on state-owned buildings; at the rest areas along the interstate highways; and at state parks.
- The Honor and Remember Flag at state-owned buildings; state-owned memorials; and any other state-owned military locations.

Section 2 provides that the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

This bill, by limiting the flags that may be displayed by governmental agencies, local governments, or other units of local government, to the state flag, U.S. flag, POW-MIA flag, and Honor and Remember flag, prohibits other flags and therefore may be determined to limit speech.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill does not define the term “flag.” Consideration should be given to providing a definition.

VII. Related Issues:

The bill prohibits a governmental agency from exposing to public view any flag that does not follow the Governor’s protocol on the State Flag or comply with state laws prescribing when a flag must be displayed on public buildings or grounds. It appears the bill, as drafted, may inadvertently prohibit the display of the U.S. Flag on public grounds other than at the State Capitol, the county court houses, and public schools.

The bill also appears to prohibit the display, in any instance, other government-sponsored flags not addressed in chapter 256, F.S. These other government-sponsored flags include county and city flags, beach warning flags, U.S. Armed Forces flags, etc.

VIII. Statutes Affected:

This bill creates section 256.045 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.



361184

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/14/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 256.045, Florida Statutes, is created to
read:

256.045 Improper display of flag; governmental agencies,
local governments, or other units of local government.—

(1) For purposes of this section, the term "governmental
entity" means this state or a political subdivision thereof,



361184

11 including, but not limited to, a county, a district or special
12 district, or a municipality, including, but not limited to, an
13 agency, an authority, a bureau, a commission, a department, or a
14 division, a district or a region thereof, whether executive,
15 judicial, or legislative, or a public school, the Board of
16 Governors, a Florida College System institution, a state
17 university, or an associated board.

18 (2) A governmental entity and its officers and employees
19 may expose to public view only the following flags in and on the
20 grounds of public buildings and other public properties:

21 (a) The flag of the United States.

22 (b) The state flag.

23 (c) The flag of the United Nations.

24 (d) The POW-MIA flag.

25 (e) The flags of foreign nations.

26 (f) The flags that represent the branches of the United
27 States Armed Forces and the Florida National Guard.

28 (g) The flags of Florida's counties.

29 (h) The flags of Florida's municipalities.

30 (i) The flags of Florida's public universities and
31 colleges.

32 (j) The flag of the Confederate States.

33 (k) Flags indicating beach warnings.

34 (l) The flag of the Olympics.

35 (3) The restrictions in subsection (2) may not be construed
36 to restrict a citizen's right to display a flag in a traditional
37 public forum.

38 Section 2. This act shall take effect July 1, 2023.

39



361184

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

41 And the title is amended as follows:

42 Delete everything before the enacting clause

43 and insert:

44 A bill to be entitled

45 An act relating to flags; creating s. 256.045, F.S.;

46 defining the term "governmental entity"; specifying

47 that a governmental entity may expose only certain

48 flags to public view in and on the grounds of public

49 buildings and properties; providing construction;

50 providing an effective date.

By Senator Collins

14-01913-23

2023668__

1 A bill to be entitled
2 An act relating to flags; creating s. 256.045, F.S.;
3 prohibiting certain governmental agencies and units of
4 local government from displaying flags that do not
5 follow a certain protocol or comply with specified
6 requirements; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 256.045, Florida Statutes, is created to
11 read:
12 256.045 Improper display of flag; governmental agencies,
13 local governments, or other units of local government.-A
14 governmental agency, local government, or other unit of local
15 government may not, in any manner, for exhibition or display,
16 expose to public view any flag that does not follow the protocol
17 adopted by the Governor pursuant to s. 256.015 or comply with
18 ss. 256.032, 256.11-256.14, 256.16, and 1000.06.
19 Section 2. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

3/15/23
Meeting Date

SB 668
Bill Number or Topic

Governmental Oversight
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Rin Alajaji Phone _____

Address 201 E Park Ave Street Email _____

Tallahassee FL City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
Equality Florida

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

SB 668

3/15/23

Meeting Date

Bill Number or Topic

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Gov't Oversight &

Committee

Accountability

Amendment Barcode (if applicable)

Name

Aurelle Colon Larrauri

Phone

954 881 8595

Address

Street

Email

aurelle@latinainstitute.org

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

National Latina Institute for Reproductive Justice FL

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

APPEARANCE RECORD

SB 668

3/15/23

Meeting Date

Bill Number or Topic

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Governmental Oversight +

Committee

Accountability

Amendment Barcode (if applicable)

Name

Jackson Oberlink

Phone

772-532-1371

Address

10800 Biscayne Blvd. Suite 1030

Email

jackson@floridaforall.vote

Street

Miami

FL

33161

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Rising

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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The Florida Senate

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3-15-23

Meeting Date

668

Bill Number or Topic

Governmental Oversight

Committee

Amendment Barcode (if applicable)

Barbara DeVane

Name

850-257-4280

Phone

625 E. Brevard St

Address

Street

barbudevane1@yahoo.com

Email

Tallahassee FL 32308

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL NOW

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

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March 15, 2023
Meeting Date

SB 668
Bill Number or Topic

Gov Oversight & Acct
Committee

Amendment Barcode (if applicable)

Name VivIAN Lyte-Johnson Phone 407 595 4264

Address 1884 Ibis Bay Ct Email V3576@att.net

Ocoee FL 34761
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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3/15/23

Meeting Date

APPEARANCE RECORD

668 - Flugs

Bill Number or Topic

Govt Oversight

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Nicholas Warren

Phone (858) 509-5450

Address 304 W 8th Ave
Street

Email nicholaslwarren@gmail.com

Tallahassee
City

FL
State

32303
Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3.15.23

Meeting Date

SB 660

Bill Number or Topic

Deliver both copies of this form to Senate professional staff conducting the meeting

Gov Oversight & Acc

Committee

Amendment Barcode (if applicable)

Yolanda Russell

Name

Phone

407-~~583-4264~~
619-3641

Address

Email

5803 CITRUS VILLAGE BLVD # 323

yolanda.russell@earthlink.net

Street

WINTER GARDEN, FL, 34787

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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SB 1118

Bill Number or Topic

3/15/23

Meeting Date

Gov't Oversight

Committee

Amendment Barcode (if applicable)

Name Jamie Merchant

Phone

Address

Email

Street

Bonita Springs

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 50

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Wright

SUBJECT: Public Records/Judicial Assistants

DATE: March 16, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Limonos-Borja</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 50 exempts from public records copying and inspection requirements certain identifying information of current judicial assistants and family members. The exemption restricts access to information in public records which may identify or locate current judicial assistants and their spouses and children. The bill provides a definition for the term “judicial assistant.”

Judicial assistants provide administrative, secretarial, organizational, and clerical support to an assigned judge’s office. As of December 2022, there were 1,022 judicial assistants employed in the county and circuit courts, district courts of appeal, and the Florida Supreme Court.

The bill exempts from public disclosure the following information that relates to a current judicial assistant:

- A judicial assistant’s home address, date of birth, and telephone number.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of a judicial assistant’s spouse and children.
- The names and locations of schools and day care facilities attended by a judicial assistant’s children.

This exemption applies to information held by an agency before, on, or after July 1, 2023.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 2023.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive branch and local government agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

[a] ll 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 connections with the transaction of official business by any agency.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁹ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.²⁰ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses, and their children. The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.²⁷ Additionally, all of these exemptions have retroactive application.²⁸ In order to have the exemption applied to a court record or an official record held by a clerk of court, the party must make a request specifying the document name, type, identification number, and page number.²⁹ Any enumerated personnel who has his or her public records held exempt may file a written and notarized request to any record custodian to have the records released to an identified party.³⁰

Justices and Judges

The state judiciary, as established in Article V of the State Constitution, is composed of the justices of the Supreme Court and the judges in Florida's six District Courts of Appeal, 20 Circuit Courts, and 67 County Courts.³¹ When carrying out their official duties, the judges and justices often preside over matters that are emotionally charged, whether in a trial, appeal, criminal proceeding, dependency hearing, or domestic or family law matter.

In 1991, and in an effort to protect the members of the judiciary, the Legislature enacted a public records exemption for current justices and judges and their families. The exemption protected their home addresses and telephone numbers as well as the home addresses, telephone numbers, and places of employment of their spouses and children, and the names and locations of schools and day care facilities attended by their children.³² In 2012, the Legislature expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members.³³ The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.³⁴

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(4)(d)3., F.S.

²⁸ Section 119.071(4)(d)6., F.S.

²⁹ Section 119.0714(2)(f) and (3)(f), F.S.

³⁰ Section 119.071(4)(d)5., F.S.

³¹ FLA. CONST. art V. *See also* Florida Courts, <http://www.flcourts.org/florida-courts> (last visited Jan. 19, 2023).

³² Ch. 91-149, Laws of Fla. Because public necessity statements were not required for public records exemptions prior to the adoption of Article I, section 24, Florida Constitution, there is no public necessity statement explaining why the exemption was created.

³³ Ch. 2012-149, Laws of Fla.

³⁴ *Id.*

In 2017, the Legislature expanded this exemption to also exempt from disclosure the names of the justices' or judges' spouses and children.³⁵

Judicial Assistants

The Florida State Courts System has established four levels of judicial assistant positions:

- Judicial assistant to a county court judge;
- Judicial assistant to a circuit court judge;
- Appellate judicial assistant to a district court judge; or
- Appellate judicial assistant to a Supreme Court justice.

According to information supplied by the Office of the State Courts Administrator, as of December 2022, there were 335 judicial assistants positions (including employed and vacant positions) at the county court level, 606 judicial assistants positions (including employed and vacant positions) at the circuit court level, 71 judicial assistants positions (including employed and vacant positions) at the district court of appeals level, and 10 employed at the Supreme Court level.³⁶

Judicial assistants are assigned to individual judges or justices to provide administrative, secretarial, and clerical support. At the trial court level in particular, the judicial assistant is generally responsible for: preparing and maintaining the judge's professional and court calendar; coordinating with attorneys, to schedule hearings, conferences, and trials; and preparing orders, notices, and other correspondence. Most significantly, trial court level judicial assistants interact "with judges, clerks of court, litigants, attorneys, law enforcement personnel, bailiffs, social services, witnesses, and the general public to exchange information or to facilitate task completion."³⁷ They also interact "with attorneys and litigants and their family members to resolve problems such as scheduling conflicts or other case-related issues."³⁸ The appellate courts also employ judicial assistants in the district courts of appeal and the Florida Supreme Court.³⁹

Based on this type of interaction, several trial court judicial assistants have reported that attorneys, litigants, or a litigant's family members have held the judicial assistant responsible for an adverse decision made by the judge. These judicial assistants reported instances of a litigant or litigant's family members showing up at the judicial assistant's home, contacting the judicial assistant on his or her personal cell phone, making threats against the judicial assistant, or naming the judicial assistant in a civil law suit.⁴⁰

³⁵ Ch. 2017-66, Laws of Fla.

³⁶ Office of the State Courts Administrator, *Senate Bill 50 Judicial Impact Statement* (Jan. 9, 2023) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=33831>.

³⁷ Florida State Courts System Classification Specification, Classification Title: Judicial Assistant – County Court <https://www.flcourts.gov/content/download/751310/file/Judicial-Assistant-County-Court.pdf>.

³⁸ Florida State Courts System Classification Specification, Classification Title: Judicial Assistant – Circuit Court <https://www.flcourts.gov/content/download/751317/file/Judicial-Assistant-Circuit-Court.pdf>.

³⁹ See also Florida State Courts System Classification Specification, Classification Title: Appellate Judicial Assistant – District Court, <https://www.flcourts.gov/content/download/751180/file/appellate-judicial-assistant-district-court.pdf> and Florida State Courts System Classification Specification, Classification Title: Appellate Judicial Assistant – Supreme Court <https://www.flcourts.gov/content/download/751181/file/appellate-judicial-assistant-supreme-court.pdf>.

⁴⁰ See Judicial Assistants Association of Florida, *JA Threats* (2023) (on file with the Senate Committee on Judiciary).

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2.e., F.S., to exempt certain information relating to judicial assistants from the public disclosure requirements. The following information for a current judicial assistant will be exempt:

- A judicial assistant’s address, date of birth, and telephone numbers.
- The names, home addresses, telephone numbers, dates of birth, and places of employment of a judicial assistant’s spouse and children.
- The names and locations of schools and day care facilities attended by a judicial assistant’s children.

Section 1 defines the term “judicial assistant” to mean a court employee assigned to the following class codes: 8140, 8150, 8310, and 8320.

The exemption applies to information held by an agency before, on, or after July 1, 2023.

The information exempted under the bill may be held by the Clerk of the Circuit Court, Tax Collector, Property Appraiser, Sheriff, police departments, and other governmental entities.

Section 2 provides the public necessity statement, as required by the State Constitution. The public necessity statement provides that, because judicial assistants may possibly engender ill will with litigants, the accused, the convicted, and their associates and families, judicial assistants and their families are at risk. Judicial assistants can become targets of fraud or revenge by disgruntled litigants who know the judicial assistants’ names, their personal information, and location. For these reasons, the identifying information of current judicial assistants and their family members should be exempt from public disclosure.

Section 3 provides that the bill takes effect July 1, 2023.

Please see section “VII. Related Issues” for a discussion of the shortened review and repeal date of this bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the

public records requirements. This bill enacts a new exemption for records pertaining to judicial assistants; therefore, the bill requires a two-thirds vote of each chamber for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect judicial assistants. This bill exempts only records pertaining to current judicial assistants and their families from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any individual or business that currently obtains location information that is covered by the definition of “home addresses” in the bill will not be able to obtain that information from the records custodian without a signed waiver if the employee or the employee’s agency requests that the home address information be exempted.

C. Government Sector Impact:

This bill may have a minimal negative fiscal impact on agencies holding records that contain personal identifying information of judicial assistants because staff responsible

for complying with public record requests may require training related to the new public record exemption. Additionally, agencies may incur costs associated with redacting the exempt information prior to releasing a record. However, the costs should be absorbed as part of the day-to-day agency responsibilities.

The Office of the State Courts Administrator (OSCA) submitted a 2023 Judicial Impact Statement for this bill and said that it does not anticipate any judicial or court workload to be created by the bill. Additionally, OSCA does not anticipate any impact to court rules or jury instructions or any fiscal impact on the judiciary.⁴¹

The Florida Court Clerks and Comptrollers also submitted an analysis that addresses the fiscal impact of the bill. They stated that they do not anticipate the bill creating “any significant operational, policy, or fiscal impact” because the burden remains on the qualifying person to request as well as identify any documents that will need to be redacted. While it might create some additional workload, the amount is not anticipated to be significant.⁴²

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the 5th year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the first year after enactment instead of the fifth year. However, the deviation from the schedule set forth in the Open Government Sunset Review Act is supported by the reasoning that a previous legislature cannot bind a future legislature.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 15, 2023:

The committee substitute provides a definition for the term “judicial assistant.” It also clarifies that the public records exemption applies only to current judicial assistants.

⁴¹ Office of the State Courts Administrator, *Senate Bill 50 Judicial Impact Statement* (Jan. 9, 2023) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=33831>.

⁴² Florida Court Clerks and Comptrollers, *Senate Bill 50 Bill Analysis* (Jan 11, 2023) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=33833>.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/15/2023	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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:



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11 a. "Home addresses" means the dwelling location at which an
12 individual resides and includes the physical address, mailing
13 address, street address, parcel identification number, plot
14 identification number, legal property description, neighborhood
15 name and lot number, GPS coordinates, and any other descriptive
16 property information that may reveal the home address.

17 b. "Judicial assistant" means a court employee assigned to
18 the following class codes: 8140, 8150, 8310, and 8320.

19 ~~c.b.~~ "Telephone numbers" includes home telephone numbers,
20 personal cellular telephone numbers, personal pager telephone
21 numbers, and telephone numbers associated with personal
22 communications devices.

23 2.a. The home addresses, telephone numbers, dates of birth,
24 and photographs of active or former sworn law enforcement
25 personnel or of active or former civilian personnel employed by
26 a law enforcement agency, including correctional and
27 correctional probation officers, personnel of the Department of
28 Children and Families whose duties include the investigation of
29 abuse, neglect, exploitation, fraud, theft, or other criminal
30 activities, personnel of the Department of Health whose duties
31 are to support the investigation of child abuse or neglect, and
32 personnel of the Department of Revenue or local governments
33 whose responsibilities include revenue collection and
34 enforcement or child support enforcement; the names, home
35 addresses, telephone numbers, photographs, dates of birth, and
36 places of employment of the spouses and children of such
37 personnel; and the names and locations of schools and day care
38 facilities attended by the children of such personnel are exempt
39 from s. 119.07(1) and s. 24(a), Art. I of the State



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40 Constitution.

41 b. The home addresses, telephone numbers, dates of birth,
42 and photographs of current or former nonsworn investigative
43 personnel of the Department of Financial Services whose duties
44 include the investigation of fraud, theft, workers' compensation
45 coverage requirements and compliance, other related criminal
46 activities, or state regulatory requirement violations; the
47 names, home addresses, telephone numbers, dates of birth, and
48 places of employment of the spouses and children of such
49 personnel; and the names and locations of schools and day care
50 facilities attended by the children of such personnel are exempt
51 from s. 119.07(1) and s. 24(a), Art. I of the State
52 Constitution.

53 c. The home addresses, telephone numbers, dates of birth,
54 and photographs of current or former nonsworn investigative
55 personnel of the Office of Financial Regulation's Bureau of
56 Financial Investigations whose duties include the investigation
57 of fraud, theft, other related criminal activities, or state
58 regulatory requirement violations; the names, home addresses,
59 telephone numbers, dates of birth, and places of employment of
60 the spouses and children of such personnel; and the names and
61 locations of schools and day care facilities attended by the
62 children of such personnel are exempt from s. 119.07(1) and s.
63 24(a), Art. I of the State Constitution.

64 d. The home addresses, telephone numbers, dates of birth,
65 and photographs of current or former firefighters certified in
66 compliance with s. 633.408; the names, home addresses, telephone
67 numbers, photographs, dates of birth, and places of employment
68 of the spouses and children of such firefighters; and the names



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69 and locations of schools and day care facilities attended by the
70 children of such firefighters are exempt from s. 119.07(1) and
71 s. 24(a), Art. I of the State Constitution.

72 e. The home addresses, dates of birth, and telephone
73 numbers of current or former justices of the Supreme Court,
74 district court of appeal judges, circuit court judges, and
75 county court judges, and of current judicial assistants; the
76 names, home addresses, telephone numbers, dates of birth, and
77 places of employment of the spouses and children of current or
78 former justices and judges, and of current judicial assistants;
79 and the names and locations of schools and day care facilities
80 attended by the children of current or former justices and
81 judges and of current judicial assistants are exempt from s.
82 119.07(1) and s. 24(a), Art. I of the State Constitution. This
83 sub-subparagraph is subject to the Open Government Sunset Review
84 Act in accordance with s. 119.15 and shall stand repealed on
85 October 2, 2028, unless reviewed and saved from repeal through
86 reenactment by the Legislature.

87 f. The home addresses, telephone numbers, dates of birth,
88 and photographs of current or former state attorneys, assistant
89 state attorneys, statewide prosecutors, or assistant statewide
90 prosecutors; the names, home addresses, telephone numbers,
91 photographs, dates of birth, and places of employment of the
92 spouses and children of current or former state attorneys,
93 assistant state attorneys, statewide prosecutors, or assistant
94 statewide prosecutors; and the names and locations of schools
95 and day care facilities attended by the children of current or
96 former state attorneys, assistant state attorneys, statewide
97 prosecutors, or assistant statewide prosecutors are exempt from



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

99 g. The home addresses, dates of birth, and telephone
100 numbers of general magistrates, special magistrates, judges of
101 compensation claims, administrative law judges of the Division
102 of Administrative Hearings, and child support enforcement
103 hearing officers; the names, home addresses, telephone numbers,
104 dates of birth, and places of employment of the spouses and
105 children of general magistrates, special magistrates, judges of
106 compensation claims, administrative law judges of the Division
107 of Administrative Hearings, and child support enforcement
108 hearing officers; and the names and locations of schools and day
109 care facilities attended by the children of general magistrates,
110 special magistrates, judges of compensation claims,
111 administrative law judges of the Division of Administrative
112 Hearings, and child support enforcement hearing officers are
113 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
114 Constitution.

