

Tab 1	CS/SB 668 by CF, Book (CO-INTRODUCERS) Torres; (Similar to H 00083) Government-sponsored Recreation Programs					
341376	A	S	RCS	GO, Book	btw L.94 - 95:	02/03 04:40 PM
677346	A	S	RCS	GO, Book	btw L.94 - 95:	02/03 04:40 PM
Tab 2	SB 716 by Mayfield; (Similar to H 00345) County Boundaries					
Tab 3	SB 786 by Gainer; (Identical to H 00905) Public Records/Aquaculture Records/Department of Agriculture and Consumer Services					
Tab 4	CS/SB 812 by EN, Hutson; (Similar to H 00549) Public Records/Endangered and Threatened Species					
460032	D	S	RCS	GO, Hutson	Delete everything after	02/03 04:40 PM
Tab 5	CS/SB 1060 by IT, Thurston; (Similar to CS/H 00755) Public Records and Meetings/911 or E911 Communication System					
Tab 6	CS/SB 1146 by CJ, Brandes; (Similar to H 01175) Special Risk Class of the Florida Retirement System					
Tab 7	SB 1170 by Baxley (CO-INTRODUCERS) Hutson; (Similar to CS/H 00821) Public Records and Meetings/Division of State Technology					
527806	A	S	RCS	GO, Baxley	Delete L.275:	02/03 04:40 PM
Tab 8	SB 1270 by Lee; (Identical to H 01113) Fiduciary Duty of Care for Appointed Public Officials and Executive Officers					
Tab 9	SB 1292 by Perry; (Identical to H 01173) Public Records/Nonjudicial Arrest Record of a Minor					
Tab 10	SB 1398 by Flores; (Identical to H 01097) Regional Planning Council Meetings					
Tab 11	SB 1490 by Bradley (CO-INTRODUCERS) Broxson, Farmer, Bracy, Rader; (Similar to H 01435) Public Officers and Employees					
711636	A	S	RCS	GO, Bradley	Delete L.36 - 37:	02/03 04:40 PM
Tab 12	SB 1570 by Perry; (Compare to H 01455) Division of Library and Information Services					
Tab 13	SB 1714 by Bradley; (Similar to H 01387) Sale of Surplus State-owned Office Buildings and Associated Nonconservation Lands					
Tab 14	SB 1042 by Albritton; (Identical to H 01061) Aquatic Preserves					
Tab 15	SB 1188 by Albritton; (Identical to H 01409) Public Records/Records of Insurers/Department of Financial Services					
492256	D	S	RCS	GO, Albritton	Delete everything after	02/03 04:40 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Hooper, Chair
Senator Rader, Vice Chair

MEETING DATE: Monday, February 3, 2020

TIME: 1:30—3:30 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 668 Children, Families, and Elder Affairs / Book (Similar H 83)	Government-sponsored Recreation Programs; Revising the definition of the term "child care facility" to exclude government-sponsored recreation programs; defining the term "government-sponsored recreation program", etc. CF 12/10/2019 Fav/CS GO 02/03/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
2	SB 716 Mayfield (Similar H 345)	County Boundaries; Revising county boundaries, etc. CA 01/27/2020 Favorable GO 02/03/2020 Favorable RC	Favorable Yeas 5 Nays 0
3	SB 786 Gainer (Identical H 905)	Public Records/Aquaculture Records/Department of Agriculture and Consumer Services; Providing a public records exemption for certain aquaculture records held by the Department of Agriculture and Consumer Services; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc. AG 01/14/2020 Favorable GO 02/03/2020 Favorable RC	Favorable Yeas 5 Nays 0
4	CS/SB 812 Environment and Natural Resources / Hutson (Similar H 549)	Public Records/Endangered and Threatened Species; Providing an exemption from public records requirements for the site-specific location information of certain endangered and threatened species; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. EN 01/13/2020 Fav/CS GO 02/03/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, February 3, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	CS/SB 1060 Innovation, Industry, and Technology / Thurston (Similar CS/H 755)	Public Records and Meetings/911 or E911 Communication System; Providing an exemption from public records requirements for certain documents that depict the structural elements of certain 911 or E911 communication system infrastructure, structures, or facilities; providing an exemption from public records requirements for geographical maps indicating the actual or proposed locations of certain 911 or E911 communication system infrastructure, structures, or facilities; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. IT 01/13/2020 Fav/CS GO 02/03/2020 Favorable RC	Favorable Yeas 5 Nays 0
6	CS/SB 1146 Criminal Justice / Brandes (Similar H 1175, Compare H 785, H 937, S 796, S 1178, S 1630)	Special Risk Class of the Florida Retirement System; Adding juvenile justice detention officers I and II and juvenile justice detention officer supervisors employed by the Department of Juvenile Justice who meet certain criteria to the class, etc. CJ 01/21/2020 Fav/CS GO 02/03/2020 Favorable AP	Favorable Yeas 5 Nays 0
7	SB 1170 Baxley (Similar CS/H 821)	Public Records and Meetings/Division of State Technology; Revising a provision to reflect the abolishment of the Agency for State Technology; providing an exemption from public records requirements for portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption; providing an exemption from public meetings requirements for portions of meetings which would reveal certain records; providing for future legislative review and repeal under the Open Government Sunset Review Act of the exemptions; providing statements of public necessity, etc. IT 01/13/2020 Favorable GO 02/03/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, February 3, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1270 Lee (Identical H 1113)	Fiduciary Duty of Care for Appointed Public Officials and Executive Officers; Establishing standards for the fiduciary duty of care for appointed public officials and executive officers of specified governmental entities; requiring training on board governance beginning on a specified date; requiring the Department of Business and Professional Regulation to contract for or approve such training programs or publish a list of approved training providers; specifying requirements for the appointment of executive officers and general counsels of governmental entities, etc. GO 02/03/2020 Not Considered CA RC	Not Considered
9	SB 1292 Perry (Identical H 1173, Compare H 615, Linked CS/S 700)	Public Records/Nonjudicial Arrest Record of a Minor; Providing an exemption from public records requirements for a nonjudicial record of the arrest of a minor who has successfully completed a diversion program; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CJ 01/14/2020 Favorable GO 02/03/2020 Favorable RC	Favorable Yeas 5 Nays 0
10	SB 1398 Flores (Identical H 1097)	Regional Planning Council Meetings; Providing requirements for establishing a quorum for meetings of certain councils when a voting member appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication; requiring the member to give notice of intent to appear via telephone, real-time videoconferencing, or similar real-time electronic or video communication by a specified time, etc. CA 01/21/2020 Favorable GO 02/03/2020 Favorable RC	Favorable Yeas 5 Nays 0
11	SB 1490 Bradley (Similar H 1435)	Public Officers and Employees; Authorizing specified reporting individuals and procurement employees to accept gifts or compensation to be used toward costs incurred due to a serious bodily injury or the diagnosis of a serious disease or illness of the individual, employee, or a child thereof; revising provisions regarding prohibited lobbying expenditures in the legislative and executive branches to conform to changes made by the act, etc. EE 01/21/2020 Favorable GO 02/03/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, February 3, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1570 Perry (Compare H 1455)	Division of Library and Information Services; Removing the date by which the division must submit an annual report regarding the allocation of library funding to the Chief Financial Officer; revising the duties and responsibilities of the division in the administration of the Florida State Archives; revising the duties and responsibilities of the division in the administration of the records and information management program; removing a limitation on the annual grant amount that the administrative unit of a library cooperative may receive from the state for purposes of sharing library resources, etc. GO 02/03/2020 Favorable ATD AP	Favorable Yeas 5 Nays 0
13	SB 1714 Bradley (Similar H 1387)	Sale of Surplus State-owned Office Buildings and Associated Nonconservation Lands; Revising the purpose of the Architects Incidental Trust Fund; requiring funds relating to the sale of surplus state- owned office buildings and associated nonconservation lands to be used for certain purposes; revising the entities that the Board of Trustees of the Internal Improvement Trust Fund must offer a lease to before offering certain surplus lands for sale to other specified entities, etc. GO 02/03/2020 Favorable AEG AP	Favorable Yeas 5 Nays 0
14	SB 1042 Albritton (Identical H 1061)	Aquatic Preserves; Creating the Nature Coast Aquatic Preserve; designating the preserve for inclusion in the aquatic preserve system; outlining the authority of the Board of Trustees of the Internal Improvement Trust Fund in respect to the preserve; prohibiting the establishment and management of the preserve from infringing upon the riparian rights of upland property owners adjacent to or within the preserve, etc. EN 01/21/2020 Favorable GO 02/03/2020 Favorable RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, February 3, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 1188 Albritton (Identical H 1409)	Public Records/Records of Insurers/Department of Financial Services; Exempting from public records requirements consumer personal financial and health information, certain underwriting files, insurer personnel and payroll records, and consumer claim files that are made or received by the Department of Financial Services acting as receiver as to an insurer; exempting from public records requirements certain reports and documents held by the department relating to insurer own-risk and solvency assessments and corporate governance annual disclosures and certain information received from the National Association of Insurance Commissioners or governments; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. BI 01/15/2020 Favorable GO 02/03/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 668

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families, and Elder Affairs Committee and Senator Book

SUBJECT: Government-sponsored Recreation Programs

DATE: February 5, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 668 revises the definition of the term “child care facility” to exclude government-sponsored recreation programs. The bill allows counties, municipalities, and school districts to create and operate recreation programs for children at least five years old and requires such programs to offer 4 programming hours per day and to adopt standards of care specifying staffing ratios, minimum staff qualifications, health and safety standards, and level 2 background screening requirement for all staff and volunteers. The bill also requires such programs to notify parents of all children participating in the program that the program is not state-licensed, and the program may not advertise itself as a child care facility. The bill requires the program to provide all parents with the county or municipality’s standards of care.

The bill provides definitions for the terms “summer day camp” and “summer 24-hour camp.” The bill creates s. 402.3132, F.S., to establish minimum requirements and enforcement of regulations over summer day camps and summer 24-hour camps. The bill permits the Department of Children and Families (DCF) or a local licensing agency to maintain all actions necessary to enforce its rules and regulations, including imposing an administrative fine for violation of the screening requirements. All summer day camps and summer 24-hour camps are required to register and be included on DCF’s summer camp listing.

The bill adds “government-sponsored recreation program” to the list of entities to whom notification of the presence of a sexual predator must be given under the Florida Sexual Predators Act.

The bill adds “government-sponsored recreation program” to the facilities to which residency restrictions apply to persons convicted of sex offenses.

The bill includes the property of a “government-sponsored recreation program” among the listing of real property where the sale, manufacture, or delivery of a controlled substance in, on or within 1,000 feet of said property is prohibited

The bill is expected to have an indeterminate positive impact on both the private and government sectors as it allows both sectors better access to federal funds under the Child and Adult Care Food Program. Summer day camps and summer 24-hour camps may incur additional costs to comply with the screening requirements and registering with the DCF for inclusion on its summer camp listing. Likewise, the DCF or local licensing agency may incur additional costs relating to enforcement of the screening requirements, rules and regulations against summer day camps and summer 24-hour camps.

The bill takes effect on July 1, 2020.

II. Present Situation:

Child Care

Child care is defined as the care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.¹

Child care is typically thought of as care and supervision for children under school age. Legislative intent related to child care finds that many parents with children under age 6 are employed outside the home.² The definition of child care does not specify a maximum or minimum age.

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- A school-age child care program is defined as any licensed child care facility serving school-aged children³ or any before and after school programs that are licensed as a child care facility and serve only school-aged children.⁴

¹ Section 402.302, F.S.

² *Id.*

³ Chapter 65C-22.008, F.A.C. “School-age child” means a child who is at least five years of age by September 1st of the beginning of the school year and who attends kindergarten through grade five.

⁴ *Id.*

- Any of the after school programs accepting children under the age of the school-age child must be licensed.⁵
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.⁶

Child Care Facilities

The term “child care facility” is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.⁷ The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;⁸
- Summer day camps;⁹
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509, F.S.,¹⁰ which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of chapter 435, F.S.¹¹

Every child care facility in the state is required to have a license that is renewed annually. The Department of Children and Families (DCF or department) or the local licensing agencies¹² approved by the department are the entities responsible for the licensure of such child care facilities.¹³

Child care facilities, as defined in s. 402.302, F.S., are afforded certain statutory protections. Under s. 775.21, The Florida Sexual Predators Act, law enforcement agencies must inform members of the community and the public of a sexual predator’s presence. Upon such notification, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides must notify each licensed child care facility, elementary school, middle school and high school within a 1 mile radius of the temporary or

⁵ *Id.*

⁶ *Id.*

⁷ Section 402.302, F.S.

⁸ This term is not defined in ch. 402, F.S. However, s. 409.175(1)(p), F.S., defines the term “summer 24-hour summer camp” to mean recreational, educational, and other enrichment programs operated on a 24-hour basis during summer vacation for children who are 5 years of age on or before September 1 and older, that are not exclusively educational.

⁹ This term is not defined in ch. 402, F.S. However, s. 409.175(1)(o), F.S., defines “summer day camp” to mean recreational, educational, and other enrichment programs operated during summer vacations for children who are 5 years of age on or before September 1 and older.

¹⁰ “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

¹¹ Section 402.302, F.S.

¹² Currently, there are 5 counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota.

¹³ Section 402.308, F.S.

permanent residence of the sexual predator of the presence of the sexual predator. The information must include:

- The name of the sexual predator;
- A description of the sexual predator, including a photograph;
- The sexual predator's current permanent, temporary, and transient addresses, and descriptions of registered locations that have no specific street address, including the name of the county or municipality if known;
- The circumstances of the sexual predator's offense or offenses; and
- Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

Additionally, child care facilities are among the protected real property in s.775.215, F.S., for which certain residency restrictions apply for persons convicted of certain sex offenses. A person convicted of a violation of ss. 794.011,¹⁴ 800.04,¹⁵ 827.071,¹⁶ 847.0135(5),¹⁷ or 847.0145¹⁸ regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park or playground.¹⁹ Further, a person convicted of any of these offenses in another jurisdiction, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, park or playground.²⁰ A person does not violate subsection (2)(a) or (3)(a) if he or she is living in a residence that meets the stator requirements and a school, child care facility, park or playground is subsequently established within 1000 feet of his or her residence.

Section 893.13(1)(c), F.S., provides that, except as authorized by ch. 893, F.S., a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility, or public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. This section specifies certain penalties for a person who violates this paragraph with respect to:

- A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c) 5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302.
- A controlled substance named or described in s. 893.03(1)(c), (2)(c) 1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

¹⁴ Sexual battery.

¹⁵ Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.

¹⁶ Sexual performance by a child.

¹⁷ Computer pornography, prohibited computer transmissions.

¹⁸ Selling or buying of minors.

¹⁹ Section 775.215(2)(a), F.S.

²⁰ Section 775.215(3)(a), F.S.

- Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

Section 893.13(1)(c), F.S., sets for an exception – providing that its provisions do not apply to a child care facility unless the owner or operator of the facility posts a sign, not less than 2 square feet in size, with a word legend identifying the facility as a licensed child care facility and that is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public.

