

Tab 1	CS/SB 406 by HP, Stargel; (Compare to H 00267) Public Records/Minor's Petition to Waive Consent/Abortion					
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Tab 2	CS/SB 476 by IT, Hooper; (Similar to CS/H 00307) Law Enforcement Vehicles					
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Tab 3	SB 504 by Perry; (Similar to H 00279) Local Government Public Construction Works					
250768	A	S	RCS	GO, Perry	btw L.25 - 26:	01/13 03:22 PM
109396	AA	S	RCS	GO, Perry	btw L.25 - 26:	01/13 03:22 PM
560258	A	S	RCS	GO, Perry	Delete L.156 - 159:	01/13 03:22 PM

Tab 4	SB 506 by Perry; (Similar to CS/H 00441) Public Procurement of Services					
638218	D	S	RCS	GO, Perry	Delete everything after	01/13 03:22 PM

Tab 5	SB 620 by Hooper; (Identical to H 00215) Firefighters' Bill of Rights					
882796	D	S	RCS	GO, Hooper	Delete everything after	01/13 03:22 PM

Tab 6	SB 936 by Gainer; (Identical to H 00593) Disability Retirement Benefits					
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Tab 7	SM 976 by Pizzo; (Similar to H 00129) Haitian and Caribbean American Recognitions					
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Tab 8	SM 978 by Pizzo; (Identical to H 00765) Juneteenth Independence Day					
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Tab 9	SB 1050 by Diaz; (Similar to H 01181) Disaster Volunteer Leave for State Employees					
823618	A	S	RCS	GO, Bean, Diaz	Delete L.24 - 25:	01/13 03:22 PM

Tab 10	SB 1114 by Montford (CO-INTRODUCERS) Torres; (Identical to H 00845) Cost-of-living Adjustments to State Employee Salaries					
101092	A	S	RCS	GO, Montford	Delete L.29 - 34:	01/13 03:22 PM

Tab 11	SB 7010 by MS; OGSR/Servicemembers and the Spouses and Dependents of Servicemembers					
385734	A	S	RCS	GO, Wright	Delete L.55 - 85:	01/13 03:22 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Hooper, Chair
Senator Rader, Vice Chair

MEETING DATE: Monday, January 13, 2020

TIME: 1:00—3:00 p.m.

PLACE: 301 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Rader, Vice Chair; Senators Albritton, Bean, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 406 Health Policy / Stargel (Compare H 267, Linked CS/S 404)	Public Records/Minor's Petition to Waive Consent/Abortion; Providing a public records exemption for information that could identify a minor which is contained in a record held by the court relating to the minor's petition to waive consent requirements to obtain an abortion; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 11/12/2019 Not Considered HP 12/10/2019 Fav/CS GO 01/13/2020 Favorable RC	Favorable Yeas 5 Nays 0
2	CS/SB 476 Innovation, Industry, and Technology / Hooper (Similar CS/H 307)	Law Enforcement Vehicles; Providing that condominium, cooperative, and homeowners' associations, respectively, may not prohibit a law enforcement officer from parking his or her assigned law enforcement vehicle in certain areas, etc. IT 12/09/2019 Fav/CS GO 01/13/2020 Favorable RC	Favorable Yeas 5 Nays 0
3	SB 504 Perry (Similar H 279)	Local Government Public Construction Works; Requiring the governing board of a local government to consider estimated costs of certain projects using generally accepted cost-accounting principles that account for specified costs when the board is making a specified determination; prohibiting a local government from performing a project using its own services, employees, and equipment if the project requires an increase in the number of government employees or an increase in certain capital expenditures, etc. CA 12/09/2019 Favorable GO 01/13/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, January 13, 2020, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 506 Perry (Similar CS/H 441)	Public Procurement of Services; Revising the maximum dollar amount for continuing contracts for construction projects; redefining the term "continuing contract" to increase certain maximum dollar amounts for professional architectural, engineering, landscape architectural, and surveying and mapping services; requiring the Department of Management Services to annually adjust by rule the statutory caps for continuing contracts, etc. GO 01/13/2020 Fav/CS AEG AP	Fav/CS Yeas 5 Nays 0
5	SB 620 Hooper (Identical H 215)	Firefighters' Bill of Rights; Requiring that witnesses be interviewed and certain information be provided to a firefighter subjected to interrogation before the interrogation is conducted; prohibiting a firefighter from being threatened with certain disciplinary action during the course of an interrogation; requiring that a firefighter be notified and provided certain information before certain disciplinary actions are taken; requiring that certain information be kept confidential and exempt in accordance with existing law, etc. CA 12/09/2019 Favorable GO 01/13/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
6	SB 936 Gainer (Identical H 593)	Disability Retirement Benefits; Allowing members receiving care at federal Veterans Health Administration facilities to use certification by a specified number of physicians working at such facilities as proof of total and permanent disability for purposes of establishing eligibility for benefits, etc. GO 01/13/2020 Favorable MS RC	Favorable Yeas 5 Nays 0
7	SM 976 Pizzo (Similar HM 129)	Haitian and Caribbean American Recognitions; Urging Congress to recognize January 1 as "Haitian Independence Day," the month of May as "Haitian American Heritage Month," May 18 as "Haitian Flag Day," and the month of June as "Caribbean American Heritage Month", etc. GO 01/13/2020 Favorable JU RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, January 13, 2020, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SM 978 Pizzo (Identical HM 765)	Juneteenth Independence Day; Urging Congress to recognize June 19, 2020, as "Juneteenth Independence Day", etc. GO 01/13/2020 Favorable JU RC	Favorable Yeas 5 Nays 0
9	SB 1050 Diaz (Similar H 1181)	Disaster Volunteer Leave for State Employees; Expanding the Florida Disaster Volunteer Leave Act to include employees of the legislative and judicial branches of state government; revising conditions under which an employee may be granted leave under the act, etc. GO 01/13/2020 Fav/CS IS RC	Fav/CS Yeas 5 Nays 0
10	SB 1114 Montford (Identical H 845, Compare S 1242)	Cost-of-living Adjustments to State Employee Salaries; Authorizing annual cost-of-living adjustments to base rates of pay of eligible state employees, beginning in 2021; requiring the Office of Economic and Demographic Research to calculate the percentage for the adjustment in a specified manner; specifying conditions under which a cost-of-living adjustment is not implemented, etc. GO 01/13/2020 Fav/CS AP RC	Fav/CS Yeas 5 Nays 0
11	SB 7010 Military and Veterans Affairs and Space	OGSR/ Servicemembers and the Spouses and Dependents of Servicemembers; Amending a provision which provides a public records exemption for the identification and location information of servicemembers and the spouses and dependents of servicemembers; expanding the exemption by removing the requirement that a servicemember submit a written statement that reasonable efforts have been made to protect the information in order to claim the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 01/13/2020 Fav/CS RC	Fav/CS Yeas 4 Nays 1

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 406

INTRODUCER: Health Policy Committee and Senator Stargel

SUBJECT: Public Records/Minor's Petition to Waive Consent/Abortion

DATE: January 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke / Kibbey</u>	<u>Brown</u>	<u>HP</u>	Fav/CS
2.	<u>Ponder</u>	<u>McVane</u>	<u>GO</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 406 creates s. 390.01118, F.S., to make confidential and exempt from public inspection and copying any information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in CS/SB 404. Specifically, the bill provides that any such information is:

- Confidential and exempt from article I, section 24(a) of the State Constitution, if held by a circuit court or an appellate court; and
- Confidential and exempt from section 119.07(1) and article I, section 24(a) of the State Constitution, if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

The bill provides legislative findings that the public records exemption is a public necessity and provides that the public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect on the same date that CS/SB 404 (July 1, 2020) or similar legislation takes effect.

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, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are 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., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as 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

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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 state or local government public record at any reasonable time, under reasonable conditions, and

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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

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.¹⁰ 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.¹¹

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹³ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁴

Public Records and the Judicial Branch

The Public Records Act does not apply to judicial records.¹⁵ As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”¹⁶

However, the judicial branch is required to maintain access to public records and court proceedings pursuant to article 1, section 24 of the Florida Constitution.¹⁷ To meet its

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *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).

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹³ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁴ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). See also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). Likewise, the Public Records Act does not apply to the Legislature. Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

¹⁶ *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). See also FLA. CONST., art. II, s. 3 (providing for the separation of powers between the executive, judicial, and legislative branches; stating “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”). See also Florida Attorney General, GOVERNMENT-IN-THE-SUNSHINE MANUAL, A REFERENCE FOR COMPLIANCE WITH FLORIDA’S PUBLIC RECORDS AND OPEN MEETINGS LAWS, *Judiciary* at 10-11, (Vol. 39, 2017 Ed.), available at [http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/\\$file/2017+sunshine+law+manual.pdf](http://myfloridalegal.com/webfiles.nsf/wf/mnos-akbs9l/$file/2017+sunshine+law+manual.pdf).

¹⁷ See GOVERNMENT-IN-THE-SUNSHINE MANUAL at 60-65, *supra*. Even before article I, section 24 was passed to require access to public records and meetings by all branches of government, the Florida Supreme Court had recognized that access to court proceedings must be safeguarded as open, “public events.” See *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116–19 (Fla. 1988) (“[B]oth civil and criminal court proceedings in Florida are public events and adhere to the

constitutional obligation, the judicial branch adopted Florida Rule of Judicial Administration 2.420 entitled “Public Access to and Protection of Judicial Branch Records.” In pertinent part, Rule 2.420 provides:

(a) Scope and Purpose. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to and the protection of the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below. . . .

(c) Confidential and Exempt Records. The following records of the judicial branch shall be confidential:

-
- (7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;
- (8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

(d) Procedures for Determining Confidentiality of Court Records.

- (1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule.

As evidenced by Rule 2.420, the judiciary may adopt, and has adopted, “legislative statements of policy as part of the rules governing matters within the jurisdiction of the judiciary,” including the disclosure or public inspection of court records.¹⁸

well-established common law right of access to court proceedings and records. . . . The reason for openness is basic to our form of government. Public trials are essential to the judicial system’s credibility in a free society.”) (citing *Craig v. Harney*, 331 U.S. 367, 374 (1947); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)). See also William A. Buzzett and Deborah K. Kearney, *Commentary to 1992 Addition [of FLA. CONST., art. I, s. 24]*, Fla. Stat. Ann. (Westlaw 1992), noting the following history leading to the passage of article I, section 24:

Florida’s public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

¹⁸ See *Florida Pub. Co. v. State*, 706 So. 2d 54, 56 (Fla. 1st DCA 1998) (citing *Timmons v. Combs*, 608 So.2d 1, 3 (Fla.1992)). See also *Barron*, 531 So. 2d 113, 118 (“closure of court proceedings or records should occur only when

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended¹⁹ public records or open meetings exemptions,²⁰ with specified exceptions.²¹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²²

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.²³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²⁴
- 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;²⁵ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²⁶

necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed. We find that, under appropriate circumstances, the constitutional right of privacy established in Florida by the adoption of article I, section 23, could form a constitutional basis for closure under (e) or (f). . . . Further, we note that it is generally the content of the subject matter rather than the status of the party that determines whether a privacy interest exists and closure should be permitted. However, a privacy claim may be negated if the content of the subject matter directly concerns a position of public trust held by the individual seeking closure.”) (holding that while a court has the power to close a proceeding, because a “strong presumption of openness exists for all court proceedings,” the court must consider certain factors before granting a request to close a proceeding).

¹⁹ 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.

²⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

²¹ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²² Section 119.15(3), F.S.

²³ Section 119.15(6)(b), F.S.

²⁴ Section 119.15(6)(b)1., F.S.

²⁵ Section 119.15(6)(b)2., F.S.

²⁶ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²⁷ In examining an exemption, the Act directs the Legislature to carefully 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.²⁸ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁹

Office of Criminal Conflict and Civil Regional Counsel

In 2007, the Legislature created the Office of Criminal Conflict and Civil Regional Counsel (Office) to provide adequate representation to persons entitled to court-appointed counsel under the U.S. or Florida Constitution or as authorized by general law. In creating the Office, the Legislature intended to provide adequate representation in a fiscally sound manner, while safeguarding constitutional principles.³⁰ The Office provides counsel only in cases where a judge appoints the office. Counsel may be provided in both criminal and civil cases.³¹

The Justice Administrative Commission

The Justice Administrative Commission (JAC), created in 1965, provides administrative services on behalf of 49 judicial related offices. Currently, the JAC administratively serves 20 Offices of State Attorney, 20 Offices of Public Defender, five Offices of Criminal Conflict and Civil Regional Counsel, three Offices of Capital Collateral Regional Counsel, and the Statewide Guardian ad Litem Program. Services provided are primarily in the areas of accounting, budget, financial services, and human resources. While the JAC administratively serves these offices, the JAC does not supervise, direct, or control the offices it serves.³²

Parental Notice of Abortion Act and Waiver of Notice Requirements

Section 390.01114, F.S., the Parental Notice of Abortion Act, requires a physician to give notice to one parent or to the legal guardian prior to terminating the pregnancy of a minor. Exceptions are provided. Section 390.01114(4), F.S., sets forth the procedure for a minor to seek a judicial waiver of the notice requirement. Under s. 390.01116, F.S., when a minor petitions a circuit

²⁷ 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?

²⁸ See generally s. 119.15, F.S.

²⁹ Section 119.15(7), F.S.

³⁰ Section 27.511, F.S.

³¹ See <https://rc1fl.com/about-us/case-types>, (last visited on November 7, 2019).

³² See <https://www.justiceadmin.org/commissioners/history.aspx>, (last visited on November 7, 2019).

court for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy, any information in documents related to the petition which could be used to identify the minor is confidential and exemption from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. A subsequent amendment to Rule 2.420 was adopted to direct clerks of court to designate and maintain the confidentiality of this information within a court record.³³

III. Effect of Proposed Changes:

Section 1 creates s. 390.01118, F.S., to establish a public records exemption for any information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in CS/SB 404, if CS/SB 404 or a similar bill becomes law. Specifically, the bill provides that any such information is:

- Confidential and exempt from article I, section 24(a) of the State Constitution, if held by a circuit court or an appellate court; and
- Confidential and exempt from section 119.07(1) and article I, section 24(a) of the State Constitution, if held by the Office or the JAC.

Section 2 provides legislative findings of public necessity as follows:

- It is a public necessity to keep confidential and exempt from public disclosure information contained in a court record which could be used to identify a minor who is petitioning the court for a waiver from the statutory requirement that a parent or legal guardian give consent before the minor may obtain an abortion. The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the safety of the minor in instances when child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, if the information was not held confidential, could learn of her pregnancy, her plans to obtain an abortion, and her petition to the court.
- It is a public necessity to keep this identifying information in records held by the court confidential and exempt in order to protect the privacy of the minor. The State Constitution contains an express right of privacy in article I, section 23. Further, the United States Supreme Court has repeatedly required parental-consent laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the confidentiality and exemption provided in this act, the disclosure of personal identifying information would violate the right of privacy of the minor and would place the constitutionality of the state's program providing for a judicial waiver of consent in question.

The bill also provides that the public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

³³ Chapter 2005-52, L.O.F., creating a new parental notice of abortion act, had the following effective date: "This act shall take effect upon the adoption of rules and forms by the Supreme Court, but no later than July 1, 2005." It was approved by the Governor on May 25, 2005. Chapter 2005-104, L.O.F., amending an accompanying public records exemption, had an effective date simultaneous with the underlying parental notice law and was approved by the Governor on June 1, 2005. On June 30, 2005, the Supreme Court issued an opinion adopting rule amendments related to the new laws.

Section 3 provides the bill takes effect on the same date that CS/SB 404 or similar legislation takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, section 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 information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in CS/SB 404. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill that creates or expands 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 exemptions.

Breadth of Exemption

Article I, section 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 this bill is to protect information that can be used to identify a minor who is petitioning a circuit court for a judicial waiver pursuant to the Parental Consent for Abortion Act established in CS/SB 404. This bill exempts only such information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the bill.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The public necessity statement in section 2 of the bill provides findings that the State Constitution contains an express right of privacy in article I, section 23. Further, the United States Supreme Court has repeatedly required parental consent laws to contain judicial bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the confidentiality and public records exemption provided in this bill, the disclosure of personal identifying information would violate the right of privacy of the minor and would place the constitutionality of the state's process to provide for a judicial waiver of consent in question.

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

None.

B. Private Sector Impact:

The private sector will be subject to the any cost associated with the custodian of records making redactions necessary in response to a public records request.

C. Government Sector Impact:

The custodian of the records made exempt by this bill will incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 390.01118 of the Florida Statutes.

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

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

CS by Health Policy on December 10, 2019:

The CS revises the contingent effective date so that the bill will take effect on the same date that CS/SB 404 or similar legislation takes effect if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. Amendments:

None.

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

By the Committee on Health Policy; and Senator Stargel

588-02033-20

2020406c1

A bill to be entitled
An act relating to public records; creating s.
390.01118, F.S.; providing a public records exemption
for information that could identify a minor which is
contained in a record held by the court relating to
the minor's petition to waive consent requirements to
obtain an abortion; providing for future legislative
review and repeal under the Open Government Sunset
Review Act; providing a statement of public necessity;
providing a contingent effective date.

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

Section 1. Section 390.01118, Florida Statutes, is created
to read:

390.01118 Public records exemptions; minors seeking waiver
of consent requirements.—Any information that can be used to
identify a minor who is petitioning a circuit court for a
judicial waiver, as provided in s. 390.01117, of the consent
requirements under the Parental Consent for Abortion Act is:

(1) Confidential and exempt from s. 24(a), Art. I of the
State Constitution, if held by a circuit court or an appellate
court.

(2) Confidential and exempt from s. 119.07(1) and s. 24(a),
Art. I of the State Constitution, if held by the office of
criminal conflict and civil regional counsel or the Justice
Administrative Commission.

This section is subject to the Open Government Sunset Review Act

588-02033-20

2020406c1

in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity to keep confidential and exempt from public disclosure information contained in a court record which could be used to identify a minor who is petitioning the court for a waiver from the statutory requirement that a parent or legal guardian give consent before the minor may obtain an abortion. The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the safety of the minor in instances when child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, if the information was not held confidential, could learn of her pregnancy, her plans to obtain an abortion, and her petition to the court.

(2) The Legislature further finds that it is a public necessity to keep this identifying information in records held by the court confidential and exempt in order to protect the privacy of the minor. The State Constitution contains an express right of privacy in s. 23 of Article I. Further, the United States Supreme Court has repeatedly required parental-consent laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the confidentiality and exemption provided in this act, the disclosure of personal identifying information would violate the

588-02033-20

2020406c1

59 right of privacy of the minor and would place the
60 constitutionality of the state's program providing for a
61 judicial waiver of consent in question. Thus, the
62 confidentiality and exemption provided by this act are necessary
63 for the effective administration of the Parental Consent for
64 Abortion Act, for which administration would be impaired without
65 the exemption.

66 Section 3. This act shall take effect on the same date that
67 SB 404 or similar legislation takes effect if such legislation
68 is adopted in the same legislative session or an extension
69 thereof and becomes a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL

22nd District

December 17, 2019

The Honorable Ed Hooper
Senate Committee on Governmental Oversight and Accountability, Chair
326 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Hooper:

I respectfully request that SB 406, related to *Public Records/Minor's Petition to Waive Consent/Abortion*, be placed on the Governmental Oversight and Accountability meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in dark ink, reading "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel
State Senator, District 22

Cc: Joe McVaney/Staff Director
Tamra Redig/AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- ☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 476

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Hooper

SUBJECT: Law Enforcement Vehicles

DATE: January 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Fav/CS
2.	<u>Hackett</u>	<u>McVane</u>	<u>GO</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 476 provides that condominium, homeowners', and cooperative associations may not prohibit law enforcement officers who are owners, tenants, guests, or invitees of an owner to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

The bill does not have a fiscal impact on state and local governments.

The bill takes effect upon becoming law.

II. Present Situation:

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,¹ recordkeeping requirements, including which records are accessible to the members of the association,² and

¹ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

² See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

financial reporting.³ Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

Condominium

A condominium is a “form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”⁴ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁵ A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.⁶

A condominium is administered by a board of directors referred to as a “board of administration.”⁷

Cooperative Associations

Section 719.103(12), F.S., defines a “cooperative” to mean:

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit’s occupants receive an exclusive right to occupy the unit. The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁸

Homeowners’ Associations

Florida law provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.⁹

³ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

⁴ Section 718.103(11), F.S.

⁵ Section 718.104(2), F.S.

⁶ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁷ Section 718.103(4), F.S.

⁸ See ss. 719.106(1)(g) and 719.107, F.S.

⁹ See s. 720.302(1), F.S.

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”¹⁰ Unless specifically stated to the contrary in the articles of incorporation, homeowners’ associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.¹¹

Homeowners’ associations are administered by a board of directors whose members are elected.¹² The powers and duties of homeowners’ associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹³ The officers and members of a homeowners’ association have a fiduciary relationship to the members who are served by the association.¹⁴

Restrictive Covenants

Community associations may enact and enforce covenants as a condition for living in the association. A covenant is an agreement, or contract, which grants a right or imposes a liability. Covenants can range from requiring owners to pay a portion of the common expenses to restrictions on the age of permanent residents.¹⁵

A restrictive covenant limits the use of community association property. Restrictive covenants imposed by a community association’s declaration are valid unless they are clearly ambiguous, wholly arbitrary, or violate a public policy or a constitutional right. Restrictions imposed by a community association’s board of directors must also be reasonable.¹⁶

Community Association Fines and Suspensions

Owners, tenants, and guests must comply with a condominium, cooperative, or homeowners’ association’s (community associations) declaration, bylaws, and rules. Condominium, cooperative, and homeowners’ associations may levy fines against or suspend the right of an owner, occupant, or a guest of an owner or occupant, to use the common elements or any other association property for failing to comply with any provision in the association’s governing documents. A suspension for failing to comply with the community association’s declaration, bylaws, or rules may not be for an unreasonable amount of time.¹⁷

¹⁰ Section 720.301(9), F.S.

¹¹ Section 720.302(5), F.S.

¹² See ss. 720.303 and 720.307, F.S.