115 h. The home addresses, telephone numbers, dates of birth,
116 and photographs of current or former human resource, labor
117 relations, or employee relations directors, assistant directors,
118 managers, or assistant managers of any local government agency
119 or water management district whose duties include hiring and
120 firing employees, labor contract negotiation, administration, or
121 other personnel-related duties; the names, home addresses,
122 telephone numbers, dates of birth, and places of employment of
123 the spouses and children of such personnel; and the names and
124 locations of schools and day care facilities attended by the
125 children of such personnel are exempt from s. 119.07(1) and s.
126 24(a), Art. I of the State Constitution.



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127 i. The home addresses, telephone numbers, dates of birth,
128 and photographs of current or former code enforcement officers;
129 the names, home addresses, telephone numbers, dates of birth,
130 and places of employment of the spouses and children of such
131 personnel; and the names and locations of schools and day care
132 facilities attended by the children of such personnel are exempt
133 from s. 119.07(1) and s. 24(a), Art. I of the State
134 Constitution.

135 j. The home addresses, telephone numbers, places of
136 employment, dates of birth, and photographs of current or former
137 guardians ad litem, as defined in s. 39.820; the names, home
138 addresses, telephone numbers, dates of birth, and places of
139 employment of the spouses and children of such persons; and the
140 names and locations of schools and day care facilities attended
141 by the children of such persons are exempt from s. 119.07(1) and
142 s. 24(a), Art. I of the State Constitution.

143 k. The home addresses, telephone numbers, dates of birth,
144 and photographs of current or former juvenile probation
145 officers, juvenile probation supervisors, detention
146 superintendents, assistant detention superintendents, juvenile
147 justice detention officers I and II, juvenile justice detention
148 officer supervisors, juvenile justice residential officers,
149 juvenile justice residential officer supervisors I and II,
150 juvenile justice counselors, juvenile justice counselor
151 supervisors, human services counselor administrators, senior
152 human services counselor administrators, rehabilitation
153 therapists, and social services counselors of the Department of
154 Juvenile Justice; the names, home addresses, telephone numbers,
155 dates of birth, and places of employment of spouses and children



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156 of such personnel; and the names and locations of schools and
157 day care facilities attended by the children of such personnel
158 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
159 Constitution.

160 1. The home addresses, telephone numbers, dates of birth,
161 and photographs of current or former public defenders, assistant
162 public defenders, criminal conflict and civil regional counsel,
163 and assistant criminal conflict and civil regional counsel; the
164 names, home addresses, telephone numbers, dates of birth, and
165 places of employment of the spouses and children of current or
166 former public defenders, assistant public defenders, criminal
167 conflict and civil regional counsel, and assistant criminal
168 conflict and civil regional counsel; and the names and locations
169 of schools and day care facilities attended by the children of
170 current or former public defenders, assistant public defenders,
171 criminal conflict and civil regional counsel, and assistant
172 criminal conflict and civil regional counsel are exempt from s.
173 119.07(1) and s. 24(a), Art. I of the State Constitution.

174 m. The home addresses, telephone numbers, dates of birth,
175 and photographs of current or former investigators or inspectors
176 of the Department of Business and Professional Regulation; the
177 names, home addresses, telephone numbers, dates of birth, and
178 places of employment of the spouses and children of such current
179 or former investigators and inspectors; and the names and
180 locations of schools and day care facilities attended by the
181 children of such current or former investigators and inspectors
182 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
183 Constitution.

184 n. The home addresses, telephone numbers, and dates of



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185 birth of county tax collectors; the names, home addresses,
186 telephone numbers, dates of birth, and places of employment of
187 the spouses and children of such tax collectors; and the names
188 and locations of schools and day care facilities attended by the
189 children of such tax collectors are exempt from s. 119.07(1) and
190 s. 24(a), Art. I of the State Constitution.

191 o. The home addresses, telephone numbers, dates of birth,
192 and photographs of current or former personnel of the Department
193 of Health whose duties include, or result in, the determination
194 or adjudication of eligibility for social security disability
195 benefits, the investigation or prosecution of complaints filed
196 against health care practitioners, or the inspection of health
197 care practitioners or health care facilities licensed by the
198 Department of Health; the names, home addresses, telephone
199 numbers, dates of birth, and places of employment of the spouses
200 and children of such personnel; and the names and locations of
201 schools and day care facilities attended by the children of such
202 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
203 the State Constitution.

204 p. The home addresses, telephone numbers, dates of birth,
205 and photographs of current or former impaired practitioner
206 consultants who are retained by an agency or current or former
207 employees of an impaired practitioner consultant whose duties
208 result in a determination of a person's skill and safety to
209 practice a licensed profession; the names, home addresses,
210 telephone numbers, dates of birth, and places of employment of
211 the spouses and children of such consultants or their employees;
212 and the names and locations of schools and day care facilities
213 attended by the children of such consultants or employees are



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214 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
215 Constitution.

216 q. The home addresses, telephone numbers, dates of birth,
217 and photographs of current or former emergency medical
218 technicians or paramedics certified under chapter 401; the
219 names, home addresses, telephone numbers, dates of birth, and
220 places of employment of the spouses and children of such
221 emergency medical technicians or paramedics; and the names and
222 locations of schools and day care facilities attended by the
223 children of such emergency medical technicians or paramedics are
224 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
225 Constitution.

226 r. The home addresses, telephone numbers, dates of birth,
227 and photographs of current or former personnel employed in an
228 agency's office of inspector general or internal audit
229 department whose duties include auditing or investigating waste,
230 fraud, abuse, theft, exploitation, or other activities that
231 could lead to criminal prosecution or administrative discipline;
232 the names, home addresses, telephone numbers, dates of birth,
233 and places of employment of spouses and children of such
234 personnel; and the names and locations of schools and day care
235 facilities attended by the children of such personnel are exempt
236 from s. 119.07(1) and s. 24(a), Art. I of the State
237 Constitution.

238 s. The home addresses, telephone numbers, dates of birth,
239 and photographs of current or former directors, managers,
240 supervisors, nurses, and clinical employees of an addiction
241 treatment facility; the home addresses, telephone numbers,
242 photographs, dates of birth, and places of employment of the



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243 spouses and children of such personnel; and the names and
244 locations of schools and day care facilities attended by the
245 children of such personnel are exempt from s. 119.07(1) and s.
246 24(a), Art. I of the State Constitution. For purposes of this
247 sub-subparagraph, the term "addiction treatment facility" means
248 a county government, or agency thereof, that is licensed
249 pursuant to s. 397.401 and provides substance abuse prevention,
250 intervention, or clinical treatment, including any licensed
251 service component described in s. 397.311(26).

252 t. The home addresses, telephone numbers, dates of birth,
253 and photographs of current or former directors, managers,
254 supervisors, and clinical employees of a child advocacy center
255 that meets the standards of s. 39.3035(2) and fulfills the
256 screening requirement of s. 39.3035(3), and the members of a
257 Child Protection Team as described in s. 39.303 whose duties
258 include supporting the investigation of child abuse or sexual
259 abuse, child abandonment, child neglect, and child exploitation
260 or to provide services as part of a multidisciplinary case
261 review team; the names, home addresses, telephone numbers,
262 photographs, dates of birth, and places of employment of the
263 spouses and children of such personnel and members; and the
264 names and locations of schools and day care facilities attended
265 by the children of such personnel and members are exempt from s.
266 119.07(1) and s. 24(a), Art. I of the State Constitution.

267 u. The home addresses, telephone numbers, places of
268 employment, dates of birth, and photographs of current or former
269 staff and domestic violence advocates, as defined in s.
270 90.5036(1)(b), of domestic violence centers certified by the
271 Department of Children and Families under chapter 39; the names,



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272 home addresses, telephone numbers, places of employment, dates
273 of birth, and photographs of the spouses and children of such
274 personnel; and the names and locations of schools and day care
275 facilities attended by the children of such personnel are exempt
276 from s. 119.07(1) and s. 24(a), Art. I of the State
277 Constitution.

278 3. An agency that is the custodian of the information
279 specified in subparagraph 2. and that is not the employer of the
280 officer, employee, justice, judge, or other person specified in
281 subparagraph 2. must maintain the exempt status of that
282 information only if the officer, employee, justice, judge, other
283 person, or employing agency of the designated employee submits a
284 written and notarized request for maintenance of the exemption
285 to the custodial agency. The request must state under oath the
286 statutory basis for the individual's exemption request and
287 confirm the individual's status as a party eligible for exempt
288 status.

289 4.a. A county property appraiser, as defined in s.
290 192.001(3), or a county tax collector, as defined in s.
291 192.001(4), who receives a written and notarized request for
292 maintenance of the exemption pursuant to subparagraph 3. must
293 comply by removing the name of the individual with exempt status
294 and the instrument number or Official Records book and page
295 number identifying the property with the exempt status from all
296 publicly available records maintained by the property appraiser
297 or tax collector. For written requests received on or before
298 July 1, 2021, a county property appraiser or county tax
299 collector must comply with this sub-subparagraph by October 1,
300 2021. A county property appraiser or county tax collector may



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301 not remove the street address, legal description, or other
302 information identifying real property within the agency's
303 records so long as a name or personal information otherwise
304 exempt from inspection and copying pursuant to this section are
305 not associated with the property or otherwise displayed in the
306 public records of the agency.

307 b. Any information restricted from public display,
308 inspection, or copying under sub-subparagraph a. must be
309 provided to the individual whose information was removed.

310 5. An officer, an employee, a justice, a judge, or other
311 person specified in subparagraph 2. may submit a written request
312 for the release of his or her exempt information to the
313 custodial agency. The written request must be notarized and must
314 specify the information to be released and the party authorized
315 to receive the information. Upon receipt of the written request,
316 the custodial agency must release the specified information to
317 the party authorized to receive such information.

318 6. The exemptions in this paragraph apply to information
319 held by an agency before, on, or after the effective date of the
320 exemption.

321 7. Information made exempt under this paragraph may be
322 disclosed pursuant to s. 28.2221 to a title insurer authorized
323 pursuant to s. 624.401 and its affiliates as defined in s.
324 624.10; a title insurance agent or title insurance agency as
325 defined in s. 626.841(1) or (2), respectively; or an attorney
326 duly admitted to practice law in this state and in good standing
327 with The Florida Bar.

328 8. The exempt status of a home address contained in the
329 Official Records is maintained only during the period when a



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330 protected party resides at the dwelling location. Upon
331 conveyance of real property after October 1, 2021, and when such
332 real property no longer constitutes a protected party's home
333 address as defined in sub-subparagraph 1.a., the protected party
334 must submit a written request to release the removed information
335 to the county recorder. The written request to release the
336 removed information must be notarized, must confirm that a
337 protected party's request for release is pursuant to a
338 conveyance of his or her dwelling location, and must specify the
339 Official Records book and page, instrument number, or clerk's
340 file number for each document containing the information to be
341 released.

342 9. Upon the death of a protected party as verified by a
343 certified copy of a death certificate or court order, any party
344 can request the county recorder to release a protected
345 decedent's removed information unless there is a related request
346 on file with the county recorder for continued removal of the
347 decedent's information or unless such removal is otherwise
348 prohibited by statute or by court order. The written request to
349 release the removed information upon the death of a protected
350 party must attach the certified copy of a death certificate or
351 court order and must be notarized, must confirm the request for
352 release is due to the death of a protected party, and must
353 specify the Official Records book and page number, instrument
354 number, or clerk's file number for each document containing the
355 information to be released. A fee may not be charged for the
356 release of any document pursuant to such request.

357 10. Except as otherwise expressly provided in this
358 paragraph, this~~This~~ paragraph is subject to the Open Government



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359 Sunset Review Act in accordance with s. 119.15 and shall stand
360 repealed on October 2, 2024, unless reviewed and saved from
361 repeal through reenactment by the Legislature.

362 Section 2. The Legislature finds that it is a public
363 necessity that the home addresses, dates of birth, and telephone
364 numbers of current judicial assistants; the names, home
365 addresses, telephone numbers, dates of birth, and places of
366 employment of the spouses and children of such judicial
367 assistants; and the names and locations of schools and day care
368 facilities attended by the children of such judicial assistants
369 be made exempt from s. 119.07(1), Florida Statutes, and s.
370 24(a), Article I of the State Constitution. Such identifying and
371 location information can be used as a tool to perpetrate fraud
372 against an individual or to acquire sensitive personal,
373 financial, medical, and familial information, the release of
374 which could cause great financial harm to the individual. In the
375 course of assisting in reviewing cases, maintaining the court
376 docket, screening phone calls and visitors to a justice's or
377 judge's chambers, preparing orders, and coordinating and problem
378 solving with attorneys and litigants, judicial assistants may
379 incur the ill will of litigants, the accused, the convicted, and
380 their associates and families, thus making judicial assistants
381 and their spouses and children targets for acts of revenge. If
382 such identifying and location information is released, the
383 safety of current judicial assistants and their spouses and
384 children could be seriously jeopardized. For these reasons, the
385 Legislature finds that it is a public necessity that such
386 information be made exempt from public records requirements.

387 Section 3. This act shall take effect July 1, 2023.



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records; amending s.
119.071, F.S.; providing a definition; adding current
judicial assistants and their spouses and children to
the specified agency personnel and family members to
whom an exemption from public records requirements
applies; providing for retroactive application of the
exemption; providing for future legislative review and
repeal of the exemption; providing a statement of
public necessity; providing an effective date.

By Senator Wright

8-00113-23

202350__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; adding current and former judicial assistants and their spouses and children to the specified agency personnel and family members to whom an exemption from public records requirements applies; providing for retroactive application of the exemption; providing for future legislative review and repeal of the exemption; 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:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

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2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including 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; the names, home addresses, telephone 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) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, 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) and s. 24(a), Art. I of the State

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59 Constitution.

60 c. The home addresses, telephone numbers, dates of birth,
61 and photographs of current or former nonsworn investigative
62 personnel of the Office of Financial Regulation's Bureau of
63 Financial Investigations whose duties include the investigation
64 of fraud, theft, other related criminal activities, or state
65 regulatory requirement violations; the names, home addresses,
66 telephone numbers, dates of birth, and places of employment of
67 the spouses and children of such personnel; and the names and
68 locations of schools and day care facilities attended by the
69 children of such personnel are exempt from s. 119.07(1) and s.
70 24(a), Art. I of the State Constitution.

71 d. The home addresses, telephone numbers, dates of birth,
72 and photographs of current or former firefighters certified in
73 compliance with s. 633.408; the names, home addresses, telephone
74 numbers, photographs, dates of birth, and places of employment
75 of the spouses and children of such firefighters; and the names
76 and locations of schools and day care facilities attended by the
77 children of such firefighters are exempt from s. 119.07(1) and
78 s. 24(a), Art. I of the State Constitution.

79 e. The home addresses, dates of birth, and telephone
80 numbers of current or former justices of the Supreme Court,
81 district court of appeal judges, circuit court judges, ~~and~~
82 county court judges, and judicial assistants; the names, home
83 addresses, telephone numbers, dates of birth, and places of
84 employment of the spouses and children of current or former
85 justices, ~~and judges, and judicial assistants~~; and the names and
86 locations of schools and day care facilities attended by the
87 children of current or former justices, ~~and judges, and judicial~~

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88 assistants are exempt from s. 119.07(1) and s. 24(a), Art. I of
89 the State Constitution.

90 f. The home addresses, telephone numbers, dates of birth,
91 and photographs of current or former state attorneys, assistant
92 state attorneys, statewide prosecutors, or assistant statewide
93 prosecutors; the names, home addresses, telephone numbers,
94 photographs, dates of birth, and places of employment of the
95 spouses and children of current or former state attorneys,
96 assistant state attorneys, statewide prosecutors, or assistant
97 statewide prosecutors; and the names and locations of schools
98 and day care facilities attended by the children of current or
99 former state attorneys, assistant state attorneys, statewide
100 prosecutors, or assistant statewide prosecutors are exempt from
101 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

102 g. The home addresses, dates of birth, and telephone
103 numbers of general magistrates, special magistrates, judges of
104 compensation claims, administrative law judges of the Division
105 of Administrative Hearings, and child support enforcement
106 hearing officers; the names, home addresses, telephone numbers,
107 dates of birth, and places of employment of the spouses and
108 children of general magistrates, special magistrates, judges of
109 compensation claims, administrative law judges of the Division
110 of Administrative Hearings, and child support enforcement
111 hearing officers; and the names and locations of schools and day
112 care facilities attended by the children of general magistrates,
113 special magistrates, judges of compensation claims,
114 administrative law judges of the Division of Administrative
115 Hearings, and child support enforcement hearing officers are
116 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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117 Constitution.

118 h. The home addresses, telephone numbers, dates of birth,
119 and photographs of current or former human resource, labor
120 relations, or employee relations directors, assistant directors,
121 managers, or assistant managers of any local government agency
122 or water management district whose duties include hiring and
123 firing employees, labor contract negotiation, administration, or
124 other personnel-related duties; the names, home addresses,
125 telephone numbers, dates of birth, and places of employment of
126 the spouses and children of such personnel; and the names and
127 locations of schools and day care facilities attended by the
128 children of such personnel are exempt from s. 119.07(1) and s.
129 24(a), Art. I of the State Constitution.

130 i. The home addresses, telephone numbers, dates of birth,
131 and photographs of current or former code enforcement officers;
132 the names, home addresses, telephone numbers, dates of birth,
133 and places of employment of the spouses and children of such
134 personnel; and the names and locations of schools and day care
135 facilities attended by the children of such personnel are exempt
136 from s. 119.07(1) and s. 24(a), Art. I of the State
137 Constitution.

138 j. The home addresses, telephone numbers, places of
139 employment, dates of birth, and photographs of current or former
140 guardians ad litem, as defined in s. 39.820; the names, home
141 addresses, telephone numbers, dates of birth, and places of
142 employment of the spouses and children of such persons; and the
143 names and locations of schools and day care facilities attended
144 by the children of such persons are exempt from s. 119.07(1) and
145 s. 24(a), Art. I of the State Constitution.

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146 k. The home addresses, telephone numbers, dates of birth,
147 and photographs of current or former juvenile probation
148 officers, juvenile probation supervisors, detention
149 superintendents, assistant detention superintendents, juvenile
150 justice detention officers I and II, juvenile justice detention
151 officer supervisors, juvenile justice residential officers,
152 juvenile justice residential officer supervisors I and II,
153 juvenile justice counselors, juvenile justice counselor
154 supervisors, human services counselor administrators, senior
155 human services counselor administrators, rehabilitation
156 therapists, and social services counselors of the Department of
157 Juvenile Justice; the names, home addresses, telephone numbers,
158 dates of birth, and places of employment of spouses and children
159 of such personnel; and the names and locations of schools and
160 day care facilities attended by the children of such personnel
161 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
162 Constitution.

163 l. The home addresses, telephone numbers, dates of birth,
164 and photographs of current or former public defenders, assistant
165 public defenders, criminal conflict and civil regional counsel,
166 and assistant criminal conflict and civil regional counsel; the
167 names, home addresses, telephone numbers, dates of birth, and
168 places of employment of the spouses and children of current or
169 former public defenders, assistant public defenders, criminal
170 conflict and civil regional counsel, and assistant criminal
171 conflict and civil regional counsel; and the names and locations
172 of schools and day care facilities attended by the children of
173 current or former public defenders, assistant public defenders,
174 criminal conflict and civil regional counsel, and assistant

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175 criminal conflict and civil regional counsel are exempt from s.
 176 119.07(1) and s. 24(a), Art. I of the State Constitution.