Additional Exemptions

In 1974 and in 1987, the Legislature created additional exceptions to the stated intent to protect the health, safety, and well-being of the children by allowing specified entities to care for children without meeting state licensure standards. Child care facilities that are an integral part of church or parochial schools and meet specified criteria are exempt from licensing standards but must conduct background screening of their personnel. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.²¹

The Child and Adult Care Food Program

The Child and Adult Care Food Program (the CCFP²²) is a federal program that provides reimbursement aid for nutritious food served in child care centers, afterschool programs, emergency shelters, and adult or child day care programs.²³ The CCFP typically involves four levels of participants: federal, state, the sponsors and the providers. The United States Department of Agriculture funds the CCFP and a federal-state agreement governs the program. Each state designates an agency to administer the federal program. Sponsors are public or nonprofit organizations that, with state approval, disburse federal money to providers for the food they serve.²⁴

Sponsors enter into contracts with the state agency administering the CCFP and perform the oversight and administrative assistance functions otherwise performed by the state agency. In return for their work, a sponsoring organization may take up to 15 percent of the claimed meal reimbursements for the sponsored centers as an administrative fee.²⁵ The providers are the child and adult day care centers, shelters, and afterschool programs that actually serve the meals. Providers may elect not to work with a sponsor and apply directly to the state agency administering the program.

The At-Risk Afterschool Meals program (ARM) is a component of the CCFP which offers funding to qualifying afterschool programs that serve meals and snacks to children in low-

²¹ Section 402.316, F.S.

²² This program commonly referred to as the CACFP, however, in Florida, it is referred to as the Child Care Food Program or CCFP. Thus, for purposes of this analysis the designation of CCFP is used. See Section 383.011(1)(i), F.S.

²³ 42 U.S.C. § 1751 et seq.

²⁴ 7 C.F.R. §§ 226.1, 226.6(b)(4); See 42 U.S.C. § 1766(f), 42 U.S.C. § 1766(a)(2)(B) and (C).

²⁵ 7 CFR § 226.16(b)(1).

income areas. To be eligible to operate the ARM component of CCFP, the afterschool program must:

- Be organized primarily to provide care for children after school or on the weekends, holidays, or school vacations during the regular school year.
- Provide organized regularly scheduled education or enrichment activities (i.e., in a structured and supervised environment).
- Be located in an attendance area of school an attendance area of school where at least 50 percent or more of the children are eligible for free or reduced price meals.²⁶

Eligible organization must be operated by one of the following:

- Public agencies such as schools or city governments;
- Tax-exempt nonprofit organizations;
- For-profit centers that meet additional requirements²⁷;
- Are currently participating in another Federal program requiring nonprofit status.²⁸

An afterschool program that meets the above requirements must also be licensed or approved by the relevant state or local agency to provide child care services in order to receive CCFP benefits.²⁹ However, where federal, state, or local licensing or approval is not required for the institution, it must meet state or local health and safety standards.³⁰ Thus, where an institution is exempt or meets an exception to the licensure requirement, it may receive funds from CCFP if it meets state or local health and safety standards.

The Department of Health, Bureau of Child Nutrition Programs (DOH) is the agency responsible for administering the CCFP in Florida. It must approve new applications, disburse reimbursement, and review and audit sponsors or providers eligible for assistance through the program.³¹ Currently, there are seven approved sponsoring organization contracting with DOH and participating in CCFP.³²

To participate in Florida's ARM, DOH requires that institution to obtain (i) a child care license from the DCF or local licensing agency; (ii) a letter from DCF or the local licensing agency stating that licensure is not required; or (iii) a Religious-Exempt Accreditation Certificate.³³

²⁶ 7 CFR § 226.2; 7 CFR § 226.17(a) and (b).

²⁷ See 7 CFR 226.2.

²⁸ See 7 CFR § 226.17.

²⁹ 42 USC § 1766 (5).

³⁰ 42 USC § 1766(5)(C).

³¹ See 7 C.F.R. § § 226.4-8; Section 383.011, F.S.

³² See *Becoming a Child Care Food Program Provider*, Contact List of Approved Sponsoring Organizations, <http://www.floridahealth.gov/programs-and-services/childrens-health/child-care-food-program/prospective-contractor.html> (last visited January 28, 2020). The current sponsors are: (i) Family Central, Inc.; (ii) Highland Food Resources, Inc.; (iii) Cornerstone Family Ministries; (iv) Child Care Of Southwest Fl., Inc.; (v) Childhood Development Services, Inc.; (vi) Com. Coord. Care For Children; and (vii) The House Next Door. In June 2019, the for executive director

³³ Section 402.302, F.S.; See Afterschool Meals Program, <http://www.floridahealth.gov/programs-and-services/childrens-health/child-care-food-program/AfterSchool%20Meal%20Program/documents/amp-fact-sheet.pdf> (last visited January 26, 2020).

In Florida, many parks and recreation departments operated by local governments offer “government-operated after-school recreation programs.”³⁴ Frequently, these programs are subject to duplicative regulation at the state and local level – such as Level 2 Background Screenings that may be required by a local government as well as by DCF as a condition to licensure. Such costly and burdensome regulation impedes government operated afterschool programs from participating in ARM and receiving CCFP funds.

III. Effect of Proposed Changes:

Section 1 amends s. 402.302, F.S., related to child care facilities, by adding definitions for “government-sponsored recreation programs,” “summer day camp,” and “summer 24-hour camp.” Summer day camp and summer 24-hour camp are defined as having the same meaning as provided in s. 409.175, F.S.

The bill defines a government-sponsored recreation program as a recreation program for school-age children that:

- offers no more than 4 hours of programming per day, however the program may extend its operating hours in order to provide services before school and on teacher planning days, holidays, and breaks that occur during the school year;
- is operated by a county, municipality, or school district that has adopted standards of care by ordinance for the program, which include, but are not limited to, staffing ratios, minimum staff qualifications, level 2 background screening, including a check of the child abuse and neglect and sexual predator registries, for all staff and volunteers, and minimum facility, health, and safety standards;
- has been certified by the county, municipality, or school district for compliance with such standards of care;
- provides notice to the parents of all participating children that the program is not state-licensed or advertised as a child care facility and provides them with the county’s, municipality’s, or school district’s standards of care; and
- Does not receive funding through the federal Child Care Development Block Grant of 2014, cannot contract to provide a school readiness program, and cannot have a Gold Seal Quality Care designation.

The bill, by excluding government-sponsored recreation programs from the definition of child care facility, will eliminate duplicative regulations and costly licensing requirements, thereby allowing such programs to more easily participate in ARM and access CCFP funding.

Section 2 creates 402.3132, F.S., to establish minimum requirements and enforcement of regulations over summer day camps and summer 24-hour camps. The bill specifies that these entities must comply with the screening³⁵ requirements of ss. 402.305 and 402.3055, F.S., and

³⁴ This term is defined by s. 119.071, F.S., to mean “a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs.”

³⁵ The term “screening” is defined in s. 402.302(15), F.S., to mean the act of assessing the background of child care personnel, in accordance with state and federal law, and volunteers and includes, but is not limited to: (a) Employment history checks, including documented attempts to contact each employer that employed the applicant within the preceding 5

meet minimum health, sanitation and safety requirements. The bill provides that a summer day camp or summer 24 hour camp that fails to comply with the screening requirements will lose the ability to operate.

DCF or a local licensing agency is permitted to commence and maintain all actions necessary for the purpose of:

- Protecting the health, sanitation, safety, and well-being of all children under care;
- Enforcing its rules and regulations;
- Making application for injunction; and
- Imposing an administrative fine, not to exceed \$100 per violation, per day, for each violation of the screening of child care personnel provisions pursuant to ss. 402.305 – 402.3055.

The bill requires all summer day camps and summer 24-hour camps are required to register with the DCF and be included in the DCF's summer camp listing.

Section 3 amends s. 775.21, F.S., of the Florida Sexual Predators Act to define “government-sponsored recreation program” and include it as an entity whom must receive notification of the presence of a sexual predator.

Section 4 amends s. 775.215, F.S., to include a government-sponsored recreation program within the residency restrictions applying to persons convicted of sex offenses.

Section 5 amends s. 893.13, F.S.(1), to include the property of a government-sponsored recreation program among the listing of real property where the sale, manufacture, or delivery of a controlled substance in, on or within 1,000 feet of said property is prohibited and within the penalty provisions. The also bill includes the property of a government-sponsored recreation program within the exception found in s. 893.12(1)(c), F.S. Thus, for the penalty provisions to apply, the owner or operator of the government-recreation program must post a sign, not less than 2 square feet in size, with word legend identifying it as a government-sponsored recreation program, on its property in a conspicuous place where the sign is reasonably visible to the public.

Section 6 amends s. 39.201, F.S., relating to mandatory reports of child abuse, to correct a cross-reference.

Section 7 amends s. 402.305, F.S., relating to licensing standards of child care facilities, to correct a cross-reference.

Section 8 amends s. 1002.82, F.S., relating to powers and duties of the Office of Early Learning, to correct a cross-reference.

Section 9 provides an effective date of July 1, 2020.

years and documentation of the findings. (b) A search of the criminal history records, sexual predator and sexual offender registry, and child abuse and neglect registry of any state in which the applicant resided during the preceding 5 years.

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:

The bill will have an indeterminate positive impact on those entities that qualify to be sponsors under the CCFP. Additionally, privately operated summer day camps and summer 24-hour camps may incur additional costs to comply with the screening requirements and to register with the DCF to be included in its summer camp listing.

C. Government Sector Impact:

The Florida Department of Law Enforcement may see an increased workload through requiring level 2 background screenings for employees of government-sponsored recreation programs, to the extent such screenings are not already required. FDLE, however, is authorized to collect a fee to pay for such screenings. Additionally, local governments will experience an indeterminate positive impact in being able to more easily access CCFP funds. The DCF or local licensing agencies may experience a slightly negative fiscal impact in enforcing the rules and regulations as to summer day camps and 24-hour camps established under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 402.302, 402.316, 39.201, 402.305, and 1002.82 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/CS by Governmental Oversight and Accountability on February 3, 2020:

- Includes government-sponsored programs among the protections afforded similar child care entities under ss. 775.21 and 775.215, F.S., relating to sexual predators, and s. 893.13, F.S., regarding the sale of drugs within a certain distance of specific types of buildings.
- Defines terms “summer day camp” and “summer 24-hour camp” and creates s. 402.3132, F.S. establishing minimum requirements and enforcement of rules and regulations related to summer day camps and summer 24 hour camps.

CS by Children, Families and Elder Affairs on December 10, 2019:

- Adds school districts to the list of governmental bodies which can oversee a government-sponsored recreation program.
- Removes the exemption from licensure as child-care facilities for government-sponsored recreation programs.

B. Amendments:

None.



341376

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 94 and 95
insert:

Section 2. Paragraph (a) of subsection (7) and paragraph
(b) of subsection (10) of section 775.21, Florida Statutes, are
amended, and paragraph (q) is added to subsection (2) of said
section, to read:

775.21 The Florida Sexual Predators Act.—

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

(q) "Government-sponsored recreation program" has the same
meaning as provided in s. 402.302.

(7) COMMUNITY AND PUBLIC NOTIFICATION.—

(a) Law enforcement agencies must inform members of the
community and the public of a sexual predator's presence. Upon
notification of the presence of a sexual predator, the sheriff
of the county or the chief of police of the municipality where
the sexual predator establishes or maintains a permanent or



341376

temporary residence shall notify members of the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides shall notify each licensed child care facility, government-sponsored recreation program, elementary school, middle school, and high school within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. Information provided to members of the community and the public regarding a sexual predator must include:

1. The name of the sexual predator;
2. A description of the sexual predator, including a photograph;
3. The sexual predator's current permanent, temporary, and transient addresses, and descriptions of registered locations that have no specific street address, including the name of the county or municipality if known;
4. The circumstances of the sexual predator's offense or offenses; and
5. Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

This paragraph does not authorize the release of the name of any victim of the sexual predator.

(10) PENALTIES.—

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where



341376

the victim is a minor; s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any business, school, child care facility, government-sponsored recreation program, park, playground, or other place where children regularly congregate, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 775.215, Florida Statutes, are amended, and paragraph (e) is added to subsection (1) of said section, to read:

775.215 Residency restriction for persons convicted of certain sex offenses.—

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

(e) "Government-sponsored recreation program" has the same meanings as provided in s. 402.302.

(2) (a) A person who has been convicted of a violation of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, government-sponsored recreation program, park, or playground.

However, a person does not violate this subsection and may not be forced to relocate if he or she is living in a residence that meets the requirements of this subsection and a school, child care facility, government-sponsored recreation program, park, or playground is subsequently established within 1,000 feet of his or her residence.



341376

(3) (a) A person who has been convicted of an offense in another jurisdiction that is similar to a violation of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, may not reside within 1,000 feet of any school, child care facility, government-sponsored recreation program, park, or playground.

However, a person does not violate this subsection and may not be forced to relocate if he or she is living in a residence that meets the requirements of this subsection and a school, child care facility, government-sponsored recreation program, park, or playground is subsequently established within 1,000 feet of his or her residence.

Section 4. Paragraph (c) of subsection (1) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(1)

(c) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302, a government-sponsored recreation program facility as defined in s. 402.302, or a public or private elementary, middle, or secondary school between the hours of 6 a.m. and 12 midnight, or at any time in, on, or within 1,000 feet of real property comprising a state, county, or municipal park, a community center, or a publicly owned recreational facility. As used in this paragraph, the term "community center" means a facility operated by a nonprofit community-based organization for the provision of recreational, social, or educational services to the public. A person who violates this paragraph with respect to:



341376

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The defendant must be sentenced to a minimum term of imprisonment of 3 calendar years unless the offense was committed within 1,000 feet of the real property comprising a child care facility as defined in s. 402.302 or a government-sponsored recreation program facility as defined in s. 402.302.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

This paragraph does not apply to a child care facility or a government-sponsored recreation program facility as defined in s. 402.302 unless the owner or operator of the facility posts a sign that is not less than 2 square feet in size with a word legend identifying the facility as a licensed child care facility or a government-sponsored recreation program facility as defined in s. 402.302 and that is posted on the property of the child care facility or a government-sponsored recreation program facility as defined in s. 402.302 in a conspicuous place where the sign is reasonably visible to the public.



341376

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

And the title is amended as follows:

Delete line 7

and insert:

program"; amending s. 775.21, F.S.; defining the term
"government-sponsored recreation program"; including
government-sponsored recreation programs in the
notification and penalty provisions of the Florida
Sexual Predators Act; amending s. 775.215, F.S.;
defining the term "government-sponsored recreation
program"; including a government-sponsored recreation
program facility among the residency restrictions for
persons convicted of certain sex offenses; amending s.
893.13, F.S.; including a government-sponsored
recreation program facility among the locations
regarding prohibited acts for which it is unlawful to
sell, manufacture, or deliver, or possess with the
intent to sell, manufacture, or deliver a controlled
substance, and including government-sponsored
recreation program facilities in the statutory
exception, requiring such facilities to post a sign
reasonably visible to the public indicating it as a
government-sponsored recreation program facility;
amending ss. 39.201, 402.305 and



677346

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Between lines 94 and 95
insert:

(20) "Summer day camp" has the same meaning as provided in
s. 409.175.

(21) "Summer 24-hour camp" has the same meaning as provided
in s. 409.175.