¹³ See ss. 720.301 and 720.303, F.S.

¹⁴ Section 720.303(1), F.S.

¹⁵ Sections 718.104(5), 718.112(3), 719.1035, 719.106(2), 720.301(4), and 720.304(1), F.S.; Peter Dunbar, *The Condominium Concept*, 13-21 (14th ed. 2014-15).

¹⁶ *Beachwood Villas Condominium v. Poor*, 448 So. 2d 1143, 1144 (Fla. 4th DCA 1984); *Hidden Harbour Estates, Inc. v. Basso*, 393 So. 2d 637, 639-40 (Fla. 3rd DCA 1981).

¹⁷ Sections 718.303, 719.303, and 720.305, F.S.

No fine may exceed \$100 per violation although a fine may be levied for each day of a continuing violation provided the fine does not exceed \$1,000. However, a fine levied by a homeowners' association may exceed \$1,000 if the governing documents authorize it. Fines levied by condominium associations and cooperatives may not become a lien on the property. Fines levied by a homeowners' association that do not exceed \$1,000 may not become a lien on the property.¹⁸

A community association may suspend an owner, tenant, or guest's ability to use the association's common elements or any other association property, if the owner is more than 90 days delinquent in paying a monetary obligation including a fine. The suspension may remain in effect until the fine is paid.¹⁹

A community association may also suspend an owner's voting rights for any monetary obligation that exceeds \$1,000 and is more than 90 days delinquent.²⁰

Commercial Vehicles

A common restrictive covenant in community associations is restricting or prohibiting the parking of certain vehicles such as commercial vehicles. However, the community association's governing documents often do not define the term "commercial vehicle," which can lead to confusion about what constitutes a commercial vehicle.²¹

Florida courts have upheld homeowners' association provisions restricting the parking of commercial when the term "commercial vehicle" has not been defined in the governing documents.²²

In June 2005, the Town of Davie requested an advisory opinion from the Florida Office of the Attorney General on the definition of commercial vehicle. Specifically, the town inquired whether a marked law enforcement vehicle is a commercial vehicle for the purposes of parking on property located in a community association. A homeowners' association within the town prohibited commercial vehicles from parking in the driveways within the association property. The association had informed an owner that a law enforcement vehicle was a commercial vehicle and could not be parked in the driveway.²³

The Attorney General determined that a law enforcement vehicle is not a commercial vehicle because a commercial vehicle is used by a business for the purpose of economic gain, and law

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Mike Antich, *Discrimination Against Vocational Vehicles*, Automotive Fleet (Dec. 22, 2017) <https://www.automotive-fleet.com/160128/discrimination-against-vocational-vehicles> (last visited Oct. 28, 2019); and Clinton Morrell, *Are law enforcement vehicles subject to Community Association "commercial vehicle" bans?*, The Condo & HOA Law Bulletin (Feb. 8, 2016) <https://thecondoandhoalawbulletin.com/2016/02/08/are-law-enforcement-vehicles-subject-to-community-association-commercial-vehicle-bans/> (last visited Nov. 26, 2019).

²² *Cottrell v. Miskove*, 605 So. 2d 572, 573 (Fla. 2nd DCA 1992) (The terms "commercial" and "vehicle" are well defined terms and when combined the term is not vague, ambiguous, or unclear.).

²³ Op. Att'y Gen. Fla. 05-36 (2005). A copy is available at: <http://www.myfloridalegal.com/ago.nsf/printview/0D1E173CAF5568FF852570220059A538> (last visited Nov. 26, 2019).

enforcement services are an integral part of government and are not provided for economic gain. The Attorney General also noted that assigning a police vehicle to an officer to drive during off-duty hours to provide a quicker response when called to an emergency is a direct benefit to the public, and the presence of a police vehicle in a neighborhood may serve as a deterrent to crime.²⁴

Recently, the media reported that a Clearwater police officer may be subject to hundreds of dollars in fines imposed by the police officer's homeowners' association if the police officer continued to park a marked police cruiser in the driveway instead of the garage.²⁵ The association's declaration prohibits owners from parking commercial and *government issued* vehicles in driveways.²⁶ According to the media reports, the association has changed its position and now lets the police officer park a marked cruiser in the driveway. However, media reports indicate that the exception only applies to that specific police officer, and all future owners with government issued vehicles may not park them in the driveways.²⁷

Law Enforcement Officer

Chapter 943, F.S., is the Department of Law Enforcement Act.²⁸ Section 943.10(1), F.S., defines the term "law enforcement officer" to mean:

[A]ny person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

The definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include support personnel employed by the employing agency.²⁹ The definition does not include part-time or auxiliary law enforcement officers themselves.³⁰

²⁴ *Id.*

²⁵ Heather Leigh, *HOA tells Clearwater officer to move her police cruiser into her garage or face legal action*, ABC Action News Tampa Bay, (Aug. 27, 2019) <https://www.abcactionnews.com/news/region-pinellas/hoa-tells-clearwater-officer-to-move-her-police-cruiser-into-her-garage-or-face-legal-action> (last visited Nov. 26, 2019); WFTS Staff, *HOA tells Florida officer to move her police cruiser off her driveway or face legal action*, News Channel 5 Nashville, Sep. 1, 2019, <https://www.newschannel5.com/news/national/hoa-tells-florida-officer-to-move-her-police-cruiser-into-off-her-driveway-or-face-legal-action> (last visited Nov. 26, 2019).

²⁶ Heather Leigh, *State leaders push for change after HOA tells Clearwater officer to move cruiser from driveway*, ABC Action News Tampa Bay, August 29, 2019 <https://www.abcactionnews.com/news/region-pinellas/state-leaders-push-for-change-after-hoa-tells-clearwater-officer-to-move-cruise-from-driveway> (last visited January 1, 2020).

²⁷ Heather Leigh, *HOA now allowing Clearwater police officer to park cruiser in driveway*, ABC Action News Tampa Bay, Sep. 11, 2019, <https://www.abcactionnews.com/news/region-pinellas/hoa-now-allowing-clearwater-police-officer-to-park-cruiser-in-driveway> (last visited Nov. 26, 2019).

²⁸ Section 943.01, F.S.

²⁹ Section 943.10(1), F.S.

³⁰ *Id.*

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.³¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.³² After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.³³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.³⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.³⁵

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.³⁶

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.], the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these

³¹ Sections 718.501(1) and 719.501(1), F.S.

³² *Id.*

³³ Section 718.501(1), F.S.

³⁴ Section 719.501(1), F.S.

³⁵ Sections 718.501(1) and 719.501(1), F.S.

³⁶ *Id.*

disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.,] are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

For homeowners' associations, the division's authority is limited to arbitration of recall election disputes.³⁷

III. Effect of Proposed Changes:

The bill provides that homeowners', condominium, and cooperative associations may not prohibit full-time law enforcement officers, as defined in s. 943.10(1), F.S., who are owners, tenants, guests, or invitees of an owner, to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

CS/SB 476 may create a conflict with the governing documents of homeowners', condominium, and cooperative associations to the extent the documents prohibit law enforcement officers, as defined in s. 943.10(1), F.S., who are owners, tenants, guests, or invitees of an owner, to park their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

³⁷ See s. 720.306(9)(c), F.S.

The governing documents of these associations are generally considered contracts.³⁸ To the extent that the provisions of this bill may be applied retroactively, provisions of the bill may prompt concerns regarding the unconstitutional impairment of contract.

Some contracts forego the impairment of contract analysis by incorporating the relevant governing statute for that particular type of association, including future changes. In the context of condominiums, for example, the contract may include what is referred to as the “Kaufman language,” which states that the contract or association “shall be governed by the Condominium Act, as amended from time-to-time.”³⁹ Without the Kaufman language, newly enacted statutes may only affect new association documents (or amendments to existing documents) or prior association documents in a limited manner.

Article I, Section 10 of the United States Constitution prohibits state legislatures from enacting laws impairing the obligation of contracts. As early as 1880, the federal courts recognized that the contract clause does not override the police power of the states to establish regulations to promote the health, safety, and morals of the community.⁴⁰ The severity of the impairment is a key issue when evaluating whether a state law impairs a contract.⁴¹ In *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983), the Supreme Court suggested it would uphold legislation that imposes a generally applicable rule of conduct designed to advance a broad societal interest that only incidentally disrupts existing contractual relationships.

Article I, section 10 of the Florida Constitution also prohibits the state from enacting laws impairing the obligation of contracts. While Florida courts have historically strictly applied this restriction, they have exempted laws when they find there is an overriding public necessity for the state to exercise its police powers.⁴² This exception extends to laws that are reasonable and necessary to serve an important public purpose,⁴³ to include protecting the public’s health, safety or welfare.⁴⁴ For a statute to offend the constitutional prohibition against impairment of contract, the statute must have the effect of changing substantive rights of the parties to an existing contract. Any retroactive application of a statute affecting substantive contractual rights would be constitutionally suspect.⁴⁵

Historically, both the state and federal courts have attempted to find a rational and defensible compromise between individual rights and public welfare when laws are enacted that may impair existing contracts.⁴⁶ The balancing process focuses on whether “the nature and extent of the impairment is constitutionally tolerable in light of the

³⁸ See *Venetian Isles Homeowners’ Assoc., Inc. v. Albrecht*, 823 So.2d 813 (Fla. 2nd D.C.A. 2002) and *Cudjoe Gardens Property Owners Assoc., Inc. v. Patne*, 779 So.2d 598 (Fla. 3rd D.C.A. 2001).

³⁹ See *Kaufman v. Shere*, 347 So.2d 627 (Fla. 3 DCA 1977).

⁴⁰ *Stone v. Mississippi*, 101 U.S. 814 (1880).

⁴¹ *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

⁴² *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So.2d 681 (Fla. 1980).

⁴³ *Yellow Cab Co. v. Dade County*, 412 So.2d 395 (Fla. 3rd DCA 1982), petition den. 424 So.2d 764 (Fla. 1982).

⁴⁴ *Khoury v. Carvel Homes South, Inc.*, 403 So.2d 1043 (Fla. 1st DCA 1981), petition den. 412 So.2d 467 (Fla. 1981).

⁴⁵ *Tri-Properties, Inc. v. Moonspinner Condominium Association, Inc.*, 447 So.2d 965 (Fla. 1st DCA 1984).

⁴⁶ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).

importance of the state’s objective, or whether it unreasonably intrudes into the parties’ bargain to a degree greater than is necessary to achieve that objective.”⁴⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates sections 718.129, 719.131, and 720.318 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Innovation, Industry, and Technology on December 9, 2019:

The committee substitute cross-references the definition of the term “law enforcement officer” in s. 943.10(1), F.S.

B. Amendments:

None.

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

⁴⁷ *Id.* at 780.

By the Committee on Innovation, Industry, and Technology; and
Senator Hooper

580-01998-20

2020476c1

A bill to be entitled
An act relating to law enforcement vehicles; creating
ss. 718.129, 719.131, and 720.318, F.S.; providing
that condominium, cooperative, and homeowners'
associations, respectively, may not prohibit a law
enforcement officer from parking his or her assigned
law enforcement vehicle in certain areas; providing an
effective date.

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

Section 1. Section 718.129, Florida Statutes, is created to
read:

718.129 Law enforcement vehicles.—An association may not
prohibit a law enforcement officer, as defined in s. 943.10(1),
who is a unit owner, or who is a tenant, guest, or invitee of a
unit owner, from parking his or her assigned law enforcement
vehicle in an area where the unit owner, or the tenant, guest,
or invitee of the unit owner, otherwise has a right to park.

Section 2. Section 719.131, Florida Statutes, is created to
read:

719.131 Law enforcement vehicles.—An association may not
prohibit a law enforcement officer, as defined in s. 943.10(1),
who is a unit owner, or who is a tenant, guest, or invitee of a
unit owner, from parking his or her assigned law enforcement
vehicle in an area where the unit owner, or the tenant, guest,
or invitee of the unit owner, otherwise has a right to park.

Section 3. Section 720.318, Florida Statutes, is created to
read:

580-01998-20

2020476c1

30 720.318 Law enforcement vehicles.—An association may not
31 prohibit a law enforcement officer, as defined in s. 943.10(1),
32 who is a parcel owner, or who is a tenant, guest, or invitee of
33 a parcel owner, from parking his or her assigned law enforcement
34 vehicle in an area where the parcel owner, or the tenant, guest,
35 or invitee of the parcel owner, otherwise has a right to park.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/13/2020

Meeting Date

476

Bill Number (if applicable)

Topic Law Enforcement Vehicles

Amendment Barcode (if applicable)

Name Tim Stanfield

Job Title Lobbyist

Address 101 E College Ave

Phone (850) 222-6891

Street

Tallahassee

FL

32301

Email stanfieldt@gtlaw.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

This form is part of the public record for this meeting

001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 13, 2020

Meeting Date

476

Bill Number (if applicable)

Topic LEO Vehicles

Amendment Barcode (if applicable)

Name Gary Bradford

Job Title Lobbyist

Address 300 East Brevard St

Phone 850-222-3329

Street

Tallahassee

FL

32301

Email gary@flpba.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida PBA Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-13-20

Meeting Date

476

Bill Number (if applicable)

Topic SB 476

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title Lobbyist

Address 110 S Monroe St
Street

Phone 813-205-0654

Tallahassee
City

FL
State

32301
Zip

Email Mark@consultanderson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CEOMC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

1/13/20

Meeting Date

476

Bill Number (if applicable)

Topic Law Enforcement Vehicles

Amendment Barcode (if applicable)

Name Meredith Brock StanfieldJob Title Director of Legislative & Cabinet AffairsAddress PL 27, The Capitol

Street

Phone (850) 413-2890Tallahassee

City

FL

State

32399

Zip

Email meredith.stanfield@myfloridacfo.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing CFO Jimmy PatronisAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/13/2020
Meeting Date

476
Bill Number (if applicable)

Topic Law Enforcement Vehicles

Amendment Barcode (if applicable)

Name Melanie Bostick

Job Title _____

Address P.O. Box 390
Street

Phone (850) 688-3183

Tallahassee FL 32302
City State Zip

Email melanie@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriff's Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 504

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Perry

SUBJECT: Local Government Public Construction Works

DATE: January 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 504 clarifies the local government that issued bidding documents or other requests for proposal must disclose all fees affecting the project put out for bid. The bill also specifies the manner in which the estimated cost of a public building construction project must be determined when a local government governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. Specifically, the bill requires the estimated cost of the project to be determined using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

For county construction and reconstruction projects of roads and bridges utilizing proceeds from the constitutional gas tax, the bill specifies that total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of materials.

The bill is expected to have an insignificant fiscal impact on local governments and the private sector.

The bill takes effect July 1, 2020.

II. Present Situation:

Procurement of Construction Services

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. The Department of Management Services is responsible for establishing the following by rule:

- Procedures for determining the qualifications and responsibilities of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state; and
- Procedures for 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.¹

Counties, municipalities, special districts, and other political subdivisions seeking to construct or improve a public building, structure, or other public construction works must competitively award the project if the projected cost is in excess of \$300,000.² For electrical work, local governments must competitively award projects estimated to cost more than \$75,000.

Section 255.20(1), F.S., provides that the term “competitively award” means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.

Exemption from Competitive Solicitation for Local Governments Performing Work

If the governing board of a local government seeking to construct or improve a public building or structure conducts a public meeting and finds by majority vote that it is in the public’s best interest to perform the project using its own services, employees, and equipment, then the local government is exempt from the requirement to competitively award the contract for the project.³ The meeting of the governing board must have been publicly noticed at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the project, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the project, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must state that the purpose of the meeting is to consider whether it is in the best interest of the public to perform the project using the local government’s own services, employees, and equipment.⁴

At the public meeting, the governing board must allow any qualified contractor or vendor who could have been awarded the project had the project been competitively bid to present evidence regarding the project and the accuracy of the local government’s estimated cost of the project. In

¹ Section 255.29, F.S.

² Section 255.20(1), F.S.

³ Section 255.20(1)(c)9., F.S.

⁴ *Id.*

making a determination, the governing board must consider the estimated cost of the project and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting. In addition, the board must consider whether the project requires an increase in the number of government employees or an increase in capital expenditures for public facilities, equipment, or other capital assets. The governing body may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest.⁵

Construction and Maintenance of Roads and Bridges

Current law authorizes counties to employ labor and provide road equipment to construct and open new roads or bridges and to repair and maintain any existing roads and bridges under certain circumstances.⁶ However, counties must competitively bid and award to the lowest bidder all projects for construction and reconstruction of roads and bridges, including resurfacing, that utilize the proceeds of the 80 percent portion of the surplus of the constitutional gas tax.⁷ An exception to this requirement allows a county to use its own forces for these construction and reconstruction projects under the following circumstances:

- Construction and maintenance in emergency situations;
- When a construction or reconstruction project has a total cumulative annual value not to exceed five percent of its 80-percent portion of the constitutional gas tax or \$400,000, whichever is greater; or
- When constructing sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than \$400,000.⁸

In addition, if, after proper advertising, the county receives no bids for a specific project, the county may use its own forces to construct the project. A county is not prohibited from performing routine maintenance as authorized by law.⁹

III. Effect of Proposed Changes:

Section 1 amends 218.80, F.S., to clarify that the local governments who issued bidding documents or other requests for proposal must disclose all fees affecting the project that was put out for bid. This will have the effect of requiring a local government to disclose not only its fees associated with the project but those of another local government where such fees will impact the project put out to bid.

⁵ *Id.*

⁶ *See* s. 336.41, F.S.

⁷ Section 336.41(4), F.S. An excise or license tax of 2 cents per net gallon, which is the tax as levied by s. 16, Art. IX of the State Constitution of 1885, as amended, and continued by s. 9(c), Art. XII of the 1968 State Constitution, as amended, which is therein referred to as the "second gas tax," and which is hereby designated the "constitutional fuel tax." *See* s. 206.41(1)(a), F.S.

⁸ *Id.*

⁹ *Id.*

Section 2 amends s. 255.20, F.S., relating to certain local bids and contracts for public construction works. The bill clarifies that when deciding whether it is in the public's best interest for the local government to perform the project using its own services, employees and equipment, the governing board's consideration of the estimated cost of the project must utilize generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials.

The bill requires a local government that performs a public building construction project using its own services, employees, and equipment to disclose the actual costs of the project after completion to the Auditor General, who must review such disclosures as part of his or her routine audits of local governments.

Section 3 amends s. 336.41, F.S., relating to the construction and reconstruction of roads and bridges by counties utilizing proceeds from the constitutional gas tax. The bill specifies that estimated total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of materials. By including these costs in their entirety, the cost of a particular project may be increased above the \$400,000 threshold, requiring the county to competitively procure these services rather than using its own forces.

Section 4 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires local governments to: (i) comply with cost-accounting principles in determining whether or not it is in the public's best interest for it to perform the project using its own services, employees and equipment; and (ii) to provide the actual costs of the project upon completion to the Auditor General, if it does perform the project. Local governments currently are required to utilize cost-accounting principles in publishing the estimated cost of a project in the notice of public meeting. Thus, it seems the new requirements under the bill will likely not have a significant impact on the government sector.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 218.80, 255.20 and 336.41 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on January 13, 2020:

The committee substitute:

- Amends s. 218.80, F.S., to clarify that the local government that issued bidding documents or other requests for proposal must disclose all fees affecting the project let for bid; and
- Removes language prohibiting a local government from performing a project using its own services, employees or an increase in capital expenditures.

¹⁰ S. 255.20(1)(c)9., F.S.

B. Amendments:

None.

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



250768

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 25 and 26
insert:

Section 1. Subsections (2) and (3) of section 218.80,
Florida Statutes, are amended to read:

218.80 Public Bid Disclosure Act.—

(2) It is the intent of the Legislature that a local
governmental entity shall disclose all of the ~~local governmental~~
~~entity's~~ permits or fees, including, but not limited to, all



250768

11 license fees, permit fees, impact fees, or inspection fees,
12 payable by the contractor ~~to the unit of government~~ that issued
13 the bidding documents or other request for proposal, unless such
14 permits or fees are disclosed in the bidding documents or other
15 request for proposal for the project at the time the project was
16 let for bid. It is further the intent of the Legislature to
17 prohibit local governments from halting construction to collect
18 any undisclosed permits or fees which were not disclosed or
19 included in the bidding documents or other request for proposal
20 for the project at the time the project was let for bid.

21 (3) Bidding documents or other request for proposal issued
22 for bids by a local governmental entity, or any public contract
23 entered into between a local governmental entity and a
24 contractor shall disclose each permit or fee which the
25 contractor will have to pay before or during construction and
26 shall include the dollar amount or the percentage method or the
27 unit method of all permits or fees which may be required ~~by the~~
28 ~~local government~~ as a part of the contract. If the request for
29 proposal does not require the response to include a final fixed
30 price, the local governmental entity is not required to disclose
31 any fees or assessments in the request for proposal. However, at
32 least 10 days prior to requiring the contractor to submit a
33 final fixed price for the project, the local governmental entity
34 shall make the disclosures required in this section. Any of the
35 local governmental entity's permits or fees that ~~which~~ are not
36 disclosed in the bidding documents, other request for proposal,
37 or a contract between a local government and a contractor shall
38 not be assessed or collected after the contract is let. No local
39 government shall halt construction under any public contract or



250768

delay completion of the contract in order to collect any permits
or fees which were not provided for or specified in the bidding
documents, other request for proposal, or the contract.

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

And the title is amended as follows:

Delete line 3

and insert:

construction works; amending s. 218.80, F.S.; revising
legislative intent; revising disclosure requirements
for bidding documents and other requests for proposals
issued for bids by a local governmental entity and
public contracts entered into between local
governmental entities and contractors; amending s.
255.20, F.S.;



109396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (250768)

Between lines 25 and 26
insert:

Section 1. Subsections (2) and (3) of section 218.80,
Florida Statutes, are amended to read:

218.80 Public Bid Disclosure Act.—

(2) It is the intent of the Legislature that a local
governmental entity shall disclose all of the ~~local governmental~~
~~entity's~~ permits or fees, including, but not limited to, all



109396

11 license fees, permit fees, impact fees, or inspection fees,
12 payable by the contractor ~~to the unit of government that issued~~
13 ~~the bidding documents or other request for proposal~~, unless such
14 permits or fees are disclosed in the bidding documents or other
15 request for proposal for the project at the time the project was
16 let for bid. It is further the intent of the Legislature to
17 prohibit local governments from halting construction to collect
18 any undisclosed permits or fees which were not disclosed or
19 included in the bidding documents or other request for proposal
20 for the project at the time the project was let for bid.