177 m. The home addresses, telephone numbers, dates of birth,
 178 and photographs of current or former investigators or inspectors
 179 of the Department of Business and Professional Regulation; the
 180 names, home addresses, telephone numbers, dates of birth, and
 181 places of employment of the spouses and children of such current
 182 or former investigators and inspectors; and the names and
 183 locations of schools and day care facilities attended by the
 184 children of such current or former investigators and inspectors
 185 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 186 Constitution.

187 n. The home addresses, telephone numbers, and dates of
 188 birth of county tax collectors; the names, home addresses,
 189 telephone numbers, dates of birth, and places of employment of
 190 the spouses and children of such tax collectors; and the names
 191 and locations of schools and day care facilities attended by the
 192 children of such tax collectors are exempt from s. 119.07(1) and
 193 s. 24(a), Art. I of the State Constitution.

194 o. The home addresses, telephone numbers, dates of birth,
 195 and photographs of current or former personnel of the Department
 196 of Health whose duties include, or result in, the determination
 197 or adjudication of eligibility for social security disability
 198 benefits, the investigation or prosecution of complaints filed
 199 against health care practitioners, or the inspection of health
 200 care practitioners or health care facilities licensed by the
 201 Department of Health; the names, home addresses, telephone
 202 numbers, dates of birth, and places of employment of the spouses
 203 and children of such personnel; and the names and locations of

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204 schools and day care facilities attended by the children of such
 205 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 206 the State Constitution.

207 p. The home addresses, telephone numbers, dates of birth,
 208 and photographs of current or former impaired practitioner
 209 consultants who are retained by an agency or current or former
 210 employees of an impaired practitioner consultant whose duties
 211 result in a determination of a person's skill and safety to
 212 practice a licensed profession; the names, home addresses,
 213 telephone numbers, dates of birth, and places of employment of
 214 the spouses and children of such consultants or their employees;
 215 and the names and locations of schools and day care facilities
 216 attended by the children of such consultants or employees are
 217 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 218 Constitution.

219 q. The home addresses, telephone numbers, dates of birth,
 220 and photographs of current or former emergency medical
 221 technicians or paramedics certified under chapter 401; the
 222 names, home addresses, telephone numbers, dates of birth, and
 223 places of employment of the spouses and children of such
 224 emergency medical technicians or paramedics; and the names and
 225 locations of schools and day care facilities attended by the
 226 children of such emergency medical technicians or paramedics are
 227 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 228 Constitution.

229 r. The home addresses, telephone numbers, dates of birth,
 230 and photographs of current or former personnel employed in an
 231 agency's office of inspector general or internal audit
 232 department whose duties include auditing or investigating waste,

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 233 fraud, abuse, theft, exploitation, or other activities that
 234 could lead to criminal prosecution or administrative discipline;
 235 the names, home addresses, telephone numbers, dates of birth,
 236 and places of employment of spouses and children of such
 237 personnel; and the names and locations of schools and day care
 238 facilities attended by the children of such personnel are exempt
 239 from s. 119.07(1) and s. 24(a), Art. I of the State
 240 Constitution.

s. The home addresses, telephone numbers, dates of birth,
 242 and photographs of current or former directors, managers,
 243 supervisors, nurses, and clinical employees of an addiction
 244 treatment facility; the home addresses, telephone numbers,
 245 photographs, dates of birth, and places of employment of the
 246 spouses and children of such personnel; and the names and
 247 locations of schools and day care facilities attended by the
 248 children of such personnel are exempt from s. 119.07(1) and s.
 249 24(a), Art. I of the State Constitution. For purposes of this
 250 sub-subparagraph, the term "addiction treatment facility" means
 251 a county government, or agency thereof, that is licensed
 252 pursuant to s. 397.401 and provides substance abuse prevention,
 253 intervention, or clinical treatment, including any licensed
 254 service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth,
 256 and photographs of current or former directors, managers,
 257 supervisors, and clinical employees of a child advocacy center
 258 that meets the standards of s. 39.3035(2) and fulfills the
 259 screening requirement of s. 39.3035(3), and the members of a
 260 Child Protection Team as described in s. 39.303 whose duties
 261 include supporting the investigation of child abuse or sexual

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 262 abuse, child abandonment, child neglect, and child exploitation
 263 or to provide services as part of a multidisciplinary case
 264 review team; the names, home addresses, telephone numbers,
 265 photographs, dates of birth, and places of employment of the
 266 spouses and children of such personnel and members; and the
 267 names and locations of schools and day care facilities attended
 268 by the children of such personnel and members are exempt from s.
 269 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, places of
 271 employment, dates of birth, and photographs of current or former
 272 staff and domestic violence advocates, as defined in s.
 273 90.5036(1)(b), of domestic violence centers certified by the
 274 Department of Children and Families under chapter 39; the names,
 275 home addresses, telephone numbers, places of employment, dates
 276 of birth, and photographs of the spouses and children of such
 277 personnel; and the names and locations of schools and day care
 278 facilities attended by the children of such personnel are exempt
 279 from s. 119.07(1) and s. 24(a), Art. I of the State
 280 Constitution.

3. An agency that is the custodian of the information
 282 specified in subparagraph 2. and that is not the employer of the
 283 officer, employee, justice, judge, or other person specified in
 284 subparagraph 2. must maintain the exempt status of that
 285 information only if the officer, employee, justice, judge, other
 286 person, or employing agency of the designated employee submits a
 287 written and notarized request for maintenance of the exemption
 288 to the custodial agency. The request must state under oath the
 289 statutory basis for the individual's exemption request and
 290 confirm the individual's status as a party eligible for exempt

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291 status.

292 4.a. A county property appraiser, as defined in s.

293 192.001(3), or a county tax collector, as defined in s.

294 192.001(4), who receives a written and notarized request for

295 maintenance of the exemption pursuant to subparagraph 3. must

296 comply by removing the name of the individual with exempt status

297 and the instrument number or Official Records book and page

298 number identifying the property with the exempt status from all

299 publicly available records maintained by the property appraiser

300 or tax collector. For written requests received on or before

301 July 1, 2021, a county property appraiser or county tax

302 collector must comply with this sub-subparagraph by October 1,

303 2021. A county property appraiser or county tax collector may

304 not remove the street address, legal description, or other

305 information identifying real property within the agency's

306 records so long as a name or personal information otherwise

307 exempt from inspection and copying pursuant to this section are

308 not associated with the property or otherwise displayed in the

309 public records of the agency.

310 b. Any information restricted from public display,

311 inspection, or copying under sub-subparagraph a. must be

312 provided to the individual whose information was removed.

313 5. An officer, an employee, a justice, a judge, or other

314 person specified in subparagraph 2. may submit a written request

315 for the release of his or her exempt information to the

316 custodial agency. The written request must be notarized and must

317 specify the information to be released and the party authorized

318 to receive the information. Upon receipt of the written request,

319 the custodial agency must release the specified information to

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320 the party authorized to receive such information.

321 6. The exemptions in this paragraph apply to information

322 held by an agency before, on, or after the effective date of the

323 exemption.

324 7. Information made exempt under this paragraph may be

325 disclosed pursuant to s. 28.2221 to a title insurer authorized

326 pursuant to s. 624.401 and its affiliates as defined in s.

327 624.10; a title insurance agent or title insurance agency as

328 defined in s. 626.841(1) or (2), respectively; or an attorney

329 duly admitted to practice law in this state and in good standing

330 with The Florida Bar.

331 8. The exempt status of a home address contained in the

332 Official Records is maintained only during the period when a

333 protected party resides at the dwelling location. Upon

334 conveyance of real property after October 1, 2021, and when such

335 real property no longer constitutes a protected party's home

336 address as defined in sub-subparagraph 1.a., the protected party

337 must submit a written request to release the removed information

338 to the county recorder. The written request to release the

339 removed information must be notarized, must confirm that a

340 protected party's request for release is pursuant to a

341 conveyance of his or her dwelling location, and must specify the

342 Official Records book and page, instrument number, or clerk's

343 file number for each document containing the information to be

344 released.

345 9. Upon the death of a protected party as verified by a

346 certified copy of a death certificate or court order, any party

347 can request the county recorder to release a protected

348 decedent's removed information unless there is a related request

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349 on file with the county recorder for continued removal of the
 350 decedent's information or unless such removal is otherwise
 351 prohibited by statute or by court order. The written request to
 352 release the removed information upon the death of a protected
 353 party must attach the certified copy of a death certificate or
 354 court order and must be notarized, must confirm the request for
 355 release is due to the death of a protected party, and must
 356 specify the Official Records book and page number, instrument
 357 number, or clerk's file number for each document containing the
 358 information to be released. A fee may not be charged for the
 359 release of any document pursuant to such request.

360 10. This paragraph is subject to the Open Government Sunset
 361 Review Act in accordance with s. 119.15 and shall stand repealed
 362 on October 2, 2024, unless reviewed and saved from repeal
 363 through reenactment by the Legislature.

364 Section 2. The Legislature finds that it is a public
 365 necessity that the home addresses, dates of birth, and telephone
 366 numbers of current and former judicial assistants; the names,
 367 home addresses, telephone numbers, dates of birth, and places of
 368 employment of the spouses and children of such judicial
 369 assistants; and the names and locations of schools and day care
 370 facilities attended by the children of such judicial assistants
 371 be made exempt from s. 119.07(1), Florida Statutes, and s.
 372 24(a), Article I of the State Constitution. Such identifying and
 373 location information can be used as a tool to perpetrate fraud
 374 against an individual or to acquire sensitive personal,
 375 financial, medical, and familial information, the release of
 376 which could cause great financial harm to the individual. In the
 377 course of assisting in making rulings, entering judgments,

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378 imposing sentences, or reviewing cases, judicial assistants may
 379 incur the ill will of litigants, the accused, the convicted, and
 380 their associates and families, thus making judicial assistants
 381 and their spouses and children targets for acts of revenge. This
 382 risk continues after judicial assistants leave their public
 383 service. Disgruntled individuals may wait until the employment
 384 of a judicial assistant ends to commit an act of revenge. If
 385 such identifying and location information is released, the
 386 safety of current or former judicial assistants and their
 387 spouses and children could be seriously jeopardized. For these
 388 reasons, the Legislature finds that it is a public necessity
 389 that such information be made exempt from public records
 390 requirements.

391 Section 3. This act shall take effect July 1, 2023.

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The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 18, 2023

I respectfully request that **Senate Bill 50**, relating to Public Records/Judicial Assistants, be placed on the:

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

Thank you for your consideration.

A handwritten signature in cursive script that reads "Tom A. Wright".

Senator Tom A. Wright
Florida Senate, District 8

The Florida Senate

APPEARANCE RECORD

3/15/24

Meeting Date

SB 50

Bill Number or Topic

Govt Oversight - Accountability

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

825 732

Amendment Barcode (if applicable)

Name Alison Dudley

Phone 850 558-1139

Address 108 S Monroe Street

Email alison@dudleyandassociates.com

City TdL

State FL

City

Zip 32301

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 1034

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Rodriguez

SUBJECT: State-administered Retirement Systems

DATE: March 16, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1034 allows a correctional officer participating in the Florida Retirement System Pension Plan to extend participation in the Deferred Retirement Optional Program (DROP) up to 36 months beyond the general 60-month limitation. To be eligible to extend for the additional 36 months, the correctional officer must in be the DROP on or after July 1, 2023, and before June 30, 2028.

State and local governments participating in the Florida Retirement System will pay an additional \$18.0 million annually to fund the benefits granted in this legislation. The bill finds that the act fulfills an important state interest. It provides that a proper and legitimate state purpose is served by the act, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was

consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group. The FRS was amended in 1998 to add the Deferred Retirement Option Program (DROP) under the defined benefit plan and amended in 2000 to provide a defined contribution plan alternative to the defined benefit plan for FRS members effective July 1, 2002.¹

The FRS is a multi-employer, contributory plan² governed by the Florida Retirement System Act.³ As of June 30, 2022, the FRS had 629,073 active members,⁴ 448,846 retired members and beneficiaries, and 28,827 members in DROP.⁵ It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and state universities. The FRS also serves as the retirement plan for participating employees of the 180 municipalities, 153 special districts, and two independent hospitals that have elected to join the system.⁶

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

- The Regular Class⁷ has 537,128 active members and 7,806 in renewed membership.
- The Special Risk Class⁸ has 72,925 active members and 1,100 in renewed membership.
- The Special Risk Administrative Support Class⁹ has 104 active members and one in renewed membership.
- The Elected Officers' Class¹⁰ has 2,075 active members and 109 in renewed membership.
- The SMSC¹¹ has 7,610 active members and 210 in renewed membership.¹²

Plan Choice

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the FRS Investment Plan; and
- The defined benefit plan, also known as the FRS Pension Plan.

When an employee is initially hired in an FRS-covered position, the member has 8 months after the month of hire to choose to participate in either the pension plan or the investment plan. If the

¹ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2022, at 35, *available at*: https://employer.frs.fl.gov/forms/2021-22_ACFR.pdf (last visited February 20, 2023).

² Prior to 1975, members of the FRS were required to make employee contributions of either four percent gross compensation for Regular Class members or six percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011, at three percent.

³ Ch. 121, F.S.

⁴ As of June 30, 2022, the FRS Pension Plan, which is a defined benefit plan, had 444,150 members, and the investment plan, which is a defined contribution plan, had 184,923 members. FRS Comprehensive Annual Report, *supra* note 1 at 260.

⁵ FRS Comprehensive Annual Report, *supra* note 1 at 42.

⁶ *Id.* at 298.

⁷ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁸ 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.

⁹ 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 FRS. Section 121.0515(8), F.S.

¹⁰ 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.

¹¹ 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.

¹² FRS Comprehensive Annual Report, *supra* note 1 at 263.

employee does not choose within that period, a member in the Special Risk Class is deemed to have chosen to participate in the pension plan and all other members are deemed to have chosen to participate in the investment plan. After a member has made an active election to participate in a plan or the member’s choice window has expired, the member has one additional opportunity to choose to switch between plans (this is referred to as the second election).¹³

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 pension plan. The earliest that any member could participate in the investment plan was July 1, 2002. The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁴ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁵

A member vests immediately in all employee contributions paid to the investment plan.¹⁶ With respect to the employer contributions, a member vests after completing 1 work year with an FRS employer.¹⁷ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁸

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and investment earnings. Benefits are provided through employee-directed investments offered by approved investment providers. The amount of money contributed to each member’s account varies by class as follows:¹⁹

Membership Class	Percentage of Gross Compensation*
Regular Class	9.30%
Special Risk Class	17.00%
Special Risk Administrative Support Class	10.95%
Elected Officers’ Class:	
Justices and Judges	16.23%
County Elected Officers	14.34%
Others	12.38%
Senior Management Service Class	10.67%

*Includes the three percent employee contribution.

¹³ Section 121.4501(4)(b), F.S.

¹⁴ Section 121.4501(8), F.S.

¹⁵ Art. IV, s. 4(e), FLA. CONST.

¹⁶ Section 121.4501(6)(a), F.S.

¹⁷ 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, any nonvested accumulations transferred from a member’s account to the SBA’s suspense account are forfeited. S. 121.4501(6)(b) – (d), F.S.

¹⁸ Section 121.591, F.S.

¹⁹ Section 121.72(6), F.S.

The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.²⁰ An FRS member who qualifies for disability while enrolled in the investment plan may 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.²¹

Pension Plan

The pension plan is a defined benefit plan administered by the secretary of the Department of Management Services through the Division of Retirement.²² The pension plan's investments are managed by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing 6 years of service with an FRS employer.²³ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after 8 years of creditable service.²⁴ A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²⁵ For members of the pension plan initially enrolled before July 1, 2011, normal retirement, which is when a member is first eligible for unreduced benefits, occurs at the earliest attainment of 30 years of service or age 62.²⁶ For members in the Special Risk and Special Risk Administrative Support Classes enrolled before July 1, 2011, normal retirement is the earliest of 25 years of service or age 55.²⁷ Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.²⁸

Deferred Retirement Option Program

All membership classes in the FRS Pension Plan may participate in DROP.²⁹ The program allows eligible members³⁰ of the FRS to defer receipt of retirement benefits while continuing employment with the FRS employer. The deferred monthly benefits accrue, plus interest, in the FRS on behalf of the member for the period of time the member participates in DROP. Upon

²⁰ See s. 121.4501(16), F.S.

²¹ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

²² Section 121.025, F.S.

²³ Section 121.021(45)(a), F.S.

²⁴ Section 121.021(45)(b), F.S.

²⁵ Section 121.091(1), F.S.

²⁶ Section 121.021(29)(a)1., F.S.

²⁷ Section 121.021(29)(b)1., F.S.

²⁸ Section 121.021(29)(a)2. and (b)2., F.S.

²⁹ A member in the FRS Investment Plan may not participate in DROP. Investment Plan members are considered retired from the FRS when the member takes a distribution from his or her account.

³⁰ See s. 121.091(13)(a), F.S.

termination of the employment, the member receives the total DROP benefits and begins to receive the previously determined normal retirement benefits.³¹

Eligible members may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months.³² However, instructional personnel employed by the Florida School for the Deaf and the Blind, instructional personnel in grades K-12, and personnel employed by a developmental research school may participate in DROP for up to 36 calendar months beyond the 60-month period.³³ In addition, in 2022 the Legislature authorized a member of the Special Risk Class who is a law enforcement officer and who is a DROP participant on or after July 1, 2022, to participate for up to 36 calendar months beyond the 60-month period if the participant enters DROP on or before June 30, 2028.³⁴

Actuarial Special Studies

In 2022, the state actuary completed a special actuarial study on the recommended blended statutory rates for 2022-2023 reflecting the extension of the maximum length of DROP participation for law enforcement members by up to 36 months.³⁵ The study shows increases for the Special Risk Class by 0.09 percentage points in the normal cost contribution rate and 0.14 percentage points for the UAL contribution rate. An increase of 0.02 percentage points in the DROP rate is also necessary. These increases result in a \$13.1 million annual increase in contributions system-wide.

The state actuary has not completed a special actuarial study relating to the extension of DROP participation for correctional officers only. However, the state actuary has completed a study associated with a 36 month extension for all DROP members, regardless of class or occupation.³⁶ The results of that study indicate that Special Risk Class contribution rates need to be increased by 0.13 percentage points in the normal cost contribution rate and 0.19 percentage points for the UAL contribution rate. An increase of 0.06 percentage points in the DROP rate is also necessary. These increases result in a \$19.5 million annual increase in contributions system-wide.

III. Effect of Proposed Changes:

Section 1 amends s. 121.091, F.S., to allow a member of the Special Risk Class who is a correctional officer³⁷ and who is a DROP participant on or after July 1, 2023, to participate for

³¹ Section 121.091(13), F.S.

³² Section 121.091(13)(b), F.S.

³³ Section 121.091(13)(b)1.a., F.S.

³⁴ Ch. 2022-156, Laws of Fla., codified in s. 121.091(13)(b)1.c., F.S.

³⁵ Letter to Ms. Andrea Simpson, *Re: Extend Maximum DROP Participation by 36 Months for Law Enforcement Officer Members*, dated January 26, 2022 (on file with the Senate Committee on Governmental Oversight and Accountability).

³⁶ Letter to Ms. Andrea Simpson, *Re: Extend Maximum DROP Participation to 8 years for all Membership Classes*, dated January 30, 2023 (on file with the Senate Committee on Governmental Oversight and Accountability).

³⁷ In order to be designated as a special risk member, effective October 1, 1978, the member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395, F.S. In addition, the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or as of July 1, 1984, the member must be the supervisor or command officer of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, are not included; however, wardens and assistant wardens, as defined by rule, are included. Section 121.0515(3)(c), F.S.

up to 36 calendar months beyond the 60-month period if he or she enters DROP on or before June 30, 2028.