Section 2. Section 402.3132, Florida Statutes, is created
to read:



677346

402.3132 Summer day camp and summer 24-hour camp.—

(1) The provisions of ss. 402.301-402.319, except for the requirements regarding screening of child care personnel, shall not apply to a summer day camp or summer 24-hour camp. However, a summer day camp or summer 24-hour camp shall meet minimum requirements, if applicable of the local governing body as to health, sanitation, and safety and shall meet the screening requirements pursuant to ss. 402.305 and 402.3055. Failure by a summer day camp or summer 24-hour camp to comply with such screening requirements shall result in the loss of the summer day camp's or summer 24-hour camp's ability to operate.

(2) The department or local licensing agency may commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:

(a) To protect the health, sanitation, safety, and well-being of all children under care.

(b) To enforce its rules and regulations.

(c) To make application for injunction to the proper circuit court, and the judge of that court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any person or entity from violating or continuing to violate any of the screening of child care personnel provisions of ss. 402.305-402.3055.

(d) To impose an administrative fine, not to exceed \$100 per violation, per day, for each violation of the screening of child care personnel provisions pursuant to ss. 402.305-402.3055.

(3) All summer camps or 24-hour summer camps must register



677346

with the department and be included in the department's summer
camp listing in order to be recognized as meeting the provisions
of this section.

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

And the directory clause is amended as follows:

Delete lines 13 - 17

and insert:

Section 1. Present subsections (9) through (18) of section
402.302, Florida Statutes, are redesignated as subsections (10)
through (19), respectively, new subsections (9), (20), and (21)
are added to that section, and subsection (2) of that section is
amended, to read:

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

And the title is amended as follows:

Delete lines 2 - 9

and insert:

An act relating to government-sponsored recreation
programs and registration of summer camps and
overnight summer camps; amending 402.302, F.S.;
revising the definition of the term "child care
facility" to exclude government-sponsored recreation
programs; defining the terms "government-sponsored
recreation program", "summer day camp", and "summer
24-hour camp"; creating s. 402.3132, F.S.;
establishing minimum requirements and enforcement of
rules and regulations related to summer day camps and
summer 24-hour camps; amending ss. 39.201, 402.305,



677346

69 and 1002.82, F.S.; conforming cross references;
70 providing and effective date.

By the Committee on Children, Families, and Elder Affairs; and
Senator Book

586-02041-20

2020668c1

A bill to be entitled
An act relating to government-sponsored recreation
programs; amending s. 402.302, F.S.; revising the
definition of the term "child care facility" to
exclude government-sponsored recreation programs;
defining the term "government-sponsored recreation
program"; amending ss. 39.201, 402.305, and
1002.82, F.S.; conforming cross-references; providing
an effective date.

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

Section 1. Present subsections (9) through (18) of section
402.302, Florida Statutes, are redesignated as subsections (10)
through (19), respectively, a new subsection (9) is added to
that section, and subsection (2) of that section is amended, to
read:

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

(2) "Child care facility" includes any child care center or
child care arrangement that ~~which~~ provides child care for more
than five children unrelated to the operator and which receives
a payment, fee, or grant for any of the children receiving care,
wherever operated, and whether or not operated for profit. The
following are not included:

(a) Public schools and nonpublic schools and their integral
programs, except as provided in s. 402.3025;

(b) Summer camps having children in full-time residence;

(c) Summer day camps;

(d) Bible schools normally conducted during vacation

586-02041-20

2020668c1

30 periods; ~~and~~

31 (e) Operators of transient establishments, as defined in
32 chapter 509, which provide child care services solely for the
33 guests of their establishment or resort, provided that all child
34 care personnel of the establishment are screened according to
35 the level 2 screening requirements of chapter 435; and

36 (f) Government-sponsored recreation programs.

37 (9) "Government-sponsored recreation program" means an
38 after-school recreation program for school-age children which has
39 organized, regularly scheduled activities, including educational
40 or enrichment activities, and which meets all of the following
41 requirements:

42 (a) Offers not more than 4 hours of programming per day.
43 However, the program may extend its hours in order to provide
44 services before school and on teacher planning days, holidays,
45 and intercessions that occur during the school district's
46 official calendar year.

47 (b) Is operated by a county, a municipality, or a school
48 district that has adopted by ordinance or policy standards of
49 care for the program which include, but are not limited to:

50 1. Meeting minimum staff-to-children ratios in accordance
51 with s. 402.305(4) and rules adopted by the department
52 thereunder;

53 2. Ensuring that all personnel meet the requirements of
54 this section and ss. 402.305 and 402.3055;

55 3. Meeting minimum facility, health, and safety standards,
56 including annual fire inspections conducted by the city or
57 county Fire Marshal;

58 4. Ensuring annual health inspections are conducted by the

586-02041-20

2020668c1

Department of Health;

5. Conducting regular inspection, cleaning, repair, and maintenance of buildings, grounds, and equipment;

6. Ensuring at least one staff person trained in cardiopulmonary resuscitation is present at all times when children are present;

7. Setting standards related to the provision of food;

8. Training program employees regarding working with school-age children;

9. Engaging in activities designed to address the ages, interests, and abilities of participants;

10. Carrying out annual inspections of vehicles transporting children;

11. Enforcing regulations related to the number of children in vehicles in accordance with vehicle capacity and searching vehicles after use to ensure no children are left in the vehicle;

12. Ensuring custodial parents or guardians have reasonable access to children while the children are in care; and

13. Developing age-appropriate policies relating to child discipline practices and making such policies available to parents or guardians at the time of registration.

(c) Has been certified by the county, municipality, or school district as compliant with such standards of care and provides annual attestation to the department of compliance with such standards of care.

(d) Provides notice to the parent or guardian of each child participating in the program that the program is not state-licensed or advertised as a child care facility and provides the

586-02041-20

2020668c1

parent or guardian with the county's, municipality's, or school district's standards of care.

(e) Does not receive funding through the Child Care Development Block Grant of 2014, does not contract to provide a school readiness program pursuant to s. 1002.88, and does not have a Gold Seal Quality Care designation pursuant to s. 402.281.

Section 2. Subsection (6) of section 39.201, Florida Statutes, is amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h) or s. 402.302(16) ~~s. 402.302(15)~~. Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176. Pursuant to s. 39.202(2)(q), the information in the central abuse hotline may also be used by the Department of Education for purposes of educator certification discipline and review.

Section 3. Paragraph (a) of subsection (2) of section 402.305, Florida Statutes, is amended to read:

402.305 Licensing standards; child care facilities.—

(2) PERSONNEL.—Minimum standards for child care personnel shall include minimum requirements as to:

(a) Good moral character based upon screening as defined in

586-02041-20

2020668c1

117 s. 402.302(16) ~~s. 402.302(15)~~. This screening shall be conducted
118 as provided in chapter 435, using the level 2 standards for
119 screening set forth in that chapter, and include employment
120 history checks, and a search of criminal history records, sexual
121 predator and sexual offender registries, and child abuse and
122 neglect registries ~~registry~~ of any state in which the current or
123 prospective child care personnel resided during the preceding 5
124 years.

125 Section 4. Paragraph (y) of subsection (2) of section
126 1002.82, Florida Statutes, is amended to read:

127 1002.82 Office of Early Learning; powers and duties.—

128 (2) The office shall:

129 (y) Establish staff-to-children ratios that do not exceed
130 the requirements of s. 402.302(8) or (12) ~~s. 402.302(8) or (11)~~
131 or s. 402.305(4), as applicable, for school readiness program
132 providers.

133 Section 5. This act shall take effect July 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human
Services
Health Policy
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR LAUREN BOOK

32nd District

December 11, 2019

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

Chair Hooper:

I respectfully request that **SB 668—Government -sponsored Recreation Programs** be placed on the agenda for the next Committee on Governmental Oversight and Accountability meeting.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book
Senate District 32

Cc: Joe McVaney, Staff Director
Tamra Redig, Administrative Assistant

REPLY TO:

- ☐ 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- ☐ 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/20
Meeting Date

SB 668

Bill Number (if applicable)

677346

Amendment Barcode (if applicable)

Topic AFTERSCHOOL / SUMMER LEARNING PROG

Name BRIAN HICKEY

Job Title DIRECTOR FL AFTERSCHOOL NETWORK

Address 1126 LEE AVE
Street

Phone 850 577 3199 ext 102

TALLAHASSEE
City

FL
State

32303
Zip

Email bhickey@floridacsc.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL AFTERSCHOOL NETWORK

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/3/2020
Meeting Date

5B668
Bill Number (if applicable)

Topic FEEDING CHILDREN IN STATE PARKS & REC.

Amendment Barcode (if applicable)

Name REV. ROBERT GIBBS

Job Title _____

Address 6340 DUCK CALL CT
Street

Phone 863-712-1464

TALLHASSEE FL 32309
City State Zip

Email bobg3849@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA. IMPACT FOR HUNGER

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 RECORD2-30-2020

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

Meeting Date

668

Bill Number (if applicable)

Topic Gov't Sponsored PARKS & Rec.

Amendment Barcode (if applicable)

Name BETH LABASKYJob Title consultantAddress 1400 Village Square Blvd.

Street

Phone 850 322 7335Ste 316 Tallahassee Fla

City

State

32312

Zip

Email bethlabasky@aol.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing FLORIDA IMPACT TO END HUNGERAppearing 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)

2/3/20

Meeting Date

668

Bill Number (if applicable)

Topic Gov't sponsored Parks + Rec

Amendment Barcode (if applicable)

Name Katie Williams

Job Title COO

Address 300 W. Pensacola St.

Phone 850-309-1488

Street

TCH

FL

32301

City

State

Zip

Email kwilliams@flimpact.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Impact to End Hunger

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

02/03/2020

Meeting Date

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

SB 6068

Bill Number (if applicable)

Topic Gov't Sponsored Parks & Rec

Amendment Barcode (if applicable)

Name Kelli Greene

Job Title Administrative Coordinator

Address 300 W. Pensacola St.

Phone 850 309 1488

Street

Tallahassee

City

FL

State

32301

Zip

Email kgreene@flimpact.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Impact to End Hunger

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)

Feb. 3, 2020

Meeting Date

668

Bill Number (if applicable)

Topic Government Sponsored Rec. Programs

Amendment Barcode (if applicable)

Name Kyle Shephard

Job Title Dir. of Intergovernmental Relations

Address 400 S. Orange Ave.

Phone 407 579 5952

Street

Orlando

FL

32801

Email kyle.shephard@orlando.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Orlando

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 716

INTRODUCER: Senator Mayfield

SUBJECT: County Boundaries

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 716 alters the boundary lines of Indian River County and St. Lucie County. These alterations will move a 0.65 acre parcel from St. Lucie County to Indian River County and transfer 5.56 acres of land from Indian River County to St. Lucie County.

The bill shift revenues and expenditures between Indian River County and St. Lucie County and the respective school districts. The bill has no impact on state revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

History of Counties in Florida

While the provisional government and territorial councils provided for county forms of government in Florida, counties did not receive constitutional status until 1861. The Constitution of 1885 first recognized counties as legal subdivisions of the state. In addition, the Legislature was granted the power to create new counties and alter county boundaries.¹ Gilchrist County was created in 1925 as the last of Florida's current 67 counties.²

¹ State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *2018 - 2020 Local Government Formation Manual*, available at <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Jan. 21 2020).

² Chapter 11371, Laws of Fla. (1925).

The revised State Constitution of 1968 amended the provision in the 1885 Constitution relating to county formation. Section 1(a), Art. VIII of the State Constitution of 1968, states:

The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment and apportionment of the public debt.

Chapter 7, F.S., provides the boundary lines for Florida's 67 counties. Chapter 125, F.S., outlines the powers and duties of counties.

Changes in County Boundaries³

Adjusting the legal descriptions of one or more counties requires an amendment to general law. The Legislature has passed several acts changing existing county boundaries by amending the appropriate section of ch. 7, F.S. A bill seeking to change county boundaries should include an accurate legal description of the affected real property. Proper description of the subject area enables effective notice to those whose interests are affected substantially by the proposed governmental change.

County boundary changes of the past 35 years include those involving:

- Franklin and Wakulla counties in 1986,⁴
- Escambia and Santa Rosa counties in 1991,⁵
- Citrus and Levy counties in 1994,⁶
- Broward and Palm Beach counties in 2007,⁷ and
- St. Lucie County and Martin counties in 2012.⁸

Highway A1A Boundary Line for Indian River County and St. Lucie County⁹

Property located at 2498 S. Highway A1A is partially located in both Indian River County and St. Lucie County. In 1991, the counties entered into an agreement regarding the construction of a home at the address. The agreement addressed issues pertaining to the development of the property, including permitting, impact fees and concurrency. The agreement, however, did not address issues relating to the provision of services to the property. In 2019, the property's owner contacted both counties regarding the enactment of a boundary change, which would allow the entire property to be located in Indian River County.

County staff from both Indian River and St. Lucie met and came to an equitable boundary change to accommodate the request. The boundary change would result in moving 0.65 acres

³ See *supra* note 1.

⁴ Chapter 86-288, Laws of Fla.

⁵ Chapter 91-310, Laws of Fla.

⁶ Chapter 94-313, Laws of Fla.

⁷ Chapter 2007-222, Laws of Fla.

⁸ Chapter 2012-45, Laws of Fla.

⁹ See Indian River County Administrator, *Resolution Requesting the Legislature Enact a General Bill Amending Boundary Line between Indian River County and St. Lucie County* (Oct. 9, 2019) and County Attorney, St. Lucie County, *County Commission Agenda Request on Resolution No. 19-196* (Sep. 11, 2019) (both on file with the Senate Committee on Community Affairs).

from St. Lucie County to Indian River County and transfer 5.56 acres of land from Indian River County to St. Lucie County. Owners of the affected parcels indicated their support for the boundary change and each county passed a resolution requesting the Florida Legislature to enact a bill altering the legal descriptions of both counties.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 7.31, F.S., to alter the boundary lines of Indian River County and s. 7.59, F.S., to alter the boundary lines of St. Lucie County. These alterations will move a 0.65 acre parcel from St. Lucie County to Indian River County and transfer 5.56 acres of land from Indian River County to St. Lucie County. Similarly, the Indian River County School District and the St. Lucie County School District will experience similar impacts.¹¹

The bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

¹⁰ St. Lucie County Resolution No. 19-196 (Oct. 1, 2019) and Indian River County Resolution No. 2019-092 (Oct. 15, 2019) (both on file the Senate Committee on Community Affairs).

¹¹ FLA. CONST. Art. IX, s. 4, provides that each county constitutes a school district.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Indian River County Administrator's Office, the boundary change will have minimal fiscal impact on Indian River County.¹² Information from the County Attorney Office in St. Lucie County indicates that the boundary change will result in a small reduction in ad valorem taxes collected in St. Lucie County.¹³ Similar impacts may be expected for the Indian River County School District and the St. Lucie County School District.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 7.31 and 7.59.

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.

¹² Indian River County Administrator, *Resolution Requesting the Legislature Enact a General Bill Amending Boundary Line between Indian River County and St. Lucie County* (Oct. 9, 2019) (on file with the Senate Committee on Community Affairs).