21 (3) Bidding documents or other request for proposal issued
22 for bids by a local governmental entity, or any public contract
23 entered into between a local governmental entity and a
24 contractor shall disclose each permit or fee which the
25 contractor will have to pay before or during construction and
26 shall include the dollar amount or the percentage method or the
27 unit method of all permits or fees which may be required ~~by the~~
28 ~~local government~~ as a part of the contract. If the request for
29 proposal does not require the response to include a final fixed
30 price, the local governmental entity is not required to disclose
31 any fees or assessments in the request for proposal. However, at
32 least 10 days prior to requiring the contractor to submit a
33 final fixed price for the project, the local governmental entity
34 shall make the disclosures required in this section. Any of the
35 local governmental entity's permits or fees that ~~which~~ are not
36 disclosed in the bidding documents, other request for proposal,
37 or a contract between a local government and a contractor shall
38 not be assessed or collected after the contract is let. No local
39 government shall halt construction under any public contract or



109396

40 delay completion of the contract in order to collect any permits
41 or fees which were not provided for or specified in the bidding
42 documents, other request for proposal, or the contract.



560258

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 156 - 159
and insert:
other capital assets. The local

By Senator Perry

8-00728-20

2020504__

1 A bill to be entitled
2 An act relating to local government public
3 construction works; amending s. 255.20, F.S.;
4 requiring the governing board of a local government to
5 consider estimated costs of certain projects using
6 generally accepted cost-accounting principles that
7 account for specified costs when the board is making a
8 specified determination; prohibiting a local
9 government from performing a project using its own
10 services, employees, and equipment if the project
11 requires an increase in the number of government
12 employees or an increase in certain capital
13 expenditures; requiring that a local government that
14 performs projects using its own services, employees,
15 and equipment disclose the actual costs of the project
16 after completion to the Auditor General; requiring
17 that the Auditor General review such disclosures as
18 part of his or her routine audits of local
19 governments; amending s. 336.41, F.S.; requiring
20 estimated total construction project costs for certain
21 projects to include specified costs; providing an
22 effective date.

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

25
26 Section 1. Paragraph (c) of subsection (1) of section
27 255.20, Florida Statutes, is amended to read:

28 255.20 Local bids and contracts for public construction
29 works; specification of state-produced lumber.-

8-00728-20

2020504__

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$75,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(c) The provisions of this subsection do not apply:

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2020504__

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:

- a. An immediate danger to the public health or safety;
- b. Other loss to public or private property which requires emergency government action; or
- c. An interruption of an essential governmental service.

2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building,

8-00728-20

2020504__

88 structure, or other public construction works or any substantial
89 addition, extension, or upgrade to an existing public facility.
90 Such additions, extensions, or upgrades shall be considered
91 substantial if the estimated cost of the additions, extensions,
92 or upgrades included as part of the repair or maintenance
93 project exceeds the threshold amount in subsection (1) and
94 exceeds 20 percent of the estimated total cost of the repair or
95 maintenance project using generally accepted cost-accounting
96 principles that fully account for all costs associated with
97 performing and completing the work, including employee
98 compensation and benefits, equipment cost and maintenance,
99 insurance costs, and materials. An addition, extension, or
100 upgrade shall not be considered substantial if it is undertaken
101 pursuant to the conditions specified in subparagraph 1. Repair
102 and maintenance projects and any related additions, extensions,
103 or upgrades may not be divided into multiple projects for the
104 purpose of evading the requirements of this subparagraph.

105 6. If the project is undertaken exclusively as part of a
106 public educational program.

107 7. If the funding source of the project will be diminished
108 or lost because the time required to competitively award the
109 project after the funds become available exceeds the time within
110 which the funding source must be spent.

111 8. If the local government competitively awarded a project
112 to a private sector contractor and the contractor abandoned the
113 project before completion or the local government terminated the
114 contract.

115 9. If the governing board of the local government complies
116 with all of the requirements of this subparagraph, conducts a

8-00728-20

2020504__

public meeting under s. 286.011 after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project using generally accepted cost-accounting principles that fully account for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and materials. The notice must specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and

8-00728-20

2020504__

146 equipment, the governing board must consider the estimated cost
147 of the project using generally accepted cost-accounting
148 principles that fully account for all costs associated with
149 performing and completing the work, including employee
150 compensation and benefits, equipment costs and maintenance,
151 insurance costs, and the cost of materials, and the accuracy of
152 the estimated cost in light of any other information that may be
153 presented at the public meeting and whether the project requires
154 an increase in the number of government employees or an increase
155 in capital expenditures for public facilities, equipment, or
156 other capital assets. If the project requires an increase in the
157 number of government employees or an increase in such capital
158 expenditures, the local government may not perform the project
159 using its own services, employees, and equipment. The local
160 government may further consider the impact on local economic
161 development, the impact on small and minority business owners,
162 the impact on state and local tax revenues, whether the private
163 sector contractors provide health insurance and other benefits
164 equivalent to those provided by the local government, and any
165 other factor relevant to what is in the public's best interest.
166 A local government that performs projects using its own
167 services, employees, and equipment must disclose the actual
168 costs of the project after completion to the Auditor General.
169 The Auditor General shall review such disclosures as part of his
170 or her routine audits of local governments.

171 10. If the governing board of the local government
172 determines upon consideration of specific substantive criteria
173 that it is in the best interest of the local government to award
174 the project to an appropriately licensed private sector

8-00728-20

2020504__

contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. 286.011 and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will

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jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

Section 2. Subsection (4) of section 336.41, Florida Statutes, is amended to read:

336.41 Counties; employing labor and providing road equipment; accounting; when competitive bidding required.—

(4) All construction and reconstruction of roads and bridges, including resurfacing, full scale mineral seal coating, and major bridge and bridge system repairs, to be performed utilizing the proceeds of the 80-percent portion of the surplus of the constitutional gas tax shall be let to contract to the lowest responsible bidder by competitive bid, except for:

(a) Construction and maintenance in emergency situations;it
~~and~~

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(b) In addition to emergency work, construction and reconstruction, including resurfacing, mineral seal coating, and bridge repairs, having a total cumulative annual value not to exceed 5 percent of its 80-percent portion of the constitutional gas tax or \$400,000, whichever is greater;~~;~~ and

(c) Construction of sidewalks, curbing, accessibility ramps, or appurtenances incidental to roads and bridges if each project is estimated in accordance with generally accepted cost-accounting principles to have total construction project costs of less than \$400,000 or as adjusted by the percentage change in the Construction Cost Index from January 1, 2008,

for which the county may utilize its own forces. Estimated total construction project costs must include all costs associated with performing and completing the work, including employee compensation and benefits, equipment costs and maintenance, insurance costs, and the cost of materials. However, if, after proper advertising, no bids are received by a county for a specific project, the county may use its own forces to construct the project, notwithstanding the limitation of this subsection. Nothing in this section shall prevent the county from performing routine maintenance as authorized by law.

Section 3. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/13/2020

Meeting Date

504

Bill Number (if applicable)

Topic Local Government Public Construction Works

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Ste 200

Phone 954-465-6811

Street

Coconut Creek

FL

33066

City

State

Zip

Email cbowen@abcoastflorida.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Associated Builders and Contractors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/13/2020
Meeting Date

504
Bill Number (if applicable)

Topic Local Gov't Public Works Projects

Amendment Barcode (if applicable)

Name Scott Jenkins

Job Title Senior Gov't Consultant

Address 215 S. Monroe St. Ste 500

Phone 850 661 0829

Street
City TLH State FL Zip 32301

Email sjenkins@earthfields.com

Speaking: ☐ For ☐ Against ☐ Information

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

- National Utility Contractors Assoc. of FL

Representing FL Road Materials & Construction Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 506

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Perry

SUBJECT: Public Procurement of Services

DATE: January 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVane	GO	Fav/CS
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 506 amends the definition of “continuing contract” under the Consultants’ Competitive Negotiation Act (CCNA) to increase the maximum dollar amount for each individual project and each individual study under the contract for construction projects. The maximum dollar amount for each individual project is increased from \$2 million to \$5 million, and the maximum dollar amount for each individual study is increased from \$200,000 to \$500,000.

The bill makes conforming revisions to s. 255.103(4), F.S. (authorizing local governmental entities to use the CCNA selection process), increasing the maximum dollar amount for continuing contracts of local governments from \$2 million to \$5 million.

With the enactment of a higher monetary threshold for these continuing contracts, the state and local governments may have fewer procurements of these services, resulting in lower overall costs.

The bill takes effect July 1, 2020.

II. Present Situation:

State Agency Construction and DMS

Section 255.29, F.S., authorizes DMS to adopt rules pursuant to Chapter 120 for bidding on building construction contracts. Specifically, DMS is required to establish procedures:

- Determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- Awarding each state agency construction project to the lowest qualified bidder as well as procedures for waiver of the rules in an emergency.
- Negotiating and modifying construction contracts.
- Entering into performance-based contracts for the development of public facilities when determined to be in the best interest of the state.¹

Competitive Procurement Generally

Chapter 255, F.S., provides the procurement process for public construction works.²

Section 255.103, F.S., authorizes a “governmental entity”³ to select a construction management entity or program management entity pursuant to s. 287.055, F.S., and at the option of the governmental entity, to require a guaranteed maximum price or a guaranteed completion date.⁴ If a project includes a grouping of substantially similar construction, rehabilitation, or renovation activities, the public subdivision may require a separate guaranteed maximum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities.⁵

Section 255.103(4), F.S., authorizes a governmental entity to enter into a continuing contract for construction projects, in accordance with s. 287.055, F.S., in which the estimated contract does not exceed \$2 million. The term “continuing contract” is defined in s. 255.103(4), F.S., to mean “a contract with a construction management or program management entity for work during a defined period on construction projects described by type which may or may not be identified at the time of entering into the contract.”

Part I of Chapter 287, F.S., provides “a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services” to protect the public by promoting “fair and open competition,” thereby reducing the appearance and opportunity for favoritism and misconduct.⁶ The term “agency” is defined to mean “any of the various state officers, departments, board commissions, divisions, bureaus, and councils and any other unit of

¹ Section 255.29, F.S.

² Section 255.065(2), F.S.

³ Section 255.103(1), F.S. defines the term “governmental entity” to mean “a county, municipality, school district, special district, special district as defined in chapter 189, or political subdivision of the state.”

⁴ Section 255.103(2), F.S.

⁵ *Id.*

⁶ Section 287.001, F.S.

organization, however designated, of the executive boards of state government.⁷ University and college boards of trustees, and the state universities and colleges are excluded from this definition.⁸ Agencies, pursuant to s. 287.057, may procure commodities and contractual services via competitive solicitation processes that include: (i) the invitation to bid; (ii) the request for proposals; and (iii) the invitation to negotiate.

The Consultants' Competitive Negotiation Act

The CCNA, s. 287.055, F.S., deviates from the remainder of part I chapter 287 in two ways. First, unlike the competitive solicitation process outlined in s. 287.057, F.S., the CCNA creates a qualifications based process - for the procurement of professional architectural, engineering, landscape architectural, or registered surveyor and mapper services.⁹ Additionally, the CCNA applies to local governments as well as state agencies and defines providing its own definition of agency.¹⁰ "Agency" is defined by the CCNA to mean the "state, a state agency, a municipality, a political subdivision, a school district or a school board."¹¹

The CCNA permits the use of continuing contracts for professional services defining the term "continuing contract" as:

A contract for professional services entered into in accordance with all procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another."¹²

The qualifications based selection process of the CCNA contemplates a three-step process: public announcement of the project, qualifications-based selection of the professional firm, and arms-length competitive negotiations with the most qualified firm.¹³

The public announcement is to be conducted by agencies in a consistent and uniform manner and is to occur on each occasion when professional services are required to be purchased for:

- a project when the basic construction cost of which is estimated by the agency to exceed \$325,000;¹⁴ or

⁷ Section 287.012(1), F.S.

⁸ *Id.*

⁹ See Section 287.055, F.S.

¹⁰ See. Section 287.055(1)(b), F.S.

¹¹ Section 287.055(2)(b), F.S. See Section 1.01(8), F.S., defining "political subdivision" to include "counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state."

¹² Section 287.055(2)(g), F.S.

¹³ See Section 287.055, F.S.

¹⁴ The amount provided in Category Five from the purchasing categories in s. 287.017, F.S.

- a planning or study activity for professional services that exceeds \$35,000.¹⁵

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

A consultant who wishes to provide professional services to an agency must first be certified by the agency as qualified to provide the needed services pursuant to law and the agency's regulations.¹⁶ In determining a firm or individual to be qualified, the agency must consider the capabilities, adequacy of personnel, past record, experience as well as whether the firm or individual is a certified minority business enterprise.¹⁷

During the competitive selection phase, the agency must evaluate current statements of qualifications and performance data of the bidders.¹⁸ The agency must select no fewer than three firms deemed to be the most highly qualified to perform the required services.¹⁹ The statute directs agencies to consider the following when determining whether a firm is qualified:

- the ability of professional personnel;
- whether a firm is a certified minority business enterprise;
- past performance;
- willingness to meet time and budget requirements;
- location;
- recent, current, and projected workloads of the firms; and
- the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.²⁰

The agency is prohibited from requesting, accepting and considering proposals for the compensation to be paid during the competitive selection process.²¹ Section 287.055(d), F.S., defines "compensation" to mean "the amount paid by the agency for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated."

Next, the agency negotiates compensation to be paid under the contract with the most qualified of the three selected firms.²² Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations may be made with the second most qualified firm.²³ The agency may negotiate with the third most qualified firm if the negotiation with the second fails to produce a satisfactory contract.²⁴ If a satisfactory contract cannot be negotiated with any

¹⁵ The amount provide in Category Two from the purchasing categories in s. 287.017, F.S.

¹⁶ Section 287.055(3)(c) F.S.

¹⁷ Section 287.055(3)(d), F.S.

¹⁸ Section 287.055(4)(a), F.S.

¹⁹ Section 287.055(4)(b), F.S.

²⁰ *Id.*

²¹ *Id.*

²² Section 287.055(5)(a), F.S.

²³ Section 287.055(5)(b), F.S.

²⁴ *Id.*

of the three firms selected, the agency must begin the qualifications-based selection process again.²⁵

III. Effect of Proposed Changes:

The bill revises the maximum dollar amount for continuing contracts for construction projections.

Section 1 amends s. 255.103, F.S., to increase the maximum dollar amount for a continuing contract for construction projects from \$2 million to \$5 million.

Section 2 revises s. 287.055, F.S., to increase the maximum dollar amount for a continuing contract for professional services from \$2 million to \$5 million. Additionally, the bill increases the maximum amount for professional services for each individual study under the contract from \$200,000 to \$500,000.

Section 3 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not impact state or local taxes or fees.

E. Other Constitutional Issues:

None identified.

²⁵ Section 287.055(5)(c), F.S.

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

None.

B. Private Sector Impact:

The bill may have an indeterminate positive fiscal impact on the private sector. The increased maximum dollar amount for continuing contracts for construction projects would theoretically allow for more projects to be covered under a continuing contract and reduce the frequency in which a firm must undergo the lengthy CCNA qualification process.

C. Government Sector Impact:

The competitive selection and negotiation process is time consuming and costly for the government sector. The bill, by increasing the maximum dollar amount for continuing contracts, captures more related services and may reduce costs with a more efficient delivery of services to market. Thus, the bill may have an indeterminate positive fiscal impact on the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because s. 287.055, F.S., and s. 255.103, F.S., are substantially similar, and Part 1 of Chapter 287 generally applies only state agencies, it is suggested consideration be given to moving s. 287.055, F.S. to Chapter 255.

Section 255.32, F.S., authorizes DMS to select and contract with a construction management entity pursuant to the process provided in s. 287.055, F.S. and to enter into continuing contracts²⁶ for projects in which construction costs do not exceed \$2 million. It is suggested that the monetary limitation for a continuing contract in s. 255.32(3), F.S., be revised to conform to the maximum dollar amount provided for in the bill for continuing contracts.

VIII. Statutes Affected:

This bill substantially amends sections 255.103 and 287.055 of the Florida Statutes.

²⁶ Section 255.32, F.S., defines “continuing contract” as “a contract with a construction management entity for work during a defined time period on construction projects described by type, which may or may not be identified at the time of entering into the contract.”

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on January 13, 2020:

The committee substitute eliminates a provision allowing the statutory cap for continuing contracts procured under the CCNA to be adjusted annually and removes the accompanying language requiring DMS to engage in annual rulemaking to adjust the statutory maximum dollar amount based on the Engineering News-Record's Construction Cost Index.

- B. **Amendments:**

None.



638218

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
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The Committee on Governmental Oversight and Accountability
(Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 255.103, Florida
Statutes, is amended to read:

255.103 Construction management or program management
entities.—

(4) A governmental entity's authority under subsections (2)
and (3) includes entering into a continuing contract for



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11 construction projects, pursuant to the process provided in s.
12 287.055, in which the estimated construction cost of each
13 individual project under the contract does not exceed \$5 ~~\$2~~
14 million. For purposes of this subsection, the term "continuing
15 contract" means a contract with a construction management or
16 program management entity for work during a defined period on
17 construction projects described by type which may or may not be
18 identified at the time of entering into the contract.

19 Section 2. Paragraph (g) of subsection (2) of section
20 287.055, Florida Statutes, are amended to read:

21 287.055 Acquisition of professional architectural,
22 engineering, landscape architectural, or surveying and mapping
23 services; definitions; procedures; contingent fees prohibited;
24 penalties.—

25 (2) DEFINITIONS.—For purposes of this section:

26 (g) A "continuing contract" is a contract for professional
27 services entered into in accordance with all the procedures of
28 this act between an agency and a firm whereby the firm provides
29 professional services to the agency for projects in which the
30 estimated construction cost of each individual project under the
31 contract does not exceed \$5 ~~\$2~~ million, for study activity if
32 the fee for professional services for each individual study
33 under the contract does not exceed \$500,000, ~~\$200,000~~, or for
34 work of a specified nature as outlined in the contract required
35 by the agency, with the contract being for a fixed term or with
36 no time limitation except that the contract must provide a
37 termination clause. Firms providing professional services under
38 continuing contracts shall not be required to bid against one
39 another.



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Section 3. This act shall take effect July 1, 2020.

===== 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 the public procurement of services;
amending s. 255.103, F.S.; revising the maximum dollar
amount for continuing contracts for construction
projects; amending s. 287.055, F.S.; revising the term
"continuing contract" to increase certain maximum
dollar amounts for professional architectural,
engineering, landscape architectural, and surveying
and mapping services; providing an effective date.

By Senator Perry

8-00685-20

2020506__

A bill to be entitled
An act relating to the public procurement of services;
amending s. 255.103, F.S.; revising the maximum dollar
amount for continuing contracts for construction
projects; amending s. 287.055, F.S.; redefining the
term "continuing contract" to increase certain maximum
dollar amounts for professional architectural,
engineering, landscape architectural, and surveying
and mapping services; requiring the Department of
Management Services to annually adjust by rule the
statutory caps for continuing contracts; providing an
effective date.

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

Section 1. Subsection (4) of section 255.103, Florida
Statutes, is amended to read:

255.103 Construction management or program management
entities.—

(4) A governmental entity's authority under subsections (2)
and (3) includes entering into a continuing contract for
construction projects, pursuant to the process provided in s.
287.055, in which the estimated construction cost of each
individual project under the contract does not exceed \$5
million, or the dollar amount as adjusted pursuant to s.
287.055(7)(b) \$2 million. For purposes of this subsection, the
term "continuing contract" means a contract with a construction
management or program management entity for work during a
defined period on construction projects described by type which

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may or may not be identified at the time of entering into the contract.

Section 2. Paragraph (g) of subsection (2) and subsection (7) of section 287.055, Florida Statutes, are amended to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(2) DEFINITIONS.—For purposes of this section:

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$5 million, or the dollar amount as adjusted pursuant to paragraph (7) (b); ~~\$2 million,~~ for study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000, or the dollar amount as adjusted pursuant to paragraph (7) (b); ~~\$200,000,~~ or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts are ~~shall~~ not ~~be~~ required to bid against one another.

(7) AUTHORITY AND DUTIES OF DEPARTMENT OF MANAGEMENT SERVICES.—

(a) Notwithstanding any other provision of this section, the Department of Management Services shall be the agency of

8-00685-20

2020506__

59 state government which is solely and exclusively authorized and
60 empowered to administer and perform the functions described in
61 subsections (3), (4), and (5) respecting all projects for which
62 the funds necessary to complete same are appropriated to the
63 Department of Management Services, irrespective of whether such
64 projects are intended for the use and benefit of the Department
65 of Management Services or any other agency of government.

66 However, nothing herein shall be construed to be in derogation
67 of any authority conferred on the Department of Management
68 Services by other express provisions of law. Additionally, any
69 agency of government may, with the approval of the Department of
70 Management Services, delegate to the Department of Management
71 Services authority to administer and perform the functions
72 described in subsections (3), (4), and (5). Under the terms of
73 the delegation, the agency may reserve its right to accept or
74 reject a proposed contract.

75 (b) The Department of Management Services shall by rule
76 adjust the statutory maximum dollar amounts for continuing
77 contracts established under paragraph (2)(g) and s. 255.103(4)
78 based on the Engineering News-Record's Construction Cost Index.
79 The adjustment shall be made July 1 of each year, beginning in
80 2021, using the most recent month for which data are available
81 at the time of the adjustment.