Section 2 makes a legislative finding that the act fulfills an important state interest. It provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

Section 3 provides that the act shall take effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State 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, state universities, community colleges, counties, municipalities, and special districts.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Actuarial requirements: Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act” (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

The bill includes employer contributions that are expected to meet the funding needs on a sound actuarial basis.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill increases employer contribution rates to generate \$18.0 million annually system-wide. The table below shows the annual contribution increases by employer group.

Employer Group	Annual Increase in Contributions
State	\$3.3 m
School Boards	\$0.2 m
State Universities	\$0.1 m
Colleges	\$0.0
Counties	\$13.2 m
Other	\$1.5 m
Total	\$18.0 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.091 of the Florida Statutes:

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 15, 2023:

The CS increases employer contributions to the FRS Trust Fund to offset the costs of the benefit increases authorized by the bill.

- B. **Amendments:**

None.

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



813240

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/15/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 144 and 145
insert:

Section 2. (1) In order to fund the benefit changes
provided in this act, the required employer contribution rates
for the members of the Florida Retirement System established in
s. 121.71(4), Florida Statutes, are increased as follows:

(a) By 0.13 percentage point for the Special Risk Class.

(b) By 0.06 percentage point for Deferred Retirement Option



813240

11 Program.

12 (2) In order to fund the benefit changes provided in this
13 act, the required employer contribution rates for the unfunded
14 actuarial liability of the Florida Retirement System established
15 in s. 121.71(5), Florida Statutes, are increased by 0.19
16 percentage point for the Regular Class.

17 (3) The adjustments provided in subsections (1) and(2) are
18 in addition to any other changes to such contribution rates
19 which may be enacted into law to take effect on July 1, 2023.
20 The Division of Law Revision is directed to adjust accordingly
21 the contribution rates provided in s. 121.71, Florida Statutes.

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

24 And the title is amended as follows:

25 Delete line 6

26 and insert:

27 for an additional 36 months; revising required
28 employer retirement contribution rates to fund the
29 benefit changes made by the act; providing a directive
30 to the Division of Law Revision; providing a
31 declaration

By Senator Rodriguez

40-01655-23

20231034__

1 A bill to be entitled
 2 An act relating to state-administered retirement
 3 systems; amending s. 121.091, F.S.; authorizing
 4 specified correctional officers to elect to
 5 participate in the Deferred Retirement Option Program
 6 for an additional 36 months; providing a declaration
 7 of important state interest; providing an effective
 8 date.

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

11
 12 Section 1. Paragraph (b) of subsection (13) of section
 13 121.091, Florida Statutes, is amended to read:

14 121.091 Benefits payable under the system.—Benefits may not
 15 be paid under this section unless the member has terminated
 16 employment as provided in s. 121.021(39) (a) or begun
 17 participation in the Deferred Retirement Option Program as
 18 provided in subsection (13), and a proper application has been
 19 filed in the manner prescribed by the department. The department
 20 may cancel an application for retirement benefits when the
 21 member or beneficiary fails to timely provide the information
 22 and documents required by this chapter and the department's
 23 rules. The department shall adopt rules establishing procedures
 24 for application for retirement benefits and for the cancellation
 25 of such application when the required information or documents
 26 are not received.

27 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
 28 subject to this section, the Deferred Retirement Option Program,
 29 hereinafter referred to as DROP, is a program under which an

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30 eligible member of the Florida Retirement System may elect to
 31 participate, deferring receipt of retirement benefits while
 32 continuing employment with his or her Florida Retirement System
 33 employer. The deferred monthly benefits shall accrue in the
 34 Florida Retirement System on behalf of the member, plus interest
 35 compounded monthly, for the specified period of the DROP
 36 participation, as provided in paragraph (c). Upon termination of
 37 employment, the member shall receive the total DROP benefits and
 38 begin to receive the previously determined normal retirement
 39 benefits. Participation in the DROP does not guarantee
 40 employment for the specified period of DROP. Participation in
 41 DROP by an eligible member beyond the initial 60-month period as
 42 authorized in this subsection shall be on an annual contractual
 43 basis for all participants.

44 (b) *Participation in DROP.*—Except as provided in this
 45 paragraph, an eligible member may elect to participate in DROP
 46 for a period not to exceed a maximum of 60 calendar months.

47 1.a. Members who are instructional personnel employed by
 48 the Florida School for the Deaf and the Blind and authorized by
 49 the Board of Trustees of the Florida School for the Deaf and the
 50 Blind, who are instructional personnel as defined in s.
 51 1012.01(2) (a)-(d) in grades K-12 and authorized by the district
 52 school superintendent, or who are instructional personnel as
 53 defined in s. 1012.01(2) (a) employed by a developmental research
 54 school and authorized by the school's director, or if the school
 55 has no director, by the school's principal, may participate in
 56 DROP for up to 36 calendar months beyond the 60-month period.
 57 Effective July 1, 2018, instructional personnel who are
 58 authorized to extend DROP participation beyond the 60-month

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59 period must have a termination date that is the last day of the
60 last calendar month of the school year within the DROP extension
61 granted by the employer. If, on July 1, 2018, the member's DROP
62 participation has already been extended for the maximum 36
63 calendar months and the extension period concludes before the
64 end of the school year, the member's DROP participation may be
65 extended through the last day of the last calendar month of that
66 school year. The employer shall notify the division of the
67 change in termination date and the additional period of DROP
68 participation for the affected instructional personnel.

69 b. Administrative personnel in grades K-12, as defined in
70 s. 1012.01(3), who have a DROP termination date on or after July
71 1, 2018, may be authorized to extend DROP participation beyond
72 the initial 60 calendar month period if the administrative
73 personnel's termination date is before the end of the school
74 year. Such administrative personnel may have DROP participation
75 extended until the last day of the last calendar month of the
76 school year in which their original DROP termination date
77 occurred if a date other than the last day of the last calendar
78 month of the school year is designated. The employer shall
79 notify the division of the change in termination date and the
80 additional period of DROP participation for the affected
81 administrative personnel.

82 c. Effective July 1, 2022, a member of the Special Risk
83 Class who is a law enforcement officer who meets the criteria in
84 s. 121.0515(3)(a) and who is a DROP participant on or after July
85 1, 2022, or a correctional officer who meets the criteria in s.
86 121.0515(3)(c) and who is a DROP participant on or after July 1,
87 2023, may participate in DROP for up to 36 calendar months

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88 beyond the 60-month period if he or she enters DROP on or before
89 June 30, 2028.

90 2. Upon deciding to participate in DROP, the member shall
91 submit, on forms required by the division:

92 a. A written election to participate in DROP;

93 b. Selection of DROP participation and termination dates
94 that satisfy the limitations stated in paragraph (a) and
95 subparagraph 1. The termination date must be in a binding letter
96 of resignation to the employer establishing a deferred
97 termination date. The member may change the termination date
98 within the limitations of subparagraph 1., but only with the
99 written approval of the employer;

100 c. A properly completed DROP application for service
101 retirement as provided in this section; and

102 d. Any other information required by the division.

103 3. The DROP participant is a retiree under the Florida
104 Retirement System for all purposes, except for paragraph (5)(f)
105 and subsection (9) and ss. 112.3173, 112.363, 121.053, and
106 121.122. DROP participation is final and may not be canceled by
107 the participant after the first payment is credited during the
108 DROP participation period. However, participation in DROP does
109 not alter the participant's employment status, and the member is
110 not deemed retired from employment until his or her deferred
111 resignation is effective and termination occurs as defined in s.
112 121.021.

113 4. Elected officers are eligible to participate in DROP
114 subject to the following:

115 a. An elected officer who reaches normal retirement date
116 during a term of office may defer the election to participate

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117 until the next succeeding term in that office. An elected
118 officer who exercises this option may participate in DROP for up
119 to 60 calendar months or no longer than the succeeding term of
120 office, whichever is less.

121 b. An elected or a nonelected participant may run for a
122 term of office while participating in DROP and, if elected,
123 extend the DROP termination date accordingly; however, if such
124 additional term of office exceeds the 60-month limitation
125 established in subparagraph 1., and the officer does not resign
126 from office within such 60-month limitation, the retirement and
127 the participant's DROP is null and void as provided in sub-
128 subparagraph (c)5.d.

129 c. An elected officer who is dually employed and elects to
130 participate in DROP must terminate all employment relationships
131 as provided in s. 121.021(39) for the nonelected position within
132 the original 60-month period or maximum participation period as
133 provided in subparagraph 1. For DROP participation ending:

134 (I) Before July 1, 2010, the officer may continue
135 employment as an elected officer as provided in s. 121.053. The
136 elected officer shall be enrolled as a renewed member in the
137 Elected Officers' Class or the Regular Class, as provided in ss.
138 121.053 and 121.122, on the first day of the month after
139 termination of employment in the nonelected position and
140 termination of DROP. Distribution of the DROP benefits shall be
141 made as provided in paragraph (c).

142 (II) On or after July 1, 2010, the officer may continue
143 employment as an elected officer but must defer termination as
144 provided in s. 121.053.

145 Section 2. The Legislature finds that a proper and

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

157 Section 3. This act shall take effect July 1, 2023.

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January 26, 2022

Ms. Andrea Simpson
Interim State Retirement Director
Florida Department of Management Services, Division of Retirement

Re: Extend Maximum DROP Participation by 36 Months for Law Enforcement Officer Members

Dear Director Simpson:

In response to a House request dated January 5, 2022, and as outlined in our project scope letter dated January 14, 2022, this letter provides actuarial analysis on a concept that would extend the maximum length of Deferred Retirement Option Program (DROP) participation for law enforcement officer (LEO) members, who are a subset of members in the Special Risk Membership Class, by up to 36 months.

Executive Summary

The estimated impact of the proposed concept on the blended proposed 2022-2023 statutory contribution rates is shown in the table below. The concept would increase the projected present value of future benefits for affected members. As such, under the individual entry age normal actuarial cost allocation method as most recently adopted by the 2021 FRS Actuarial Assumption Conference, the concept, if adopted, would increase the Normal Cost, the Actuarial Liability and the Unfunded Actuarial Liability. The concept would affect the DROP Normal Cost Rate, which is set equal to the composite FRS Pension Plan average employer-paid Normal Cost Rate, which would increase from 7.77% to 7.79% of applicable payroll.

Blended Proposed 2022-2023 Statutory Contribution Rate Changes Due to Concept (as a % of Payroll):			
	Special Risk Class	DROP	Composite System including DROP
Employer Normal Cost Contribution Rate	0.09%	0.02%	0.02%
Employer UAL Contribution Rate	<u>0.14%</u>	<u>0.00%</u>	<u>0.02%</u>
Total Employer Contribution Rate	0.23%	0.02%	0.04%

The table above shows the increase in blended proposed 2022-2023 statutory contribution rates, which would be assessed on both FRS Pension Plan and FRS Investment Plan payroll.

This work product was prepared solely for the Florida Department of Management Services for the purposes stated herein and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work. Milliman recommends that third parties be aided by their own actuary or other qualified professional when reviewing the Milliman work product.

Proposed Concept

Law enforcement officers are a subset of the Special Risk Class. Under current statute, all members of the Special Risk Class may participate in the DROP for a maximum of 60 months. The proposed concept would extend the maximum DROP participation period by 36 months, for a new maximum DROP participation period of 96 months, or 8 years, for eligible law enforcement officer members. The proposed concept would afford law enforcement officers the same maximum DROP participation period that current statute provides to K-12 instructional personnel in Regular Class. The proposed concept would not affect the maximum DROP participation period of Special Risk Class members who are not law enforcement officers. Further, the concept applies only to eligible active members who have not yet entered DROP as of the concept's effective date.

Eligible Members

The Division of Retirement provided us a listing of members in law enforcement officer positions who meet the criteria to be affected by this concept. The listing identified 22,198 eligible law enforcement officer actives among the Special Risk Class active members included in the July 1, 2021 actuarial valuation data. Said another way, as of July 2021 by headcount, law enforcement officers comprise about 35% of the active Special Risk Class Pension Plan membership.

Background – What is the DROP?

FRS's DROP was established in 1998. Members who have reached eligibility for immediate unreduced retirement benefits and who satisfy certain other criteria (as discussed later in this letter) can elect to enter the DROP. The member's monthly retirement benefit payable as of the DROP entry date, based on final average pay and service as of that date, is calculated. The member then continues to work until the member's selected DROP exit date, which under current rules for members other than K-12 instructional personnel can be up to five years subsequent. The proposed concept would allow law enforcement officers' selected DROP exit dates to be up to eight years after DROP entry. At DROP exit, the member receives the accumulated monthly benefit "payments" during the DROP participation period plus interest as a single lump sum, rollovers, or a combination. Then the member commences receipt of the monthly annuity calculated at time of DROP entry, plus any applicable COLA increases between DROP entry and DROP exit. Many members may view a DROP as a financially attractive proposition since it provides a member the opportunity to simultaneously collect both a paycheck and accumulate a monthly retirement benefit payment for a period. Our current valuation assumptions anticipate that over half of all full-career male Tier 1 Special Risk Pension Plan members who start their FRS-covered employment by age 25 choose to participate in DROP. Those assumptions are based on recently observed actual experience. For employers, a DROP can have the benefit of providing significant advance notice of retirements, which can assist in management of personnel and staffing levels.

Milliman

Current DROP Entry Eligibility Criteria

Except as allowed by statute, notably for K-12 instructional personnel¹, members have a limited eligibility window during which they can elect to enter the DROP. A member initially becomes eligible to enter DROP in the same month the member first becomes eligible to file for unreduced immediate retirement benefits. Eligibility windows differ by tier and membership class and are initially reached via satisfying either service-only criteria or age-plus-service criteria.

For most members achieving DROP entry eligibility via service-only criteria, the window to enter DROP lasts more than 12 months, with the DROP entry window’s length varying by individual. (The window must be at least 12 months in length.) The window for Special Risk members satisfying service-only eligibility criteria is shown in the table below.

DROP Entry Eligibility Window for Special Risk Members Satisfying Service-Only Criteria			
Tier	Window Initially Opens	Window Remains Open	Window Closes
Tier I	25 Years of Service	Age 52	Age 53*
Tier II	30 Years of Service	Age 55	Age 56*

*Or 12 months after window opens, if opening is after the “remains open” age listed above

Members who have not yet reached unreduced immediate retirement eligibility through service-only criteria become eligible to enter DROP upon satisfaction of age-plus-service criteria. For those members, the eligibility window to enter DROP lasts for 12 months. The window for Special Risk members satisfying age-plus-service eligibility criteria is shown in the table below.

DROP Entry Eligibility Window for Special Risk Members Satisfying Age-Plus-Service Criteria		
Tier	Window Opens	Window Closes
Tier I	Age 55 and 6 Years of Service	After 12 months
Tier II	Age 60 and 8 Years of Service	After 12 months

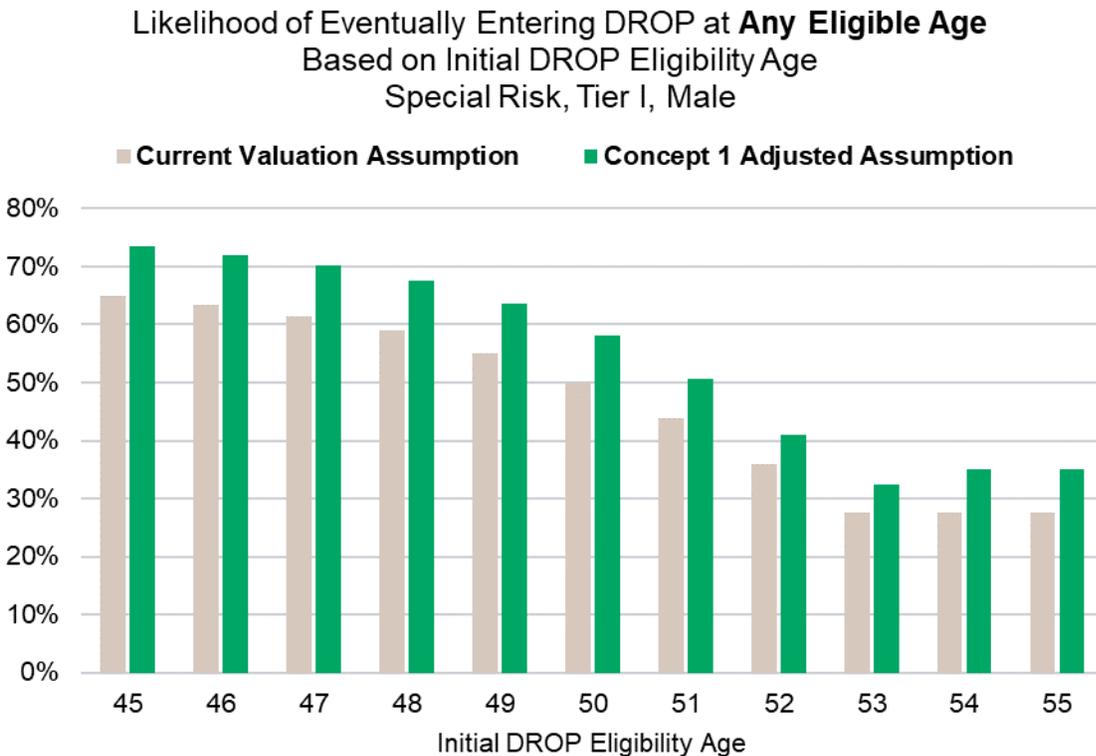
Modeling of Concept

We anticipate DROP entry and exit behavior patterns for some eligible members would be modified in response to this concept’s enactment. Accordingly, we have estimated the cost impact of this concept by modeling the revised DROP duration provisions and modifying the actuarial valuation’s assumptions for likelihood and timing of DROP entry and length of DROP participation for the law enforcement officer subset of the Special Risk Class. We expect that enactment of the concept would impact member behavior by lowering the average age at which

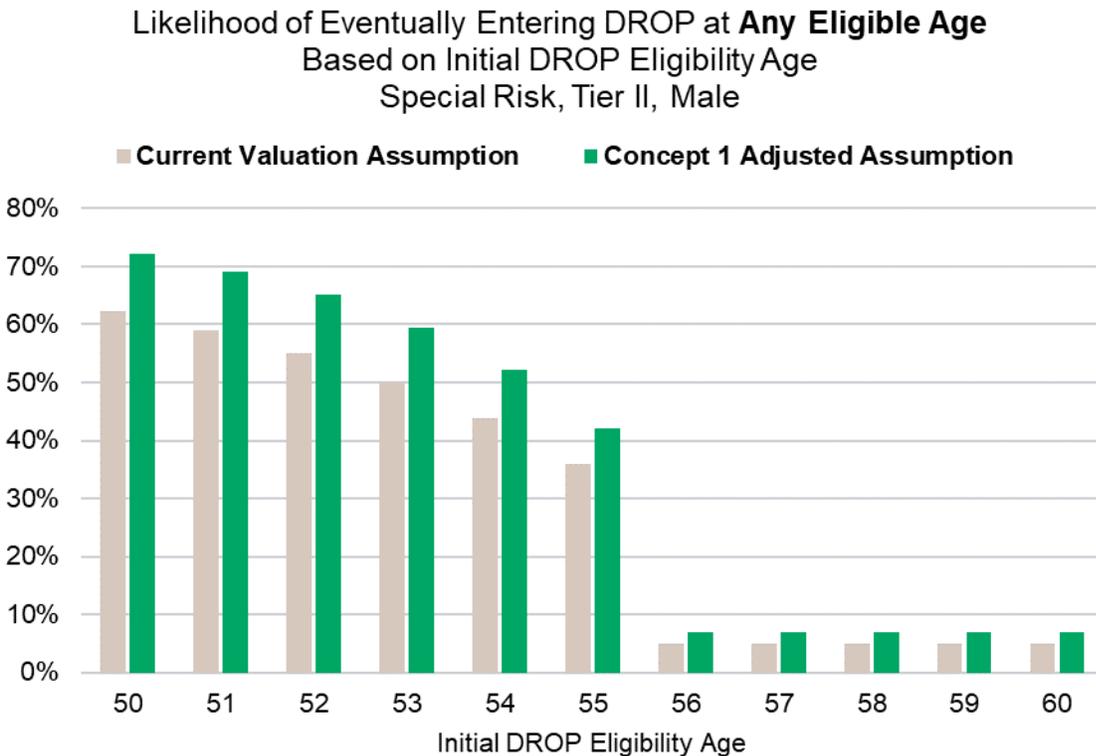
¹ Instructional personnel in grades K-12 may defer DROP participation to any age under current statute.

law enforcement officers enter DROP and extending the duration of DROP participation for such members.