¹³ County Attorney, St. Lucie County, *County Commission Agenda Request on Resolution No. 19-196* (Sep. 11, 2019) (on file with the Senate Committee on Community Affairs).

By Senator Mayfield

17-00952-20

2020716__

A bill to be entitled
An act relating to county boundaries; amending ss.
7.31 and 7.59, F.S.; revising county boundaries;
providing an effective date.

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

Section 1. Section 7.31, Florida Statutes, is amended to
read:

7.31 Indian River County.—The boundary lines of Indian
River County are as follows: Beginning at the northwest corner
of township thirty-one south, of range thirty-five east; thence
east on the line dividing the townships thirty and thirty-one
south, to the point where said line intersects the thread of the
south fork of the St. Sebastian River; thence northerly down the
thread of said stream to the main stream of the St. Sebastian
River; thence down the thread of the St. Sebastian River to its
confluence with the Indian River; thence east to the
intersection with the southwesterly extension of the centerline
of the approach channel to the Sebastian Inlet from the Indian
River; thence northeasterly along said centerline and continue
northeasterly and easterly along the centerline of the Sebastian
Inlet to the Atlantic Ocean; thence southward along the Atlantic
coast, including the waters of the Atlantic Ocean within the
jurisdiction of the State of Florida to the intersection of said
Atlantic coast and a line lying 45.22 feet south of, as measured
at right angles to, the township line dividing ~~between~~ townships
thirty-three and thirty-four south; thence west, parallel with,
and 45.22 feet south of said township line, to the west right-

17-00952-20

2020716__

of-way line of State Road A1A; thence northwesterly along said
right-of-way line to the intersection of said right-of-way line
and the north line of Lot 25, plat of Kansas City Colony, as
recorded in Plat Book 4, page 23, of the public records of St.
Lucie County, Florida. Said north line of Lot 25 lying 150 feet
north of, and parallel with, as measured at right angles to, the
township line dividing townships thirty-three and thirty-four
south; thence west along the north line of said Lot 25 to the
easterly mean high water line of Round Island Creek; thence
meandering southeasterly along said mean high water line to its
intersection with the township line dividing townships thirty-
three and thirty-four south; thence west on said township line
to range line dividing ranges thirty-five and thirty-six east;
thence north between ranges thirty-five and thirty-six east to
the northeast corner of section one, township thirty-three
south, range thirty-five east; thence west on township line
dividing townships thirty-two and thirty-three south, range
thirty-five east to the range line dividing ranges thirty-four
and thirty-five east; thence north on said range line to the
northwest corner of township thirty-one south, range thirty-five
east, being the place of beginning.

Section 2. Section 7.59, Florida Statutes, is amended to
read:

7.59 St. Lucie County.—The boundary lines of St. Lucie
County are as follows: Beginning on the eastern boundary of the
State of Florida at a point where the north section line of
section thirteen, township thirty-seven south, range forty-one
east, produced easterly, would intersect the same; thence
westerly on the north line of said section and other sections to

17-00952-20

2020716__

the northwest corner of section eighteen, township thirty-seven south, range forty-one east; thence south along the range line between ranges forty east and forty-one east which is concurrent with the St. Lucie County and Martin County boundary lines to the intersection with the north line of the south 508.15 feet of the northeast quarter of section twenty-four, township thirty-seven south, range forty east; thence west along the south 508.15-foot line of the northeast quarter of section twenty-four, township thirty-seven south, range forty east and concurrent with the municipal boundary line of the City of Port St. Lucie to the intersection of the east 924.15-foot line of section twenty-four, township thirty-seven south, range forty east; thence south along the east 924.15-foot line of section twenty-four, township thirty-seven south, range forty east and continuing along the municipal boundary line of the City of Port St. Lucie, to the intersection of the south line of the northeast quarter of section twenty-four, township thirty-seven south, range forty east; thence west along the south line of the northeast quarter of section twenty-four, township thirty-seven south, range forty east to the intersection with the west edge of Howard Creek; thence southerly and along with the west edge of Howard Creek being concurrent with the municipal boundary line of the City of Port St. Lucie to the intersection of the north shore of the north fork of the St. Lucie River and the west edge of Howard Creek as concurrent with the City of Port St. Lucie municipal boundary; thence departing said north shore of the north fork of the St. Lucie River and the municipal boundary line of the City of Port St. Lucie, a bearing direction (State Plane Coordinate System, Florida East Zone) of south 45

17-00952-20

2020716__

88 degrees, 16 minutes west, 2,355 feet more or less, to a point
89 within the body of water of the north fork of the St. Lucie
90 River; thence departing said point a bearing direction (State
91 Plane Coordinate System, Florida East Zone) of south 41 degrees,
92 4 minutes east, 6,155 feet more or less to a point located in
93 the body of the north fork of the St. Lucie River which
94 intersects with the west line of section thirty, township
95 thirty-seven south, range forty-one east; thence south 6,459
96 feet along the west line of sections thirty and thirty-one,
97 township thirty-seven south, range forty-one east, to the
98 intersection with the township line between townships thirty-
99 seven and thirty-eight south; also being the southwest corner of
100 section thirty-one, township thirty-seven, range forty-one east;
101 thence west on the said township line to the range line dividing
102 ranges thirty-six and thirty-seven east; thence north on said
103 range line, concurrent with the east boundary of Okeechobee
104 County, to the northwest corner of township thirty-four south,
105 range thirty-seven east; thence east on the township line
106 dividing townships thirty-three and thirty-four south to a point
107 of intersection with the easterly mean high water line of Round
108 Island Creek; thence meandering northwesterly along said mean
109 high water line to its intersection with the north line of Lot
110 25, plat of Kansas City Colony, as recorded in Plat Book 4, page
111 23, of the public records of St. Lucie County, Florida. Said
112 north line of Lot 25 lying 150 feet north of, and parallel with,
113 as measured at right angles to, the township line dividing
114 townships thirty-three and thirty-four south; thence east along
115 the north line of said Lot 25 to the west right-of-way line of
116 State Road A1A; thence southeasterly along said right-of-way

17-00952-20

2020716__

117 line to the intersection of said west right-of-way line and a
118 line lying 45.22 feet south of, as measured at right angles to,
119 the township line dividing townships thirty-three and thirty-
120 four south; thence east along said line lying 45.22 feet south
121 of, and parallel with the line dividing townships thirty-three
122 and thirty-four south, to the Atlantic Ocean; thence continuing
123 easterly to the eastern boundary of the State of Florida; thence
124 southerly along said east boundary, including the waters of the
125 Atlantic Ocean within the jurisdiction of the State of Florida,
126 to the place of beginning.

127 Section 3. 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)

2.3.2020

Meeting Date

SB 716

Bill Number (if applicable)

Topic County Boundaries

Amendment Barcode (if applicable)

Name Ken Privitt

Job Title _____

Address 113 E. College Ave
Street

Phone 772-971-5760

Tallahassee FL 32301
City State Zip

Email Ken@thePSgroup.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/20
Meeting Date

716
Bill Number (if applicable)

Topic County Boundary

Amendment Barcode (if applicable)

Name Nicole Fogarty

Job Title Leg. Affairs Director

Address 2300 Virginia Ave

Phone _____

Street

Ft. Pierce FL 34982

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing St. Lucie 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.

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 786

INTRODUCER: Senator Gainer

SUBJECT: Public Records/Aquaculture Records/Department of Agriculture and Consumer Services

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	Favorable
2.	Hackett	McVaney	GO	Favorable
3.			RC	

I. Summary:

SB 786 exempts from public inspection and copying requirements certain aquaculture records held by the Department of Agriculture and Consumer Service. The exempt records include receiving logs, production volume records, inventories, and receipts and invoices related to a business's aquaculture facilities. This exemption applies to aquaculture records held before, on, or after July 1, 2020.

This exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption and expands other public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 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

¹ FLA. CONST. art. I, s. 24(a).

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 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

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).

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).

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

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

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.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- 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

Aquaculture Records Held by the Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) is Florida's lead aquaculture agency. It coordinates and assists in the development of aquaculture and regulates aquafarms to protect and conserve Florida's natural resources. There are an estimated 1,500 species or varieties of fish, plants, mollusks, crustaceans, and reptiles grown in the state.²⁷

Currently, aquaculture producers are required to provide the department with receiving logs, production volume records, inventories, and receipts and invoices related to their aquaculture facilities to ensure compliance with the terms and conditions of sovereign submerged land lease agreements and aquaculture best management practices. These records include information, such as quantity and price of seed stock purchased and harvest times which, if released, could be detrimental to their businesses. Information regarding products, harvest times, and locations make aquaculture businesses susceptible to theft, particularly with respect to sovereign submerged land leases in remote locations. Because these required records are public, potential aquaculture producers may make the decision not to operate in this state. This makes the

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 See <https://www.fdacs.gov/Divisions-Offices/Aquaculture> (Last visited January 3, 2020).

department's regulating and monitoring responsibilities more difficult and hinders its efforts to continue developing Florida's aquaculture industry.

The department has indicated that there is a significant precedent for the exemption of private sales and production information for agriculture and fisheries products. The aquaculture information which is proposed to become exempt under this bill was, in fact, exempt under s. 397.362(6), F.S., until 1998 when the Florida Game and Freshwater Fish Commission was reorganized, including its aquaculture regulatory authority. After the formation of the Florida Fish and Wildlife Conservation Commission (FWC), authority for the regulation of marine life was redistributed between the department, the FWC, and the Department of Environmental Protection. In 2000, records exemptions were limited to certain records held by the FWC, and records held by the department were not included. This change failed to address the role of the department in the regulation of marine aquaculture products. This resulted current law that exempts production data for commercial fisheries products from s. 119.007(1), but does not exempt aquaculture data.²⁸

III. Effect of Proposed Changes:

Section 1 creates s. 597.31, F.S., to provide a public records exemption for certain aquaculture records that are required by the department. The records would include receiving logs, production volume records, inventories, and receipts and invoices related to a business' aquaculture facilities. This exemption applies to aquaculture records held before, on, or after July 1, 2020.

This section is subject to the Act and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

Section 2 provides legislative intent that it is a public necessity to make a business' private aquaculture sales and production information for agriculture and fisheries products exempt from the states' public records laws. Because these records are currently public, aquaculture businesses may be deterred from working in this state. An exemption would also enable the department to ensure that the terms and conditions of sovereign submerged land lease agreements and aquaculture best management practices are in compliance.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

²⁸ See Department of Agriculture and Consumer Services, Bill Analysis for SB 786, p. 3 (November 18, 2019) (on file with the Senate Committee on Agriculture).

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the private sales and production information for aquaculture businesses, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

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 private aquaculture business information, to make facilities theft more difficult, and to enable the department to more efficiently monitor the industry. This bill exempts the following from the public records requirements:

- Shellfish receiving and production logs from a shellfish processing facility;
- Planting and harvesting amounts, vendor information, and supporting invoices and receipts that are reported to the department; and
- Aquaculture production volume, inventory records, and invoices or receipts generated by aquaculture facilities.

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:

Indeterminate. The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Indeterminate. The department will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 597.31 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Gainer

2-00856A-20

2020786__

A bill to be entitled
An act relating to public records; creating s. 597.31,
F.S.; providing a public records exemption for certain
aquaculture records held by the Department of
Agriculture and Consumer Services; providing
applicability; providing for future legislative review
and repeal under the Open Government Sunset Review
Act; providing a statement of public necessity;
providing an effective date.

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

Section 1. Section 597.31, Florida Statutes, is created to
read:

597.31 Public records exemptions; aquaculture records.—

(1) The following information held by the department is
exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution:

(a) Shellfish receiving and production logs generated by
shellfish processing facilities licensed pursuant to s. 597.020.

(b) Planting and harvesting amounts, vendor information,
and supporting invoices and receipts reported to the department
pursuant to submerged land leases issued in accordance with
chapter 253 or former chapter 370.

(c) Aquaculture production volume, inventory records, and
invoices or receipts generated by aquaculture facilities
certified pursuant to s. 597.004.

(2) The exemption from public records requirements under
subsection (1) applies to aquaculture records held before, on,

2-00856A-20

2020786__

or after July 1, 2020.

(3) This section is subject to the Open Government Sunset Review Act 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. The Legislature finds that it is a public necessity to make certain production information related to aquaculture businesses exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution to encourage producers to operate in this state and to protect aquaculture facilities and leases from theft. Producers are required to provide receiving logs, production volume records, inventories, and receipts and invoices related to aquaculture facilities to the Department of Agriculture and Consumer Services to ensure compliance with the terms and conditions of sovereign submerged land lease agreements and aquaculture best management practices. However, these records include information, such as quantity and price of seed stock purchased and harvest times which, if released, could be detrimental to individual businesses. Information regarding products, harvest times, and locations make aquaculture businesses susceptible to theft, particularly with respect to sovereign submerged land leases in remote locations. Because these records are public, aquaculture businesses may be deterred from working in this state and are less inclined to provide the required information to the department, making the department's monitoring responsibilities more difficult.

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)

2/3/2020
Meeting Date

786
Bill Number (if applicable)

Topic Public Records / Aquaculture

Amendment Barcode (if applicable)

Name Jim SPURTT

Job Title §

Address PO Box 10011
Street

Phone 850 228 1296

TC14 FL 32302
City State Zip

Email jim.e.magnolia@fla.aquaculture.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Aquaculture Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3

Meeting Date

SB 0786

Bill Number (if applicable)

Topic Public Records / Aquaculture

Amendment Barcode (if applicable)

Name Landon Hoffman

Job Title legislative Affairs

Address _____
Street

Phone 850 508 1236

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Farm Bureau

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)

02/03/2020

Meeting Date

786

Bill Number (if applicable)

Topic Public Records Aquaculture

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Legislative Affairs Director

Address 400 S. Monroe Street

Phone 8506177700

Street

Tallahassee

FL

32399

Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDACS

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/CS/SB 812

INTRODUCER: Governmental Oversight and Accountability Committee; Environment and Natural Resources Committee and Senator Hutson

SUBJECT: Public Records/Endangered and Threatened Species

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rogers</u>	<u>Rogers</u>	<u>EN</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 812 creates a new public records exemption to exempt site-specific location information for endangered and threatened species from public inspection and copying requirements. The exemption does not apply to location information for animals held in captivity.

The exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

The bill contains legislative findings, including that “the release of such location information would jeopardize the continued existence of protected species by putting them in danger from wildlife poachers or by threatening the integrity of the site due to increased use of or traffic within the site. This exemption protects private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties and encourages the landowners, as well as researchers, to provide information to the agencies which they would not otherwise provide if the information could be made public.”

Because the bill creates a new public records exemption and expands other public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 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

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

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).

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

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

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); see *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.

²⁰ Section 119.15(6)(b), F.S.

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

Florida's Management of Endangered Species

Pursuant to s. 9, Art. IV of the State Constitution, the Florida Fish and Wildlife Conservation Commission (FWC) exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.²⁷ Under the Florida Endangered and Threatened Species Act, FWC is responsible for research and management of freshwater and upland species and for research and management of marine species.²⁸ "Endangered species" includes any species of fish and wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory

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 FLA. CONST. art. IV, s. 9.