82 Section 3. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/13/2020
Meeting Date

506
Bill Number (if applicable)

Topic Public Procurement of Services

638218
Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Parkway, Ste 200 Phone 954-465-6811
Street

Coconut Creek FL 33066
City State Zip

Email cbowen@abcconstruction.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Associated Builders and Contractors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-13-19

Meeting Date

506

Bill Number (if applicable)

Topic PUBLIC PROCUREMENT OF SERVICES

Amendment Barcode (if applicable)

Name LAURA YOUMAN

Job Title LEGISLATIVE COUNSEL

Address 100 N. MOORE

Street

TAL

City

FL

State

32304

Zip

Phone

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ASSOC. COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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1/13/2020
Meeting Date

506
Bill Number (if applicable)

Topic Public Procurement of Services

Amendment Barcode (if applicable)

Name Cathy Cool

Job Title Sr. Legislative Advocate

Address 301 S. Dracough St.
Street

Phone _____

Tallahassee FL
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/13/2020
Meeting Date

506
Bill Number (if applicable)

Topic Public Procurement of Services

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Ste 200 Phone (954) 465-6811
Street

Coconut Creek FL 33066 Email cbowen@abcoastflorida.com
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Associated Builders and Contractors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/13/20

Meeting Date

SB 506

Bill Number (if applicable)

Topic Public Procurement of Services

Amendment Barcode (if applicable)

Name Ryan Matthews

Job Title Lobbyist

Address 301 S Bronough Street

Phone 850-681-7383

Street

Tallahassee

FL

32301

Email Ryan@psmfl.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Marion County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: November 4, 2019

I respectfully request that **Senate Bill #506**, relating to Public Procurement of Services, 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 with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

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 620

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hooper

SUBJECT: Firefighters' Bill of Rights

DATE: January 14, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 620 amends the Firefighters' Bill of Rights, which provides specific rights to a firefighter under investigation and when subject to interrogation for alleged misconduct that could lead to disciplinary action. The bill revises the definition of the term "informal inquiry" to exclude certain routine work-related discussions. The bill requires all identifiable witnesses to be interviewed before the beginning of an interrogation of a firefighter, when possible, and specified information must be provided to the firefighter before an interrogation is conducted. The bill authorizes a firefighter to provide a voluntary statement any time after being informed of the right to review witness statements and prohibits a firefighter from being threatened with disciplinary action during an interrogation.

The bill requires that the firefighter be provided a copy of the interrogation within a specified time frame, upon request. A firefighter must be notified and provided certain information before disciplinary actions are taken and must be allowed to address the findings.

The bill provides firefighters most of the same rights under an informal inquiry as the firefighter has during an interrogation (reasonable time, place, and duration of questioning, and prohibition against offensive language and threats of disciplinary action). The primary differences in the rights provided are that all identifiable witnesses must be interviewed prior to an interrogation, certain documents must be made available to the firefighter prior to the interrogation, and an interrogation must be electronically recorded. The bill allows an informal inquiry to last no

longer than 72 hours after the allegation of misconduct is made, unless the firefighter voluntarily participates in the informal inquiry at the time period elapses.

State and local agencies employing firefighters may incur minimal costs in complying with the provisions of the bill.

The bill takes effect on July 1, 2020.

II. Present Situation:

Chapter 633, F.S., provides state law on fire prevention and control. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).¹ Under this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;²
- Investigates the causes of fires;³
- Enforces arson laws;⁴
- Regulates the installation and maintenance of fire equipment;⁵
- Conducts firesafety inspections of state buildings;⁶
- Develops firesafety standards;⁷
- Provides facilities for the analysis of fire debris;⁸ and
- Operates the Florida State Fire College.⁹

Additionally, the Division adopts by rule the Florida Fire Prevention Code, which contains or references all fire safety laws and rules regarding public and private buildings.¹⁰

The Division consists of two bureaus: the Bureau of Fire Standards and Training (BFST) and the Bureau of Fire Prevention.¹¹ Last year the BFST processed and issued 6,514 firefighter certifications.¹² The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the Division's annual report.¹³

¹ The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* s. 20.121, F.S.

² Section 633.128(1), F.S. *See also* ch. 633, part IV: Fire Standards and Training, F.S.

³ Section 633.104(2)(e), F.S.

⁴ *Id.*

⁵ Section 633.104(2)(b), F.S. *See also* s. 633.104(2)(c), F.S., and ch. 633, part III: Fire Protection and Suppression, F.S.

⁶ Section 633.218, F.S.

⁷ Chapter 633, part II: Fire Safety and Prevention, F.S.

⁸ Section 633.432, F.S.

⁹ Section 633.128(1)(h)–(q), F.S. *See also* ss. 633.428–633.434, F.S.

¹⁰ Section 633.202(1), F.S.

¹¹ *See* Division of State Fire Marshal, available at: <https://www.myfloridacfo.com/Division/sfm/> (last visited on Nov. 7, 2019).

¹² *See* Division of State Fire Marshal, *Certification and Testing-About Us*, available at: <https://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited on Nov. 7, 2019).

¹³ *Id.*

Firefighters Employment, Standards, and Training Council

The Firefighters Employment, Standards, and Training Council (Council) is housed within the DFS and consists of 14 members.¹⁴ The Council is authorized to make recommendations for adoption by the Division on:

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Minimum curriculum requirements for schools operated by or for any fire service provider¹⁵ for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all standards, training, curriculum, and the issuance of any certificate of competency required by ch. 633, F.S.¹⁶

The Council may also make or support studies on any aspect of firefighting employment, education, and training or recruitment.¹⁷

Curriculum Requirements for Firefighters

A person applying for certification as a firefighter must:

- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or perjury or false statements, a felony, a crime punishable by imprisonment of one year or more, or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the division with a current processing fee;
- Have a good moral character;
- Be in good physical condition as determined by a medical examination; and
- Be a nonuser of tobacco or tobacco products for at least one year immediately preceding application.¹⁸

The Division is responsible for establishing a Minimum Standards Course as the training and educational curriculum required for a firefighter to obtain a Firefighter Certificate of Compliance (FCOC).¹⁹ The Division issues an FCOC to an individual who does all of the following:

- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state which has been determined by the Division to be at least the equivalent of the training required for the Minimum Standards Course;

¹⁴ Section 633.402(1), F.S.

¹⁵ Section 633.102(13), F.S., defines “fire service provider” as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

¹⁶ Section 633.402(9), F.S.

¹⁷ *Id.*

¹⁸ Section 633.412, F.S.

¹⁹ Section 633.408(1)(a), F.S.

- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Meets the character and fitness requirements in s. 633.412, F.S.²⁰

For a firefighter to retain or renew his or her FCOC, every four years, he or she must:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four years, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the Division;
- Within six months before the four-year period expires, complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination.²¹

Firefighters' Bill of Rights

The Firefighters' Bill of Rights provides specific rights when a firefighter is under investigation and subject to interrogation for a reason which could lead to disciplinary action, including reprimand, suspension, or dismissal.²² There is a similar law for law enforcement and correctional officers known as the Law Enforcement Officers' Bill of Rights.²³

The Firefighters' Bill of Rights contains the following definitions:²⁴

- "Firefighter" means a person who is certified in compliance with s. 633.408, F.S., and who is employed solely within the fire department or public safety department of an employing agency as a full-time firefighter whose primary responsibility is the prevention and extinguishment of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.
- "Employing agency" means any municipality or the state or any political subdivision thereof, including authorities and special districts, which employs firefighters.
- "Informal inquiry" means a meeting by supervisory or management personnel with a firefighter about whom an allegation of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced.
- "Formal investigation" means the process of an investigation ordered by supervisory personnel, after the supervisory personnel has previously determined that the firefighter shall be reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted to gather evidence of misconduct.

²⁰ Section 633.408(4), F.S.

²¹ Section 633.414(1), F.S.

²² Part VIII, ch. 112, F.S.

²³ Part VI, ch. 112, F.S.

²⁴ Section 112.81, F.S.

- “Administrative proceeding” means any nonjudicial hearing which may result in the recommendation, approval, or order of disciplinary action against, or suspension or discharge of, a firefighter.
- “Interrogation” means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but shall not include arbitration or civil service proceedings. Questioning during an informal inquiry shall not be deemed to be an interrogation.

An interrogation of a firefighter must be conducted according to the following terms:²⁵

- The interrogation shall take place at the facility where the investigating officer is assigned or at the facility that has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.
- No firefighter shall be subjected to interrogation without first receiving written notice in sufficient detail of the investigation to reasonably apprise the firefighter of the nature of the investigation. The firefighter shall be informed beforehand of the names of all complainants.
- All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter is on duty unless the importance of the interrogation or investigation is of such a nature that immediate action is required.
- The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.
- Interrogation sessions shall be of reasonable duration, and the firefighter shall be permitted reasonable periods for rest and personal necessities.
- The firefighter being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.
- A complete record of any interrogation shall be made, and if a transcript of such interrogation is made, the firefighter under investigation shall be entitled to a copy without charge. Such records may be electronically recorded.
- An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation in any proceeding to which this part applies. If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit during investigations or interrogations, such representative shall be allowed to be present.
- No firefighter shall be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason solely of his or her exercise of any of the rights granted or protected by this part.

²⁵ Section 112.82, F.S.

Public Records Exemption for Agency Investigations of Employee Misconduct

Current law provides a public records exemption for agency²⁶ investigations into complaints of employee misconduct.²⁷ A complaint of misconduct filed with an agency against an agency employee and all information obtained during an investigation by the agency of the complaint of misconduct is confidential and exempt from public disclosure until the investigation ceases to be active, or until the agency provides written notice, either personally or by mail, to the employee who is the subject of the complaint that the agency has either:

- Concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- Concluded the investigation with a finding to proceed with disciplinary action or file charges.²⁸

III. Effect of Proposed Changes:

Section 1 amends s. 112.81, F.S., to revise the definitions of “informal inquiry” and “formal investigation.” “Informal inquiry” is revised to exclude certain discussions between supervisory and management personnel and firefighters, such as safety sessions, normal operational fire debriefings, and routine work-related discussions. The term “formal investigation” is revised to include an investigation undertaken to determine whether a firefighter will be disciplined, reprimanded, suspended, or removed. A formal investigation may be initiated by management personnel as well as supervisory personnel.

Section 2 amends s. 112.82(1), F.S., to require that an informal inquiry be conducted at the facility where the investigating officer is assigned, or at the facility which has jurisdiction over the place where the incident under investigation allegedly took place.

Section 112.82(2), F.S., is amended to require all identifiable witnesses be interviewed before the beginning of an interrogation of a firefighter, when possible. The complaint, all witness statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each firefighter who is the subject of a complaint before he or she is interrogated. A firefighter may waive the rights provided under this section and provide a voluntary statement at any time after being informed of his or her right to review witness statements. These rights are not applicable to informal inquiries.

Sections 112.82(3) and (5), F.S., are amended to require informal inquiries to be conducted at a reasonable time of day and for a reasonable duration.

Section 112.82(4), F.S., is amended to require certain information about the officer in charge of an informal inquiry and the investigators to be provided to the firefighter subject to the inquiry.

²⁶ 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.

²⁷ Section 119.071(2)(k), F.S.

²⁸ *Id.*

Section 112.82(6), F.S., is amended to prohibit a firefighter from being threatened with a transfer, dismissal, or disciplinary action during an interrogation or an informal inquiry.

Section 112.82(7), F.S., is amended to require a copy of the interrogation transcript, if made, be provided to a firefighter under investigation, upon request, without charge. If the firefighter requests a copy of the transcript, it must be provided within 72 hours, excluding weekends and holidays, after the interrogation.

Subsection (10) is added to s. 112.82, F.S., to require any informal inquiry to be conducted within 72 hours of the initial allegation of misconduct. Upon expiration of the 72 hour period, any meeting regarding the allegation is deemed an interrogation, and the firefighter must be afforded the rights granted for interrogations. The firefighter has the discretion to waive the rights granted by this section.

Section 3 creates s. 112.825, F.S., to provide additional protection to firefighters. A dismissal, demotion, transfer, reassignment, or other disciplinary action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not be taken against a firefighter unless the firefighter is notified of the action and the reason for the action before the effective date of the action.

A firefighter who is subject to disciplinary action that consists of suspension with loss of pay, demotion, or dismissal, or his or her representative, must, upon request, be given a complete copy of the investigative file, including the final investigative report and all evidence, by the employing agency. The firefighter must be allowed to address the findings in the final investigative report with the employing agency before such disciplinary action is taken. The contents of the complaint and all information obtained during a subsequent investigation must remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution as provided under s. 119.071(2)(k), F.S.

Section 4 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the Florida Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Under this bill, cities and counties that employ firefighters may incur costs relating to the new notice rights afforded firefighters. However, the mandate requirements do not apply to laws having an insignificant impact, which, for Fiscal Year 2020-2021, is forecast at

slightly over \$2.1 million.^{29,30,31} The impact on government employers is expected to be minimal so the bill appears to be exempt from the mandates requirements.

If such costs are determined to exceed \$2.1 million, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., provision of funding or a funding mechanism, apply to all persons similarly situated (employers of firefighters), or enactment by vote of two-thirds of the membership of each house).

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:

An employing agency may need to amend its internal policies and procedures, which will likely be a minimal impact on its resources.

²⁹ FLA. CONST. art. VII, s. 18(d).

³⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Dec. 20, 2019).

³¹ Based on the Florida Demographic Estimating Conference's December 3, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 20, 2019).

An employing agency may incur some additional costs in providing the interrogation transcript and complete investigative file to the firefighter. These costs appear to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 112.81 and 112.82 of the Florida Statutes. This bill also creates section 112.825 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on January 13, 2020:

The CS retains the current distinction between an interrogation and an informal inquiry for the first 72 hours after an allegation of misconduct is made. However, during this 72-hour period, the firefighter has certain rights during the informal inquiry as the firefighter would have under an interrogation. The primary differences between the rights under during an informal inquiry and the rights under an interrogation are that all identifiable witnesses must be interviewed prior to an interrogation, certain documents must be made available to the firefighter prior to the interrogation, and an interrogation must be electronically recorded.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (3), (4), and (6) of section 112.81,
Florida Statutes, are amended to read:

112.81 Definitions.—As used in this part:

(3) "Informal inquiry" means a meeting by supervisory or
management personnel with a firefighter about whom an allegation
of misconduct has come to the attention of such supervisory or



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management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced. The term does not include discussions such as safety sessions, normal operational fire debriefings, and routine work-related discussions.

(4) "Formal investigation" means the process of investigation ordered by supervisory or management personnel to determine if, ~~after the supervisory personnel have previously determined that~~ the firefighter shall be disciplined, reprimanded, suspended, or removed, during which the questioning of a firefighter is conducted for the purpose of gathering evidence of misconduct.

(6) "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but does ~~shall~~ not include arbitration or civil service proceedings. Questioning pursuant to an informal inquiry is ~~shall~~ not be deemed to be an interrogation.

Section 2. Section 112.82, Florida Statutes, is amended to read:

112.82 Rights of firefighters.—Whenever a firefighter is subjected to an interrogation or an informal inquiry, such processes must ~~interrogation shall~~ be conducted in accordance with ~~pursuant to~~ the terms of this section.

(1) The interrogation or informal inquiry must ~~shall~~ take place at the facility where the investigating officer is assigned, or at the facility which has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.



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(2) ~~A No~~ firefighter may not ~~shall~~ be subjected to interrogation without first receiving written notice in of sufficient detail of the investigation in order to reasonably apprise the firefighter of the nature of the investigation. The firefighter must ~~shall~~ be informed beforehand of the names of all complainants. All identifiable witnesses must be interviewed before the beginning of the interrogation of the firefighter, when possible. The complaint, all witness statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each firefighter who is the subject of the complaint before he or she is interrogated. A firefighter may waive the rights provided under this section and provide a voluntary statement at any time after being informed of his or her right to review witness statements.

(3) All interrogations and informal inquiries must ~~shall~~ be conducted at a reasonable time of day, preferably when the firefighter is on duty, unless the importance of the informal inquiry, interrogation, or investigation is of such a nature that immediate action is required.

(4) The firefighter under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the informal inquiry or investigation, the interrogators, and all persons present during any interrogation.

(5) Interrogation and informal inquiry sessions must ~~shall~~ be of reasonable duration and the firefighter must be afforded ~~shall be permitted~~ reasonable periods for rest and personal necessities.



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(6) The firefighter may ~~being interrogated shall~~ not be subjected to offensive language; threatened with transfer, dismissal, or disciplinary action; or offered any incentive as an inducement to answer any questions.

(7) A complete record of any interrogation must ~~shall~~ be made. Such record may be electronically recorded. ~~and~~ If a transcript of the ~~such~~ interrogation is made, the firefighter under investigation must receive a copy, upon request, without charge. If the firefighter requests a copy of the transcript, it must be provided within 72 hours, excluding weekends and holidays, after the interrogation shall be entitled to a copy without charge. Such record may be electronically recorded.

(8) An employee or officer of an employing agency may represent the agency, and an employee organization may represent any member of a bargaining unit desiring such representation in any proceeding to which this part applies. ~~If a collective bargaining agreement provides for the presence of a representative of the collective bargaining unit during investigations or interrogations, such representative shall be allowed to be present.~~

(9) ~~A~~ No firefighter may not ~~shall~~ be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason ~~solely~~ of his or her exercise of any of the rights granted or protected by this part.

(10) Any informal inquiry meeting conducted by supervisory or management personnel must be conducted within 72 hours of the



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initial allegation of misconduct. Any meeting regarding the
allegation conducted more than 72 hours after the initial
allegation is considered to be an interrogation. A firefighter
may waive the rights provided under this section and voluntarily
participate in an informal inquiry at any time.

Section 3. Section 112.825, Florida Statutes, is created to read:

112.825 Notice of disciplinary action.—

(1) A dismissal, demotion, transfer, reassignment, or other
disciplinary action that might result in loss of pay or benefits
or that might otherwise be considered a punitive measure may not
be taken against a firefighter unless the firefighter is
notified of the action and the reason for the action before the
effective date of the action.

(2) A firefighter who is subject to disciplinary action
that consists of suspension with loss of pay, demotion, or
dismissal, or his or her representative, must, upon request, be
given a complete copy of the investigative file, including the
final investigative report and all evidence, by the employing
agency. The firefighter must be given the opportunity to address
the findings in the final investigative report with the
employing agency before such disciplinary action is taken. The
contents of the complaint and all information obtained pursuant
to the subsequent investigation must remain confidential and
exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution as provided under s. 119.071(2)(k).

Section 4. This act shall take effect July 1, 2020.

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



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And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to the Firefighters' Bill of Rights;
amending s. 112.81, F.S.; revising definitions;
amending s. 112.82, F.S.; specifying application of
certain rights of firefighters to informal inquiries;
requiring that witnesses be interviewed and certain
information be provided to a firefighter subjected to
interrogation before an interrogation is conducted;
authorizing a firefighter to provide a voluntary
statement at any time after being informed of a
certain right; specifying requirements and limitations
with respect to informal inquiries; prohibiting a
firefighter from being threatened with certain
disciplinary action; requiring that a copy of the
interrogation be provided to a firefighter within a
specified timeframe, upon request; specifying
requirements for informal inquiry meetings; creating
s. 112.825, F.S.; requiring that a firefighter be
notified and provided certain information before
certain disciplinary actions are taken; requiring that
a firefighter be given the opportunity to address
certain findings; requiring that certain information
be kept confidential and exempt in accordance with
existing law; providing an effective date.

By Senator Hooper

16-00917-20

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A bill to be entitled
An act relating to the Firefighters' Bill of Rights;
amending s. 112.81, F.S.; revising definitions;
amending s. 112.82, F.S.; requiring that witnesses be
interviewed and certain information be provided to a
firefighter subjected to interrogation before the
interrogation is conducted; authorizing a firefighter
to provide a voluntary statement at any time after
being informed of a certain right; prohibiting a
firefighter from being threatened with certain
disciplinary action during the course of an
interrogation; requiring that a copy of the
interrogation be provided to a firefighter within a
specified timeframe, upon request; creating s.
112.825, F.S.; requiring that a firefighter be
notified and provided certain information before
certain disciplinary actions are taken; requiring that
a firefighter be given the opportunity to address
certain findings; requiring that certain information
be kept confidential and exempt in accordance with
existing law; providing an effective date.

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

Section 1. Subsections (3) and (6) of section 112.81,
Florida Statutes, are amended to read:

112.81 Definitions.—As used in this part:

(3) "Informal inquiry" means a meeting by supervisory or
management personnel with a firefighter about whom an allegation

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of misconduct has come to the attention of such supervisory or management personnel, the purpose of which meeting is to mediate a complaint or discuss the facts to determine whether a formal investigation should be commenced. The term does not include discussions such as safety sessions, normal operational fire debriefings, and routine work-related discussions.

(6) "Interrogation" means the questioning of a firefighter by an employing agency in connection with a formal investigation or an administrative proceeding but does ~~shall~~ not include arbitration or civil service proceedings. Questioning pursuant to an informal inquiry is considered ~~shall not be deemed to be~~ an interrogation for purposes of this part.

Section 2. Subsections (2), (6), (7), and (9) of section 112.82, Florida Statutes, are amended to read:

112.82 Rights of firefighters.—Whenever a firefighter is subjected to an interrogation, such interrogation shall be conducted pursuant to the terms of this section.

(2) A ~~No~~ firefighter may not ~~shall~~ be subjected to interrogation without first receiving written notice in ~~of~~ sufficient detail of the investigation in order to reasonably apprise the firefighter of the nature of the investigation. The firefighter must ~~shall~~ be informed beforehand of the names of all complainants. All identifiable witnesses must be interviewed before the beginning of the interrogation of the firefighter, when possible. The complaint, all witness statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation, must be provided to each firefighter who is the subject of the complaint before

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he or she is interrogated. A firefighter may waive the rights provided under this section and provide a voluntary statement at any time after being informed of his or her right to review witness statements.

(6) The firefighter being interrogated may ~~shall~~ not be subjected to offensive language; threatened with transfer, dismissal, or disciplinary action; or offered any incentive as an inducement to answer any questions.

(7) A complete record of any interrogation must ~~shall~~ be made. Such record may be electronically recorded. ~~and~~ If a transcript of the ~~such~~ interrogation is made, the firefighter under investigation must receive a copy, upon request, without charge. If the firefighter requests a copy of the transcript, it must be provided within 72 hours, excluding weekends and holidays, after the interrogation shall be entitled to a copy without charge. Such record may be electronically recorded.