To reflect the modified behavior anticipated by the concept, we modified the valuation assumptions for DROP entry at ages 45-55 for Tier I law enforcement officers, and ages 50-60 for Tier II law enforcement officers. We anticipate that members who become initially eligible for DROP at ages with modified assumptions under the studied concept would have a somewhat higher overall likelihood of eventually entering DROP at any eligible age, as shown in the charts below for Tier I and Tier II males.



Tier I Special Risk members who reach normal retirement eligibility before age 52 have a DROP entry eligibility window greater than 12 months. Accordingly, the bar chart above represents the cumulative likelihood of entering DROP at any age during the window. Tier I Special Risk members who reach normal retirement eligibility on and after age 52 have a DROP entry eligibility window length of 12 months.



Tier II Special Risk members who reach normal retirement eligibility before age 55 have a DROP entry eligibility window greater than 12 months. Accordingly, the bar chart above represents the cumulative likelihood of entering DROP at any age during the window. Tier II Special Risk members who reach normal retirement eligibility on and after age 55 have a DROP entry eligibility window length of 12 months. Due to the demanding nature of Special Risk Class positions, the assumed likelihood of entering DROP at ages 56 and older is notably lower than the assumed likelihood of entering DROP at ages younger than 56. However, we anticipate that concept enactment would increase the rates of DROP entry somewhat at ages 56 and older.

Tier I and Tier II DROP entry rates for eligible female law enforcement officers were adjusted similarly to the tier-specific male rates. See Table 3 for more detail on the specific rate adjustments.

The current valuation assumption is that members electing DROP will participate in the DROP on average for 48 months, or 4 years. The assumption is based on actual FRS experience of the average duration of DROP participation, which does not vary notably for Special Risk Class compared to the other large membership classes. Furthermore, FRS experience for K-12 instructional Regular Class personnel, who under current statute have the ability to remain in

DROP up to 96 months, reflects an average duration of DROP participation not much different from non-instructional members of the Regular class.

In considering how the concept may affect the average duration of DROP participation of affected members, we reviewed the provisions and assumptions for other public safety DROP programs that allow participation periods of greater than 60 months. The experience and assumptions show that most members do not remain in DROP for the maximum duration allowed. Therefore, we have assumed that the average duration of DROP participation for law enforcement officers affected by this concept would increase from 48 months to 60 months.

Summary of Results

The projected impact of the concept was assessed on a member-by-member basis for each current active member not already in DROP projected to be eligible under the concept. The magnitude of the effect of the concept varies from member to member and depends on the member's age and service. Our analysis quantifies the estimated impact of the concept when compared to the current benefit structure for the Special Risk Class FRS Pension Plan participants.

Applying the adopted actuarial cost allocation method used for determining 2022-2023 fiscal year actuarially calculated contribution rates, the FRS Pension Plan Normal Cost, Actuarial Liability and Unfunded Actuarial Liability would be increased by this concept.

Under the concept, both FRS Pension Plan Actuarial Liability and Unfunded Actuarial Liability (UAL) for the Special Risk Membership Class would increase by approximately \$99 million. The impact on the proposed blended statutory 2022-2023 contribution rates is as shown on the table on page one of this analysis, and in Table 2 of the attached exhibits.

Table 1 of the attached exhibits shows the impact of the change on the FRS Pension Plan's July 1, 2021 actuarial valuation results for Special Risk Class members prior to blending with FRS Investment Plan cost levels to create 2022-2023 proposed blended statutory employer contribution rates. The concept would also affect the DROP Normal Cost Rate, which is set equal to the composite FRS Pension Plan average employer-paid Normal Cost Rate. Section A of the table shows the estimated increase to the actuarially calculated Employer Normal Cost Rate and UAL Cost Rate. Section B of the table shows the estimated increase to the FRS Pension Plan's Unfunded Actuarial Liability and Present Value of Projected Benefits calculated based on the methodology used to calculate Actuarial Liability for FRS Pension Plan funding calculations as approved by the 2021 FRS Actuarial Assumption Conference.

Table 2 shows the estimated impact of the concept on the proposed blended statutory rates for the 2022-2023 plan year. Section A of the table develops the 2022-2023 proposed blended statutory employer-paid Normal Cost Rate reflecting the expected impact of the concept, based on the concept's increase to the FRS Pension Plan employer Normal Cost Rate for the Special Risk Class and the DROP. The FRS Pension Plan rates shown are based on the results of this

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study's analysis. The FRS Investment Plan rates would be unchanged by enactment of this concept.

Section B of Table 2 develops the proposed blended statutory Employer UAL Contribution Rate as the total employer UAL Cost derived from the FRS Pension Plan divided by the total projected payroll of the FRS Pension Plan and FRS Investment Plan. Section C of the table compares the proposed blended statutory rates reflecting the impact of the concept to those developed in the 2022-2023 Blended Rate Study, which was developed as part of the July 1, 2021 Actuarial Valuation. Section D of the table translates the estimated change in 2022-2023 proposed blended statutory rates to an estimated increase in employer contributions during the 2022-2023 plan year.

The payroll for some employee groups is subject to only the blended Employer UAL Contribution Rate component of the overall employer contribution rate (e.g., participants in the SUSORP, SMSOAP, and SCCORP, and reemployed members not eligible for renewed membership). The payroll for those employee groups is included in the calculation of the proposed blended statutory Employer UAL Contribution Rate but is excluded from the calculation of the proposed blended statutory Employer Normal Cost Contribution Rate.

The contribution rates shown in Table 2 excludes the 0.06% contribution rate for FRS Investment Plan administration and education (applied to all membership classes except DROP) and the 1.66% contribution rate for the Florida Retiree Health Insurance Subsidy (HIS) program, which is charged to all FRS Pension Plan and FRS Investment Plan payroll.

Table 3 compares the valuation DROP entry assumptions to the rates as modified by this study, at the ages for which the rates were modified.

Other Assumptions and Methods

The calculations are based on census and payroll data as of July 1, 2021 provided to us by the Division of Retirement for development of the FRS Actuarial Valuation as of July 1, 2021 and the FRS 2022-2023 Blended Rate Study. Additionally, the Division of Retirement provided us a file identifying law enforcement officer members who have met the criteria to be eligible for this concept. We have not audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete. The impact of the concept was modeled by applying the concept's provisions and adjusted assumptions to Special Risk active members who were also on the listing of eligible members provided by the Division of Retirement. Valuation results for all other members were unchanged from the FRS Actuarial Valuation as of July 1, 2021.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and

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comparison of the data to search for data values that are questionable or for relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.

Except where otherwise noted in this letter, this analysis is based on the methods and assumptions as stated in the FRS Actuarial Valuation as of July 1, 2021 report. The data was based on the July 1, 2021 FRS actuarial valuation database and supplemental data provided for this study and described above. The results of our study depend on future experience conforming to those actuarial assumptions discussed earlier in this letter. Future actuarial measurements may differ significantly from the current measurements presented in this analysis due to many factors, including plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period) and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements. In addition, the cost of the proposed change will depend on the actual legislation.

The study results were developed using models intended for valuations that use standard actuarial techniques.

Milliman's work product was prepared exclusively for the internal business use of Florida Department of Management Services, Division of Retirement. It is a complex technical analysis that assumes a high level of knowledge concerning the Florida Retirement System's operations, and uses Division data, which Milliman has not audited. To the extent that Milliman's work is not subject to disclosure under applicable public record laws, Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit or create a legal duty to any third-party recipient of its work product. Milliman's consent to release its work product to any third party may be conditioned on the third party signing a Release, subject to the following exceptions:

- a. The Division of Retirement may provide a copy of Milliman's work, in its entirety, to the System's professional service advisors who are subject to a duty of confidentiality and who agree to not use Milliman's work for any purpose other than to benefit the System.
- b. The Division of Retirement may provide a copy of Milliman's work, in its entirety, to other governmental entities, as required by law.

No third-party recipient of Milliman's work product should rely upon Milliman's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

The consultants who worked on this assignment are retirement actuaries. Milliman's advice is not intended to be a substitute for qualified legal or accounting counsel.

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Ms. Andrea Simpson
January 26, 2022
Page 9

Milliman consultants are independent of the plan sponsor. We are not aware of any relationship that would impair the objectivity of our work.

On the basis of the foregoing, I hereby certify that, to the best of my knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the principles prescribed by the Actuarial Standards Board and the *Code of Professional Conduct and Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States* published by the American Academy of Actuaries.

I am a consulting actuary for Milliman, Inc. I am a member of the American Academy of Actuaries and meet their Qualification Standards to render the actuarial opinion contained herein. Please call if you would like to further discuss this project.

Respectfully Submitted,



Matt Larrabee, FSA, EA, MAAA
Principal & Consulting Actuary

cc: Garry Green (Division of Retirement), Daniel Wade (Milliman), Kathryn Hunter (Milliman)

Enclosures

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FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

**Effect on July 1, 2021 Defined Benefit FRS Pension Plan Actuarial Valuation Results
of Proposal for Prospective Extension of Maximum DROP Participation by 36-months for Law Enforcement Officer Members Effective July 1, 2021
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)**

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab Local		Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
A. Actuarially Calculated Pension Plan Employer Contribution Rates (prior to blending to create proposed blended statutory contribution rates)										
1. Actuarially Calculated Pension Plan Employer Contribution Rates Developed in July 1, 2021 Valuation ¹										
a. Employer Normal Cost	5.73%	16.32%	11.70%	14.48%	9.00%	10.98%	7.59%	7.77%	7.77%	7.77%
b. UAL Cost	<u>5.52%</u>	<u>11.16%</u>	<u>36.66%</u>	<u>33.24%</u>	<u>80.39%</u>	<u>63.41%</u>	<u>31.03%</u>	<u>7.17%</u>	<u>9.15%</u>	<u>7.33%</u>
c. Total Employer Cost	11.25%	27.48%	48.36%	47.72%	89.39%	74.39%	38.62%	14.95%	16.92%	15.10%
2. Actuarially Calculated Pension Plan Employer Contribution Rates Reflecting Proposed Change										
a. Employer Normal Cost	5.73%	16.42%	11.70%	14.48%	9.00%	10.98%	7.59%	7.79%	7.79%	7.79%
b. UAL Cost	<u>5.52%</u>	<u>11.32%</u>	<u>36.66%</u>	<u>33.24%</u>	<u>80.39%</u>	<u>63.41%</u>	<u>31.03%</u>	<u>7.20%</u>	<u>9.15%</u>	<u>7.35%</u>
c. Total Employer Cost	11.25%	27.74%	48.36%	47.72%	89.39%	74.39%	38.62%	14.99%	16.94%	15.14%
3. Change in Actuarially Calculated Pension Plan Employer Contribution Rates due to Proposed Change										
a. Normal Cost	0.00%	0.10%	0.00%	0.00%	0.00%	0.00%	0.00%	0.02%	0.02%	0.02%
b. UAL Cost	<u>0.00%</u>	<u>0.16%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.03%</u>	<u>0.00%</u>	<u>0.02%</u>
c. Total Cost	0.00%	0.26%	0.00%	0.00%	0.00%	0.00%	0.00%	0.05%	0.02%	0.04%
B. FRS Pension Plan Unfunded Actuarial Liability (UAL) and Present Value of Projected Benefits (Dollars in Thousands)										
1. July 1, 2021 Actuarial Valuation UAL ²	\$20,187,663	\$7,938,690	\$16,278	\$535,788	\$72,136	\$421,656	\$2,512,289	\$31,684,500	\$3,053,094	\$34,737,594
2. July 1, 2021 UAL Reflecting Proposed Change	<u>20,187,663</u>	<u>8,037,975</u>	<u>16,278</u>	<u>535,788</u>	<u>72,136</u>	<u>421,656</u>	<u>2,512,289</u>	<u>31,783,785</u>	<u>3,053,094</u>	<u>34,836,879</u>
3. Increase in UAL due to Proposed Change	\$0	\$99,285	\$0	\$0	\$0	\$0	\$0	\$99,285	\$0	\$99,285
4. Decrease in Present Value of Future Normal Costs	<u>\$0</u>	<u>(\$78,070)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>(\$78,070)</u>	<u>\$0</u>	<u>(\$78,070)</u>
5. Increase in Present Value of Projected Benefits (3. + 4.)	\$0	\$21,215	\$0	\$0	\$0	\$0	\$0	\$21,215	\$0	\$21,215

¹ As reported in the July 1, 2021 valuation - Table 4-11

² As reported in the July 1, 2021 valuation - Table 3-2

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

**Effect on Proposed Blended Statutory Employer Contribution Rates for 2022-2023 Plan Year
of Proposal for Prospective Extension of Maximum DROP Participation by 36-months for Law Enforcement Officer Members Effective July 1, 2021
Assumes 3.25% Annual Growth in Total Payroll**

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
A. Proposed Blended Statutory Normal Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)										
1. Actuarially Calculated Defined Benefit Pension Plan Normal Cost										
a. Employer Pension Plan Normal Cost Rate	5.73%	16.42%	11.70%	14.48%	9.00%	10.98%	7.59%	7.79%	7.79%	7.79%
b. Projected Pension Plan Normal Cost Payroll	\$19,861,536	\$4,654,614	\$3,485	\$114,681	\$5,619	\$44,147	\$573,600	\$25,257,682	\$2,419,435	\$27,677,117
c. Total Employer Pension Plan Normal Cost [(1a) x (1b)]	\$1,138,066	\$764,288	\$408	\$16,606	\$506	\$4,847	\$43,536	\$1,968,257	\$188,474	\$2,156,731
2. Investment Plan Employer Cost										
a. Employer Rates effective July 1, 2021 (Sec 121.72-73; 121.735)	3.60%	13.54%	5.43%	11.05%	6.94%	8.95%	4.98%	4.64%	0.00%	4.64%
b. Projected Investment Plan Payroll	\$7,199,162	\$800,533	\$1,400	\$23,417	\$2,703	\$21,701	\$236,389	\$8,285,305	\$0	\$8,285,305
c. Total Employer Investment Plan Cost [(2a) x (2b)]	\$259,170	\$108,392	\$76	\$2,588	\$188	\$1,942	\$11,772	\$384,128	\$0	\$384,128
3. Proposed Blended Statutory Employer Normal Cost Rate (Pension Plan + Investment Plan)										
a. Total Employer Normal Cost Contribution [(1c) + (2c)]	\$1,397,236	\$872,680	\$484	\$19,194	\$694	\$6,789	\$55,308	\$2,352,385	\$188,474	\$2,540,859
b. Total System Projected Payroll [(1b) + (2b)]	\$27,060,698	\$5,455,147	\$4,885	\$138,098	\$8,322	\$65,848	\$809,989	\$33,542,987	\$2,419,435	\$35,962,422
c. Proposed Blended Statutory Employer Normal Cost Contribution Rate ¹ As a Percentage of Total Payroll [(3a) / (3b)]	5.16%	16.00%	9.91%	13.90%	8.34%	10.31%	6.83%	7.01%	7.79%	7.07%
B. Proposed Blended Statutory Unfunded Actuarial Liability (UAL) Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)										
1. Actuarially Calculated Defined Benefit Pension Plan UAL Cost										
a. Pension Plan UAL Cost Rate	5.52%	11.32%	36.66%	33.24%	80.39%	63.41%	31.03%	7.20%	9.15%	7.35%
b. Projected Pension Plan UAL Cost Payroll	\$23,632,063	\$4,683,880	\$3,485	\$115,595	\$6,489	\$49,133	\$589,858	\$29,080,503	\$2,419,435	\$31,499,938
c. Total Employer UAL Cost [(1a) x (1b)]	\$1,304,490	\$530,215	\$1,278	\$38,424	\$5,217	\$31,155	\$183,033	\$2,093,812	\$221,378	\$2,315,190
2. Investment Plan Projected Payroll										
	\$7,199,162	\$800,533	\$1,400	\$23,417	\$2,703	\$21,701	\$236,389	\$8,285,305	\$0	\$8,285,305
3. Proposed Blended Statutory Employer UAL Contribution Rate (Pension Plan + Investment Plan)										
a. Total Employer UAL Cost [(1c)]	\$1,304,490	\$530,215	\$1,278	\$38,424	\$5,217	\$31,155	\$183,033	\$2,093,812	\$221,378	\$2,315,190
b. Total System Projected Payroll [(1b) + (2)]	\$30,831,225	\$5,484,413	\$4,885	\$139,012	\$9,192	\$70,834	\$826,247	\$37,365,808	\$2,419,435	\$39,785,243
c. Proposed Blended Statutory Employer UAL Contribution Rate ¹ As a Percentage of Total Payroll [(3a) / (3b)]	4.23%	9.67%	26.16%	27.64%	56.76%	43.98%	22.15%	5.60%	9.15%	5.82%

¹ Rates shown do not include the HIS contribution rate or IP administrative fees.

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

**Effect on Proposed Blended Statutory Employer Contribution Rates for 2022-2023 Plan Year
of Proposal for Prospective Extension of Maximum DROP Participation by 36-months for Law Enforcement Officer Members Effective July 1, 2021
Assumes 3.25% Annual Growth in Total Payroll**

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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	Regular	Special Risk	Special Risk Administrative	-----Elected Officers' Class----- Judicial	Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
C. Proposed Blended Statutory Employer Contribution Rates Reflecting the Concept										
1. Proposed Blended Statutory Employer Contribution Rates Based on July 1, 2021 Valuation ²										
a. Employer Normal Cost Contribution Rate	5.16%	15.91%	9.91%	13.90%	8.34%	10.31%	6.83%	7.00%	7.77%	7.05%
b. Employer UAL Contribution Rate	<u>4.23%</u>	<u>9.53%</u>	<u>26.16%</u>	<u>27.64%</u>	<u>56.76%</u>	<u>43.98%</u>	<u>22.15%</u>	<u>5.58%</u>	<u>9.15%</u>	<u>5.80%</u>
c. Total Employer Contribution Rate [(C1a) + (C1b)]	9.39%	25.44%	36.07%	41.54%	65.10%	54.29%	28.98%	12.58%	16.92%	12.85%
2. Proposed Blended Statutory Employer Contribution Rates Reflecting Proposed Change ¹										
a. Employer Normal Cost Contribution Rate [(A3c)]	5.16%	16.00%	9.91%	13.90%	8.34%	10.31%	6.83%	7.01%	7.79%	7.07%
b. Employer UAL Contribution Rate [(B3c)] ³	<u>4.23%</u>	<u>9.67%</u>	<u>26.16%</u>	<u>27.64%</u>	<u>56.76%</u>	<u>43.98%</u>	<u>22.15%</u>	<u>5.60%</u>	<u>9.15%</u>	<u>5.82%</u>
c. Total Employer Contribution Rate [(C3a) + (C3b)]	9.39%	25.67%	36.07%	41.54%	65.10%	54.29%	28.98%	12.61%	16.94%	12.89%
3. Change in Proposed Blended Statutory Employer Contribution Rates due to Proposed Change										
a. Employer Normal Cost Contribution Rate [(C2a) - (C1a)]	0.00%	0.09%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%	0.02%	0.02%
b. Employer UAL Contribution Rate [(C2b) - (C1b)]	<u>0.00%</u>	<u>0.14%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.02%</u>	<u>0.00%</u>	<u>0.02%</u>
c. Total Employer Contribution Rate [(C3a) + (C3b)]	0.00%	0.23%	0.00%	0.00%	0.00%	0.00%	0.00%	0.03%	0.02%	0.04%
D. Additional/(Reduced) Proposed Statutory Employer Contributions for the 2022-2023 Plan Year Due to Proposed Change (Dollars in Thousands)										
1. State	\$0	\$2,375	\$0	\$0	\$0	\$0	\$0	\$2,375	\$70	\$2,445
2. School Boards	\$0	\$162	\$0	\$0	\$0	\$0	\$0	\$162	\$203	\$365
3. State Universities	\$0	\$74	\$0	\$0	\$0	\$0	\$0	\$74	\$15	\$89
4. Community Colleges	\$0	\$6	\$0	\$0	\$0	\$0	\$0	\$6	\$13	\$19
5. Counties	\$0	\$9,202	\$0	\$0	\$0	\$0	\$0	\$9,202	\$157	\$9,359
6. Other	<u>\$0</u>	<u>\$768</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$768</u>	<u>\$25</u>	<u>\$793</u>
7. Total	\$0	\$12,587	\$0	\$0	\$0	\$0	\$0	\$12,587	\$483	\$13,070

¹ Rates shown do not include the HIS contribution rate or IP administrative fees.