²⁸ Section 379.2291(4), F.S.

mechanisms; or other natural or manmade factors affecting its continued existence.²⁹ “Threatened species” are defined by statute as any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subjected to increased stress as a result of further modification of its environment.³⁰

At the federal level, the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA–Fisheries) is responsible for listing most marine species and the U.S. Fish and Wildlife Service (USFWS) is responsible for other species.³¹ FWC rules clarify that Florida endangered and threatened species include federally-designated endangered and threatened species and state-designated threatened species.³²

The current listing status of all of Florida’s federal and state listed species is found in FWC’s publication “Florida’s Endangered and Threatened Species List” and in agency rules.³³ Intentionally killing or wounding any fish or wildlife of a species designated by FWC as endangered, threatened, or of special concern is a felony.³⁴ This also applies to intentionally destroying the eggs or nest of any such fish or wildlife.³⁵ While the USFWS has primary responsibility for Florida species that are federally endangered or threatened, like the sand skink or the Florida scrub-jay, FWC works in partnership with USFWS to help conserve these species.³⁶

FWC’s mission is “managing fish and wildlife resources for their long-term well-being and the benefit of people.”³⁷ Management of listed species includes surveying and monitoring of species, habitat improvement and restoration, development and implementation of management plans, conservation planning, agency commenting on potential impacts to species and citizen awareness. Research is a systematic means of generating the scientific information necessary to support and guide management. Research also leads to a better understanding of how wildlife managers may alter populations through management actions, as well as leading to management actions that have aided in species stabilization and conservation.³⁸ FWC developed the “Imperiled Species Management Plan” to address the needs of state listed species that did not already have a management plan or specific program in place.³⁹ The plan focuses primarily on improving the conservation status of Florida’s imperiled wildlife through reducing the risk of

²⁹ Section 379.2291(3)(b), F.S.

³⁰ Section 379.2291(3)(c), F.S.

³¹ 50 C.F.R. 17 (animals); 50 C.F.R. 23 (plants); 50 C.F.R. 223 and 224 (marine species).

³² Fla. Admin. Code R. 68A-27.001.

³³ Fla. Admin. Code R.s 68A–27.003 and 68A–27.0031; FWC, *Florida’s Endangered and Threatened Species*, available at <https://myfwc.com/media/1945/threatend-endangered-species.pdf>.

³⁴ Section 379.411, F.S.

³⁵ *Id.*

³⁶ FWC, *Wildlife Conservation*, <https://myfwc.com/wildlifehabitats/wildlife/> (last visited Dec. 26, 2019).

³⁷ FWC, *Endangered and Threatened Species Management and Conservation Plan Progress Report Fiscal Year 2018-2019*, available at <https://myfwc.com/media/22264/2018-19-legislative-report.pdf>.

³⁸ *Id.*

³⁹ FWC, *Florida’s Imperiled Species Management Plan 2016-2026*, available at <https://myfwc.com/media/2030/imperiled-species-management-plan.pdf>.

extinction, maintaining sufficient habitat, and improving public and partner support of conservation efforts.⁴⁰

Habitat restoration is often a key aspect of a species management plan.⁴¹ This includes reestablishment of native habitat and ecological functions after disturbance and as enhancement (improving habitat features) and rehabilitation (accelerating natural recovery of habitat after disturbance). A crucial element for habitat restoration and enhancement is a well-organized framework for research, monitoring, and evaluation. The analysis of information helps to identify the most effective types of restoration, improves cost effectiveness, and improves models that guide managers as they decide on future habitat improvement projects and maintenance after restoration.⁴²

Site-specific Species Information

FWC has the following concerns relating to the disclosure of species-specific information:

Current public records laws require Florida state agencies to disclose data and research, including those data that originated from the Commission and data connected with research conducted by outside parties that have their information stored within the Commission.

This research data includes, but is not limited to: population trends, migratory patterns, reproductive ecology, distribution data, den locations, satellite telemetry, point localities for artificial reefs, and mark-recapture data. Collaboration with nongovernmental organizations (NGO's), universities, other management agencies, and private consultants is extremely beneficial when making management decisions for species that the Commission is tasked with conserving.

Additionally, for landowners that are currently enrolled in the Commission's management plan, there is no exemption that protects private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties. This is cause for private land owners not to allow research or allow for the Commission to develop wildlife management plans that would assist with species management.⁴³

The primary concerns raised by FWC include:

- Withholding of data by the federal government, universities, and researchers due to concerns that stakeholders with such information may interfere with species, harm species, or damage species habitat if the location of the species was made public.
- Safety concerns relating to the public putting themselves in harm's way to view species such as bears and panthers.

⁴⁰ *Id.* at iv.

⁴¹ *Id.* at 106.

⁴² *Id.*

⁴³ FWC, *Agency Analysis of SB 812* (Dec. 26, 2019) (on file with the Senate Committee on Environment and Natural Resources).

- Illegal activity for the taking of species that have value on the black market.⁴⁴

III. Effect of Proposed Changes:

Section 1 creates s. 379.1026, F.S., creating a public records exemption for site-specific location information for threatened and endangered species.

The bill provides that site-specific location information held by an agency concerning an endangered or threatened species as defined in Florida law or as listed by a federal agency is exempt from the constitutional and statutory provisions relating to public records. The exemption does not apply to animals held in captivity.

The exemption is subject to the Act and is subject to repeal on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

Section 2 creates legislative findings that it is a public necessity that the site-specific location information held by an agency concerning a species that is listed federally as an endangered species or a threatened species or is listed by the Fish and Wildlife Conservation Commission as a threatened species be made exempt from disclosure as a public record. Specific findings include that:

- The release of such location information would jeopardize the continued existence of protected species by putting them in danger from wildlife poachers or by threatening the integrity of the site due to increased use of or traffic within the site.
- The exemption protects private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties and encourages the landowners, as well as researchers, to provide information to the agencies which they would not otherwise provide if the information could be made public.
- The harm that may result from the release of such site-specific location information outweighs any public benefit that may be derived from the disclosure of the information.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

⁴⁴ FWC, *Examples Table 1* (Dec. 26, 2019) (on file with the Senate Committee on Environment and Natural Resources) (including specific examples that have raised these concerns).

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for site-specific information relating to endangered or threatened species, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

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 endangered and threatened species and the general public. This bill exempts only site-specific information relating to endangered or threatened species from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Indeterminate. The custodian will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 379.1026 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/CS by Governmental Oversight and Accountability on February 3, 2020:

The CS amends the bill to remove the stipulation that the exemption is not waived by the release of such location information to another agency or to an educational institution or scientific facility for research purposes. The CS shifts the definitions into the same section as the exemption for clarity. The CS clarifies that the exemption does not apply to *the site-specific location information of animals held in captivity*.

CS by Environment and Natural Resources on January 13, 2020:

The amendment adds a provision specifying that the exemption does not apply to animals held in captivity.

- B. Amendments:

None.



460032

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 379.1026, Florida Statutes, is created to
read:

379.1026 Site-specific location information for endangered
and threatened species; public records exemption.— The site-
specific location information held by an agency, as defined in
s. 119.011, concerning an endangered species as defined in s.



460032

379.2291(3)(b), a threatened species as defined in s.
379.2291(3)(c), or a species listed by a federal agency as
endangered or threatened is exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution. This exemption does not
apply to the site-specific location information of animals held
in captivity. This section is subject to the Open Government
Sunset Review Act in accordance with s. 119.15 and shall stand
repealed on October 2, 2025, unless reviewed and saved from
repeal by the Legislature.

Section 2. The Legislature finds that it is a public
necessity that the site-specific location information held by an
agency concerning an endangered or threatened species as listed
by a federal agency or the Fish and Wildlife Conservation
Commission be made exempt from s. 119.07(1), Florida Statutes,
and s. 24(a), Article I of the State Constitution. The
Legislature finds that the release of such location information
would jeopardize the continued existence of endangered or
threatened species by increasing the risk of exposure to
wildlife poachers or by threatening the integrity of the site
due to increased use or traffic. This exemption protects private
property owners from potential trespass and related liability
issues when endangered or threatened species are found on their
properties and encourages such property owners, as well as
researchers, to provide agencies with information they might not
otherwise provide if such location information were made public.
The Legislature finds that the harm that may result from the
release of such location information outweighs any public
benefit that may be derived from the disclosure of the
information.



460032

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 public records; creating s.
379.1026, F.S.; providing an exemption from public
records requirements for the site-specific location
information of certain endangered and threatened
species; providing for future legislative review and
repeal of the exemption; providing a statement of
public necessity; providing an effective date.

By the Committee on Environment and Natural Resources; and
Senator Hutson

592-02237-20

2020812c1

A bill to be entitled
An act relating to public records; creating s.
379.1026, F.S.; providing an exemption from public
records requirements for the site-specific location
information of certain endangered and threatened
species; 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. Section 379.1026, Florida Statutes, is created
to read:

379.1026 Site-specific location information for endangered
and threatened species; public records exemption.—

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

(a) "Agency" has the same meaning as in s. 119.011.

(b) "Endangered species" has the same meaning as in s.
379.2291(3)(b).

(c) "Threatened species" has the same meaning as in s.
379.2291(3)(c).

(2) The site-specific location information held by an
agency concerning a species listed by a federal agency as
endangered or threatened or listed by the Fish and Wildlife
Conservation Commission as threatened is exempt from s.
119.07(1) and s. 24(a), Art. I of the State Constitution. This
exemption does not apply to animals held in captivity and is not
waived by the release of such location information to another
agency or to an educational institution or scientific facility

592-02237-20

2020812c1

30 for research purposes. This section is subject to the Open
31 Government Sunset Review Act in accordance with s. 119.15 and
32 shall stand repealed on October 2, 2025, unless reviewed and
33 saved from repeal by the Legislature.

34 Section 2. The Legislature finds that it is a public
35 necessity that the site-specific location information held by an
36 agency concerning a species listed by a federal agency as
37 endangered or threatened or listed by the Fish and Wildlife
38 Conservation Commission as threatened be made exempt from s.
39 119.07(1), Florida Statutes, and s. 24(a), Article I of the
40 State Constitution. The Legislature finds that the release of
41 such location information would jeopardize the continued
42 existence of endangered or threatened species by increasing the
43 risk of exposure to wildlife poachers or by threatening the
44 integrity of the site due to increased use or traffic. This
45 exemption protects private property owners from potential
46 trespass and related liability issues when endangered or
47 threatened species are found on their properties and encourages
48 such property owners, as well as researchers, to provide
49 agencies with information they might not otherwise provide if
50 such location information were made public. The Legislature
51 finds that the harm that may result from the release of such
52 location information outweighs any public benefit that may be
53 derived from the disclosure of the information.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 21, 2020

I respectfully request that **Senate Bill #812**, relating to Public Records/Endangered and Threatened Species , be placed on the:

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

A handwritten signature in black ink, reading "Travis J. Hutson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/2020

Meeting Date

812

Bill Number (if applicable)

460032

Amendment Barcode (if applicable)

Topic Public Records / Endangered & Threatened Species

Name Jessica Crawford

Job Title Legislative Affairs Director

Address 620 S. Meridian St.
Street

Phone 850-487-3795

Tallahassee FL 32399
City State Zip

Email Jessica.Crawford@myfloridacomm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fish & Wildlife Conservation Commission

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

2/3/2020

Meeting Date

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

812

Bill Number (if applicable)

Topic Public Records/Endangered & Threatened Species Amendment Barcode (if applicable)

Name Jessica Crawford

Job Title Legislative Affairs Director

Address 620 S. Meridian St.

Street

Tallahassee

City

FL

State

32399

Zip

Phone 850-487-3795

Email Jessica.Crawford@myfloridacounty.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fish & Wildlife Conservation Commission

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 1060

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

SUBJECT: Public Records and Meetings/911 or E911 Communication System

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.	Ponder	McVaney	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1060 makes confidential and exempt from public records disclosure requirements certain plans and geographical maps relating to 911 or E911 communication structures or facilities owned and operated by a state agency. Any portion of a meeting that would reveal the confidential and exempt information is made exempt from the public meeting requirements.

An agency is authorized to disclose the confidential and exempt information to:

- Another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- A licensed architect, engineer, or contractor who is performing work on or related to the 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.

The bill provides for the scheduled repeal of the public records and public meetings exemptions on October 2, 2025, pursuant to the Open Government Sunset Review Act and contains legislative findings of public necessity for the exemptions.

The bill may have a minimal negative fiscal impact on the governmental sector.

The bill takes effect upon becoming law.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, 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 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

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).

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 Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

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

¹⁷ *Id.*

¹⁸ FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁹ or the “Sunshine Law,”²⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²¹ The board or commission must provide the public reasonable notice of such meetings.²² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²³ Minutes of a public meeting must be promptly recorded and open to public inspection.²⁴ Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act³⁰ (the act) prescribes a legislative review process for newly created or substantially amended³¹ public records or open meetings exemptions, with specified exceptions.³² 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.³³

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁰ Section 119.15, F.S.

³¹ 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.

³² 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.

³³ 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.³⁴ 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;³⁵
- 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;³⁶ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁷

The act also requires specified questions to be considered during the review process.³⁸ 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.³⁹ 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.⁴⁰

The 911 System

The purpose of the 911 system is to improve public safety by establishing one number to call to contact a nationwide, seamless communications infrastructure for all emergency services. 911 service is a vital part of our nation's emergency response and disaster preparedness system.⁴¹ While 911 operates nationwide, it is not a single, nationwide system. Instead, all voice communications service providers are required to route 911 calls to the nearest public safety

³⁴ Section 119.15(6)(b), F.S.

³⁵ Section 119.15(6)(b)1., F.S.

³⁶ Section 119.15(6)(b)2., F.S.

³⁷ Section 119.15(6)(b)3., F.S.

³⁸ 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?

³⁹ See generally s. 119.15, F.S.

⁴⁰ Section 119.15(7), F.S.

⁴¹ Federal Communications Commission, *911 and E911 Services*, <https://www.fcc.gov/general/9-1-1-and-e9-1-1-services> (last visited December 20, 2019).

answering point (PSAP), which is operated by local government, answers all 911 calls, and dispatches the appropriate local emergency first responders.⁴² These locally owned and operated PSAPs and their infrastructure are the heart of the 911 emergency reporting system.

Section 365.172(3)(h), F.S., defines “enhanced 911” or “E911” to mean an enhanced 911 system or enhanced 911 service that:

- is an emergency telephone system or service that provides a subscriber with 911 service and, directs 911 calls to appropriate public safety answering points by selective routing based on the geographical location from which the call originated, or as otherwise provided in the state plan under s. 365.171, F.S.; and
- that provides for automatic number identification and automatic location-identification features.⁴³

Public Record and Public Meeting Exemptions Related to Security and Firesafety

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Security and Firesafety Plan

Section 119.071(3)(a)1., F.S., defines a “security or firesafety plan” to include:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems⁴⁴;
- Threat assessments conducted by any agency or any private entity;⁴⁵
- Threat Response Plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

A security or firesafety plan or any portion thereof that is held by an agency⁴⁶ is confidential and exempt⁴⁷ from public record requirements if the plan is for any property owned by or leased to

⁴² Julie Layton, *How 9-1-1 Works*, <https://people.howstuffworks.com/9-1-1.htm> (last visited December 20, 2019).