(9) ~~A~~ No firefighter may not ~~shall~~ be discharged, disciplined, demoted, denied promotion or seniority, transferred, reassigned, or otherwise disciplined or discriminated against in regard to his or her employment, or be threatened with any such treatment as retaliation for or by reason ~~solely~~ of his or her exercise of any of the rights granted or protected by this part.

Section 3. Section 112.825, Florida Statutes, is created to read:

112.825 Notice of disciplinary action.-

(1) A dismissal, demotion, transfer, reassignment, or other disciplinary action that might result in loss of pay or benefits or that might otherwise be considered a punitive measure may not

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88 be taken against a firefighter unless the firefighter is
89 notified of the action and the reason for the action before the
90 effective date of the action.

91 (2) A firefighter who is subject to disciplinary action
92 that consists of suspension with loss of pay, demotion, or
93 dismissal, or his or her representative, must, upon request, be
94 given a complete copy of the investigative file, including the
95 final investigative report and all evidence, by the employing
96 agency. The firefighter must be given the opportunity to address
97 the findings in the final investigative report with the
98 employing agency before such disciplinary action is taken. The
99 contents of the complaint and all information obtained pursuant
100 to the subsequent investigation must remain confidential and
101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
102 Constitution as provided under s. 119.071(2)(k).

103 Section 4. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/13/2020
Meeting Date

620
Bill Number (if applicable)

Topic Firefighters Bill of Rights

882796 DE
Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 343 W Madison St
Street

Phone 850-224-7333

Tallahassee FL 32301
City State Zip

Email Rocco@fotp.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 936

INTRODUCER: Senator Gainer

SUBJECT: Disability Retirement Benefits

DATE: January 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hackett	McVaney	GO	Favorable
2. _____	_____	MS	_____
3. _____	_____	RC	_____

I. Summary:

SB 936 amends the certification requirements for proof of disability for Florida Retirement System benefits. Specifically, the bill allows a member of the Florida Retirement System who is receiving care at a federal Veterans Health Administration facility to offer certification by two of that facility's physicians as proof of the member's total and permanent disability, regardless of where such physician is licensed. Under current law, such a member is required to receive certification from physicians licensed in Florida or the state in which the member works.

The bill is not expected to impact state or local revenues or expenditures.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Retirement System - Disability Retirement

Benefits from the Florida Retirement System may not be paid unless the member has ended employment.¹ A member who becomes "totally and permanently disabled" in the line of duty or after completing 5 years of service is entitled to disability benefit.² A member is considered totally and permanently disabled if, "in the opinion of the administrator, he or she is prevented, by reason of medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee."³ The Division of Retirement has adopted rules for required documentation of a member's termination of employment and establishment of disability in order to approve disability retirement.⁴

¹ Section 121.091, F.S.

² Section 121.091(4), F.S.

³ Section 121.091(4)(b), F.S.

⁴ Section 121.091(4)(a)2., F.S.

Proof of disability is provided by certification of the member's total and permanent disability by two licensed physicians of the state, as well as other evidence required by the administrator.⁵ A member whose employment requires the member to work full time outside the state, but within the United States, may include certification by two physicians licensed in the state where the member works.⁶

In situations where the member is being treated at a federal veterans health facility, physicians licensed in other states frequently provide the health services. In these circumstances, in order to prove disability, the member must go outside of their primary care facility to receive their required disability certification from Florida licensed physicians. This process may increase the time and expense to receive disability benefits for many veterans in the state.

The physician must document that the member's medical condition occurred or became symptomatic during the member's employment, that the member was totally and permanently disabled at the time they terminated employment, and that the member has not been employed following the termination.⁷ If the application is for in-line-of-duty disability, the physician must also document by competent medical evidence that the disability was caused by a job-related illness or accident during the member's employment.⁸

The administrator may require periodic reexaminations at the expense of the retirement fund.⁹ If it is found that the member has recovered from their disability prior to their regular retirement date, the disability retirement benefits are discontinued.

Veterans Health Administration Physicians

The U.S. Department of Veterans Affairs has three main administrations: the Veterans Health Administration (VHA), the Veterans Benefits Administration, and the National Cemetery Administration.¹⁰ The VHA operates medical facilities that provide services to nearly 9 million veterans nationwide. The VHA is responsible for ensuring that physicians at its facilities are properly credentialed but gives broad discretion to each facility director in hiring and credentialing.¹¹

VHA physicians must be licensed for unrestricted practice in one U.S. state to practice with the agency.¹² Such state license must be full, active, current, and unrestricted. A physician who has had his license revoked for misconduct, incompetence, or substandard care is not eligible for VHA work unless fully restored by the state licensing board. Physicians must also provide the VHA with employment history, pre-employment references, and details of past involvement with

⁵ Section 121.091(4)(c)1., F.S.

⁶ *Id.*

⁷ Section 121.091(4)(c)2., F.S.

⁸ Section 121.091(4)(c)3., F.S.

⁹ Section 121.091(4)(h), F.S.

¹⁰ United States Government Accountability Office, *Greater Focus on Credentialing Needed to Prevent Disqualified Providers from Delivering Patient Care*, Feb. 2019, Page 5.

¹¹ *Id.*, at 7-8.

¹² Veterans Health Administration Handbook 1100.19, Page 14.

malpractice allegations. The VHA also consults the National Practitioner Data Bank, which provides a background check for each new hire.

III. Effect of Proposed Changes:

Section 1 amends Section 121.091(4)(c)1, F.S., to allow a member of the Florida Retirement System who is receiving care at a federal Veterans Health Administration facility to offer two of that facility's physicians' certifications as proof of the member's total and permanent disability, regardless of where such physician is licensed.

Section 2 provides that the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article X, Section 14 of the State Constitution requires that any governmental unit increasing Florida Retirement System benefits must concurrently provide for the funding of the increase on a sound actuarial basis. Because this bill does not increase benefits, no actuarial study is required, and no additional funding is necessary.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

FRS members receiving care at VHA facilities will no longer need to leave such facility and seek consultation with Florida licensed physicians before receiving their disability benefits. This will have a positive fiscal impact due to the saved expenses.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In the early 2000's, the Department of Management Services accepted certifications from VHA physicians. The agency's legal office encountered some difficulties in obtaining records and deposition testimony, as the VHA asserted immunity to state subpoenas.¹³

VIII. Statutes Affected:

This bill substantially amends section 121.091, 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.

¹³ Department of Management Services, 2020 Agency Legislative Bill Analysis (on file with Senate Committee on Governmental Oversight and Accountability).

By Senator Gainer

2-01359-20

2020936__

A bill to be entitled
An act relating to disability retirement benefits;
amending s. 121.091, F.S.; allowing members receiving
care at federal Veterans Health Administration
facilities to use certification by a specified number
of physicians working at such facilities as proof of
total and permanent disability for purposes of
establishing eligibility for benefits; providing an
effective date.

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

Section 1. Paragraph (c) of subsection (4) of section
121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not
be paid under this section unless the member has terminated
employment as provided in s. 121.021(39) (a) or begun
participation in the Deferred Retirement Option Program as
provided in subsection (13), and a proper application has been
filed in the manner prescribed by the department. The department
may cancel an application for retirement benefits when the
member or beneficiary fails to timely provide the information
and documents required by this chapter and the department's
rules. The department shall adopt rules establishing procedures
for application for retirement benefits and for the cancellation
of such application when the required information or documents
are not received.

(4) DISABILITY RETIREMENT BENEFIT.—

(c) *Proof of disability*.—The administrator, before

2-01359-20

2020936__

30 approving payment of any disability retirement benefit, shall
31 require proof that the member is totally and permanently
32 disabled as provided herein:

33 1. Such proof shall include the certification of the
34 member's total and permanent disability by two licensed
35 physicians of the state and such other evidence of disability as
36 the administrator may require, including reports from vocational
37 rehabilitation, evaluation, or testing specialists who have
38 evaluated the applicant for employment. A member whose position
39 with an employer requires that the member work full time outside
40 this state in the United States may include certification by two
41 licensed physicians of the state where the member works. A
42 member who is receiving care at a federal Veterans Health
43 Administration facility may include certification by two
44 licensed physicians working at the facility.

45 2. It must be documented that:

46 a. The member's medical condition occurred or became
47 symptomatic during the time the member was employed in an
48 employee/employer relationship with his or her employer;

49 b. The member was totally and permanently disabled at the
50 time he or she terminated covered employment; and

51 c. The member has not been employed with any other employer
52 after such termination.

53 3. If the application is for in-line-of-duty disability, in
54 addition to the requirements of subparagraph 2., it must be
55 documented by competent medical evidence that the disability was
56 caused by a job-related illness or accident which occurred while
57 the member was in an employee/employer relationship with his or
58 her employer.

2-01359-20

2020936__

59 4. The unavailability of an employment position that the
60 member is physically and mentally capable of performing will not
61 be considered as proof of total and permanent disability.

62 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/13/20
Meeting Date

SB 936
Bill Number (if applicable)

Topic Disability Retirement Benefits

Amendment Barcode (if applicable)

Name Cody Farrill

Job Title Deputy Chief of Staff

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Street

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Tallahassee FL 32311
City State Zip

Email cody.farrill@dms.myflorida.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Department of Management Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Management Services

BILL INFORMATION

BILL NUMBER:	SB 936
BILL TITLE:	Disability Retirement Benefits
BILL SPONSOR:	Gaines
EFFECTIVE DATE:	7/1/2020

COMMITTEES OF REFERENCE

1) Governmental Oversight and Accountability
2) Military and Veterans Affairs and Space
3) Rules
4) N/A
5) N/A

CURRENT COMMITTEE

N/A

SIMILAR BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

PREVIOUS LEGISLATION

BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS

BILL NUMBER:	HB 593
SPONSOR:	Williamson

Is this bill part of an agency package?

N/A

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	December 21, 2019
LEAD AGENCY ANALYST:	Cody Farrill, Legislative Affairs Director Andrew Forst, Deputy Director
ADDITIONAL ANALYST(S):	David Disalvo, Director of Retirement Garry Green, Retirement-Chief of Research and Education
LEGAL ANALYST:	Chasity O'Steen, General Counsel
FISCAL ANALYST:	Morgan Helton, Budget Director

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Allow for Florida Retirement System (FRS) members or beneficiaries who receive medical treatment in federal Veterans Affairs (VA) facilities to receive certification of proof of total and permanent disability by licensed physicians working at VA facilities.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Section 121.091(4)(c)1., Florida Statutes requires members to provide proof, via a certification by two licensed physicians of the state (Florida-licensed), of being totally and permanently disabled before the administrator (Secretary of the Department of Management Services, according to s. 121.025, F.S.) can approve payment of any disability retirement benefit.

The requirement that certification be provided by two Florida-licensed physicians can be more complicated for members of the Florida Retirement System (FRS) or their beneficiaries who seek care at a federal Veterans Administration facility, where many of the physicians on staff are on rotation throughout the country and are not Florida-licensed physicians. If an FRS member or beneficiary's doctor is not a Florida-licensed physician, they must find a different doctor that is licensed in Florida to complete the certification of being totally and permanently disabled. This process for FRS members or beneficiaries having to find a Florida-licensed physician, in addition to their regular physician at a federal VA facility, can increase costs and delay their getting added to the retired payroll.

2. EFFECT OF THE BILL:

Section 121.091(4)(c)1., F.S. would be amended to include that a member who is receiving care at a federal VA facility may include certification by two licensed physicians working at a federal VA facility. This change in law would likely reduce the amount of time necessary for certain FRS members or beneficiaries who use a VA facility as their medical provider to certify total and permanent disability and therefore be add to the retired payroll sooner.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

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

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

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

Y ☐ N ☒

If yes, provide a description:	N/A
Date Due:	N/A

Bill Section Number(s):	N/A
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6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N/A
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. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation contain a State Government appropriation?	N/A
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☐ N ☒

Revenues:	N/A
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?Y ☐ N ☒

If yes, explain impact.	N/A
Bill Section Number:	N/A

5. ACTUARIAL STATEMENT OF FISCAL SOUNDNESS - FRS

Does the bill comply with the requirements of Article X, Section 14 of the Constitution?	Yes.
Does the bill satisfy the actuarial cost impact provisions of Chapter 112, Part VII, Florida Statutes pending completion of actuarial impact statements?	Yes.
Explanation:	SB 936 allows the doctors treating FRS members to certify total and permanent disability in addition to Florida-licensed physicians beginning July 1, 2020. This change would provide FRS members who use the Veterans Administration medical care system greater flexibility to meet certification of total and permanent disability.
Fiscal Note:	The change proposed by SB 936 does not alter the requirements for FRS members to become eligible to receive disability retirement benefits. The change proposed by SB 936 does not require an actuarial special study.



Matt Larrabee, Enrolled Actuary
Milliman Inc.
Date: December 21, 2019

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?Y ☐ N ☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A
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FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?Y ☐ N ☒

If yes, describe the anticipated impact including any fiscal impact.	N/A
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ADDITIONAL COMMENTS

NA

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW
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Issues/concerns/comments:	In the early 2000's the Division would accept certifications from VA physicians. However, the legal office had difficulty obtaining records and deposition testimony as the VA asserted that they were immune from State subpoenas.
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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: SM 976

INTRODUCER: Senator Pizzo

SUBJECT: Haitian and Caribbean American Recognitions

DATE: January 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Favorable
2.			JU	
3.			RC	

I. Summary:

SM 976 urges Congress to recognize:

- January 1 as “Haitian Independence Day”;
- The month of May as “Haitian American Heritage Month”;
- May 18 as “Haitian Flag Day”; and
- The month of June as “Caribbean American Heritage Month.”

A memorial is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law.

II. Present Situation:

Background

Haiti

Located in the Caribbean Sea on the western one-third of the island of Hispaniola, Haiti is a country of approximately 10.8 million people.¹ Haiti and the United States “share a deeply intertwined history and a long standing friendship.”² Due in part to Haiti’s close proximity to the United States, there are approximately 1,036,385³ people of Haitian descent living in the United

¹ United States Central Intelligence Agency, *The World Factbook: Haiti*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (last visited December 27, 2019).

² Statement of President Barack Obama on Haitian Flag Day, 2009 WL 1383714, at 1.

³ Selected Population Profile in the United States, Haitian, Years 2018, 2017, 2016, <https://data.census.gov/cedsci/all?q=&g=&t=581%20-%20Haitian%20%28336-359%29&table=S0201&tid=ACSSPP1Y2018.S0201&hidePreview=false&lastDisplayedRow=16> (last visited December 27, 2019).

States – a large portion of whom reside in and around the city of Miami and the greater South Florida area.⁴

The month of May is of cultural significance to the people of Haiti and the Haitian diaspora with many celebrations held during the month throughout the country. One of the most celebrated holidays is Haitian Flag Day, celebrated on May 18. Many governmental entities in the United States have issued resolutions or proclamations recognizing the importance of the month of May in Haitian and Haitian American culture, including but not limited to the following:

- In 1999, Massachusetts first celebrated Haitian Heritage Month and has held annual celebrations since that time;⁵
- In 2001, Miami-Dade County passed a resolution designating May as “Haitian Cultural Heritage Month”⁶ and has held annual celebration in the county ever since;⁷
- In 2003, the Palm Beach County School District issued a resolution recognizing May as “Haitian Heritage Month”;⁸ and
- On May 1, 2011, Governor Deval Patrick of the Commonwealth of Massachusetts proclaimed the month of May to be “Haitian Heritage Month,” with subsequent annual proclamations following through 2014, and Governor Baker has issued subsequent annual proclamations since taking office in 2015.⁹

At the federal level, resolutions have been introduced in the United States House of Representatives to recognize May as “Haitian American Heritage Month.” For example, House Resolution 777, sponsored by former Congressman Kendrick Meek, was introduced, but never heard, during the 109th congress.¹⁰ Additionally, House Resolution 224, sponsored by Congresswoman Frederica Wilson, was introduced, but never heard, during the 113th Congress.¹¹

⁴ See Migration Policy Institute, *Haitian Immigrants in the United States*, <http://www.migrationpolicy.org/article/haitian-immigrants-united-states> (last visited December 27, 2019).

⁵ Heritage Month Celebration, <http://www.hauinc.org/HeritageMonthCelebration.asp> (last visited December 27, 2019).

⁶ Miami-Dade Board of County Commissioners, *County Resolution R-452-01*, available at <http://www.miamidade.gov/govaction/matter.asp?matter=011622&file=false&yearFolder=Y2001> (last visited December 27, 2019).

⁷ Miami-Dade County, *Haitian Cultural Heritage Month kicks off on May 1*, <http://www.miamidade.gov/district02/releases/2015-04-24-haitian-month.asp> (last visited December 27, 2019).

⁸ A copy of the resolution, dated April 23, 1992, is on file with the House of Representatives Local & Federal Affairs Committee.

⁹ See May is Haitian Heritage Month, <https://www.waltham.lib.ma.us/blog/main/?m=201105> (last visited December 27, 2019).

¹⁰ 109th Congress 2005-2006, *H. Res. 777 – Expressing the sense of the House of Representatives, in recognition of the contributions of the Haitian people to the history and culture of the United States, by establishing “Haitian-American Heritage Month”*, available at <https://www.congress.gov/bill/109th-congress/house-resolution/777?q=%7B%22search%22%5C%22hres777%5C%22%22%5D%7D&resultIndex=5>

¹¹ 113th Congress 2013-2014, *H. Res. 224 – Expressing the sense of the House of Representatives that a Haitian-American Heritage Month should be established in recognition of the contributions of the Haitian people to the history and culture of the United States*, available at <https://www.congress.gov/bill/113th-congress/house-resolution/224?r=25>

Caribbean American History

In 2014, approximately 4 million immigrants from the Caribbean resided in the United States, accounting for 9 percent of the nation's 42.4 million immigrants.¹² In the early 1900s, the United States became a major destination for Caribbean migrants due to the increased economic opportunities the industrial revolution created.¹³ The United States is currently the top destination for Caribbean emigrants, accounting for more than 60 percent of the 6 million Caribbean emigrants worldwide.¹⁴

Caribbean Americans have made numerous contributions to the United States.¹⁵ Some of the most famous Caribbean Americans include Alexander Hamilton, the first Secretary of the Treasury for the United States, who was born on the Caribbean Island of Nevis,¹⁶ W.E.B. Du Bois, a civil rights activist and the first African American to graduate from Harvard, was the son of a Haitian immigrant,¹⁷ and Colin Powell, the first African American Secretary of State, was the son of Jamaican immigrants.¹⁸

History of Caribbean American Heritage Month

On March 14, 2004, Congresswoman Barbara Lee introduced House Resolution 570 “[e]xpressing the sense of the House of Representatives that there should be established a Caribbean American Heritage Month.” The resolution was not enacted.¹⁹ During the 109th Congress (2005-2006), the resolution was reintroduced as House Concurrent Resolution 71 with 81 bipartisan co-sponsors that originated from 26 states plus American Samoa, District of Columbia, Guam, Puerto Rico, and the US Virgin Islands.²⁰ On June 27, 2005, the resolution passed in the U.S. House and on February 14, 2006, the Senate agreed to the resolution without amendment; thereby declaring June as Caribbean American Heritage Month.²¹ In June of 2006, President George Bush issued a presidential proclamation recognizing Caribbean American Heritage Month.²² In each year since, the White House has issued an annual proclamation

¹² Migration Policy Institute, *Caribbean Immigrants in the United States*, <http://www.migrationpolicy.org/article/caribbean-immigrants-united-states> (last visited December 27, 2019).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Biographical Directory of the United States Congress, *Alexander Hamilton*, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=h000101> (last visited December 27, 2019).

¹⁶ *Id.*

¹⁷ National Consortium on Racial and Ethnic Fairness in the Courts, *Special Recognition: Caribbean American Heritage Month*, <http://www.national-consortium.org/Special-Recognition/Caribbean.aspx> (last visited at December 27, 2019).

¹⁸ Jonathan Power, *Colin Powell's Jamaican connection*, (Nov. 3, 1995), available at http://articles.baltimoresun.com/1995-11-03/news/1995307066_1_michael-manley-colin-powell-jamaica (last visited December 27, 2019).

¹⁹ Caribbean Heritage Organization, *Institute of Caribbean Studies: The History of National Caribbean American Heritage Month*, <http://caribbeanheritage.org/wp-content/uploads/2016/12/cam-congressional-resolution.pdf> (last visited December 27, 2019).

²⁰ *Id.*

²¹ *Id.*

²² National Caribbean American Heritage Foundation, *National Caribbean-American Heritage Month Marks Tenth Anniversary in 2016*, <http://www.caribbeanamericanmonth.org/> (last visited December 27, 2019).

recognizing June as Caribbean American Heritage Month.²³ June of 2016 marked the tenth anniversary of June as National Caribbean American Heritage Month.²⁴

Federal Recognition of Other Commemorative Events

Congress has passed legislation relating to national observances and commemorative months on several occasions. For example, Congress has passed legislation to commemorate or authorize the President to proclaim February as “National African American History Month,” November as “Native American Heritage Month,”²⁵ May as “Jewish American Heritage Month,” May as “Asian Pacific Heritage Month,” and the period beginning September 15 and ending October 15 as “National Hispanic Heritage Month.”²⁶ In addition, Congress has passed legislation to commemorate or authorize the President to proclaim several days of national observance such as Flag Day on June 14,²⁷ and Native American Heritage Day on the first Friday after Thanksgiving.²⁸

III. Effect of Proposed Changes:

The memorial urges Congress to recognize:

- January 1 as “Haitian Independence Day”;
- The month of May as “Haitian American Heritage Month”;
- May 18 as “Haitian Flag Day”;
- The month of June as “Caribbean American Heritage Month.”

Copies of the memorial will be sent by the Secretary of state to the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor’s veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

²³ *Id.*

²⁴ *Id.*

²⁵ The observance was first authorized by President H.W. Bush in 1990 under the title ‘National American Indian Heritage Month’ and has since been titled under several variations. The current title of the observation is ‘Native American Heritage Month.’ LIBRARY OF CONGRESS, *About Native American Heritage Month*, <http://nativeamericanheritagemonth.gov/about/> (last visited December 27, 2019).