² As reported in the 2022-2023 Blended Rates Study dated December 1, 2021.

³ Employers of employee groups subject to only the UAL contribution rate would pay the rates shown in line (C.2.b.) and line (C.3.b.).

FLORIDA RETIREMENT SYSTEM
DROP ENTRY RATE ASSUMPTIONS

DROP Entry Rates Effective July 1, 2021 for the Defined Benefit FRS Pension Plan

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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Age	Tier I Special Risk: Valuation Assumptions		Tier I Law Enforcement Officers: Study Assumptions		Tier II Special Risk: Valuation Assumptions		Tier II Law Enforcement Officers: Study Assumptions	
	Female	Male	Female	Male	Female	Male	Female	Male
45	8.0%	13.0%	11.0%	18.0%				
46	8.0%	13.0%	11.0%	18.0%				
47	8.0%	13.0%	11.0%	18.0%				
48	11.0%	15.0%	14.0%	20.0%				
49	11.0%	15.0%	14.0%	20.0%				
50	11.0%	15.0%	14.0%	20.0%	11.0%	15.0%	15.0%	21.0%
51	11.0%	15.0%	14.0%	20.0%	11.0%	15.0%	15.0%	21.0%
52	15.0%	36.0%	18.0%	41.0%	11.0%	15.0%	15.0%	21.0%
53	15.0%	27.5%	18.0%	32.5%	11.0%	15.0%	15.0%	21.0%
54	15.0%	27.5%	22.0%	35.0%	11.0%	15.0%	15.0%	21.0%
55	32.0%	27.5%	40.0%	35.0%	17.0%	36.0%	23.0%	42.0%
56					11.0%	5.0%	13.0%	7.0%
57					11.0%	5.0%	13.0%	7.0%
58	Tier I rates modified only for ages 45-55				11.0%	5.0%	13.0%	7.0%
59					11.0%	5.0%	13.0%	7.0%
60					20.0%	5.0%	22.0%	7.0%



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January 30, 2023

Ms. Andrea Simpson
 State Retirement Director
 Florida Department of Management Services, Division of Retirement

Re: Extend Maximum DROP Participation to 8 Years for All Membership Classes

Dear Director Simpson:

In response to a House request and as outlined in our project scope letter dated January 10, 2023, this letter provides actuarial analysis on a concept that would extend the maximum length of Deferred Retirement Option Program (DROP) participation for all membership classes to 8 years.

Executive Summary

The estimated impact of the proposed concept on the blended proposed 2023-2024 statutory contribution rates is shown in the table below. The concept would increase the projected present value of future benefits for affected members. Under the current actuarial cost allocation method, if adopted the concept would increase the Normal Cost, the Actuarial Liability and the Unfunded Actuarial Liability for all membership classes. The concept would also affect the DROP Normal Cost Rate, which is set equal to the composite FRS Pension Plan average employer-paid Normal Cost Rate, increasing it from 8.18% to 8.24% of DROP payroll.

Blended Proposed 2023-2024 Statutory Contribution Rate Changes Due to Concept (as a % of Payroll):				
	Regular Class	Special Risk Class	DROP	Composite System including DROP
Employer Normal Cost Contribution Rate	0.02%	0.13%	0.06%	0.04%
Employer UAL Contribution Rate	<u>0.06%</u>	<u>0.19%</u>	<u>0.00%</u>	<u>0.07%</u>
Total Employer Contribution Rate	0.08%	0.32%	0.06%	0.11%

The table above shows the increase in blended proposed 2023-2024 statutory contribution rates, which would be assessed on both FRS Pension Plan and FRS Investment Plan payroll.

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Proposed Concept

The proposed concept would extend the maximum length of DROP participation for members in all membership classes. Under current statute, most members may participate in the DROP for a maximum of 60 months. K-12 Instructional personnel and law enforcement officers may extend participation for up to 36 additional months. The proposed concept would extend the maximum DROP participation period to 8 years total for all eligible active members regardless of membership class or employment classification. The proposed concept would afford all active members the same maximum DROP participation period that current statute provides to K-12 instructional personnel and law enforcement officers.

We anticipate DROP entry and exit behavior patterns for some members would change in response to this concept's enactment. Accordingly, we have estimated the cost impact of this concept by modeling the revised DROP duration provisions and modifying the actuarial valuation's assumptions for DROP entry and length of DROP participation for members affected by the concept. While actual future member behavior in response to this concept cannot be known in advance with precision, it is likely that enactment of the concept would impact member behavior by lowering the average age at which members enter the DROP, given that the concept would allow them to remain in the DROP longer.

Background – What is the DROP?

FRS's DROP was established in 1998. Members who have reached eligibility for immediate unreduced retirement benefits and who satisfy certain other criteria (as discussed later in this letter) can elect to enter the DROP. The member's monthly retirement benefit payable as of the DROP entry date, based on final average pay and service as of that date, is calculated. The member then continues to work until the member's selected DROP exit date, which under current rules for members other than K-12 instructional personnel or law enforcement officers can be up to five years subsequent. At DROP exit, the member receives the accumulated monthly benefit "payments" during the DROP participation period plus interest as a single lump sum, rollover, or a combination. Then the member commences receipt of the monthly annuity calculated at time of DROP entry, plus any applicable COLA increases between DROP entry and DROP exit.

Many members may view a DROP as a financially attractive proposition since it provides a member the opportunity to simultaneously collect both a paycheck and accumulate monthly retirement benefit payments for a period. Our current valuation assumptions anticipate that over half of all full-career male Tier I Special Risk Pension Plan members who start their FRS-covered employment by age 25 will choose to participate in DROP. Similarly, our current valuation assumptions anticipate that over half of all full-career female Tier I Regular Class (non-Instructional) Pension Plan members who start their FRS-covered employment by age 28 will choose to participate in DROP. Those assumptions are based on recently observed actual experience. For employers, a DROP can have the benefit of providing significant advance notice of retirements, which can assist in management of personnel and staffing levels.

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Current DROP Entry Eligibility Criteria

Except as allowed by law, notably for K-12 instructional personnel¹, members have a limited eligibility window during which they can elect to enter the DROP. A member initially becomes eligible to enter DROP in the same month the member first becomes eligible to file for unreduced immediate retirement benefits. Eligibility windows differ by tier and membership class and are initially reached via satisfying either a) service-only criteria or b) age-plus-service criteria.

For most members achieving DROP entry eligibility via service-only criteria, the window to enter DROP lasts more than 12 months under current law, with the DROP entry window’s length varying by individual. (The window must be at least 12 months in length.)

The window for members satisfying service-only eligibility criteria is shown in the table below. As noted earlier in this letter, under current law the DROP entry window does not close for K-12 instructional personnel.

CURRENT LAW – SERVICE-ONLY CRITERIA			
DROP Entry Eligibility Window for Non-Special Risk Members Satisfying Service-Only Criteria			
Tier	Window Initially Opens	Window Remains Open	Window Closes
Tier I	30 Years of Service	Age 57	Age 58*
Tier II	33 Years of Service	Age 60	Age 61*
DROP Entry Eligibility Window for Special Risk Members Satisfying Service-Only Criteria			
Tier	Window Initially Opens	Window Remains Open	Window Closes
Tier I	25 Years of Service	Age 52	Age 53*
Tier II	30 Years of Service	Age 55	Age 56*

*Or 12 months after window opens, if opening is after the “remains open” age listed above

¹ Instructional personnel in grades K-12 may defer DROP entry to any age under current law.

Members who have not yet reached unreduced immediate retirement eligibility through service-only criteria become eligible to enter DROP upon satisfaction of age-plus-service criteria. For those members, the eligibility window to enter DROP lasts for 12 months under current law. The window for members satisfying age-plus-service eligibility criteria is shown in the table below.

CURRENT LAW – AGE-PLUS-SERVICE CRITERIA		
DROP Entry Eligibility Window for Non-Special Risk Members Satisfying Age-Plus-Service Criteria		
Tier	Window Opens	Window Closes
Tier I	Age 62 and 6 Years of Service	After 12 months
Tier II	Age 65 and 8 Years of Service	After 12 months
DROP Entry Eligibility Window for Special Risk Members Satisfying Age-Plus-Service Criteria		
Tier	Window Opens	Window Closes
Tier I	Age 55 and 6 Years of Service	After 12 months
Tier II	Age 60 and 8 Years of Service	After 12 months

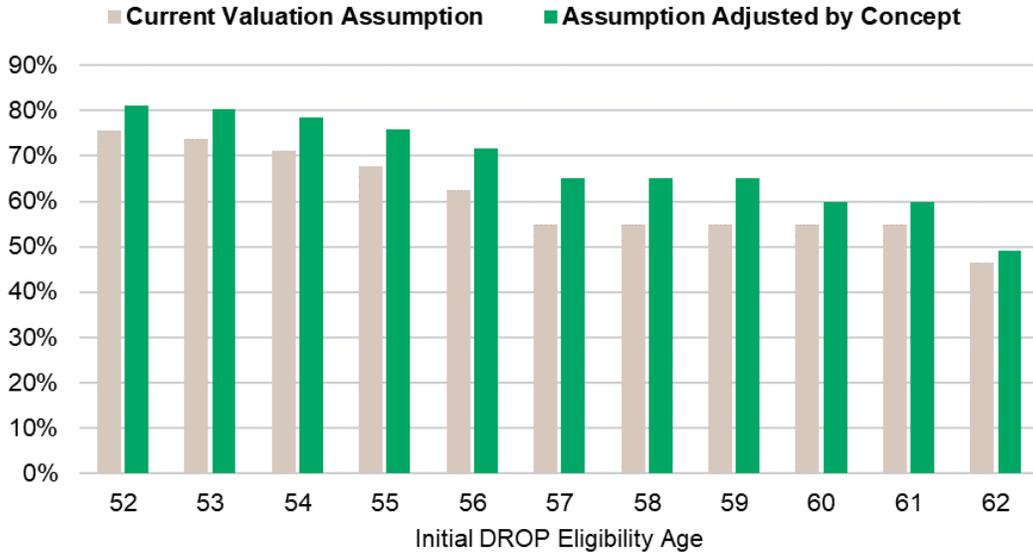
Modeling of Concept

We anticipate DROP entry and exit behavior patterns for certain individual members would be modified in response to this concept’s enactment. Accordingly, we have estimated the cost impact of this concept by modeling the revised DROP duration provisions and modifying the actuarial valuation’s assumptions for likelihood and timing of DROP entry and length of DROP participation. We expect that enactment of the concept would impact member behavior by lowering the average age at which members enter DROP and extending the duration of DROP participation for some members.

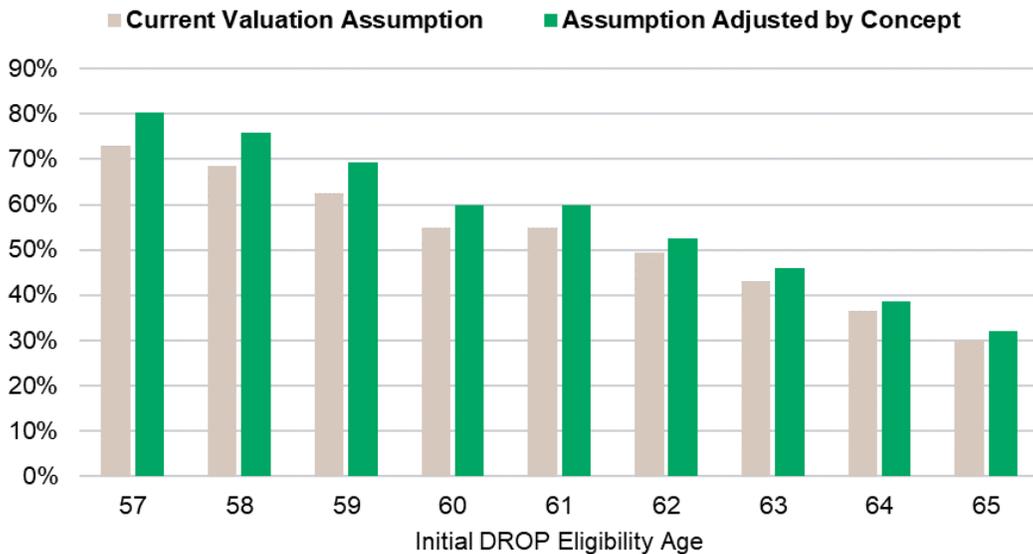
To reflect the modified behavior anticipated by the concept, we modified the valuation assumptions for DROP entry for all membership classes, except K-12 instructional personnel in the Regular Class and law enforcement officers (LEOs) in the Special Risk Class, since those members already have 8-year maximum DROP participation under current law. For non-LEO Special Risk members, the DROP entry assumptions as modified by the concept were set equal to the DROP entry assumptions used in the July 1, 2022 valuation for the LEO subset of the Special Risk Class.

We anticipate that members who become initially eligible for DROP at ages with modified assumptions under the studied concept would have a somewhat higher overall likelihood of eventually entering DROP at any eligible age, as shown in the charts below for sample representative groups. The study’s DROP entry rates for all member groups are provided in Table 3.

Likelihood of Eventually Entering DROP at **Any Eligible Age**
 Based on Initial DROP Eligibility Age
 Regular Non-Instructional, Tier I, Female

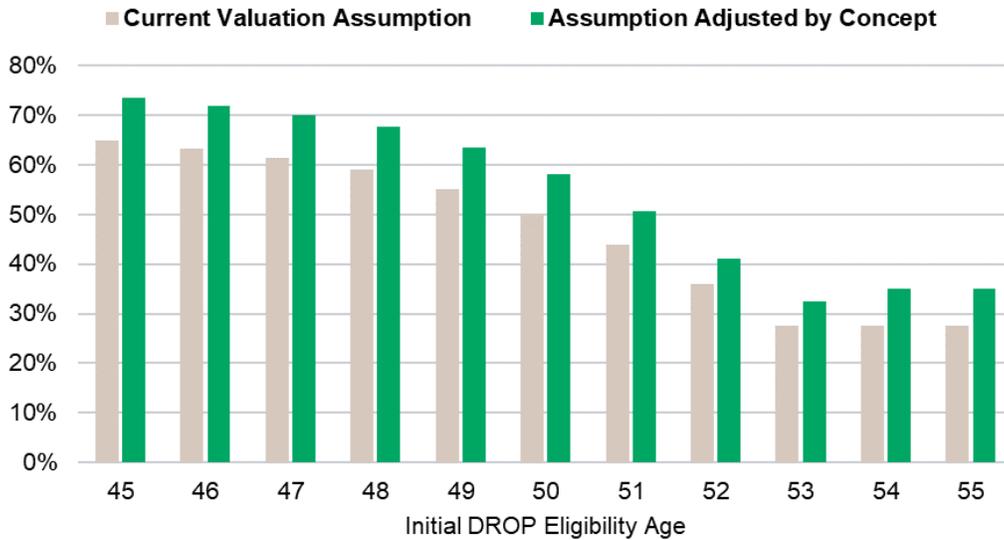


Likelihood of Eventually Entering DROP at **Any Eligible Age**
 Based on Initial DROP Eligibility Age
 Regular Non-Instructional, Tier II, Female

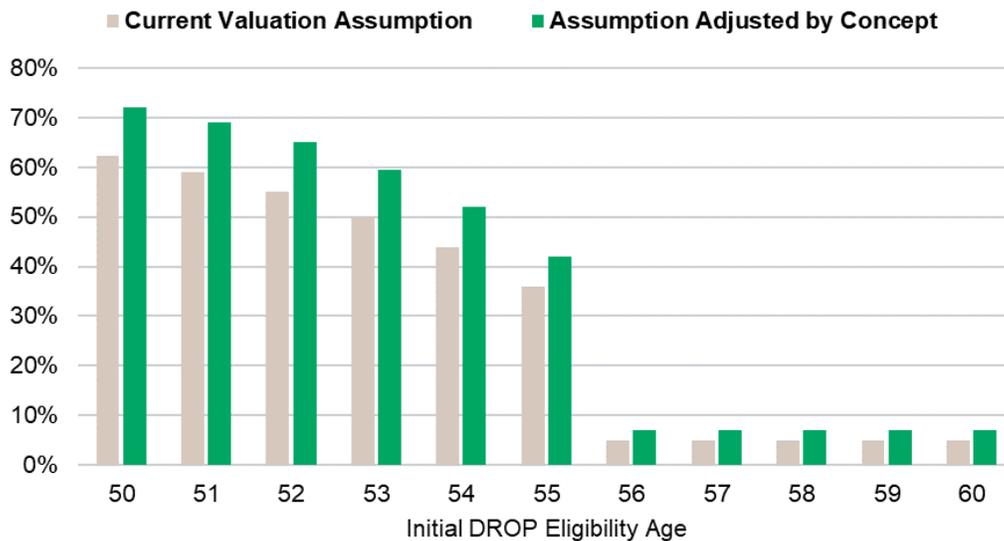


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Likelihood of Eventually Entering DROP at **Any Eligible Age**
 Based on Initial DROP Eligibility Age
 Special Risk (non-LEO), Tier I, Male



Likelihood of Eventually Entering DROP at **Any Eligible Age**
 Based on Initial DROP Eligibility Age
 Special Risk (non-LEO), Tier II, Male



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DROP entry rates for non-instructional male Regular Class members, and male and female members in other non-Special Risk classes were adjusted similarly to the tier-specific non-instructional female Regular Class rates shown in the two Regular Class charts above. Tier I and Tier II DROP entry rates for female non-LEO Special Risk Class and Special Risk Administrative members were adjusted similarly to the tier-specific male rates shown in the two Special Risk charts above. See Table 3 for more detail on the specific rate adjustments. Note that Tier I and Tier II DROP entry rates for non-LEO Special Risk Class and Special Risk Administrative members were adjusted to match current DROP entry rates for Law Enforcement Officers.

As noted previously, the DROP entry assumptions adjusted by the concept result in overall more members electing DROP (comparison of green bars to grey bars in the preceding charts) and a decrease to the average age at which members are assumed to enter DROP. The decrease to weighted average age of DROP Entry within a membership group varies by the age at which the member first becomes DROP-eligible. Table 4 shows the change in weighted average age of DROP Entry for sample representative groups. The changes in weighted average age of DROP Entry are similar for each of the membership groups not illustrated in Table 4.

The current valuation assumption is that non-LEO members electing DROP will participate in the DROP on average for 48 months, or 4 years. The assumption is based on actual FRS experience of the average duration of DROP participation, which does not vary notably between the large membership classes. Furthermore, FRS experience for K-12 instructional Regular Class personnel, who under current statute have the ability to remain in DROP up to 96 months, reflects an average duration of DROP participation not much different from non-instructional members of the Regular class.

In considering how the concept may affect the average duration of DROP participation of affected members, we reviewed experience showing that most members do not remain in DROP for the maximum duration allowed, and took into consideration how some members may elect to coordinate their DROP exit dates with Medicare eligibility age and/or potential Social Security retirement ages. Therefore, we have assumed that the average duration of DROP participation for all membership classes would change from 48 months to 60 months for members who enter DROP at age 60 or younger. In this study we assume an average duration of DROP participation of 48 months for members who enter DROP at age 61 or later.