⁴³ An E911 service provided by a wireless provider means E911 as defined in the order as specified under s. 365.172(t), F.S. See s. 365.172(3)(h), F.S.

⁴⁴ Section 119.071(3)(a)1.a., F.S.

⁴⁵ Section 119.071(3)(a)1.b., F.S.

⁴⁶ Section 119.011(2), F.S., defines “agency” to mean any S., defines “agency” to mean 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 chapter 119, F.S., 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.

⁴⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City*

the state or any of its political subdivisions or any privately owned or leased property.⁴⁸ An agency is authorized to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.⁴⁹

Any portion of a meeting that would reveal a security or firesafety system plan or portion thereof is exempt from public meetings requirements.⁵⁰

Building Plans, Blueprints, Schematic Drawings and Diagrams

Section 119.071(3)(b)1., F.S., makes confidential and exempt from the public record requirements:

Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment, facility, or other structure owned by an agency.

This information may be disclosed to:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.⁵¹

The entities or persons receiving such information must maintain the exempt status of the information.⁵²

Section 119.071(3)(c)1., F.S., provides:

Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development,

of Minneola, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

⁴⁸ Section 119.071(3)(a)2., F.S.

⁴⁹ Section 119.071(a)3., F.S.

⁵⁰ Section 286.0113(1), F.S.

⁵¹ Section 119.071(3)(b)3., F.S.

⁵² Section 119.071(3)(b)4., F.S.

which records are held by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.⁵³

This information may be disclosed to:

- Another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- The owners of the structure in question or the owner's legal representative; or
- Upon a showing of good cause before a court of competent jurisdiction.⁵⁴

Section 119.071(3)(c)4., F.S., specifies that this comprehensive plans or site plans, or amendment thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review do not fall under the exemption in this paragraph.

Information relating to the Nationwide Public Safety Broadband Network

Section 119.071(3)(d)1., F.S., makes confidential and exempt from the public records requirements information relating to the Nationwide Public Safety Broadband Network established pursuant to 47 U.S.C. ss. 1401 et seq., held by an agency if the release would reveal certain information pertaining to network facilities and network infrastructure.⁵⁵

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3), F.S., to create a public record exemption for:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure owned and operated by an agency, including towers and antennae; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure owned and operated by an agency (collectively, 911 or E911 Plans and Maps).

The bill specifies that the public record exemption for 911 or E911 Information applies retroactively. Thus, the 911 or E911 Plans and Maps in existence prior to the effective date of the bill will be protected by the exemptions.

The bill permits disclosure of the exempt information to:

- Another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;

⁵³ This paragraph provides definitions for “attractions and recreation facility,” “entertainment or resort complex,” “Industrial complex,” “retail and service development,” “office development,” “health care facility,” “hotel or motel development.” See Section 119.071(3)(c)5., F.S.

⁵⁴ Section 119.071(3)(c)3., F.S.

⁵⁵ See Section 119.071(3)(d)1., F.S.

- A licensed architect, engineer, or contractor who is performing work on or related to the 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.

The entities or persons receiving such information are charged with maintaining the exempt status of the information.

The bill provides for repeal of the public records exemption on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 amends s. 286.0113, F.S., to create a public meeting exemption for any portion of a meeting that would reveal 911 or E911 Plans or Maps.

No portion of an exempt meeting may be off the record, and all exempt portions of such a meeting must be recorded and transcribed. The recordings and transcripts are confidential and exempt from disclosure unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the exempt information made exempt. If such a judicial determination is made, only that portion of the recording and transcript which reveals nonexempt information may be disclosed to a third party.

This bill provides for repeal of the public meetings exemption on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3 provides a statement of public necessity as required by the State Constitution, which states that the exemptions are a public necessity to ensure the security of emergency communication infrastructure, structures, and facilities.

The bill takes effect upon becoming a law.

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 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 or public meetings requirements. This bill enacts a new public records exemption for building plans, blueprints, schematic drawings, and diagrams depicting the

structural elements of 911 or E911 communication system infrastructure, and for geographical maps indicating the location of 911 or E911 communication system infrastructure, owned and operated by an agency. It also enacts a new public meetings records exemption for that portion of a public meeting where these records are discussed. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 of the bill contains a statement of public necessity for the exemptions.

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 911 or E911 communication system infrastructure from any disruption during an active shooter or other terror event, including cybercrime, arson, and terrorism. This bill exempts only building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, and geographic maps indicating the actual or proposed locations of such infrastructure from public records requirements. It also exempts only the discussion of those records from the public meetings requirements. The exemptions do 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 be subject to the cost, to the extent one is imposed, associated with an agency making redactions in response to a public records requests.

C. **Government Sector Impact:**

Government agencies will incur costs related to the redaction of records in responding to public records requests. Additionally, governmental agencies will incur costs associated with recording the closed portion of meetings wherein the confidential and exempt information is discussed.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 119.071, 286.0113.

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 Innovation, Industry, and Technology on January 13, 2020:

The committee substitute:

- Provides for recording and transcribing exempt portions of a meeting, makes these recordings and transcripts confidential and exempt from disclosure, and provides a process for limited disclosure; and
- Sets out legislative findings of public necessity that the recordings and transcripts of that portion of the meeting discussing the exempt records also be confidential and exempt from disclosure.

B. **Amendments:**

None.

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

580-02213-20

20201060c1

A bill to be entitled

An act relating to public records and meetings;
amending s. 119.071, F.S.; providing an exemption from
public records requirements for certain documents that
depict the structural elements of certain 911 or E911
communication system infrastructure, structures, or
facilities; providing an exemption from public records
requirements for geographical maps indicating the
actual or proposed locations of certain 911 or E911
communication system infrastructure, structures, or
facilities; providing for retroactive application;
authorizing disclosure under certain circumstances;
providing for future legislative review and repeal of
the exemptions; amending s. 286.0113, F.S.; providing
an exemption from public meetings requirements for
portions of meetings which would reveal certain
documents depicting the structural elements of 911 or
E911 communication system infrastructure, structures,
or facilities, or geographic maps indicating the
actual or proposed locations of 911 or E911
communication system infrastructure, structures, or
facilities; requiring the recording and transcription
of exempt portions of such meetings; providing an
exemption from public records requirements for such
recordings and transcripts; providing an exception;
providing for future legislative review and repeal of
the exemptions; providing a statement of public
necessity; providing an effective date.

580-02213-20

20201060c1

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

Section 1. Paragraph (e) is added to subsection (3) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(3) SECURITY AND FIRESAFETY.—

(e)1.a. Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure or other 911 and E911 communication structures or facilities owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911 or E911 communication system

580-02213-20

20201060c1

59 infrastructure or other 911 or E911 communication structures or
60 facilities owned and operated by an agency, before, on, or after
61 the effective date of this act.

62 3. Information made exempt by this paragraph may be
63 disclosed:

64 a. To another governmental entity if disclosure is
65 necessary for the receiving entity to perform its duties and
66 responsibilities;

67 b. To a licensed architect, engineer, or contractor who is
68 performing work on or related to the 911 or E911 communication
69 system infrastructure, including towers, antennae, equipment or
70 facilities used to provide 911 or E911 communication services,
71 or other 911 or E911 communication structures or facilities
72 owned and operated by an agency; or

73 c. Upon a showing of good cause before a court of competent
74 jurisdiction.

75 4. The entities or persons receiving such information must
76 maintain the exempt status of the information.

77 5. This paragraph is subject to the Open Government Sunset
78 Review Act in accordance with s. 119.15 and shall stand repealed
79 on October 2, 2025, unless reviewed and saved from repeal
80 through reenactment by the Legislature.

81 Section 2. Subsection (4) is added to section 286.0113,
82 Florida Statutes, to read:

83 286.0113 General exemptions from public meetings.—

84 (4) (a) Any portion of a meeting that would reveal building
85 plans, blueprints, schematic drawings, or diagrams, including
86 draft, preliminary, and final formats, which depict the
87 structural elements of 911 or E911 communication system

580-02213-20

20201060c1

88 infrastructure, including towers, antennae, equipment or
89 facilities used to provide 911 or E911 communication services,
90 or other 911 and E911 communication structures or facilities
91 made exempt by s. 119.071(3)(e)1.a. is exempt from s. 286.011
92 and s. 24, Art. I of the State Constitution.

93 (b) Any portion of a meeting that would reveal geographical
94 maps indicating the actual or proposed locations of 911 or E911
95 communication system infrastructure, including towers, antennae,
96 equipment or facilities used to provide 911 or E911
97 communication services, or other 911 or E911 communication
98 structures or facilities made exempt by s. 119.071(3)(e)1.b. is
99 exempt from s. 286.011 and s. 24, Art. I of the State
100 Constitution.

101 (c) No portion of an exempt meeting under paragraph (a) or
102 paragraph (b) may be off the record. All exempt portions of such
103 meeting shall be recorded and transcribed. Such recordings and
104 transcripts are confidential and exempt from disclosure under s.
105 119.07(1) and s. 24(a), Art. I of the State Constitution unless
106 a court of competent jurisdiction, after an in-camera review,
107 determines that the meeting was not restricted to the discussion
108 of the information made exempt by s. 119.071(3)(e)1. In the
109 event of such a judicial determination, only that portion of the
110 recording and transcript which reveals nonexempt information may
111 be disclosed to a third party.

112 (d) This subsection is subject to the Open Government
113 Sunset Review Act in accordance with s. 119.15 and shall stand
114 repealed on October 2, 2025, unless reviewed and saved from
115 repeal through reenactment by the Legislature.

116 Section 3. The Legislature finds that it is a public

580-02213-20

20201060c1

117 necessity that building plans, blueprints, schematic drawings,
118 and diagrams, including draft, preliminary, and final formats,
119 which depict the structural elements of 911 or E911
120 communication system infrastructure, including towers, antennae,
121 equipment or facilities used to provide 911 or E911
122 communication services, and other 911 or E911 communication
123 structures or facilities owned and operated by an agency, and
124 geographic maps indicating the actual or proposed locations of
125 such communication system infrastructure, structures, or
126 facilities should be made exempt from s. 119.07(1), Florida
127 Statutes, and s. 24(a), Article I of the State Constitution to
128 ensure the security of emergency communication infrastructure,
129 structures, and facilities. In addition, the Legislature finds
130 that it is a public necessity that any portion of a meeting
131 revealing such documents and maps that are held by an agency
132 should be made exempt from s. 286.011, Florida Statutes, and s.
133 24(b), Article I of the State Constitution and that the
134 recordings and transcripts of such an exempt meeting be
135 confidential and exempt from disclosure under s. 119.07(1),
136 Florida Statutes, and s. 24(a), Article I of the State
137 Constitution. Building plans, blueprints, schematic drawings,
138 and diagrams, including draft, preliminary, and final formats,
139 received and held by counties, municipalities, and other
140 governmental agencies that depict the structural elements of 911
141 or E911 communication system infrastructure, structures, and
142 facilities are currently subject to release as public records
143 upon request. Similarly, geographical maps showing the present
144 or proposed locations of such 911 or E911 communication system
145 infrastructure, structures, and facilities that are in the

580-02213-20

20201060c1

possession of counties, municipalities, and other governmental agencies are also subject to release as public records upon request. Counties, municipalities and other governmental agencies may review the building plans or geographical maps to ensure compliance with land development regulations, building codes, agency rules, and standards to protect the public health and safety. These building plans include diagrams and schematic drawings of emergency communication systems, electrical systems, and other physical plant and security details which depict the structural elements of such emergency communication facilities and structures. 911 and E911 communication facilities, including towers and antennae, are a vital link in the chain of survival. Such critical infrastructure must be protected as any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennae need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities and other government agencies include information about towers, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. Information contained in these documents could aid in the planning of, training for, and execution of criminal actions including cybercrime, arson, and terrorism. Consequently, the Legislature finds that it is a public necessity to exempt such information from public records requirements to reduce exposure to security threats and protect the public.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 23, 2020

I respectfully request that **Senate Bill #1060**, relating to Public Records and Meetings/911 or E911 Communication System, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

Perry E. Thurston, Jr.

Senator Perry E. Thurston, Jr.
Florida Senate, District 33

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.3.2020

Meeting Date

1060

Bill Number (if applicable)

Topic Public Records + Mtg / E911 Comm System

Amendment Barcode (if applicable)

Name Tonnelle Graham

Job Title Assoc. Director of Public Policy

Address 100 S. Monroe Street

Phone 850.922.4300

Street

Tallahassee, FL

State

32301

Zip

Email tgraham@fl-counties.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/2020

Meeting Date

1060

Bill Number (if applicable)

Topic Public Records and Meetings/911 or E911 comm. system

Amendment Barcode (if applicable)

Name Daphnee Sainvil

Job Title Legislative Policy Advisor

Address 100 S. Andrews Ave., 8th Floor

Street

Ft. Lauderdale

City

FL

State

33301

Zip

Phone 954-253-7320

Email dsainvil@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward County Bd. of County Comrs.

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 1146

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Special Risk Class of the Florida Retirement System

DATE: January 31, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Stokes</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2. <u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3. _____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1146 amends s. 121.0515, F.S., to revise criteria for membership in the Special Risk Class of the Florida Retirement System (FRS) to include juvenile justice detention officers I and II and juvenile justice detention supervisors with the Department of Juvenile Justice (DJJ).

Juvenile justice detention officers I and II (JDO) serve as a front-line direct care staff who supervise and manage all youth assigned to a juvenile detention center. JDOs are tasked with ensuring the safety and security of all youth in custody, and that youth are provided their constitutional rights regarding access to legal, medical, and mental health issues.

This bill provides a legislative declaration that the bill fulfills an important state interest.

The DJJ will incur roughly \$6.2 million annually in additional retirement contributions to fund these enhanced benefits for detention officers and supervisors shifting from the Regular Class to the Special Risk Class of the Florida Retirement System. The costs incurred by DJJ will be partially offset by increased cost-sharing payments allocated to counties for detention costs paid pursuant to s. 985.6865, F.S. See Section V. Fiscal Impact Statement.

This bill is effective July 1, 2020.

II. Present Situation:

The Florida Retirement System (FRS)

General Background

The FRS was established in 1970.¹ The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S. As of June 30, 2019, the FRS had 647,942 active members, 424,895 annuitants, 15,783 disabled retirees, and 32,670 active participants of the Deferred Retirement Option Program (DROP).² As of June 30, 2019, the FRS consisted of 976 participating employers enrolling new members and 44 participating employers closed to new FRS membership with grandfathered FRS members.³

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

- The Regular Class⁴ consists of 554,631 active members and 7,629 in renewed membership;⁵
- The Special Risk Class⁶ includes 74,274 active members and 1,112 in renewed membership;
- The Special Risk Administrative Support Class⁷ has 100 active members;
- The Elected Officers' Class⁸ has 2,088 active members and 112 in renewed membership; and
- The Senior Management Service Class⁹ has 7,767 active members and 214 in renewed membership.¹⁰

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

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

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

¹ Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems*, p. 35, available at https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf (last visited January 6, 2020).

² *Id.* at 158.

³ *Id.* at 8.

⁴ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁵ Effective July 1, 2017, retirees of specified defined contribution plans employed in a regularly established position are eligible to be enrolled as renewed members of the defined contribution plan covering the position held except the Senior Management Service Optional Annuity Program that is closed to new members. FRS Pension Plan retirees remain ineligible for renewed membership. Section 121.122, F.S.