²⁶ Library of Congress, *Commemorative Observances*, <http://www.loc.gov/law/help/commemorative-observations/> (Last visited December 27, 2019).

²⁷ House Joint Resolution 211, Pub. L. 99-54 (1985), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-99/pdf/STATUTE-99-Pg97.pdf>

²⁸ House Joint Resolution 40, Pub. L. 111-33 (2009), available at <https://www.congress.gov/bill/111th-congress/house-joint-resolution/40/text>

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

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

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Pizzo

38-01013-20

2020976__

Senate Memorial

A memorial to the Congress of the United States,
urging Congress to recognize January 1 as "Haitian
Independence Day," the month of May as "Haitian
American Heritage Month," May 18 as "Haitian Flag
Day," and the month of June as "Caribbean American
Heritage Month."

WHEREAS, the United States of America has thrived as a
country of immigrants, united by common values and the promise
of a better tomorrow, and

WHEREAS, the Republic of Haiti, an island nation located in
the West Indies on the western third of the Island of
Hispaniola, declared its independence from French colonial rule
on January 1, 1804, following a slave revolt under the
leadership of Generals Toussaint L'Ouverture, Jean-Jacques
Dessalines, and Alexandre Pétion, becoming the first and only
nation created from a successful slave rebellion, and

WHEREAS, Haiti was the first independent nation in Latin
America and the first postcolonial independent nation led by
blacks in the world, and

WHEREAS, Haitian Americans have made their mark on every
facet of our society as educators, authors, community leaders,
activists, athletes, artists, musicians, and politicians, and
have contributed to the betterment and diversity of our state
and nation, and

WHEREAS, the close proximity of Haiti to American shores,
in conjunction with our shared values and commitment to
democracy, ensures lasting comity of nations and continued trade

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and diplomatic relations, and

WHEREAS, an estimated 1.5 million persons of Haitian descent now live throughout this nation, and

WHEREAS, the United States and Haiti share a history of freedom, a common belief in human rights, and diverse, complex, and resilient populations who have impacted the world through their vibrant cultures, commitment to democracy, and a wealth of talent and achievement, and

WHEREAS, Haitian Independence Day is globally acknowledged and annually celebrated on January 1 as an affirmation of equality, freedom, and the abolition of slavery, and

WHEREAS, Congresswoman Frederica S. Wilson and Congressman Kendrick B. Meek, having acknowledged the importance of Haitian Americans in this nation's history and diversity, have proposed resolutions in the United States House of Representatives to recognize the month of May as "Haitian American Heritage Month" in the United States, and

WHEREAS, Haitian American Heritage Month is held to salute the Haitian and Haitian American communities and to exhibit appreciation for their culture and heritage, which have immeasurably enriched the lives of the people of this nation, and

WHEREAS, the Haitian flag known today, a variant of which first came into use in 1806, is emblazoned with the country's coat of arms and the colors red and blue, adopted from the flag of France, the country from which Haiti gained its independence, and

WHEREAS, General Jean-Jacques Dessalines is regarded as the father of the Haitian flag and is known to have dramatically cut

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the French tricolor with his saber at the May 1803 Congress of Arcahaie, ripping away the white of the French flag to symbolize an end to European influence and leaving two strips that Catherine Flon then sewed back together: the blue, which represented the former African slaves brought to Haiti by colonial powers, and the red, which symbolized a people of mixed ancestry, and

WHEREAS, the Haitian flag is a definitive symbol of pride for the Caribbean nation, having become the second republic, after the United States, to defeat a European colonial power in the Americas, and

WHEREAS, Haitian Flag Day events are annually observed on May 18 and celebrated with pride and enthusiasm throughout the United States, and

WHEREAS, from a region that conjures images of a scenic paradise, Caribbean Americans are as vibrant as the islands from which they come, possessing a wealth of talent and history that reverberates throughout this great state and nation, and

WHEREAS, emigration from the Caribbean region to the American colonies began as early as 1619, with the arrival of indentured workers in Jamestown, Virginia, and since 1820, millions of people have emigrated from the Caribbean region to the United States, and

WHEREAS, Caribbean Americans have made their mark on every facet of our society as educators, authors, community leaders, activists, athletes, artists, musicians, and politicians, and have contributed to the betterment and diversity of our state and nation, and

WHEREAS, counted among the many famous sons and daughters

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of the Caribbean are activist W. E. B. Du Bois; Secretary of the Treasury Alexander Hamilton; the first African American Secretary of State, Colin Powell; actress Cicely Tyson; actor Sidney Poitier, the first African American actor to receive the Academy Award for Best Actor in a Leading Role; author, poet, and civil rights activist James Weldon Johnson; musician, actor, and activist Harry Belafonte; athlete Roberto Clemente, the first Latino inducted into the National Baseball Hall of Fame; and numerous others who have displayed great strength and resiliency while serving as pioneers among the people of the Caribbean, and

WHEREAS, the modern political influences of Caribbean Americans are evident in the election of a former member of the Florida House of Representatives, Jennifer Carroll of Trinidad and Tobago, as Florida's first Caribbean American Lieutenant Governor; the election of former Maryland Lieutenant Governor Anthony G. Brown, who is of Jamaican descent; and the continued representation in local, state, and national governments by members from the Bahamas, the Cayman Islands, Haiti, Jamaica, and other Caribbean nations, and

WHEREAS, in June 2005, the United States House of Representatives unanimously adopted a concurrent resolution recognizing the significance of Caribbean people and their descendants in the history and culture of the United States and resolving that the month of June should be established as "Caribbean American Heritage Month," and

WHEREAS, on February 14, 2006, the United States Senate unanimously passed the resolution, culminating a 2-year bicameral effort, and

38-01013-20

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117 WHEREAS, since the adoption of the resolution in 2005, the
118 White House has issued an annual proclamation recognizing June
119 as "Caribbean American Heritage Month," exemplifying the
120 importance of this observance across the nation, NOW, THEREFORE,
121

122 Be It Resolved by the Legislature of the State of Florida:
123

124 That the Congress of the United States is urged to
125 recognize January 1 as "Haitian Independence Day," the month of
126 May as "Haitian American Heritage Month," May 18 as "Haitian
127 Flag Day," and the month of June as "Caribbean American Heritage
128 Month."

129 BE IT FURTHER RESOLVED that the Secretary of State dispatch
130 copies of this memorial to the President of the United States,
131 the President of the United States Senate, the Speaker of the
132 United States House of Representatives, and each member of the
133 Florida delegation to the United States Congress.



The Florida Senate

Committee Agenda Request

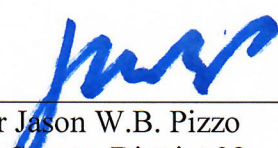
To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: December 13, 2019

I respectfully request that **SM 976**, relating to Haitian and Caribbean American Recognitions, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38

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: SM 978

INTRODUCER: Senator Pizzo

SUBJECT: Juneteenth Independence Day

DATE: January 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Favorable
2.			JU	
3.			RC	

I. Summary:

SM 978 is a memorial to Congress of the United States urging Congress to recognize June 19, 2020, as “Juneteenth Independence Day.”

A memorial is not subject to the approval or veto powers of the Governor, is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law.

II. Present Situation:

Juneteenth

On June 19 (“Juneteenth”), 1865, Union general Gordon Granger arrived in Galveston, Texas, and read General Order No. 3 announcing the end of the Civil War and that all slaves were free in accordance with President Abraham Lincoln’s Emancipation Proclamation. Although the Emancipation Proclamation was issued on January 1, 1863, it had little impact in the south without Union enforcement, and many slaves were unaware of it. The first Juneteenth celebrations were used as political rallies and to teach freed African Americans about their voting rights.¹ During the era of Jim Crow laws, Juneteenth celebrations diminished until the civil rights movement when the Poor People’s March planned by Martin Luther King, Jr., was purposely scheduled to coincide with the date. The march brought Juneteenth back to the public’s attention and the holiday was essentially reborn.²

¹ See *Juneteenth*, <https://tshaonline.org/handbook/online/articles/lkj01>, (last visited January 4, 2019).

² See *12 Things You Might Not Know About Juneteenth*, <https://www.mentalfloss.com/article/501680/12-things-you-might-not-know-about-juneteenth> (last visited January 4, 2019).

Legislation

Though most states now officially recognize Juneteenth, it is not a national holiday. In 1980, Texas became the first state to declare Juneteenth a state holiday. Since that time, forty-five other states and the District of Columbia have passed legislation recognizing it as a holiday or observance. In 1991, the Florida Legislature designated June 19th of each year as “Juneteenth Day” to commemorate the traditional observance of the day the slaves in Florida were notified of the Emancipation Proclamation.³

Observances and Ceremonies

National and Patriotic Observances and Ceremonies are governed by Title 36 of the United States Code. There are forty-six patriotic and national observances specified by the United States Code, from American Heart Month to Veterans Day.⁴ These observances designate a certain day for observation and request that the president issue a proclamation calling for appropriate observance and ceremony.⁵ Each of the observances and ceremonies are American, related to American history.

Senate Memorial

A Senate Memorial is “a measure addressed to an executive agency or another legislative body, usually congress, which expresses the consensus of the Florida Legislature or urges that certain action be taken on a matter within the jurisdiction of the agency or body to which it is addressed. When both houses adopt the measure, the memorial is signed by the legislative officers and transmitted to the Secretary of State for presentation to the addressee. A memorial is not subject to the approval or veto powers of the Governor, is not subject to constitutional title requirements, and does not have the effect of law.”⁶

III. Effect of Proposed Changes:

The Senate Memorial urges Congress to recognize June 19, 2020, as “Juneteenth Independence Day.” The memorial directs the Secretary of State to dispatch copies to the Majority Leader of the United States Senate, the Speaker of the House of Representatives, and each member of the Florida delegation to the United States Congress.

The memorial contains six whereas clauses finding:

- January 1, 1863, President Abraham Lincoln issued the Emancipation Proclamation, which ended slavery;
- Despite the issuance of the Emancipation Proclamation, news of the end of slavery did not travel to certain regions of the United States for more than 2 years afterwards;
- On or about June 19, 1865, federal authorities had arrived in Galveston, Texas, to inform slaves that the Civil War had ended and that the enslaved were now free;

³ Section 683.21, F.S.

⁴ See 36 U.S.C. ss. 101-145 (2019).

⁵ See, e.g., 36 U.S.C. s 109 Father’s Day (2019).

⁶ Senate Glossary, <https://www.flsenate.gov/Reference/Glossary>.

- Following emancipation, former slaves and their descendants continued to commemorate each June 19 in recognizing the emancipation of all slaves in the United States and celebrating freedom;
- In 1991, Florida officially designated June 19 of each year as “Juneteenth Day” to commemorate the freeing of slaves within the state; and
- Congress has previously demonstrated strong bipartisan support in recognizing “Juneteenth Independence Day,” evidenced by the introduction of Senate Resolution 253, House Resolution 448, and House Resolution 450 in June 2019.

A memorial is an official legislative document addressed to Congress, the President of the United States, or some other governmental entity that expresses the will of the Legislature on a matter within the jurisdiction of the recipient. A memorial requires passage by both legislative houses but does not require the Governor’s approval nor is it subject to a veto.

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 the counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties or 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Pizzo

38-01064-20

2020978__

Senate Memorial

A memorial to the Congress of the United States,
urging Congress to recognize June 19, 2020, as
"Juneteenth Independence Day."

WHEREAS, on January 1, 1863, President Abraham Lincoln
issued the Emancipation Proclamation, which ended slavery, and

WHEREAS, despite the issuance of the Emancipation
Proclamation, news of the end of slavery did not travel to
certain regions of the United States for more than 2 years
afterwards, and

WHEREAS, on or about June 19, 1865, federal authorities had
arrived in Galveston, Texas, to inform slaves that the Civil War
had ended and that the enslaved were now free, and

WHEREAS, following emancipation, former slaves and their
descendants continued to commemorate each June 19 in recognizing
the emancipation of all slaves in the United States and
celebrating freedom, and

WHEREAS, in 1991, Florida officially designated June 19 of
each year as "Juneteenth Day" to commemorate the freeing of
slaves within the state, and

WHEREAS, Congress has previously demonstrated strong
bipartisan support in recognizing "Juneteenth Independence Day,"
evidenced by the introduction of Senate Resolution 253, House
Resolution 448, and House Resolution 450 in June 2019, NOW,
THEREFORE,

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

38-01064-20

2020978__

30 That the Congress of the United States is urged to
31 recognize June 19, 2020, as "Juneteenth Independence Day."

32 BE IT FURTHER RESOLVED that the Secretary of State dispatch
33 copies of this memorial to the Majority Leader of the United
34 States Senate, the Speaker of the House of Representatives, and
35 each member of the Florida delegation to the United States
36 Congress.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: December 13, 2019

I respectfully request that **SM 978**, relating to Juneteenth Independence Day, be placed on the:

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



Senator Jason W.B. Pizzo
Florida Senate, District 38

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 1050

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Diaz

SUBJECT: Disaster Volunteer Leave for State Employees

DATE: January 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Fav/CS
2.			IS	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1050 substantially amends s. 110.120, F.S., the Florida Disaster Volunteer Leave Act (the Act). The bill broadens the definition of the term “disaster” to mean an event that results in a state of emergency as declared by the governor of this state or any other state or territory in the United States.

The bill adds two terms to the definition section of the Act: “disaster area” and “volunteer.”

The bill requires a request for disaster leave be made by the employee and specifies that an employing agency must verify the employee’s volunteer status before granting leave.

The bill provides that leave for disasters occurring outside the boundaries of this state but within the United States requires the approval of the head of the employee’s employing agency.

The bill provides that an employee receiving disaster leave must attest to his or her employing agency that he or she has completed his or her volunteer service and must specify the period of time served as a volunteer for that event and a description of the disaster response or recovery services provided.

The bill provides for an effective date of July 1, 2020.

II. Present Situation:

Executive Branch

Chapter 110, Florida Statutes, provides the employment policy of the state. The Legislature has declared that:

[i]t is the pose of this chapter to establish a system of personnel management. This system shall provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and shall include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.¹

Chapter 110, F.S., is divided into five parts: Part I deals with general state employment provisions; Part II covers the Career Service System; Part III pertains to the Senior Management Service System; Part IV relates to volunteers; and Part V deals with the Selected Exempt Service System. The Department of Management Services is charged with adopting administrative rules to effectuate the provisions of this chapter.²

Section 110.120, F.S., is entitled the “Florida Disaster Volunteer Leave Act” (the Act). The Act provides that an employee³ of a state agency who is a certified disaster service volunteer of the American Red Cross (Red Cross), a 501(c)(3)⁴ tax-exempt organization, may be granted a leave of absence with pay for not more than 15 working days in any 12-month period to participate in specialized disaster relief services for the Red Cross.⁵ The term “state agency” is defined by the Act to mean “any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.”⁶ The Act specifies that a “disaster” comprises those “disasters designated at level II and above in the American National Red Cross regulations and procedures.”⁷

Leave may be granted upon the request of the Red Cross and the approval of the employee’s employing agency.⁸ An employee granted leave under the Act shall not be deemed an employee of the state for purposes of workers’ compensation.⁹ The Act provides that leave may be granted only for services related to a disaster occurring within the boundaries of the State of Florida,

¹ Section 110.105(1), F.S.

² Section 110.1055, F.S.

³ Other-personal-services employees (OPS), pursuant to s. 110.131(3), F.S., are not eligible for any form of paid leave. Thus, for an OPS employee who requests and is approved leave to provide disaster relief services, such leave of absence will be without pay.

⁴ 26 U.S.C. § 501(c)(3), provides tax exemption for corporations and foundations that are operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

⁵ Section 110.120(3), F.S.

⁶ Section 110.120(2)(a), F.S.

⁷ Section 110.120(2)(b), F.S.

⁸ *Id.*

⁹ *Id.*

except that, with the approval of the Governor and Cabinet, leave may be granted for services in response to a disaster occurring within the boundaries of the United States.¹⁰

Tax-Exempt Nonprofit Organizations and Disaster Relief

Tax-exempt organizations, such as the Red Cross and the Salvation Army, play a critical role in disaster relief and recovery efforts. As recognized by the Internal Revenue Service, “[p]roviding aid to relieve human suffering caused by a natural or civil disaster or an emergency hardship is charity in its most basic form.”¹¹ In the years since the 9/11 terrorist attacks, there has been a sharp growth in the creation of tax-exempt nonprofits that receive donations and disburse assistance following a disaster. For example, Team Rubicon became an established nonprofit 501(c)(3) organization in 2010 with the mission of providing disaster relief and giving American veterans a vital sense of purpose.¹² Team Rubicon was one of the first nonprofits to reach Haiti just five days after the 7.0 magnitude earthquake that killed at least 160,000 people.¹³ World Vision, a registered 501(c)(4)¹⁴ nonprofit organization, is an international partnership of Christians that, among other things, provides emergency relief to assist people afflicted by conflict or disaster.¹⁵ During its Hurricane Katrina response, World Vision not only met emergency needs of the community but also participated in rebuilding efforts over a three year period.¹⁶

States of Emergency Declaration Process

As a state’s chief executive officer, the governor is typically charged via a state’s constitution and/or statutes, with protecting the public safety and welfare of the people of that state.¹⁷ Though the exact process may vary state to state, it is generally the governor who declares a state of emergency through the issuance of an executive order or proclamation to that effect

In Florida, chapter 252, F.S., governs emergency management. The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.¹⁸ Section 252.36(1)(a), F.S., provides in pertinent part that “[i]n the event of an emergency beyond local control, the Governor ... may assume” or delegate “direct operational control over all or any part of the emergency management functions within this state.” The Governor must declare a state of emergency by executive order or proclamation “if she or he finds an emergency has occurred or

¹⁰ *Id.*

¹¹ Publication 3833, *Disaster Relief, Providing Assistance through Charitable Organizations* <https://www.irs.gov/pub/irs-pdf/p3833.pdf> (last visited December 18, 2019).

¹² See <https://www.fema.gov/news-release/2017/11/12/4339/national-voad-and-other-voluntary-organizations-play-critical-role-housing> (Last visited December 23, 2019).

¹³ See Kyle Dickman, *The Future of Disaster Relief Isn’t the Red Cross*, Outside Magazine, August 25, 2016, <https://www.outsideonline.com/2106556/team-rubicon-takes-red-cross> (last visited December 23, 2019).

¹⁴ 26 U.S.C. § 501(c)(4), provides tax-exempt status to “[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.”

¹⁵ See Our Mission Statement, <https://www.worldvision.org/about-us/mission-statement> (last visited December 23, 2019).

¹⁶ See 2005 Hurricane Katrina: Facts, FAQ, and how to help <https://www.worldvision.org/disaster-relief-news-stories/2005-hurricane-katrina-facts#world-vision> (last visited December 23, 2019).

¹⁷ See Patricia Sweeney & Ryan Joyce, *Gubernatorial Emergency Management Powers: Testing the Limits in Pennsylvania*, 6 PITT. J. ENVTL. PUB. HEALTH L. 149, 150 (2012).

¹⁸ Section 252.36, F.S.

that the occurrence or the threat thereof is imminent.”¹⁹ A state of emergency continues until terminated by the Governor by executive order or proclamation but may not continue “longer than 60 days unless renewed by the Governor.”²⁰ The Legislature may terminate a state of emergency at any time by a concurrent resolution.²¹ If a state of emergency is terminated by the Legislature, the Governor must issue an executive order or proclamation ending the state of emergency.²² Section 252.36, F.S., requires all executive orders or proclamations to “indicate the nature of the emergency, the area or areas threatened, and the conditions which have brought the emergency about or which make possible its termination.”²³

III. Effect of Proposed Changes:

Section 1 revises s. 110.120(2), F.S., to amend the definition of “disaster” to mean an event that results in a state of emergency, as declared by executive order or proclamation issued by the Governor of this state, or any other state or territory of the United States.

The bill adds the terms “disaster area” and “volunteer” to the definitions section. “Disaster area” is defined to mean a location covered under a state of emergency, as declared by executive order or proclamation issued by the Governor of this state or any other state or territory of the United States. “Volunteer” is defined to mean an individual who has entered into an agreement with a tax-exempt nonprofit organization under s. 501(c)(3) or s. 501 (c)(4) of the Internal Revenue Code to provide nonpaid services to a disaster area for disaster response or recovery.

This section amends s. 110.120(3), F.S., to provide that a leave of absence with pay to serve as a volunteer may be granted for no more than 120 working hours (equivalent to 15 8-hour days) in any 12-month period. The bill requires that the request for leave be made by the employee and that the employee’s employing agency must verify the employee’s volunteer status prior to granting such leave for services related to a disaster within Florida. The approval of the head of the employing agency is required for any leave where the employee is providing volunteer services related to disasters occurring outside the boundaries of this state but within the states or territories of the United States.

The bill requires an employee granted leave to attest to his or her employing agency that he or she has completed his or her volunteer service for a disaster, and to specify the period of time for which he or she served as a volunteer for that event and a description of the disaster response or recovery services that the employee provided.

Section 2 provides that the act will take effect on July 1, 2020.

¹⁹ Section 252.36(2), F.S.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

This bill does not impose, authorize, or raise a state tax or fee.

E. Other Constitutional Issues:

None identified.

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

This bill does not impact state or local taxes or fees.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The government sector will continue to experience an impact in processing applications for disaster volunteer leave. While the bill requires the request be made by the employee as opposed to the American Red Cross and specifies the employing agency must verify the employee's volunteer status prior to approval, this change will likely not have a substantial or disruptive impact.

The bill may have a slight negative impact on the government sector as it allows employees to request disaster leave to volunteer with any tax-exempt nonprofit under 501(c)(3) or 501(c)(4) and not solely the Red Cross. Thus, there may be more requests being submitted that an agency will have to process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 110.120 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on January 13, 2020:

The committee substitute removes the legislative and judicial branches from the definition of “state agency” in s. 110.120(2), F.S., because those branches currently have broad discretionary authority to grant leave addressed by this bill.