Summary of Results

The projected impact of the concept was assessed on a member-by-member basis for each current active member not already in DROP projected to be eligible under the concept. The magnitude of the effect of the concept varies from member to member and depends on the member's age, service and membership class. Our analysis quantifies the estimated impact of

the concept when compared to the current benefit structure for active FRS Pension Plan participants.

Applying the adopted actuarial cost allocation method used for determining 2023-2024 fiscal year actuarially calculated contribution rates, the FRS Pension Plan Normal Cost, Actuarial Liability and Unfunded Actuarial Liability would be increased by this concept for all membership classes.

Under the concept, both FRS Pension Plan Actuarial Liability and Unfunded Actuarial Liability (UAL) would increase by approximately \$388 million. The impact on the proposed blended statutory 2023-2024 contribution rates is as shown on the table on page one of this analysis, and in Table 2 of the attached exhibits.

Table 1 of the attached exhibits shows the impact of the change on the FRS Pension Plan's July 1, 2022 actuarial valuation results prior to blending with FRS Investment Plan cost levels to create 2023-2024 proposed blended statutory employer contribution rates. The concept would also affect the DROP Normal Cost Rate, which is set equal to the composite FRS Pension Plan average employer-paid Normal Cost Rate. Section A of the table shows the estimated change to the actuarially calculated Employer Normal Cost Rate and UAL Cost Rate. Section B of the table shows the estimated increase to the FRS Pension Plan's Unfunded Actuarial Liability and Present Value of Projected Benefits calculated based on the methodology used to calculate Actuarial Liability for FRS Pension Plan funding calculations as approved by the 2022 FRS Actuarial Assumption Conference.

Table 2 shows the estimated impact of the concept on the proposed blended statutory rates for the 2023-2024 plan year. Section A of the table develops the 2023-2024 proposed blended statutory employer-paid Normal Cost Rate reflecting the expected impact of the concept, based on the concept's change to the FRS Pension Plan employer Normal Cost Rate for each membership class and the DROP. The FRS Pension Plan rates shown are based on the results of this study's analysis. The FRS Investment Plan rates would be unchanged by enactment of this concept and reflect the sum of the employer rates in Sections 121.72, 121.73, and 121.735 of Florida Statutes, plus the 0.57% of pay IP allocation to the Special Risk Class reflecting the contribution cost of enhancements made to death and disability benefits effective July 1, 2022 by enactment of House Bill 689 and Senate Bill 838.

Section B of Table 2 develops the proposed blended statutory Employer UAL Contribution Rate as the total employer UAL Cost derived from the FRS Pension Plan divided by the total projected payroll of the FRS Pension Plan and FRS Investment Plan. Section C of the table compares the proposed blended statutory rates reflecting the impact of the concept to those developed in the Special Actuarial Study of Combined Effect of HB 689 and SB 838, dated January 9, 2023. Section D of the table translates the estimated change in 2023-2024 proposed blended statutory rates to an estimated increase in employer contributions during the 2023-2024 plan year.

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The payroll for some employee groups is subject to only the blended Employer UAL Contribution Rate component of the overall employer contribution rate (e.g., participants in the SUSORP, SMSOAP, and SCCORP, and reemployed members not eligible for renewed membership). The payroll for those employee groups is included in the calculation of the proposed blended statutory Employer UAL Contribution Rate but is excluded from the calculation of the proposed blended statutory Employer Normal Cost Contribution Rate.

The contribution rates shown in Table 2 excludes the 0.06% contribution rate for FRS Investment Plan administration and education (applied to all membership classes except DROP) and the 1.66% contribution rate for the Florida Retiree Health Insurance Subsidy (HIS) program, which is charged to all FRS Pension Plan and FRS Investment Plan payroll.

Table 3 compares the valuation DROP entry assumptions to the rates as modified by this study.

Other Assumptions and Methods

The calculations are based on census and payroll data as of July 1, 2022 provided to us by the Division of Retirement for development of the FRS Actuarial Valuation as of July 1, 2022 and the FRS 2023-2024 Blended Rate Study. We have not audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete. The impact of the concept was modeled by applying the concept's provisions and adjusted assumptions to active FRS Pension Plan members. Valuation results for all other members were unchanged from the FRS Actuarial Valuation as of July 1, 2022.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or for relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.

Except where otherwise noted in this letter, this analysis is based on the methods and assumptions as stated in the FRS Actuarial Valuation as of July 1, 2022 report. The data was based on the July 1, 2022 FRS actuarial valuation database. The results of our study depend on future experience conforming to those actuarial assumptions discussed earlier in this letter. Future actuarial measurements may differ significantly from the current measurements presented in this analysis due to many factors, including plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period) and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements. In addition, the cost of the proposed change will depend on the actual legislation.

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The FRS Pension Plan, like any retirement plan, is subject to a variety of risks that could materially impact the Plan and in some instances Plan participants. These include the potential that actual investment returns are materially lower than assumed, actual legislatively mandated contributions are below actuarially determined levels, or actual future demographic experience is materially different than assumed. As noted above, while this analysis uses a single set of modeling assumptions no set of assumptions is uniquely correct and actual plan experience will differ at least to some extent from the modeling assumptions. For additional identification, discussion and quantification of plan risks please refer to Appendix F of our most recent actuarial valuation report for system funding purposes dated December 1, 2022.

The study results were developed using models intended for valuations that use standard actuarial techniques.

Milliman's work product was prepared exclusively for the internal business use of Florida Department of Management Services, Division of Retirement. It is a complex technical analysis that assumes a high level of knowledge concerning the Florida Retirement System's operations, and uses Division data, which Milliman has not audited. To the extent that Milliman's work is not subject to disclosure under applicable public record laws, Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit or create a legal duty to any third-party recipient of its work product. Milliman's consent to release its work product to any third party may be conditioned on the third party signing a Release, subject to the following exceptions:

- a. The Division of Retirement may provide a copy of Milliman's work, in its entirety, to the System's professional service advisors who are subject to a duty of confidentiality and who agree to not use Milliman's work for any purpose other than to benefit the System.
- b. The Division of Retirement may provide a copy of Milliman's work, in its entirety, to other governmental entities, as required by law.

No third-party recipient of Milliman's work product should rely upon Milliman's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

The consultants who worked on this assignment are retirement actuaries. Milliman's advice is not intended to be a substitute for qualified legal or accounting counsel.

Milliman consultants are independent of the plan sponsor. We are not aware of any relationship that would impair the objectivity of our work.

On the basis of the foregoing, I hereby certify that, to the best of my knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the principles prescribed by the Actuarial Standards Board and the *Code of Professional*

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Ms. Andrea Simpson
January 30, 2023
Page 11

Conduct and Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States published by the American Academy of Actuaries.

I am a consulting actuary for Milliman, Inc. I am a member of the American Academy of Actuaries and meet their Qualification Standards to render the actuarial opinion contained herein. Please call if you would like to further discuss this project.

Respectfully Submitted,



Matt Larrabee, FSA, EA, MAAA
Principal & Consulting Actuary

cc: Garry Green (Division of Retirement), Nicolle Bournival (Division of Retirement), Daniel Wade (Milliman), Kathryn Hunter (Milliman)

Enclosures

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FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

**Effect on July 1, 2022 Defined Benefit FRS Pension Plan Actuarial Valuation Results
of Proposal for Prospective Extension of Maximum DROP Participation to 8 years for All Memberships Classes**
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
A. Actuarially Calculated Pension Plan Employer Contribution Rates (prior to blending to create proposed blended statutory contribution rates)										
1. Actuarially Calculated Pension Plan Employer Contribution Rates Developed in July 1, 2022 Valuation ¹										
a. Employer Normal Cost	5.96%	17.13%	11.57%	14.77%	9.54%	11.63%	7.86%	8.18%	8.18%	8.18%
b. UAL Cost	<u>6.27%</u>	<u>12.62%</u>	<u>33.81%</u>	<u>33.52%</u>	<u>76.48%</u>	<u>64.87%</u>	<u>33.53%</u>	<u>8.09%</u>	<u>10.01%</u>	<u>8.23%</u>
c. Total Employer Cost	12.23%	29.75%	45.38%	48.29%	86.02%	76.50%	41.39%	16.27%	18.19%	16.41%
2. Actuarially Calculated Pension Plan Employer Contribution Rates Reflecting Proposed Change										
a. Employer Normal Cost	5.99%	17.28%	11.81%	15.01%	9.66%	11.74%	7.95%	8.24%	8.24%	8.24%
b. UAL Cost	<u>6.34%</u>	<u>12.84%</u>	<u>34.37%</u>	<u>33.94%</u>	<u>76.87%</u>	<u>65.18%</u>	<u>33.77%</u>	<u>8.19%</u>	<u>10.01%</u>	<u>8.32%</u>
c. Total Employer Cost	12.33%	30.12%	46.18%	48.95%	86.53%	76.92%	41.72%	16.43%	18.25%	16.56%
3. Change in Actuarially Calculated Pension Plan Employer Contribution Rates due to Proposed Change										
a. Normal Cost	0.03%	0.15%	0.24%	0.24%	0.12%	0.11%	0.09%	0.06%	0.06%	0.06%
b. UAL Cost	<u>0.07%</u>	<u>0.22%</u>	<u>0.56%</u>	<u>0.42%</u>	<u>0.39%</u>	<u>0.31%</u>	<u>0.24%</u>	<u>0.10%</u>	<u>0.00%</u>	<u>0.09%</u>
c. Total Cost	0.10%	0.37%	0.80%	0.66%	0.51%	0.42%	0.33%	0.16%	0.06%	0.15%
B. FRS Pension Plan Unfunded Actuarial Liability (UAL) and Present Value of Projected Benefits (Dollars in Thousands)										
1. July 1, 2022 Actuarial Valuation UAL ²	\$22,340,160	\$9,009,912	\$16,166	\$527,271	\$74,980	\$434,940	\$2,648,382	\$35,051,811	\$3,203,735	\$38,255,546
2. July 1, 2022 UAL Reflecting Proposed Change	<u>22,555,670</u>	<u>9,153,955</u>	<u>16,467</u>	<u>533,904</u>	<u>75,363</u>	<u>437,036</u>	<u>2,667,544</u>	<u>35,439,939</u>	<u>3,203,735</u>	<u>38,643,674</u>
3. Increase / (Decrease) in UAL due to Proposed Change	\$215,510	\$144,043	\$301	\$6,633	\$383	\$2,096	\$19,162	\$388,128	\$0	\$388,128
4. Increase / (Decrease) in Present Value of Future Normal Costs	<u>(\$137,070)</u>	<u>(\$112,300)</u>	<u>(\$150)</u>	<u>(\$1,345)</u>	<u>(\$94)</u>	<u>(\$610)</u>	<u>(\$12,351)</u>	<u>(\$263,920)</u>	\$0	<u>(\$263,920)</u>
5. Increase / (Decrease) in Present Value of Projected Benefits (3. + 4.)	\$78,440	\$31,743	\$151	\$5,288	\$289	\$1,486	\$6,811	\$124,208	\$0	\$124,208

¹ As reported in the July 1, 2022 valuation - Table 4-11

² As reported in the July 1, 2022 valuation - Table 3-2

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

**Effect on Proposed Blended Statutory Employer Contribution Rates for 2023-2024 Plan Year
of Proposal for Prospective Extension of Maximum DROP Participation to 8 years for All Memberships Classes
Assumes 3.25% Annual Growth in Total Payroll
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used**

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----		Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
A. Proposed Blended Statutory Normal Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)										
1. Actuarially Calculated Defined Benefit Pension Plan Normal Cost										
a. Employer Pension Plan Normal Cost Rate	5.99%	17.28%	11.81%	15.01%	9.66%	11.74%	7.95%	8.24%	8.24%	8.24%
b. Projected Pension Plan Normal Cost Payroll	\$19,960,194	\$4,874,192	\$3,943	\$114,631	\$6,231	\$44,770	\$573,342	\$25,577,303	\$2,396,438	\$27,973,741
c. Total Employer Pension Plan Normal Cost [(1a) x (1b)]	\$1,195,616	\$842,260	\$466	\$17,206	\$602	\$5,256	\$45,581	\$2,106,987	\$197,466	\$2,304,453
2. Investment Plan Employer Cost										
a. Employer Rates effective July 1, 2022 (Sec 121.72-73; 121.735) ¹	6.60%	17.11%	8.43%	14.05%	9.94%	11.95%	7.98%	7.63%	0.00%	7.63%
b. Projected Investment Plan Payroll	\$7,841,985	\$812,015	\$1,385	\$24,667	\$3,884	\$23,983	\$247,878	\$8,955,797	\$0	\$8,955,797
c. Total Employer Investment Plan Cost [(2a) x (2b)]	\$517,571	\$138,936	\$117	\$3,466	\$386	\$2,866	\$19,781	\$683,123	\$0	\$683,123
3. Proposed Blended Statutory Employer Normal Cost Rate (Pension Plan + Investment Plan)										
a. Total Employer Normal Cost Contribution [(1c) + (2c)]	\$1,713,187	\$981,196	\$583	\$20,672	\$988	\$8,122	\$65,362	\$2,790,110	\$197,466	\$2,987,576
b. Total System Projected Payroll [(1b) + (2b)]	\$27,802,179	\$5,686,207	\$5,328	\$139,298	\$10,115	\$68,753	\$821,220	\$34,533,100	\$2,396,438	\$36,929,538
c. Proposed Blended Statutory Employer Normal Cost Contribution Rate ² As a Percentage of Total Payroll [(3a) / (3b)]	6.16%	17.26%	10.94%	14.84%	9.77%	11.81%	7.96%	8.08%	8.24%	8.09%
B. Proposed Blended Statutory Unfunded Actuarial Liability (UAL) Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)										
1. Actuarially Calculated Defined Benefit Pension Plan UAL Cost										
a. Pension Plan UAL Cost Rate	6.34%	12.84%	34.37%	33.94%	76.87%	65.18%	33.77%	8.19%	10.01%	8.33%
b. Projected Pension Plan UAL Cost Payroll	\$23,957,991	\$4,904,404	\$3,943	\$115,638	\$7,270	\$50,695	\$590,145	\$29,630,086	\$2,396,438	\$32,026,524
c. Total Employer UAL Cost [(1a) x (1b)]	\$1,518,937	\$629,725	\$1,355	\$39,248	\$5,588	\$33,043	\$199,292	\$2,427,188	\$239,883	\$2,667,071
2. Investment Plan Projected Payroll										
	\$7,841,985	\$812,015	\$1,385	\$24,667	\$3,884	\$23,983	\$247,878	\$8,955,797	\$0	\$8,955,797
3. Proposed Blended Statutory Employer UAL Contribution Rate (Pension Plan + Investment Plan)										
a. Total Employer UAL Cost [(1c)]	\$1,518,937	\$629,725	\$1,355	\$39,248	\$5,588	\$33,043	\$199,292	\$2,427,188	\$239,883	\$2,667,071
b. Total System Projected Payroll [(1b) + (2)]	\$31,799,976	\$5,716,419	\$5,328	\$140,305	\$11,154	\$74,678	\$838,023	\$38,585,883	\$2,396,438	\$40,982,321
c. Proposed Blended Statutory Employer UAL Contribution Rate ¹ As a Percentage of Total Payroll [(3a) / (3b)]	4.78%	11.02%	25.43%	27.97%	50.10%	44.25%	23.78%	6.29%	10.01%	6.51%

¹ Section 121.73 and 121.735 allocations reflect HB 689 and SB 838, as developed in the January 9, 2023 special study of that legislation.

² Rates shown do not include the HIS contribution rate or IP administrative fees.

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

**Effect on Proposed Blended Statutory Employer Contribution Rates for 2023-2024 Plan Year
of Proposal for Prospective Extension of Maximum DROP Participation to 8 years for All Memberships Classes
Assumes 3.25% Annual Growth in Total Payroll
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used**

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
C. Proposed Blended Statutory Employer Contribution Rates										
1. Proposed Blended Statutory Employer Contribution Rates Based on July 1, 2022 Valuation ^{1 & 2}										
a. Employer Normal Cost Contribution Rate	6.14%	17.13%	10.75%	14.64%	9.69%	11.74%	7.90%	8.04%	8.18%	8.05%
b. Employer UAL Contribution Rate	<u>4.72%</u>	<u>10.83%</u>	<u>25.02%</u>	<u>27.63%</u>	<u>49.85%</u>	<u>44.04%</u>	<u>23.61%</u>	<u>6.21%</u>	<u>10.01%</u>	<u>6.44%</u>
c. Total Employer Contribution Rate [(C1a) + (C1b)]	10.86%	27.96%	35.77%	42.27%	59.54%	55.78%	31.51%	14.25%	18.19%	14.49%
2. Proposed Blended Statutory Employer Contribution Rates Reflecting Proposed Change ¹										
a. Employer Normal Cost Contribution Rate [(A3c)]	6.16%	17.26%	10.94%	14.84%	9.77%	11.81%	7.96%	8.08%	8.24%	8.09%
b. Employer UAL Contribution Rate [(B3c)] ³	<u>4.78%</u>	<u>11.02%</u>	<u>25.43%</u>	<u>27.97%</u>	<u>50.10%</u>	<u>44.25%</u>	<u>23.78%</u>	<u>6.29%</u>	<u>10.01%</u>	<u>6.51%</u>
c. Total Employer Contribution Rate [(C3a) + (C3b)]	10.94%	28.28%	36.37%	42.81%	59.87%	56.06%	31.74%	14.37%	18.25%	14.60%
3. Change in Proposed Blended Statutory Employer Contribution Rates due to Proposed Change										
a. Employer Normal Cost Contribution Rate [(C2a) - (C1a)]	0.02%	0.13%	0.19%	0.20%	0.08%	0.07%	0.06%	0.04%	0.06%	0.04%
b. Employer UAL Contribution Rate [(C2b) - (C1b)]	<u>0.06%</u>	<u>0.19%</u>	<u>0.41%</u>	<u>0.34%</u>	<u>0.25%</u>	<u>0.21%</u>	<u>0.17%</u>	<u>0.08%</u>	<u>0.00%</u>	<u>0.07%</u>
c. Total Employer Contribution Rate [(C3a) + (C3b)]	0.08%	0.32%	0.60%	0.54%	0.33%	0.28%	0.23%	0.12%	0.06%	0.11%
D. Additional/(Reduced) Proposed Statutory Employer Contributions for the 2023-2024 Plan Year Due to Proposed Change (Dollars in Thousands)										
1. State	\$2,223	\$3,292	\$31	\$761	\$36	\$0	\$817	\$7,160	\$202	\$7,362
2. School Boards	\$10,967	\$226	\$0	\$0	\$0	\$40	\$205	\$11,438	\$603	\$12,041
3. State Universities	\$3,207	\$110	\$0	\$0	\$0	\$0	\$27	\$3,344	\$44	\$3,388
4. Community Colleges	\$854	\$10	\$0	\$0	\$0	\$0	\$78	\$942	\$38	\$980
5. Counties	\$4,222	\$13,322	\$1	\$0	\$0	\$144	\$553	\$18,242	\$476	\$18,718
6. Other	<u>\$1,286</u>	<u>\$1,140</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$22</u>	<u>\$252</u>	<u>\$2,700</u>	<u>\$74</u>	<u>\$2,774</u>
7. Total	\$22,759	\$18,100	\$32	\$761	\$36	\$206	\$1,932	\$43,826	\$1,437	\$45,263

¹ Rates shown do not include the HIS contribution rate or IP administrative fees.

² As reported in the Special Actuarial Study of Combined Effect of HB 689 and SB 838 dated January 9, 2023.

³ Employers of employee groups subject to only the UAL contribution rate would pay the rates shown in line (C.2.b.) and line (C.3.b.).