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

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

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

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

¹⁰ Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems*, p. 161, available at https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf (last visited January 6, 2020).

The Special Risk Class of the FRS

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S.

When originally establishing the Special Risk Class of membership in the FRS, the Legislature recognized that persons employed in certain categories of positions:

[A]re required to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.¹¹

Compared to Regular Class members, a person who is a member in the Special Risk Class of the FRS pension plan earns a higher annual service accrual rate, may retire at an earlier age and is eligible to receive higher disability and death benefits. As a result, the contribution rates to fund the normal cost of the Special Risk benefits is higher than the contribution rates to fund the normal cost of the Regular Class benefits. Similarly, the contribution rates to fund the unfunded liabilities of the Special Risk Class is higher than the similar type contribution rates for the Regular Class.¹² Special Risk Class members of the FRS investment plan receive total contributions into the individual investment accounts equal to 14 percent of salary. A Regular Class member receives total contributions equal to 6.3 percent of salary.

The table below shows the contribution rates for the Regular Class and the Special Risk Class as enacted for FY 2019-20¹³ and as recommended by the state actuary¹⁴ beginning FY 2020-21.

	2019-20		2020-21	
Rates to fund	Regular Class	Special Risk Class	Regular Class	Special Risk Class
Normal Cost	3.19%	12.61%	4.84%	15.13%
Unfunded Actuarial Liability	3.56%	11.15%	3.44%	7.60%
Total Contribution	6.75%	23.76%	8.28%	22.73%

¹¹ Section 121.0515(1), F.S.

¹² Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2019, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems*, p. 41, available at https://www.rol.frs.state.fl.us/forms/2018-19_CAFR.pdf (last visited January 6, 2020).

¹³ Section 121.71(4) and (5), F.S.

¹⁴ Letter to Mr. David DiSalvo, *Re: Blended Proposed Statutory Rates for the 2020-2021 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 5, 2019 (on file with the Senate Committee on Governmental Oversight and Accountability).

Cost Sharing

Cost sharing is governed by s. 985.6865, F.S., which provides, notwithstanding s. 985.686, F.S., each fiscal year, every county that is not fiscally constrained¹⁵ and that has dismissed any action or claim described in s. 985.6865(2), F.S.,¹⁶ must pay 50 percent of the total shared detention cost.¹⁷

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for juveniles residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for juveniles in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.¹⁸

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.¹⁹ Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.²⁰ The DJJ will determine quarterly whether counties are complying with this section.²¹

The State must pay all costs of detention care for juveniles:

- Residing in a fiscally constrained county.
- Residing out of State.
- Housed in state detention centers from counties that provide their own detention care for juveniles.²²

Department of Juvenile Justice

JDOs serve as front-line direct care staff who supervise and manage all youth assigned to juvenile detention centers.²³ The DJJ operates 21 secure detention centers in 21 counties with a total of 1,243 beds. Youth placed in secure detention have been assessed as risks to public safety and must remain in a physically secure detention center while awaiting court proceedings.²⁴

¹⁵ Section 985.6865(3)(b), F.S., defines “fiscally constrained county” as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

¹⁶ Various counties and the DJJ have engaged in a multitude of legal proceedings, including administrative or judicial claims, regarding detention cost sharing for juveniles. Such litigation has largely focused on how the DJJ calculates the detention costs that the counties are responsible for paying, leading to the overbilling of counties for a period of years. Sections 985.6865(1) and (2), F.S.

¹⁷ Section 985.6865(4), F.S.

¹⁸ *Id.*

¹⁹ Section 985.6865(6), F.S.

²⁰ Section 985.6865(7), F.S.

²¹ Section 985.6865(8), F.S.

²² Section 985.6865(5), F.S.

²³ Department of Juvenile Justice, *2020 Agency Analysis of SB 1146* (December 19, 2019). On file with the Senate Committee on Criminal Justice.

²⁴ Department of Juvenile Justice, *Detention Services*, available at <http://www.djj.state.fl.us/services/detention> (last visited January 6, 2020).

Section 985.66, F.S., provides minimum requirements for program staff of the DJJ who deliver direct-care services. These minimum requirements include that the staff must:

- Be at least 19 years of age.
- Be a high school graduate or its equivalent as determined by the DJJ.
- Not have been convicted of any felony or a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States.
- Abide by all of s. 985.644(1), F.S., which provides requirements for fingerprinting and background investigations.
- Execute and submit to the department an affidavit-of-application form, adopted by the DJJ, attesting to his or her compliance with the above requirements.²⁵

Section 985.66, F.S., also provides that the DJJ must establish staff development and training, and requires that DJJ staff who provide direct care must complete the DJJ-approved program of training pertinent to their areas of responsibility.²⁶

The DJJ had a total of 1,172 JDO direct care worker positions that supervised a total of 12,290 youth during the FY 2018-19. The turnover rate for the entry-level JDO positions was 64 percent for FY 2018-19, and the average vacancy rate was 25 percent. According to the DJJ, this has led to the DJJ spending over \$6 million per year over the last four fiscal years in overtime pay to compensate these vacancies.²⁷

As of July 2019, approximately 51 percent of the detention workforce had less than two years of experience. JDOs rely on hand-to-hand takedowns when a situation escalates to a physical altercation, and they do not carry tasers or pepper spray. The DJJ has a 63 percent higher workers' compensation claim rate than the Florida Department of Corrections. According to the DJJ, in FY 2018-19, 31 per 100 JDOs were injured on the job, 41 were victims of assault by youth, and 135 staff were injured while trying to restrain a youth in an emergency situation.²⁸

JDOs and JDO supervisors are currently not eligible for Special Risk Class retirement.

III. Effect of Proposed Changes:

Section 1 amends s. 121.0515, F.S., to revise criteria for membership in the Special Risk Class of the FRS to include JDOs and JDO supervisors with the DJJ.

To be eligible for Special Risk Class membership, the employee must:

- Be employed as a JDO or JDO supervisor at the DJJ;
- Be certified or required to be certified in accordance with s. 985.66(3), F.S., which provides minimum requirements for staff and requires the DJJ to establish staff development and training programs; and either

²⁵ Section 985.66(3), F.S.

²⁶ *Id.*

²⁷ Department of Juvenile Justice, *2020 Agency Analysis of SB 1146* (December 19, 2019). On file with the Senate Committee on Criminal Justice.

²⁸ *Id.*

- Have primary duties and responsibilities that include ensuring the custody, and applying physical restraint when necessary, of detained youth within a juvenile detention facility or while being transported; or
- Be the supervisor or command officer of a member who has such duties and responsibilities.

Section 2 provides a legislative declaration that the bill fulfills an important state interest.

This bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature....”

This bill reclassifies JDOs and JDO supervisors as members of the Special Risk Class in the FRS. This reclassification increases the costs incurred by the DJJ relating to detention of juveniles. While this bill does not expressly require a county or municipality to expend funds, counties will be responsible for 50 percent of the cost increase associated with the reclassification of county JDOs and JDO supervisors, in accordance with s. 985.6865, F.S., which establishes the cost-sharing requirements between the DJJ and counties.

The bill contains a declaration that this bill fulfills an important state interest (see section 2).

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:

This bill reclassifies JDOs and JDO supervisors as members of the Special Risk Class in the FRS rather than the Regular Class. This reclassification of retirement classes increases the personnel costs by 14.45 percent of payroll. Beginning in FY 2020-21, the DJJ will incur higher annual retirement contributions to fund these enhanced benefits for employees moving from the Regular Class to the Special Risk Class of the FRS as specified in this bill. The DJJ has requested \$6.2 million in recurring funds for Special Risk retirement benefits for JDOs and JDO supervisors.²⁹ Beginning in FY 2021-22, counties will be billed for their portion of the increase in cost in accordance with s. 985.6865, F.S.³⁰ Non-fiscally constrained counties are required to contribute 50 percent of the total detention costs to the DJJ.³¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.0515 of the Florida Statutes.

²⁹ Florida Fiscal Portal, *Agency Legislative Budget Request for Fiscal Year 2020-2021, Exhibit D-3A: Expenditures by Issue and Appropriation Category*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=19211&DocType=PDF> (last visited January 6, 2020).

³⁰ Department of Juvenile Justice, *2020 Agency Analysis of SB 1146* (December 19, 2019). On file with the Senate Committee on Criminal Justice.

³¹ Section 985.6865(4), F.S.

IX. Additional Information:

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

CS by Criminal Justice on January 21, 2020:

The committee substitute changes the terms “juvenile detention officer” to “juvenile justice detention officers I and II” and “juvenile detention officer supervisor” to “juvenile justice detention officer supervisor.”

Additionally, the committee substitute provides a declaration that the bill fulfills an important state interest.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Brandes

591-02400-20

20201146c1

A bill to be entitled
An act relating to the Special Risk Class of the
Florida Retirement System; amending s. 121.0515, F.S.;
adding juvenile justice detention officers I and II
and juvenile justice detention officer supervisors
employed by the Department of Juvenile Justice who
meet certain criteria to the class; providing a
declaration of important state interest; providing an
effective date.

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

Section 1. Subsection (3) of section 121.0515, Florida
Statutes, is amended, and paragraph (i) is added to subsection
(2) of that section, to read:

121.0515 Special Risk Class.—

(2) MEMBERSHIP.—

(i) Effective July 1, 2020, the member must be employed by
the Department of Juvenile Justice as a juvenile justice
detention officer I or II or a juvenile justice detention
officer supervisor and meet the special criteria set forth in
paragraph (3)(k).

(3) CRITERIA.—A member, to be designated as a special risk
member, must meet the following criteria:

(a) Effective October 1, 1978, the member must be employed
as a law enforcement officer and be certified, or required to be
certified, in compliance with s. 943.1395, except that; ~~however,~~
sheriffs and elected police chiefs are not required to be
certified ~~excluded from meeting the certification requirements~~

591-02400-20

20201146c1

30 ~~of this paragraph.~~ In addition, the member's duties and
31 responsibilities must include the pursuit, apprehension, and
32 arrest of law violators or suspected law violators; or as of
33 July 1, 1982, the member must be an active member of a bomb
34 disposal unit whose primary responsibility is the location,
35 handling, and disposal of explosive devices; or the member must
36 be the supervisor or command officer of a member or members who
37 have such responsibilities. Administrative support personnel,
38 including, but not limited to, those whose primary duties and
39 responsibilities are in accounting, purchasing, legal, and
40 personnel, are not included;

41 (b) Effective October 1, 1978, the member must be employed
42 as a firefighter and be certified, or required to be certified,
43 in compliance with s. 633.408 and be employed solely within the
44 fire department of a local government employer or an agency of
45 state government with firefighting responsibilities. In
46 addition, the member's duties and responsibilities must include
47 on-the-scene fighting of fires; as of October 1, 2001, fire
48 prevention or firefighter training; as of October 1, 2001,
49 direct supervision of firefighting units, fire prevention, or
50 firefighter training; or as of July 1, 2001, aerial firefighting
51 surveillance performed by fixed-wing aircraft pilots employed by
52 the Florida Forest Service of the Department of Agriculture and
53 Consumer Services; or the member must be the supervisor or
54 command officer of a member or members who have such
55 responsibilities. Administrative support personnel, including,
56 but not limited to, those whose primary duties and
57 responsibilities are in accounting, purchasing, legal, and
58 personnel, are not included. All periods of creditable service

591-02400-20

20201146c1

59 in fire prevention or firefighter training, or as the supervisor
60 or command officer of a member or members who have such
61 responsibilities, and for which the employer paid the special
62 risk contribution rate, are included;

63 (c) Effective October 1, 1978, the member must be employed
64 as a correctional officer and be certified, or required to be
65 certified, in compliance with s. 943.1395. In addition, the
66 member's primary duties and responsibilities must be the
67 custody, and physical restraint if ~~when~~ necessary, of prisoners
68 or inmates within a prison, jail, or other criminal detention
69 facility, or while on work detail outside the facility, or while
70 being transported; or as of July 1, 1984, the member must be the
71 supervisor or command officer of a member or members who have
72 such responsibilities. Administrative support personnel,
73 including, but not limited to, those whose primary duties and
74 responsibilities are in accounting, purchasing, legal, and
75 personnel, are not included; however, wardens and assistant
76 wardens, as defined by rule, are included;

77 (d) Effective October 1, 1999, the member must be employed
78 by a licensed Advance Life Support (ALS) or Basic Life Support
79 (BLS) employer as an emergency medical technician or a paramedic
80 and be certified in compliance with s. 401.27. In addition, the
81 member's primary duties and responsibilities must include on-
82 the-scene emergency medical care or as of October 1, 2001,
83 direct supervision of emergency medical technicians or
84 paramedics, or the member must be the supervisor or command
85 officer of one or more members who have such responsibility.
86 Administrative support personnel, including, but not limited to,
87 those whose primary responsibilities are in accounting,

591-02400-20

20201146c1

88 purchasing, legal, and personnel, are not included;

89 (e) Effective January 1, 2001, the member must be employed
90 as a community-based correctional probation officer and be
91 certified, or required to be certified, in compliance with s.
92 943.1395. In addition, the member's primary duties and
93 responsibilities must be the supervised custody, surveillance,
94 control, investigation, and counseling of assigned inmates,
95 probationers, parolees, or community controllees within the
96 community; or the member must be the supervisor of a member or
97 members who have such responsibilities. Administrative support
98 personnel, including, but not limited to, those whose primary
99 duties and responsibilities are in accounting, purchasing, legal
100 services, and personnel management, are not included; however,
101 probation and parole circuit and deputy circuit administrators
102 are included;

103 (f) Effective January 1, 2001, the member must be employed
104 in one of the following classes and must spend at least 75
105 percent of his or her time performing duties that ~~which~~ involve
106 contact with patients or inmates in a correctional or forensic
107 facility or institution:

- 108 1. Dietitian (class codes 5203 and 5204);
- 109 2. Public health nutrition consultant (class code 5224);
- 110 3. Psychological specialist (class codes 5230 and 5231);
- 111 4. Psychologist (class code 5234);
- 112 5. Senior psychologist (class codes 5237 and 5238);
- 113 6. Regional mental health consultant (class code 5240);
- 114 7. Psychological Services Director-DCF (class code 5242);
- 115 8. Pharmacist (class codes 5245 and 5246);
- 116 9. Senior pharmacist (class codes 5248 and 5249);

591-02400-20

20201146c1

117 10. Dentist (class code 5266);
118 11. Senior dentist (class code 5269);
119 12. Registered nurse (class codes 5290 and 5291);
120 13. Senior registered nurse (class codes 5292 and 5293);
121 14. Registered nurse specialist (class codes 5294 and
122 5295);
123 15. Clinical associate (class codes 5298 and 5299);
124 16. Advanced practice registered nurse (class codes 5297
125 and 5300);
126 17. Advanced practice registered nurse specialist (class
127 codes 5304 and 5305);
128 18. Registered nurse supervisor (class codes 5306 and
129 5307);
130 19. Senior registered nurse supervisor (class codes 5308
131 and 5309);
132 20. Registered nursing consultant (class codes 5312 and
133 5313);
134 21. Quality management program supervisor (class code
135 5314);
136 22. Executive nursing director (class codes 5320 and 5321);
137 23. Speech and hearing therapist (class code 5406); or
138 24. Pharmacy manager (class code 5251);
139 (g) Effective October 1, 2005, through June 30, 2008, the
140 member must be employed by a law enforcement agency or medical
141 examiner's office in a forensic discipline recognized by the
142 International Association for Identification and must qualify
143 for active membership in the International Association for
144 Identification. The member's primary duties and responsibilities
145 must include the collection, examination, preservation,

591-02400-20

20201146c1

documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility. Administrative support personnel, including, but not limited to, those whose primary responsibilities are clerical or in accounting, purchasing, legal, and personnel, are not included;

(h) Effective July 1, 2008, the member must be employed by the Department of Law Enforcement in the crime laboratory or by the Division of State Fire Marshal in the forensic laboratory in one of the following classes:

1. Forensic technologist (class code 8459);
2. Crime laboratory technician (class code 8461);
3. Crime laboratory analyst (class code 8463);
4. Senior crime laboratory analyst (class code 8464);
5. Crime laboratory analyst supervisor (class code 8466);
6. Forensic chief (class code 9602); or
7. Forensic services quality manager (class code 9603);

(i) Effective July 1, 2008, the member must be employed by a local government law enforcement agency or medical examiner's office and must spend at least 65 percent of his or her time performing duties that involve the collection, examination, preservation, documentation, preparation, or analysis of human tissues or fluids or physical evidence having potential biological, chemical, or radiological hazard or contamination, or use chemicals, processes, or materials that may have carcinogenic or health-damaging properties in the analysis of such evidence, or the member must be the direct supervisor of one or more individuals having such responsibility. If a special

591-02400-20

20201146c1

175 risk member changes to another position within the same agency,
176 he or she must submit a complete application as provided in
177 paragraph (4)(a); ~~or~~

178 (j) The member must have already qualified for and be
179 actively participating in special risk membership under
180 paragraph (a), paragraph (b), or paragraph (c), must have
181 suffered a qualifying injury as defined in this paragraph, must
182 not be receiving disability retirement benefits as provided in
183 s. 121.091(4), and must satisfy the requirements of this
184 paragraph.