B. Amendments:

None.



823618

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 24 - 25
and insert:
of the executive branch of state government.

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

And the title is amended as follows:

Delete lines 4 - 7
and insert:



823618

11 revising, and providing definitions; revising
12 conditions under which an

By Senator Diaz

36-01364-20

20201050__

A bill to be entitled
An act relating to disaster volunteer leave for state employees; amending s. 110.120, F.S.; reordering, revising, and providing definitions; expanding the Florida Disaster Volunteer Leave Act to include employees of the legislative and judicial branches of state government; revising conditions under which an employee may be granted leave under the act; specifying requirements and limitations; providing an effective date.

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

Section 1. Section 110.120, Florida Statutes, is amended to read:

110.120 Administrative leave for disaster service volunteers.—

(1) SHORT TITLE.—This section ~~shall be known and~~ may be cited as the "Florida Disaster Volunteer Leave Act."

(2) DEFINITIONS.—As used in this section, the term ~~following terms shall apply~~:

(c) ~~(a)~~ "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive, legislative, or judicial branch of state government.

(a) ~~(b)~~ "Disaster" means an event that results in a state of emergency, as declared by executive order or proclamation issued by the Governor of this state or any other state or territory of the United States ~~includes disasters designated at level II and~~

36-01364-20

20201050__

above in the American National Red Cross regulations and
procedures.

(b) "Disaster area" means a location covered under a state
of emergency, as declared by executive order or proclamation
issued by the Governor of this state or any other state or
territory of the United States.

(d) "Volunteer" means an individual who has entered into an
agreement with a tax-exempt nonprofit organization under s.
501(c)(3) or s. 501(c)(4) of the Internal Revenue Code to
provide nonpaid services to a disaster area for disaster
response or recovery.

(3) LEAVE OF ABSENCE.—An employee of a state agency ~~who is
a certified disaster service volunteer of the American Red Cross~~
may be granted a leave of absence with pay for no not more than
120 working hours ~~15 working days~~ in any 12-month period to
serve as a volunteer ~~participate in specialized disaster relief
services for the American Red Cross~~. Such leave of absence may
be granted upon the request of the employee ~~American Red Cross~~
and upon ~~the~~ approval of the employee's employing agency after
verifying the employee's volunteer status. An employee granted
leave under this section is ~~shall~~ not be deemed to be an
employee of the state for purposes of workers' compensation.
Leave under this section ~~act~~ may be granted only for providing
volunteer ~~for~~ services related to a disaster occurring within
the boundaries of this ~~the~~ state of Florida, except that, ~~with
the approval of the Governor and Cabinet,~~ leave may be granted
to an employee to provide volunteer ~~for~~ services in response to
a disaster occurring within the states or territories ~~boundaries~~
of the United States upon approval of the head of the employee's

36-01364-20

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59 employing agency. An employee who is granted leave under this
60 section must attest to his or her employing agency that he or
61 she has completed his or her volunteer service for a disaster,
62 and must also specify the period of time for which he or she
63 served as a volunteer for that event and a description of the
64 disaster response or recovery services that the employee
65 provided.

66 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/20

Meeting Date

SB 2050

Bill Number (if applicable)

823018

Amendment Barcode (if applicable)

Topic SB 2050, FL Volunteer Disaster Leave Act

Name Savannah Kelly

Job Title External Affairs Director

Address 2545 Raymond Drive

Street

TLH

FL

32303

City

State

Zip

Phone

Email savannah@

volunteerflorida.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Volunteer Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-13-2020

Meeting Date

1050

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Clay Ingram

Job Title CEO - Volunteer Florida

Address 1545 Raymond Deihl Rd.

Street

Tallahassee FL

City

State

32308

Zip

Phone 904-414-7400

Email clay@volunteerflorida.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Chair*
Appropriations Subcommittee on Education,
Vice Chair
Appropriations Subcommittee on Health
and Human Services
Ethics and Elections
Health Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR MANNY DIAZ, JR.

36th District

January 9, 2020

Senator Ed Hooper
Chair, Government Oversight and Accountability
330 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Hooper,

I am scheduled to present my bill before your committee *SB 1050 Disaster Volunteer Leave for State Employees* on Monday January 13, 2020. Unfortunately, I will not be able to present the bill. Senator Bean has agreed to present the bill on my behalf. Please do not hesitate to contact me if you require additional information. Thank you.

Best,

A handwritten signature in black ink, appearing to read "M. Diaz", written in a cursive style.

Manny Diaz, Jr.
State Senator
District 36

REPLY TO:

- ☐ 10001 Northwest 87th Avenue, Hialeah Gardens, Florida 33016 (305) 364-3073
- ☐ 306 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1114

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Montford

SUBJECT: Cost-of-living Adjustments to State Employee Salaries

DATE: January 14, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1114 creates an annual salary adjustment for eligible state employees filling established positions in the executive and judicial branches, and certain employees of the state university system, contingent upon an appropriation by the Legislature. The pay adjustments are equivalent to the percentage increase in the Consumer Price Index during the third quarter over the prior year's third quarter. The percentage increase for 2020 is estimated to be two percent.

The fiscal impact of a pay adjustment implemented pursuant to this bill is estimated to be \$95.2 million for FY 2020-21 and \$190.3 million annually thereafter.

The bill takes effect July 1, 2020.

II. Present Situation:

State Employment

Pay Plans

The Department of Management Services (DMS) is granted broad authority to establish and maintain a classification and compensation program for the Career Service, Selected Exempt Service, and Senior Management Service pay plans.¹ These pay plans apply to most of the

¹ Section 110.2035, F.S.

employees of the executive branch. While DMS is required to provide broad, market-based pay bands for occupations and guidelines to move employees through the pay bands, the employing agencies are authorized to determine the appropriate salary within the pay bands and guidelines developed by DMS.²

Other entities have been granted authority to establish and maintain pay plans for employees of the state court system³, the Department of Lottery,⁴ state attorney offices,⁵ public defender offices,⁶ the Justice Administration Commission and its related entities,⁷ and the Florida School for the Deaf and Blind.⁸

Positions

Section 110.107(8), F.S., defines an “established position” to be an authorized position that has been classified in accordance with a classification and pay plan as provided by law.

Section 110.107(1), F.S., defines an “authorized position” as a position included in an approved budget. The legislature includes in the general appropriations act for each fiscal year the number of authorized positions for most state agencies in the executive and judicial branches. A notable exception is that the legislature does not indicate authorized positions for the state university system or the state college system.

Salary Adjustments

Section 216.251(3), F.S., prohibits an agency from providing general salary increases unless authorized by the Legislature. In the general appropriations act each year, the legislature typically grants state agencies the authority to provide merit pay increases to employees providing exemplary performance of duties.

On occasion, across-the-board salary adjustments have been specifically authorized by the legislature in the annual general appropriations act. The chart below shows the across-the-board pay increases authorized by the legislature.

Chart A. History of Across-the-Board Salary Increases

Fiscal Year	Amount of the Increase in Base Rate of Salary
2005-06	3.6%
2006-07	3.0%
2007-08	None
2008-09	None
2009-10	None

² Section 110.2035(6)(a), F.S.

³ Section 25. 382(3), F.S.

⁴ Section 24.105(18)(d), F.S.

⁵ Section 27.25(1), F.S.

⁶ Section 27.53(1), F.S.

⁷ Sections 27.705(4) and 43.16(4)(a), F.S.

⁸ Section 1002.36(4)(f), F.S.

Fiscal Year	Amount of the Increase in Base Rate of Salary
2010-11	None
2011-12	None
2012-13	None
2013-14	\$1,400 for employees making \$40,000 or less, and \$1,000 for employees making more than \$40,000
2014-15	None
2015-16	None
2016-17	None
2017-18	\$1,400 for employees making \$40,000 or less, and \$1,000 for employees making more than \$40,000 (this did not include employees of the state university system)
2018-19	None
2019-20	None

In addition to these across-the-board adjustments, the legislature has authorized pay adjustments for various occupations. Law enforcement officers, correctional officers, military command staff, and attorneys are the occupations that have received targeted pay adjustments to address recruitment, retention, and pay equity issues.

Consumer Price Index for Urban Wage Earners and Clerical Workers

The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.⁹ Chart B below shows the CPI and the percentage point change from year to year over the same period of time as Chart A shows for the across-the-board salary increases authorized by the legislature. This data is based on third quarter data for each calendar year.

Chart B. Consumer Price Index¹⁰ and Annual Percentage Change

Calendar Year	Third Quarter Average of CPI-W	Change over Prior Year
2005	192.700	4.1%
2006	199.067	3.3%
2007	203.596	2.3%
2008	215.495	5.8%
2009	211.001	(-2.1%)
2010	214.136	1.5%
2011	223.233	3.6%

⁹ “Consumer Price Index Frequently Asked Questions,” https://www.bls.gov/cpi/questions-and-answers.htm#Question_1, (last visited on December 27, 2019).

¹⁰ Average CPI by Quarter and Year, <https://www.ssa.gov/OACT/STATS/avgcpi.html>, (last visited on December 27, 2019).

Calendar Year	Third Quarter Average of CPI-W	Change over Prior Year
2012	226.936	1.7%
2013	230.327	1.5%
2014	234.242	1.7%
2015	233.278	(0.4%)
2016	235.057	0.3%
2017	239.668	2.0%
2018	246.352	2.8%
2019	250.200	1.6%

Chart C below shows the forecasted annual change in CPI for the next five fiscal years. This data is based on second quarter data (rather than third quarter data).

Chart C. Forecast of CPI Change¹¹

Fiscal Year Ending	Percentage Change
2020	2.0%
2021	1.5%
2022	2.3%
2023	2.5%
2024	2.5%

III. Effect of Proposed Changes:

The bill creates s. 110.195, F.S., to establish annual salary adjustments for eligible state employees filling established positions in the executive and judicial branches, and certain employees of the state university system, contingent upon an appropriation by the Legislature. State officers, including judges and statewide elected officers, are not eligible for these adjustments.

For employees of the State University System, the pay adjustment addressed by this bill is applied only to the portion of the salary funded from the General Revenue Fund. A university typically funds salary increases for other positions or portions of positions with funds (i.e., tuition, fees, and grants) that each university controls at the local level.

The pay adjustments are equivalent to the percentage increase in the Consumer Price Index during the third quarter over the prior year's third quarter.

The bill takes effect July 1, 2020.

¹¹ Economic Estimating Conference, National Economic: Long Run, December 10, 2019, <http://edr.state.fl.us/Content/conferences/useconomic/LongRunTables.pdf>, page 2. (last visited on December 27, 2019).

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

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or 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 identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Based on the forecasted growth in CPI for calendar year 2020 over calendar year 2019, this bill will authorize a two percent pay adjustment for each eligible state employee working for the executive or judicial branch, including certain employees of the state university system. The first year cost, based on a January 2021 effective date, is estimated to be \$95.2 million for FY 2020-21 and \$190.3 million for FY 2021-22.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 110.195 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on January 13, 2020:

The CS applies the pay adjustment to the portion of SUS employee salaries funded from the General Revenue Fund.

- B. **Amendments:**

None.

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



101092

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 29 - 34
and insert:

(b) "State employee" means an employee filling an
established position as an employee of a state agency or an
employee of the State University System whose position is funded
by the legislature through an appropriation for the Education
and General Activities Program.

(2) Beginning January 1, 2021, and each January 1



101092

thereafter, the base rate of pay of each eligible state employee shall be increased by the percentage adjustment calculated pursuant to subsection (3); provided, however, only the portion of the base rate of pay of each eligible employee of the State University System funded from the General Revenue Fund will be increased by the percentage adjustment calculated pursuant to subsection (3).

By Senator Montford

3-01015-20

20201114__

A bill to be entitled

An act relating to cost-of-living adjustments to state employee salaries; creating s. 110.195, F.S.; defining terms; authorizing annual cost-of-living adjustments to base rates of pay of eligible state employees, beginning in 2021; requiring the Office of Economic and Demographic Research to calculate the percentage for the adjustment in a specified manner; specifying conditions under which a cost-of-living adjustment is not implemented; requiring the office to certify the adjustment amount to the Governor and the Legislature; specifying eligibility for the cost-of-living adjustment; providing legislative intent; providing that implementation of cost-of-living adjustments is contingent upon funding by the Legislature; providing an effective date.

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

Section 1. Section 110.195, Florida Statutes, is created and incorporated into part I of chapter 110, Florida Statutes, to read:

110.195 Annual cost-of-living adjustments to state employee salaries.—

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

(a) "State agency" means any official, officer, commission, board, authority, council, committee, or department of the executive or judicial branches of state government.

(b) "State employee" means an employee filling an

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30 established position as an employee of a state agency.

31 (2) Beginning January 1, 2021, and each January 1
32 thereafter, the base rate of pay of each eligible state employee
33 shall be increased by the percentage adjustment calculated
34 pursuant to subsection (3).

35 (3) (a) By November 1, 2020, and each November 1 thereafter,
36 the Office of Economic and Demographic Research shall calculate
37 the percentage increase, if any, in the Consumer Price Index for
38 Urban Wage Earners and Clerical Workers from the average for the
39 third quarter of the current calendar year to the average for
40 the third quarter of the preceding calendar year.

41 (b) If the calculation made pursuant to paragraph (a)
42 results in a positive number, the number must be rounded to the
43 nearest tenth of 1 percent. If the calculation results in a
44 negative number, or if the rounded result is zero, there is no
45 cost-of-living adjustment for the year.

46 (c) The Office of Economic and Demographic Research shall
47 certify the result of the calculation to the Governor, the
48 President of the Senate, and the Speaker of the House of
49 Representatives.

50 (4) (a) To be eligible for the adjustment authorized in
51 subsection (2), a state employee, at a minimum, must have met
52 his or her required performance standard, if applicable, during
53 the most recently completed fiscal year. If an otherwise
54 eligible state employee achieves performance standards
55 subsequent to the cost-of-living adjustment, but on or before
56 the end of the fiscal year, the employee may receive the
57 adjustment effective on the date the employee achieves such
58 standards but not retroactively to the date of the cost-of-

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20201114__

59 living adjustment.

60 (b) It is the intent of the Legislature that all eligible
61 state employees receive the increases authorized in subsection
62 (2) even if the implementation of such increase results in an
63 employee's salary exceeding the adjusted pay grade maximum.

64 (5) Each increase authorized in subsection (2) is
65 contingent upon a specific appropriation by the Legislature to
66 fund the first year's costs of implementation of such increase.

67 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/13/2020
Meeting Date

SB 1114
Bill Number (if applicable)

Topic COLA

Amendment Barcode (if applicable)

Name LINDA EDSON

Job Title Legislative Volunteer Florida Retired Educators Assoc

Address 1841 Myrick Rd Phone 850-310-2729
Street

Tallahassee FL 32303 Email edsonL@nettally.com
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Retired Educators Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 13, 2020

Meeting Date

1114

Bill Number (if applicable)

Topic COLA to State Employees

Amendment Barcode (if applicable)

Name Ken "cop-CHEN-ski" Kopczynski

Job Title Lobbyist

Address 300 East Brevard St

Phone 850-222-3329

Street

Tallahassee

FL

32301

Email ken@flpba.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida PBA Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 7010

INTRODUCER: Governmental Oversight and Accountability Committee and Military and Veterans Affairs and Space Committee

SUBJECT: OGSR/Servicemembers and the Spouses and Dependents of Servicemembers

DATE: January 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Brown</u>	<u>Caldwell</u>		MS Submitted as Committee Bill
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7010 amends s. 119.0171(5)(k), Florida Statutes, to save from repeal the current exemption for contact information of a servicemember and his or her family that is held by an agency. Specifically, the exemption protects from public inspection and copying identification and location information of current or former active duty servicemembers who served after September 11, 2001, for the United States Armed Forces, a reserve component of the Armed Forces, or the National Guard. The exemption is scheduled for repeal October 2, 2020.

Protected information consists of the:

- Home address, telephone number, and date of birth of a servicemember;
- Home address, telephone number, date of birth, and place of employment of a spouse or dependent; and
- Name and location of a school attended by a spouse or dependent or a day care facility attended by a dependent.

The bill also removes the requirement that the servicemember include a statement that reasonable efforts have been made to otherwise protect the information from public access in their written request to an agency to have qualified information exempted, which expands the exemption. The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

Because the bill expands the public records exemption, a two-thirds vote by each house of the Legislature is required for its passage.

This bill takes effect October 1, 2020.

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, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are 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., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as 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

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

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.¹⁰ 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.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *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).

¹² *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).

¹³ *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).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

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., provide that exemptions that are required by federal law or are 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.

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 it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental 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 carefully 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.²⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Public Records Exemption for Contact Information of Servicemembers

On November 30, 2014, the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin, *Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Joint Bulletin).²⁷ In

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.

²⁶ Section 119.15(7), F.S.

²⁷ Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS), *Joint Intelligence Bulletin, Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Nov. 30, 2014)(on file with the Senate Committee on Military and Veterans Affairs and Space).

it, the FBI and the DHS warn of potential attacks by the Islamic State of Iraq and the Levant (ISIL) on current and former servicemembers.²⁸ Specifically the report states,

The FBI recently received reporting indicating individuals located overseas are spotting and assessing like-minded individuals in the United States who are willing and capable of conducting attacks against current and former US-based members of the United States military.²⁹

Based on this, the Joint Bulletin urged servicemembers to be mindful of their content and presence on online social media accounts.³⁰

In 2015, the Legislature enacted a public records exemption for the contact and location information of a servicemember and his or her family.³¹ Specifically, the public records exemption protects from disclosure the identification and location information of current or former active duty servicemembers who served after September 11, 2001 of:

- The United States Armed Forces;
- A reserve component of the Armed Forces; or
- The National Guard.

The public records exemption protects from disclosure the identification and location information of the servicemember, his or her spouse, and his or her dependents. The information protected by the exemption consists of the:

- Home address, telephone number (including the telephone number of a personal communications device), and date of birth of a servicemember;
- Home address, telephone number (including the telephone number of a personal communications device), date of birth, and place of employment of the spouse or dependent of a servicemember; and
- Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

The servicemember must request the exemption in writing and include a statement that the servicemember has made reasonable efforts to protect the information from public access through other means. The term “reasonable efforts” is not defined in law.

The original public necessity statement articulates as justification for the exemption that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized. Specifically, the public necessity statement provided:

Servicemembers perform among the most critical, most effective, and most dangerous operations in defense of our nation’s freedom. Terrorist groups have threatened servicemembers and their families and have encouraged terrorist sympathizers to harm servicemembers and their families within the United

²⁸ *Id.*

²⁹ *Id.* at p. 2.

³⁰ *Id.* at p. 2.

³¹ Chapter 2015-86, L.O.F.

States. One terrorist group has allegedly gathered the photographs and home addresses of servicemembers from public sources to create and publish a list of servicemembers in order to make such persons vulnerable to an act of terrorism.³²

The public records exemption is scheduled to repeal on October 2, 2020.

Open Government Sunset Review

Survey on Public Records Exemption

During the interim of 2019, Senate and House staff drafted a survey to query various entities on the public records exemption.³³ Staff sent the survey to 23 state agencies, and the associations for the supervisors of elections and the property appraisers for distribution. Staff received 80 responses, or 51 percent:

- State agencies - Of 22 surveyed, 18 responded, for an 82 percent response rate³⁴;
- Supervisors of Elections - Of 67 surveyed, 21 responded, for a 31 percent response rate; and
- Property Appraisers. - Of 67 surveyed, 41 responded, for a 61 percent response rate.

Requests for Public Record Exemption

When asked about the number of requests made since the exemption took effect, the year 2015, entities receiving the top requests are as follows:

- Agencies - The Department of Highway Safety and Motor Vehicles received 512 requests, the Fish and Wildlife Conservation Commission received 34, and the Department of Law Enforcement received 20 to date;
- Supervisors of Elections - Volusia County received 1,465 requests, Pinellas received 325, and Okaloosa received 243 requests to date;
- Property Appraisers - Brevard County received 1,000 requests; Miami-Dade received 95, and Pinellas County received 76 requests to date.³⁵

Many entities responded that they have received zero requests for this exemption³⁶, and a few did not answer whether they had received requests.

³² *Id.*

³³ *Open Government Sunset Review Questionnaire, Identification and Location Information of Servicemembers* (July 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

³⁴ Surveys were sent to the Departments of Agriculture and Consumer Services, Business and Professional Regulation, Children and Families, Corrections, Economic Opportunity, Education, Elder Affairs, Environmental Protection, Financial Services, Health, Highway Safety and Motor Vehicles, Juvenile Justice, Law Enforcement, Legal Affairs, Lottery, Management Services, Military Affairs, Revenue, State, Transportation, Veterans' Affairs, and the Fish and Wildlife Conservation Commission.

³⁵ A number of agencies and counties report that they maintain data on requests for public records exemptions in the aggregate, so that they have no way of discerning how many requests are made for this specific public records exemption.

³⁶ Entities reporting that they have not received any requests for this public records exemption are: Agencies - the Departments of Corrections, Economic Opportunity, Environmental Protection, Health, Juvenile Justice, and Legal Affairs; Property Appraisers - Alachua, Baker, Bradford, Charlotte, Columbia, Desoto, Dixie, Gilchrist, Gulf, Hardee, Hendry, Indian River, Liberty, Madison, Okeechobee, Putnam, Taylor, Union, and Wakulla counties; and Supervisors of Election - Citrus, Collier, Holmes, and Union counties.