FLORIDA RETIREMENT SYSTEM
ASSUMPTIONS

***DROP Entry Assumptions for the Defined Benefit FRS Pension Plan
July 1, 2022 Valuation Assumptions Compared to Modified Assumptions Adjusted by Concept
Proposal for Prospective Extension of Maximum DROP Participation to 8 years for All Memberships Classes***

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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Rates of DROP Entry ¹

Age	Tier I Regular Not K-12 School Instructional: Valuation Assumptions		Tier I Regular Not K-12 School Instructional: Study Assumptions		Tier II Regular Not K-12 School Instructional: Valuation Assumptions		Tier II Regular Not K-12 School Instructional: Study Assumptions	
	Female	Male	Female	Male	Female	Male	Female	Male
45	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
46	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
47	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
48	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
49	10.0%	9.0%	10.0%	9.0%	10.0%	9.0%	10.0%	9.0%
50	10.0%	9.0%	10.0%	9.0%	10.0%	9.0%	10.0%	9.0%
51	12.0%	9.0%	13.0%	10.0%	12.0%	9.0%	12.0%	9.0%
52	14.0%	9.0%	15.0%	10.0%	14.0%	9.0%	14.0%	9.0%
53	15.0%	11.0%	17.0%	13.0%	15.0%	11.0%	15.0%	11.0%
54	16.0%	12.0%	19.0%	15.0%	16.0%	12.0%	19.0%	15.0%
55	18.0%	12.0%	21.0%	15.0%	18.0%	12.0%	21.0%	15.0%
56	20.0%	15.0%	24.0%	19.0%	20.0%	15.0%	23.0%	18.0%
57	55.0%	55.0%	65.0%	65.0%	20.0%	15.0%	27.0%	22.0%
58	55.0%	50.0%	65.0%	60.0%	20.0%	15.0%	27.0%	22.0%
59	55.0%	50.0%	65.0%	60.0%	20.0%	15.0%	27.0%	22.0%
60	55.0%	50.0%	60.0%	55.0%	55.0%	55.0%	60.0%	60.0%
61	55.0%	50.0%	60.0%	55.0%	55.0%	49.0%	60.0%	54.0%
62	46.5%	42.5%	49.0%	45.0%	49.5%	43.0%	52.5%	46.0%
63	5.0%	5.0%	5.0%	5.0%	43.0%	37.0%	46.0%	40.0%
64	5.0%	5.0%	5.0%	5.0%	36.5%	31.0%	38.5%	33.0%
65	5.0%	5.0%	5.0%	5.0%	30.0%	25.0%	32.0%	27.0%
66	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
67	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
68	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
69	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
70-79	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
80	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

¹ Rates for Regular K-12 School Instructional members are unchanged from the July 1, 2022 Valuation by this concept.

FLORIDA RETIREMENT SYSTEM
ASSUMPTIONS

***DROP Entry Assumptions for the Defined Benefit FRS Pension Plan
July 1, 2022 Valuation Assumptions Compared to Modified Assumptions Adjusted by Concept
Proposal for Prospective Extension of Maximum DROP Participation to 8 years for All Memberships Classes***

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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Rates of DROP Entry (continued) ²

Age	Tier I Special Risk (non-LEO) and Special Risk Admin: Valuation Assumptions		Tier I Special Risk (non-LEO) and Special Risk Admin: Study Assumptions		Tier II Special Risk (non-LEO) and Special Risk Admin: Valuation Assumptions		Tier II Special Risk (non-LEO) and Special Risk Admin: Study Assumptions	
	Female	Male	Female	Male	Female	Male	Female	Male
45	8.0%	13.0%	11.0%	18.0%	8.0%	13.0%	11.0%	18.0%
46	8.0%	13.0%	11.0%	18.0%	8.0%	13.0%	11.0%	18.0%
47	8.0%	13.0%	11.0%	18.0%	8.0%	13.0%	11.0%	18.0%
48	11.0%	15.0%	14.0%	20.0%	11.0%	15.0%	15.0%	21.0%
49	11.0%	15.0%	14.0%	20.0%	11.0%	15.0%	15.0%	21.0%
50	11.0%	15.0%	14.0%	20.0%	11.0%	15.0%	15.0%	21.0%
51	11.0%	15.0%	14.0%	20.0%	11.0%	15.0%	15.0%	21.0%
52	15.0%	36.0%	18.0%	41.0%	11.0%	15.0%	15.0%	21.0%
53	15.0%	27.5%	18.0%	32.5%	11.0%	15.0%	15.0%	21.0%
54	15.0%	27.5%	22.0%	35.0%	11.0%	15.0%	15.0%	21.0%
55	32.0%	27.5%	40.0%	35.0%	17.0%	36.0%	23.0%	42.0%
56	5.0%	5.0%	5.0%	5.0%	11.0%	5.0%	13.0%	7.0%
57	5.0%	5.0%	5.0%	5.0%	11.0%	5.0%	13.0%	7.0%
58	5.0%	5.0%	5.0%	5.0%	11.0%	5.0%	13.0%	7.0%
59	5.0%	5.0%	5.0%	5.0%	11.0%	5.0%	13.0%	7.0%
60	5.0%	5.0%	5.0%	5.0%	20.0%	5.0%	22.0%	7.0%
61	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
62	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
63	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
64	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
65	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
66	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
67	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
68	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
69	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
70-79	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
80	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

² This concept changes the rates used for Special Risk (non-LEO) and Special Risk Admin members to match rates for Law Enforcement Officers (LEO) in the July 1, 2022 Valuation.

FLORIDA RETIREMENT SYSTEM
ASSUMPTIONS

***DROP Entry Assumptions for the Defined Benefit FRS Pension Plan
July 1, 2022 Valuation Assumptions Compared to Modified Assumptions Adjusted by Concept
Proposal for Prospective Extension of Maximum DROP Participation to 8 years for All Memberships Classes***

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Rates of DROP Entry (continued)

Age	Tier I Senior Management and Elected Officers' Subclasses: Valuation Assumptions	Tier I Senior Management and Elected Officers' Subclasses: Study Assumptions	Tier II Senior Management and Elected Officers' Subclasses: Valuation Assumptions	Tier II Senior Management and Elected Officers' Subclasses: Study Assumptions
	Unisex	Unisex	Unisex	Unisex
45	5.0%	5.0%	5.0%	5.0%
46	5.0%	5.0%	5.0%	5.0%
47	5.0%	5.0%	5.0%	5.0%
48	16.0%	16.0%	16.0%	16.0%
49	16.0%	16.0%	16.0%	16.0%
50	16.0%	16.0%	16.0%	16.0%
51	16.0%	17.0%	16.0%	16.0%
52	16.0%	18.0%	16.0%	16.0%
53	16.0%	18.0%	16.0%	16.0%
54	16.0%	19.0%	16.0%	19.0%
55	16.0%	19.0%	16.0%	19.0%
56	16.0%	20.0%	16.0%	19.0%
57	55.0%	65.0%	16.0%	23.0%
58	55.0%	65.0%	16.0%	23.0%
59	55.0%	65.0%	16.0%	23.0%
60	55.0%	60.0%	55.0%	60.0%
61	55.0%	60.0%	50.0%	55.0%
62	43.0%	45.5%	45.0%	48.0%
63	3.0%	3.0%	40.0%	43.0%
64	3.0%	3.0%	35.0%	37.0%
65	3.0%	3.0%	30.0%	32.0%
66	3.0%	3.0%	3.0%	3.0%
67	3.0%	3.0%	3.0%	3.0%
68	3.0%	3.0%	3.0%	3.0%
69	3.0%	3.0%	3.0%	3.0%
70-79	3.0%	3.0%	3.0%	3.0%
80	0.0%	0.0%	0.0%	0.0%

FLORIDA RETIREMENT SYSTEM
ASSUMPTIONS

*Effect on Weighted Average Age of DROP Entry of Modified Assumptions Adjusted by Concept
Proposal for Prospective Extension of Maximum DROP Participation to 8 years for All Memberships Classes*

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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Regular Class Non-Instructional, Tier I, Female

Initial DROP Eligibility Age	Weighted-Average Age of DROP Entry		
	Current Valuation Assumption	Assumption Adjusted by Concept	Change (Years)
52	54.6	54.5	-0.1
53	55.2	55.1	-0.1
54	55.7	55.7	0.0
55	56.2	56.2	0.0
56	56.7	56.7	0.0
57	57.0	57.0	0.0
58	58.0	58.0	0.0
59	59.0	59.0	0.0
60	60.0	60.0	0.0
61	61.0	61.0	0.0
62	62.0	62.0	0.0

Regular Class Non-Instructional, Tier II, Female

Initial DROP Eligibility Age	Weighted-Average Age of DROP Entry		
	Current Valuation Assumption	Assumption Adjusted by Concept	Change (Years)
57	58.6	58.4	-0.2
58	59.2	59.0	-0.2
59	59.7	59.6	-0.1
60	60.0	60.0	0.0
61	61.0	61.0	0.0
62	62.0	62.0	0.0
63	63.0	63.0	0.0
64	64.0	64.0	0.0
65	65.0	65.0	0.0

Special Risk Class Non-Law Enforcement Officer, Tier I, Male

Initial DROP Eligibility Age	Weighted-Average Age of DROP Entry		
	Current Valuation Assumption	Assumption Adjusted by Concept	Change (Years)
45	47.9	47.5	-0.4
46	48.6	48.3	-0.3
47	49.3	49.0	-0.3
48	49.9	49.7	-0.2
49	50.6	50.4	-0.2
50	51.2	51.1	-0.1
51	51.7	51.6	-0.1
52	52.0	52.0	0.0
53	53.0	53.0	0.0
54	54.0	54.0	0.0
55	55.0	55.0	0.0

Special Risk Class Non-Law Enforcement Officer, Tier II, Male

Initial DROP Eligibility Age	Weighted-Average Age of DROP Entry		
	Current Valuation Assumption	Assumption Adjusted by Concept	Change (Years)
50	52.2	51.9	-0.3
51	52.9	52.7	-0.2
52	53.6	53.4	-0.2
53	54.2	54.0	-0.2
54	54.7	54.6	-0.1
55	55.0	55.0	0.0
56	56.0	56.0	0.0
57	57.0	57.0	0.0
58	58.0	58.0	0.0
59	59.0	59.0	0.0
60	60.0	60.0	0.0



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 28, 2023

I respectfully request that **Senate Bill #1034**, relating to State-administered Retirement Systems, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 40

3/15/23

Meeting Date

The Florida Senate

APPEARANCE RECORD

SB 1034

Bill Number or Topic

Gov't Oversight & Accountability

Committee

Deliver both copies of this form to
Senate or professional staff conducting the meeting

Amendment Barcode (if applicable)

Name DAVID ERICKS

Phone 850-088-0

Address 205 S. ADAMS ST
Street

Email david@ericksonconsultants.com

TALLAHASSEE, FL 32301
City State Zip



Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

NATIONAL FEDERATION OF PUBLIC EMPLOYEES

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 3/15/2023 1:02:56 PM

Ends: 3/15/2023 2:44:22 PM

Length: 01:41:27

1:02:58 PM Meeting called to order, roll call
1:03:17 PM Quorum is present
1:03:21 PM Chair Avila makes opening remarks
1:04:13 PM Tab 5- SB 258, Prohibited Applications on Government-issued Devices by Senator Burgess
1:04:14 PM Chair Avila recognizes Senator Burgess
1:04:18 PM Senator Burgess explains the bill
1:05:17 PM Amendment 887954
1:05:21 PM Senator Burgess explains the amendment
1:06:37 PM Amendment 623046
1:07:17 PM Senator Burgess waives close
1:07:26 PM Chair Avila reports amendment
1:08:16 PM Senator Burgess waives close
1:08:22 PM Chair Avila reports amendment
1:08:34 PM Questions on the bill as amended:
1:08:35 PM Senator Davis
1:09:07 PM Senator Burgess
1:10:27 PM Roll call on SB 258
1:10:39 PM Chair Avila reports the bill
1:11:03 PM Tab 4- SB 304, United States-produced Iron and Steel in Public Works Projects by Senator Boyd
1:11:07 PM Chair Avila recognizes Senator Rodriguez
1:11:10 PM Senator Rodriguez explains the bill
1:11:58 PM Questions:
1:11:59 PM Senator Rouson
1:12:21 PM Senator Rodriguez
1:12:48 PM Amendment 784794
1:12:56 PM Senator Rodriguez explains the amendment
1:13:36 PM Senator Rodriguez waives close
1:13:41 PM Chair Avila reports amendment
1:13:55 PM Chair Avila recognizes Public Testimony:
1:14:46 PM Tim Adams, WFLA
1:15:30 PM Jose Besu
1:16:50 PM Lara Watkins
1:18:09 PM Dr. Rich Templin
1:19:42 PM Debate:
1:19:42 PM Senator Albritton
1:19:57 PM Senator Rodriguez closes on the bill
1:20:39 PM Roll call on SB 304
1:20:53 PM Chair Avila reports the bill
1:21:02 PM Tab 2- SB 404, Public Records/Autopsy Reports of Minors Whose Deaths were Related to Acts of Domestic Violence by Senator Perry
1:21:08 PM Chair Avila recognizes Senator Perry
1:21:10 PM Senator Perry explains the bill
1:22:22 PM Chair Avila recognizes public testimony:
1:22:33 PM Minde O'Sullivan
1:23:26 PM Senator Perry closes on the bill
1:23:42 PM Roll call on SB 404
1:23:55 PM Chair Avila reports the bill
1:24:03 PM Tab 3- SB 430, Abandoned and Historic Cemeteries by Senator Powell
1:24:09 PM Chair Avila recognizes Senator Powell
1:24:10 PM Senator Powell explains the bill
1:25:00 PM Amendment 462086
1:25:05 PM Senator Powell explains the amendment

1:25:50 PM Senator Powell waives close
1:25:54 PM Chair Avila reports the amendment
1:26:03 PM Amendment 203470
1:26:11 PM Senator Powell explains the amendment
1:26:46 PM Senator Powell waives close
1:26:51 PM Chair Avila reports the amendment
1:27:15 PM Chair Avila recognizes public testimony:
1:27:26 PM David McCallister
1:29:01 PM Lonnie Mann
1:30:57 PM Gloria Anderson
1:34:48 PM Annie Sloan
1:36:50 PM Debate:
1:36:53 PM Senator Davis
1:37:42 PM Senator Powell closes on the bill
1:39:09 PM Roll call on SB 430
1:39:21 PM Chair Avila reports the bill
1:39:37 PM Chair Avila recognizes Senator Davis
1:39:45 PM Senator Davis
1:40:29 PM Tab 7- SB 1096, Monuments and Memorials by Senator Martin
1:41:25 PM Chair Avila recognizes Senator Martin
1:41:33 PM Senator Martin explains the bill
1:42:23 PM Questions:
1:42:25 PM Senator Rouson
1:42:47 PM Senator Martin
1:43:30 PM Senator Rouson
1:43:51 PM Senator Martin
1:44:02 PM Senator Rouson
1:44:12 PM Senator Martin
1:44:16 PM Senator Rouson
1:44:22 PM Senator Martin
1:45:24 PM Senator Rouson
1:45:55 PM Senator Martin
1:46:49 PM Senator Rouson
1:47:07 PM Senator Martin
1:47:16 PM Senator Polsky
1:47:53 PM Senator Martin
1:47:55 PM Senator Polsky
1:48:05 PM Senator Martin
1:48:54 PM Senator Polsky
1:49:00 PM Senator Martin
1:49:07 PM Senator Polsky
1:49:23 PM Senator Martin
1:49:48 PM Senator Polsky
1:50:02 PM Senator Martin
1:50:05 PM Senator Polsky
1:50:09 PM Senator Martin
1:50:27 PM Senator Davis
1:51:04 PM Senator Martin
1:52:26 PM Senator Davis
1:53:56 PM Senator Martin
1:55:41 PM Senator Polsky
1:56:07 PM Senator Martin
1:56:11 PM Senator Polsky
1:56:43 PM Senator Martin
1:57:26 PM Senator Polsky
1:57:51 PM Senator Martin
1:58:15 PM Senator Polsky
1:58:24 PM Senator Martin
1:58:31 PM Senator Polsky
1:58:45 PM Senator Martin
1:59:23 PM Senator Polsky
1:59:33 PM Senator Martin

1:59:40 PM Senator Hooper
2:00:26 PM Senator Martin
2:01:15 PM Senator Hooper
2:01:51 PM Amendment 870980
2:01:58 PM Senator Martin explains the amendment
2:02:46 PM Senator Martin closes on the amendment
2:03:22 PM Chair Avila reports the amendment
2:03:35 PM Questions:
2:03:37 PM Senator Davis
2:03:59 PM Senator Martin
2:04:14 PM Senator Davis
2:04:36 PM Senator Martin
2:04:41 PM Senator Davis
2:04:59 PM Senator Martin
2:05:22 PM Senator Davis
2:06:16 PM Senator Martin
2:06:54 PM Chair Avila recognizes public testimony:
2:07:29 PM Bob Holladay, National Foundation of Public Employees
2:08:59 PM Jeff Kottkamp, Guardians of American History
2:10:27 PM Jill Pacetti
2:13:54 PM Judy Hoffman
2:16:13 PM David McCallister
2:19:46 PM Marshall Rawson
2:20:52 PM Debate:
2:20:55 PM Senator Wright
2:21:22 PM Senator Hooper
2:23:01 PM Senator Rodriguez
2:23:32 PM Senator Polsky
2:26:05 PM Senator Davis
2:28:03 PM Senator Martin closes on the bill
2:30:45 PM Roll call on SB 1096
2:30:59 PM Chair Avila reports the bill
2:31:15 PM Chair Avila passes the chair to Senator Albritton
2:31:33 PM Tab 1- SPB 7024, Retirement by Governmental Oversight and Accountability
2:31:40 PM Chair Albritton recognizes Senator Avila
2:31:42 PM Senator Avila explains the bill
2:32:38 PM Questions:
2:32:42 PM Chair Albritton
2:32:55 PM Roll call on SPB 7024
2:33:15 PM Chair Albritton reports the bill
2:33:26 PM Chair Albritton passes the chair back to Chair Avila
2:33:36 PM Tab 9- SB 50, Public Records/Judicial Assistants by Senator Wright
2:33:46 PM Chair Avila recognizes Senator Wright
2:33:50 PM Amendment 825732
2:34:10 PM Senator Wright explains the amendment
2:34:53 PM Chair Avila reads appearance cards waiving
2:35:06 PM Senator Wright waives close
2:35:15 PM Chair Avila reports the amendment
2:35:38 PM Senator Wright closes on the bill
2:35:56 PM Roll call on SB 50
2:36:04 PM Chair Avila reports the bill
2:36:16 PM Tab 10- SB 1034, State-administered Retirement Systems by Senator Rodriguez
2:36:22 PM Chair Avila recognizes Senator Rodriguez
2:36:24 PM Senator Rodriguez explains the bill
2:37:08 PM Questions:
2:37:09 PM Senator Davis
2:37:25 PM Senator Rodriguez
2:37:49 PM Amendment 813240
2:37:55 PM Senator Rodriguez explains the amendment
2:38:21 PM Senator Rodriguez waives close
2:38:28 PM Chair Avila reports amendment
2:38:47 PM Chair Avila recognizes public testimony

2:39:06 PM Debate:
2:39:08 PM Senator Wright
2:40:09 PM Senator Rodriguez closes on the bill
2:40:23 PM Roll call on SB 1034
2:40:32 PM Chair Avila reports the bill
2:40:41 PM Tab 6- SB 742, Administrative Procedures by Senator Grall
2:40:57 PM Chair Avila recognizes Senator Hooper
2:40:58 PM Senator Hooper explains the bill
2:42:38 PM Chair Avila recognizes public testimony
2:43:11 PM Senator Hooper waives close
2:43:16 PM Roll call on SB 742
2:43:21 PM Chair Avila reports the bill
2:43:52 PM Senator Wright moves to record missed votes
2:44:05 PM Meeting adjourned