Process for Request of Public Record Exemption

Respondents were asked if the agency has a process in place for a servicemember to request a public records exemption. Entities responded that some provide a form, online, in person or both while others handle it case by case. Several agencies include a public records exemption request form in the packet provided to new employees. Forms typically provide a checkoff list of available exemptions.³⁷ A number of counties specifically identify form DOS-119, provided by the Florida Department of State, as the Public Records Exemption Request form in use by their office.³⁸ The form requires servicemembers to have served after September 11, 2001, and for the applicant to certify, in signing the form that reasonable efforts have been made to protect the information from public disclosure.³⁹

Complaints About Public Records Exemption

When asked whether the agency has received complaints about the exemption, nine entities responded that they had received at least one. Most complaints were made to the Property Appraiser and may indicate the unique nature of the information maintained by their office and accessed for various purposes. As noted by the St. Johns County Property Appraiser:

We occasionally hear verbal complaints, because once someone has made their information confidential within our office, we can no longer discuss any sort of property information with them electronically or over the phone. Further, other organizations or departments (such as the building department) cannot look up the tax payer's information electronically. So, if the taxpayer is trying to pull a permit, or refinance their house, they physically have to come in with their driver's license or ID to receive such information when usually those organizations can simply pull it from our website.⁴⁰

Recommendation on Exemption

When asked whether an entity would recommend continuing the exemption, of total respondents, 37 recommended reenacting the exemption as is. In contrast, 25 respondents recommended reenactment with changes. Of these, 10 respondents recommended deleting the reasonable efforts requirement or defining the term.⁴¹ Twelve other respondents specifically requested that the Legislature lift the restriction on the post-September 11, 2001 date.⁴² Remaining respondents either did not answer the question or specified that they wished to remain neutral.

³⁷ These are the Departments of Education, Environmental Protection, Financial Services, Health, Legal Affairs, Management Services, Military Affairs, and Revenue.

³⁸ These are Bay, Collier, Flagler, Levy, Monroe, Pinellas, Putnam, Volusia, and Walton counties.

³⁹ Florida Department of State, *Public Records Exemption Request, Form DOS-119; Rev. 06/2015*; available at: <https://dos.myflorida.com/media/695507/public-records-exemption-formdos-119.pdf>.

⁴⁰ St. Johns County Property Appraiser, *Survey Response* (July 18, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴¹ These are: the Florida Department of Law Enforcement; the Property Appraisers of Charlotte, Duval, Hernando, Miami-Dade, Palm Beach, St. Lucie, and Wakulla counties; and the Supervisors of Election of Collier and Union counties.

⁴² These are: the Departments of Elder Affairs, Highway Safety and Motor Vehicles, Law Enforcement, and Military Affairs; the Property Appraisers of Brevard and Polk Counties; and the Supervisors of Election of Hernando, Levy, Okaloosa, Pinellas, St. Johns, and Volusia counties.

Only the Alachua County Property Appraiser, St. Johns County Property Appraiser, and Wakulla County Property Appraiser recommended repeal of the exemption.⁴³

Current Threat to Servicemembers

The FBI provided a letter⁴⁴ to the Florida Senate updating threats to servicemembers since its issuance of the Joint Bulletin of 2014. In the letter, the FBI submitted that on September 23, 2016, Ardit Ferizi was sentenced to 20 years imprisonment for providing material support to the Islamic State of Iraq and the Levant (ISIL), and accessing databases containing personal identifying information of tens of thousands of people, including military servicemembers and other governmental personnel. Mr. Ferizi subsequently culled the personal identifying information of servicemembers and other government personnel, which totaled about 1,300 individuals, and provided it to an ISIL member, who on August 11, 2015, posted by tweet a hit list that contained the personal identifying information of the individuals.

In February 2019, the FBI Jacksonville Field Office identified 12 new web pages that were hosting the ISIL hit list with all or some of the personal identifying information of the 1,300 individuals. One of the pages states:

O Crusaders, as you continue your ag[g]ression towards the Islamic State and your bombing campaign against the muslims, know that we are in your emails and computer systems, watching and recording your every move [W]e are extracting confidential data and passing on your personal information to the soldiers ... who ... will strike at your necks in your own lands!⁴⁵

Requirement of Reasonable Efforts

As noted above, what is meant by “a reasonable effort” to protect information from public access is not defined in law. Prior to 2017, various other public record exemptions required the requesting applicant to include a written statement that a reasonable effort had been made to protect the information from other sources.

In 2017, however, the Legislature deleted this requirement from the following exemptions afforded to:

- A general magistrate;
- A special magistrate;
- A judge of compensation claims;
- An administrative law judge of the Division of Administrative hearings;
- A child support enforcement hearing officer;
- A current or former guardian ad litem;
- A current or former investigator or inspector of the Department of Business and Professional Regulation;

⁴³ “The concept, first enacted for law enforcement decades ago, has been eclipsed by the continued advancement of available technology.” Alachua County Property Appraiser, *Survey Response* (July 25, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴⁴ FBI, *Re: Update on Department of Justice Press Release 16-1085 regarding Ardit Ferizi* (Oct. 11, 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴⁵ *Id.*

- A county tax collector;
- A current or former employee of the Department of Health;
- A current or former impaired practitioner consultant retained by an agency or whose duties result in a determination of a person's skill and safety to practice a licensed profession;
- A current or former emergency medical technician or paramedic; or
- A current or former employee of an inspector general or internal audit department.⁴⁶

In its public necessity statement, the Legislature notes:

Requiring these personnel prove that they made reasonable efforts to protect their identification and location information is an added burden on these individuals as well as on agencies The extent to which these individuals must protect their information from public accessibility is unclear. It is also unclear how much proof an agency needs The burden on an agency . . . adversely impacts the effective and efficient administration of government in establishing who is eligible for an exemption. Relatively few public record exemptions require an individual to prove that he or she made reasonable efforts to protect his or her information Such inconsistencies among public record exemptions reduce accuracy and efficiency when redacting exempt information It is not in the public interest for the public to receive inaccurately redacted information.⁴⁷

Currently, in addition to the servicemember exemption the only remaining requirement of reasonable efforts applies to an exemption for a current or former United States attorney, assistant United States attorney, judge of the United States Court of Appeal, United States district judge, or United States magistrate.⁴⁸

Other Exemptions

Part of the OGSR requires a review of other exemptions that may protect the same public record or meeting, and consideration of whether multiple exemptions may be merged. While it is possible that portions of information may be protected if a servicemember qualifies under another exemption, for example if the servicemember works in law enforcement ⁴⁹, s. 119.071(5)(k), F.S., uniquely protects the identifying and location information of servicemembers and their families. Additionally, no other exemption would be appropriate for merging. Therefore, the information and application of this exemption is not duplicated elsewhere in law, nor can it be merged with another exemption.

III. Effect of Proposed Changes:

The public necessity statement for the original exemption provides as justification that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized.

⁴⁶ Chapter 2017-66, L.O.F.

⁴⁷ *Id.*

⁴⁸ Section 119.071(5)(i), F.S.

⁴⁹ Section 119.071(4)(d), F.S., provides a public records exemption for home addresses, phone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel.

Based on information received from the FBI, that concern has not lifted. Therefore, the bill reenacts the public record exemption for servicemembers and their families.

Additionally, the bill expands the exemption by removing the requirement that a servicemember provide a statement that reasonable efforts have been made to otherwise protect the information. Removing this requirement reflects concerns expressed by survey respondents in how to define a reasonable effort and is also consistent with the wholesale change that the Legislature made in 2017 in deleting the requirement of reasonable efforts from most other exemptions.

Although some survey respondents also requested that the Legislature expand the exemption to all servicemembers, the bill does not do so, as the intended target of the threat appears to continue to apply to servicemembers who served after September 11, 2001.⁵⁰

The public necessity statement provides that exempting servicemembers' identifying information is required to protect the servicemembers from targeted threats made by terrorist groups.

The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

Because the bill expands the public records exemption, a two-thirds vote of each house of the Legislature is needed for it to pass.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires 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. Because the bill expands the public records exemption to include identification and location information for certain servicemembers and their families regardless of the servicemember's efforts to protect such information, a two-thirds vote is required 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

⁵⁰ FBI, *supra* note 40.

justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption which supports the public policy of 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 the personal identifying information of servicemembers contained in a record held by government agencies from use by terrorist groups. 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:

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The agencies will continue to incur costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 January 13, 2020:

The committee substitute revises the public necessity statement to explain that the exemption is meant to thwart targeted threats on servicemembers from terrorist groups.

- B. **Amendments:**

None.



385734

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/13/2020	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 55 - 85
and insert:

Section 2. The Legislature finds that it is a public
necessity to make identification and location information of
current or former members of the Armed Forces of the United
States, a reserve component of the Armed Forces of the United
States, or the National Guard, who served after September 11,
2001, and their spouses and dependents, exempt from s.



385734

11 119.07(1), Florida Statutes, and s. 24(a), Article I of the
12 State Constitution, regardless of whether such individuals made
13 reasonable efforts to protect such information from being
14 public. Servicemembers perform among the most critical, most
15 effective, and most dangerous operations in defense of our
16 nation's freedom. Terrorist groups continue to threaten
17 servicemembers and their families and encourage terrorist
18 sympathizers to harm servicemembers and their families within
19 the United States. The Legislature finds that allowing public
20 access to the identification and location information of current
21 or former servicemembers and their families jeopardizes the
22 safety of servicemembers, their spouses, and their dependents.
23 The Legislature finds that protecting the safety and security of
24 current or former members of the Armed Forces of the United
25 States, a reserve component of the Armed Forces of the United
26 States, or the National Guard, who served after September 11,
27 2001, and their spouses and dependents, outweighs any public
28 benefit that may be derived from the public disclosure of the
29 identification and location information.

By the Committee on Military and Veterans Affairs and Space

583-01415-20

20207010__

A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 119.071, F.S., which
provides a public records exemption for the
identification and location information of
servicemembers and the spouses and dependents of
servicemembers; expanding the exemption by removing
the requirement that a servicemember submit a written
statement that reasonable efforts have been made to
protect the information in order to claim 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 (k) of subsection (5) of section
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.—

(5) OTHER PERSONAL INFORMATION.—

(k)1. For purposes of this paragraph, the term:

a. "Identification and location information" means the:

(I) Home address, telephone number, and date of birth of a
servicemember, and the telephone number associated with a
servicemember's personal communication device.

(II) Home address, telephone number, date of birth, and
place of employment of the spouse or dependent of a
servicemember, and the telephone number associated with such

583-01415-20

20207010__

spouse's or dependent's personal communication device.

(III) Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

b. "Servicemember" means a current or former member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, or the National Guard, who served after September 11, 2001.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a servicemember submits to an agency that has custody of the identification and location information:

~~a. a written request to exempt the identification and location information from public disclosure; and~~

~~b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.~~

3. This exemption applies to identification and location information held by an agency before, on, or after the effective date of this exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025 ~~2020~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to remove the requirement that a servicemember submit a written statement that he or she has made reasonable efforts to protect their identification and location information from

583-01415-20

20207010__

being accessible through other means available to the public in order to claim the public records exemption under s. 119.071(5)(k), Florida Statutes. The requirement of a written statement of reasonable efforts is an added burden on these individuals as well as on agencies receiving public records requests. The extent to which servicemembers must protect their information from public accessibility in order to satisfy the reasonable efforts standard is unclear. It is also unclear how much proof of reasonable efforts made by an individual is needed by an agency in order to grant the exemption. The burden on an agency to verify whether these individuals have protected from public disclosure their identification and location information adversely impacts the effective and efficient administration of government in establishing who is otherwise eligible for an exemption. In 2017, the Legislature removed the requirement that certain agency personnel could claim a public records exemption only if reasonable efforts had been made in protecting such information from being accessible through other means available to the public from numerous public records exemptions. Following the 2017 amendments, only two public records exemptions under current law, including the exemption for identification and location information for servicemembers, continue to impose that requirement. Such inconsistencies among public records exemptions reduce accuracy and efficiency of redacting exempt information when a public records request for agency personnel information is made. It is not in the public interest for the public to receive inaccurately redacted information.

Section 3. This act shall take effect October 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT

14th District

December 18, 2019

The Honorable Ed Hooper
326, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 7010 – OGSR/Servicemembers and the Spouses and Dependents of Servicemembers

Dear Chair Hooper:

Senate Bill 7010, relating to OGSR/Servicemembers and the Spouses and Dependents of Servicemembers has been referred to the Committee on Governmental Oversight and Accountability. I am requesting your consideration on placing SB 7010 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: Joe McVane, Staff Director of the Committee on Governmental Oversight and Accountability
Tamra Redig, Administrative Assistant of the Committee on Governmental Oversight and Accountability

REPLY TO:

- ☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

CourtSmart Tag Report

Room: SB 301
Caption: Senate Governmental Oversight and Accountability

Type:
Judge:

Started: 1/13/2020 1:00:46 PM

Ends: 1/13/2020 2:03:04 PM

Length: 01:02:19

1:00:45 PM Meeting called to order
1:00:50 PM Quorum is present
1:01:05 PM Comments by Chair
1:01:31 PM Tab 6 - SB 936 by Senator Gainer - Disability Retirement Benefits
1:03:05 PM Chair
1:03:08 PM Questions? None
1:03:12 PM Appearance Cards?
1:03:17 PM Debate?
1:03:36 PM Cody Farrill, Dep. Chief of Staff, Fla. Dept. of Mgmt. Services, waives in support
1:03:37 PM Debate?
1:03:41 PM Senator Torres
1:04:14 PM Chair
1:04:17 PM Senator Gainer to close
1:04:38 PM Roll call on SB 936
1:04:54 PM Tab 7 - SM 976 by Senator Pizzo - Haitian and Caribbean American Recognitions
1:05:51 PM Questions? None
1:05:55 PM Appearance Cards? None
1:06:02 PM Debate? None
1:06:08 PM Senator Pizzo to close
1:06:10 PM Roll Call on SM 976
1:06:20 PM Tab 8- SM 978 by Senator Pizzo - Juneteenth Independence Day
1:06:59 PM Questions? None
1:07:03 PM Appearance? None
1:07:06 PM Debate? None
1:07:08 PM Senator Pizzo waives close
1:07:12 PM Roll Call on SM 978
1:07:38 PM Gavel turned over to Vice Chair Rader
1:07:53 PM Tab 2 - SB 476 by Senator Hooper - Law Enforcement Vehicles
1:09:10 PM Questions? None
1:09:12 PM Appearance Cards?
1:09:15 PM Tim Stanfield, Lobbyist, Florida Police Chiefs Association, waiving in support
1:09:28 PM Gary Bradford, Lobbyist, Fla. PBA, Inc., waives in support
1:09:38 PM Mark Anderson, Lobbyist, CEOMC, waives in support
1:09:48 PM Meredith Brock Stanfield, Dir. Leg. Affairs, CFO Jimmy Patronis, waives in support
1:09:58 PM Melanie Bostick, Florida Sherriff's Association, waives in support
1:10:07 PM Debate? None
1:10:11 PM Senator Hooper waives close
1:10:16 PM Roll Call CS/SB 476
1:10:34 PM Tab 5 - SB 620 by Senator Hooper - Firefighters' Bill of Rights
1:10:53 PM Delete-all Amendment 882796 by Senator Hooper
1:11:35 PM Senator Hooper
1:11:37 PM Questions? Senator Torres
1:12:05 PM Senator Hooper
1:12:58 PM Senator Torres
1:13:02 PM Senator Hooper
1:13:07 PM Appearance Cards?
1:13:19 PM Rocco Salvatori, Firefighter, Fla. Professional Firefighters speaking for
1:14:01 PM Senator Torres
1:14:33 PM Rocco Salvatori
1:15:41 PM Senator Torres
1:15:45 PM Questions?
1:15:49 PM Senator Albritton

1:16:14 PM Rocco Salvatori
 1:18:07 PM Chair
 1:18:10 PM Debate? None
 1:18:16 PM Senator Hooper to close
 1:18:48 PM Objections to delete-all amendment? None
 1:19:14 PM Show amendment adopted
 1:19:14 PM Back on the bill as amended
 1:19:16 PM Questions? None.
 1:19:26 PM Appearance Cards? None.
 1:19:31 PM Debate? None.
 1:19:32 PM Roll call on CS/SB 620
 1:19:39 PM Gavel turned back over to Chair Hooper
 1:20:00 PM Tab 11 - SB 7010 - Senator Wright to explain bill by Military and Veterans Affairs and Space -
 OGSR/Service members and the Spouses and Dep. of Servicemembers
 1:20:17 PM Questions on Bill?
 1:20:19 PM Senator Wright
 1:20:25 PM Senator Rader
 1:20:36 PM Amendment 385734 by Senator Wright
 1:21:58 PM Questions?
 1:22:32 PM Senator Rader
 1:22:34 PM Senator Wright
 1:22:49 PM Appearance Cards? None
 1:23:02 PM Debate on the amendment?
 1:23:18 PM Any objection to the adoption of amendment 385734?
 1:23:25 PM Seeing no objection, show the amendment adopted.
 1:23:33 PM Back on bill as amended
 1:23:50 PM Senator Rader
 1:24:40 PM Senator Wright waives close
 1:24:47 PM Roll Call CS/SB 7010
 1:25:27 PM Tab 10 - SB 1114 by Senator Montford - Cost-of-living Adjustments to State Employee Salaries
 1:28:23 PM Questions on the bill?
 1:29:26 PM Amendment 101092 by Senator Montford
 1:29:45 PM Questions? None
 1:29:49 PM Appearance Cards?
 1:30:03 PM Debate?
 1:30:06 PM Objections to adoption of amendment? Show the amendment adopted
 1:30:15 PM Back on bill as amended
 1:30:20 PM Appearance Cards?
 1:30:27 PM Ken Kopzynski, Lobbyist, FI PBA waives in support
 1:30:43 PM Linda Edson, Fla. Retired Educators Association volunteer, speaking in support of bill
 1:33:14 PM Debate on bill as amended?
 1:33:26 PM Senator Rader
 1:34:16 PM Senator Montford to close
 1:34:49 PM Roll Call SB 1114
 1:36:21 PM Tab 9 - SB 1050 by Senator Diaz - Disaster Volunteer Leave for State Employees
 1:36:33 PM Senator Bean presenting bill for Senator Diaz
 1:37:53 PM Amendment 823618 by Senators Bean and Diaz
 1:38:10 PM Questions on amendment?
 1:38:15 PM Appearance Cards?
 1:38:20 PM Savannah Kelly, Volunteer Florida, waives in support
 1:38:39 PM Debate on amendment? None
 1:38:45 PM Objection to Adoption of amendment? None
 1:38:52 PM Back on bill as amended
 1:39:00 PM Senator Torres
 1:39:22 PM Senator Bean
 1:40:06 PM Appearance Cards?
 1:40:11 PM Clay Ingram, CEO Volunteer Florida, for information
 1:40:25 PM Debate? None
 1:40:29 PM Senator Bean to close
 1:40:58 PM Roll Call on CS/SB 1050
 1:41:29 PM Tab 1 - CS/SB 406 by Senator Stargel - Public Records/Minor's Petition to Waive Consent/Abortion
 1:41:59 PM Questions? None

1:42:09 PM Appearance? None
 1:42:13 PM Debate? None
 1:42:16 PM Senator Stargel to close
 1:42:29 PM Roll Call on CS/SB 406
 1:43:11 PM Recording Paused
 1:47:13 PM Recording Resumed
 1:47:21 PM Tab 3 - SB 504 By Senator Perry - Local Government Public Construction Works
 1:47:43 PM Questions on the bill?
 1:48:08 PM Amendment 250768 by Senator Perry
 1:48:34 PM Amendment to Amendment 109396 by Senator Perry
 1:48:58 PM Questions on Amendment to Amendment
 1:49:06 PM Debate? None
 1:49:09 PM Senator Perry waives close
 1:49:16 PM Objection to Amendment to Amendment? None
 1:49:30 PM Amendment to Amendment 109396 is adopted
 1:49:50 PM Back on the main amendment as amended
 1:49:53 PM Questions on amendment? None - Appearance Cards? None - Debate? None
 1:50:05 PM Senator Perry waives close
 1:50:11 PM Objections to amendment? Seeing no objection, show the amendment adopted.
 1:50:20 PM Amendment 560258 by Senator Perry
 1:50:47 PM Senator Perry explains amendment 560258
 1:50:53 PM Questions on the amendment?
 1:50:58 PM Senator Torres
 1:51:21 PM Senator Perry
 1:51:22 PM Appearance Cards on amendment? None
 1:51:27 PM Debate on Amendment? None
 1:51:34 PM Senator Perry to close
 1:51:41 PM Objections to amendment? None
 1:51:48 PM Amendment 560258 is adopted
 1:51:52 PM Back on bill as amended
 1:51:56 PM Senator Rader
 1:52:17 PM Senator Perry
 1:52:59 PM Appearance Cards?
 1:53:03 PM Speaking for amendment -Carol Bowen, Chief Lobbyist, Associated Builders and Contractors
 1:53:08 PM Scott Jenkins, Senior Gov't Consultant, Local Gov't Public Works Projects, waive in support
 1:53:30 PM Debate on bill as amended?
 1:53:38 PM Senator Torres
 1:54:19 PM Senator Perry to close
 1:54:27 PM Roll call on CS/SB 504
 1:54:47 PM Tab 4 - SB 506 by Senator Perry - Public Procurement of Services
 1:55:29 PM Delete-all amendment 638218 by Senator Perry
 1:56:07 PM Questions on delete-all amendment? None
 1:56:13 PM Appearance Cards - Carol Bowen to speak on amendment
 1:57:06 PM Senator Rader
 1:57:39 PM Carol Bowen, Chief Lobbyist, Associated Builders & Contractors
 1:58:22 PM Senator Rader
 2:00:24 PM Debate? None
 2:00:28 PM Senator Perry waives close
 2:00:34 PM Any objections to the adoption of the amendment? None.
 2:00:37 PM Delete-all Amendment is adopted
 2:00:44 PM Back on bill as amended
 2:00:53 PM Ryan Matthews, Lobbyist, Marion County, waives in support
 2:00:56 PM Casey Cook, Sr. Legislative Advocate, Florida League of Cities, waives in support
 2:00:58 PM Carol Bowen waives in support
 2:01:08 PM Laura Youmane, Leg. Counsel, Fla. Association of Counties, waives in support
 2:01:15 PM Debate on bill as amended? None
 2:01:22 PM Senator Perry to close?
 2:02:19 PM Roll Call CS/SB 506
 2:02:41 PM Comments from the Chair
 2:02:43 PM Other Business before committee? None
 2:02:47 PM Senator Albritton moves to adjourn
 2:02:56 PM Are there objections? Seeing none, show the motion adopted. We are adjourned.