185 1. The ability to qualify for the class of membership
186 defined in paragraph (2)(h) occurs when two licensed medical
187 physicians, one of whom is a primary treating physician of the
188 member, certify the existence of the physical injury and medical
189 condition that constitute a qualifying injury as defined in this
190 paragraph and ~~that~~ the member has reached maximum medical
191 improvement after August 1, 2008. The certifications from the
192 licensed medical physicians must include, at a minimum, that the
193 injury to the special risk member has resulted in a physical
194 loss, or loss of use, of at least two of the following: left
195 arm, right arm, left leg, or right leg; and that:

196 a. The ~~That this~~ physical loss or loss of use is total and
197 permanent, unless ~~except if~~ the loss of use is due to a physical
198 injury to the member's brain, in which event the loss of use is
199 permanent with at least 75 percent loss of motor function with
200 respect to each arm or leg affected.

201 b. The ~~That this~~ physical loss or loss of use renders the
202 member physically unable to perform the essential job functions
203 of his or her special risk position.

591-02400-20

20201146c1

204 c. ~~That~~, Notwithstanding this physical loss or loss of use,
205 the individual can perform the essential job functions required
206 by the member's new position, as provided in subparagraph 3.

207 d. ~~That~~ Use of artificial limbs is not possible or does not
208 alter the member's ability to perform the essential job
209 functions of the member's position.

210 e. ~~That~~ The physical loss or loss of use is a direct result
211 of a physical injury and not a result of any mental,
212 psychological, or emotional injury.

213 2. For the purposes of this paragraph, "qualifying injury"
214 means an injury sustained in the line of duty, as certified by
215 the member's employing agency, by a special risk member which
216 ~~that~~ does not result in total and permanent disability as
217 defined in s. 121.091(4)(b). An injury is a qualifying injury if
218 the injury is a physical injury to the member's physical body
219 resulting in a physical loss, or loss of use, of at least two of
220 the following: left arm, right arm, left leg, or right leg.
221 Notwithstanding any other provision of this section, an injury
222 that would otherwise qualify as a qualifying injury is not
223 ~~considered~~ a qualifying injury if and when the member ceases
224 employment with the employer for whom he or she was providing
225 special risk services on the date the injury occurred.

226 3. The new position, as described in sub-subparagraph 1.c.,
227 which ~~that~~ is required for qualification as a special risk
228 member under this paragraph is not required to be a position
229 with essential job functions that entitle an individual to
230 special risk membership. Whether a new position as described in
231 sub-subparagraph 1.c. exists and is available to the special
232 risk member is a decision to be made solely by the employer in

591-02400-20

20201146c1

233 accordance with its hiring practices and applicable law.

234 4. This paragraph does not grant or create additional
235 rights for any individual to continued employment or to be hired
236 or rehired by his or her employer which ~~that~~ are not already
237 provided by state law ~~within the Florida Statutes~~, the State
238 Constitution, the Americans with Disabilities Act, if
239 applicable, or any other ~~applicable state or federal law;~~ or

240 (k) Effective July 1, 2020, the member must be employed as
241 a juvenile justice detention officer I or II or a juvenile
242 justice detention officer supervisor at the Department of
243 Juvenile Justice; be certified in accordance with s. 985.66(3);
244 and have primary duties and responsibilities that include
245 ensuring the custody, and applying physical restraint when
246 necessary, of detained youth within a juvenile detention
247 facility or while being transported, or be the supervisor of a
248 member who has such duties and responsibilities.

249 Section 2. The Legislature finds that a proper and
250 legitimate state purpose is served when employees and retirees
251 of the state and its political subdivisions, and the dependents,
252 survivors, and beneficiaries of such employees and retirees, are
253 extended the basic protections afforded by governmental
254 retirement systems. These persons must be provided benefits that
255 are fair and adequate and that are managed, administered, and
256 funded in an actuarially sound manner, as required by s. 14,
257 Article X of the State Constitution and part VII of chapter 112,
258 Florida Statutes. Therefore, the Legislature determines and
259 declares that this act fulfills an important state interest.

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



1455 SW Broadway Street, Suite 1600
Portland, OR 97201
Tel 503 227 0634

1301 Fifth Avenue, Suite 3800
Seattle, WA 98101
Tel 206 624 7940

milliman.com

December 5, 2019

Mr. David DiSalvo
State Retirement Director
Florida Department of Management Services, Division of Retirement

**Re: Blended Proposed Statutory Rates for the 2020-2021 Plan Year
Reflecting a Uniform UAL Rate for All Membership Classes and DROP**

Dear Director DiSalvo:

As requested, we have calculated the uniform or "blended" proposed statutory employer rates for the 2020-2021 plan year based on the statutory contributions for the FRS Investment Plan and the actuarially calculated 2020-2021 rates for the defined benefit FRS Pension Plan, as specified in the FRS 2019 Actuarial Valuation Report. The blended rates reflect a uniform Unfunded Actuarial Liability (UAL) Contribution Rate for all payroll bases on which the Blended UAL Contribution Rate is assessed.

Analysis

We determined the uniform blended 2020-2021 employer rate for each membership class and subclass of the Florida Retirement System by projecting contributions for both the FRS Pension Plan and the FRS Investment Plan. We did this by dividing the projected combined amount that would be contributed for both the FRS Pension Plan and the FRS Investment Plan by the total projected combined payroll for both plans. The uniform blended rate calculation assumes plan year 2020-2021 contributions for the FRS Pension Plan will be made at the actuarially calculated rate levels. The actuarially calculated rate levels are based on the July 1, 2019 actuarial valuation of the FRS Pension Plan, as presented in Table 4-11 of the FRS 2019 Actuarial Valuation Report. The FRS Investment Plan rates are the sum of the rates in Sections 121.72, 121.73, and 121.735 of Florida Statutes and assume those rates continue in effect during plan year 2020-2021. The employer contribution rates shown in the attached table are net of the 3% of payroll employee contribution rate.

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

Based on the data provided to us for this study, as of July 1, 2019 FRS Investment Plan payroll comprised between 19% and 20% of total payroll. On a headcount basis, FRS Investment Plan members constitute between 22% and 23% of active FRS membership. Please note, Senate Bill 7022 enacted by the 2017 Florida legislature changed the default plan for initial enrollments on and after January 1, 2018

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



from the FRS Pension Plan to the FRS Investment Plan for all membership classes other than Special Risk. As a result of the enactment, new entrants who would have defaulted into the FRS Pension Plan under prior statute will now default into the FRS Investment Plan in the absence of an active election. The actual levels of participation in the FRS Pension Plan and the FRS Investment Plan as of July 1, 2019 reflect that Investment Plan payroll now comprises an increased percentage of total payroll than it did one year ago.

Results

Table I shows the results of our study based on actual levels of participation in the FRS Pension Plan and the FRS Investment Plan as of July 1, 2019, projected to plan year 2020-2021 using the long-term payroll growth assumption of 3.25%.

Section A of the table includes the Normal Cost Rates developed in the July 1, 2019 funding actuarial valuation of the FRS Pension Plan. Section A does not include the UAL Cost. UAL Cost Rates are applied to a larger total payroll than the Normal Cost Rates and are developed in a later section. Section A, line 3 shows the total employer Normal Cost of the FRS Pension Plan as the product of Normal Cost Rates and projected Normal Cost payroll.

Similarly, Section B calculates the total employer cost of the FRS Investment Plan as the product of applicable employer contribution rates in effect since July 1, 2019 and the projected FRS Investment Plan payroll. FRS Investment Plan payroll is projected as described above.

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

Section D of the table shows the UAL Cost as of July 1, 2019 of the FRS Pension Plan, as shown in Table 4-11 of the FRS 2019 Actuarial Valuation Report.

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

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

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



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

The calculations are based on census and payroll data provided to us by the Florida Department of Management Services, Division of Retirement for the July 1, 2019 actuarial valuation. We have not audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete. These calculations are based on the Individual Entry Age actuarial cost allocation method, as described in the FRS 2019 Actuarial Valuation Report for use in developing 2020-2021 actuarially calculated contribution rates for the FRS Pension Plan.

Certification

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

Except where otherwise noted in this letter, this analysis is based on the FRS Pension Plan provisions, actuarial methods and actuarial assumptions as summarized in the FRS 2019 Actuarial Valuation Report as published on December 3, 2019. Further, the data used in these calculations were based on FRS Pension Plan data as summarized in the FRS 2019 Actuarial Valuation Report and FRS Investment Plan census data as of July 1, 2019 as provided to us by the Florida Department of Management Services, Division of Retirement. The results of our study depend on future experience conforming to those actuarial assumptions discussed earlier in this letter. Future actuarial measurements may differ significantly from the current measurements presented in this analysis due to many factors, including: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period) and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements.

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

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



David DiSalvo
Division of Retirement
December 5, 2019
Page 4

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

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

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

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

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

We are consulting actuaries for Milliman, Inc. We are also members of the American Academy of Actuaries, and meet their Qualification Standards to render the actuarial opinion contained herein.

Please call if you would like to further discuss this project.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matt Larrabee'.

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

A handwritten signature in black ink, appearing to read 'Daniel Wade'.

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

A handwritten signature in black ink, appearing to read 'Kathryn M. Hunter'.

Kathryn Hunter, FSA, EA, MAAA
Consulting Actuary

Enclosures

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Blended Proposed Statutory Normal Cost Plus UAL Rates for 2020-2021 Plan Year
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

Blended Proposed Statutory Normal Cost Contribution Rates

A. Defined Benefit FRS Pension Plan Normal Cost

1. Employer Cost

- a. Normal Cost Rate ¹
b. Rate Reduction Techniques
c. Total Adjusted Contribution Rate ²
-PVE 2021

2. Projected Payroll

3. Total Employer Normal Cost [(1c) x (2)]
-PVE 2021

B. Defined Contribution FRS Investment Plan (IP) Employer Cost

1. Employer Rates effective July 1, 2019
(Sec 121.72, Sec 121.73 and Sec 121.735)

2. Projected Payroll

3. Total Employer Cost [(1) x (2)]
-PVE 2021

C. Total System Normal Cost (FRS Pension Plan + FRS Investment Plan)

1. Total Normal Cost Contribution [(A3) + (B3)]
2. Total System Projected Payroll [(A2) + (B2)]
3. "Blended" Normal Cost Contribution Rate
As a Percentage of Total Payroll [(C1) / (C2)] ²

	Regular	Special Risk Administrative	Special Risk Judicial	Electoral Officers' Class— Leg-Atty-Cor	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
a. Normal Cost Rate ¹	5.19%	15.41%	11.13%	13.64%	8.76%	10.57%	5.90%	7.03%	7.03%
b. Rate Reduction Techniques	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
c. Total Adjusted Contribution Rate ² -PVE 2021	5.19%	15.41%	11.13%	13.64%	8.76%	10.57%	5.90%	7.03%	7.03%
2. Projected Payroll	\$20,118,483	\$4,322,041	\$3,729	\$114,351	\$6,583	\$45,103	\$53,566	\$2,364,056	\$27,527,912
3. Total Employer Normal Cost [(1c) x (2)] -PVE 2021	\$1,044,149	\$666,027	\$415	\$15,597	\$777	\$4,767	\$38,196	\$166,193	\$1,995,921
1. Employer Rates effective July 1, 2019 (Sec 121.72, Sec 121.73 and Sec 121.735)	3.50%	13.54%	5.43%	11.05%	6.94%	8.95%	4.98%	0.00%	4.83%
2. Projected Payroll	\$5,663,268	\$74,118	\$1,021	\$16,582	\$1,743	\$20,089	\$20,230	\$0	\$6,678,111
3. Total Employer Cost [(1) x (2)] -PVE 2021	\$203,878	\$104,816	\$55	\$1,832	\$121	\$1,798	\$10,024	\$0	\$322,524
1. Total Normal Cost Contribution [(A3) + (B3)]	\$1,248,027	\$770,843	\$470	\$17,429	\$898	\$6,565	\$49,220	\$166,193	\$2,358,445
2. Total System Projected Payroll [(A2) + (B2)]	\$25,781,751	\$5,096,159	\$4,750	\$130,933	\$8,326	\$65,192	\$754,856	\$2,364,056	\$34,206,023
3. "Blended" Normal Cost Contribution Rate As a Percentage of Total Payroll [(C1) / (C2)] ²	4.84%	15.13%	9.89%	13.31%	8.38%	10.07%	6.39%	7.03%	6.60%

¹ As reported in the July 1, 2019 actuarial valuation report - Table 4-11

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

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

MILLMAN

12/5/2019

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Blended Proposed Statutory Normal Cost Plus UAL Rates for 2020-2021 Plan Year
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

Blended Proposed Statutory UAL Contribution Rates

	Regular	Special Risk	Special Risk Administrative	Judicial	Elected Officers Class— Leg-Atty-Crb	Local	Senior Management	Composia (excluding DROP)	DROP	Composia (including DROP)
D. Defined Benefit FRS Pension Plan UAL Contribution										
1. Employer UAL Contribution Rate ^{1,2}	4.26%	8.93%	30.97%	28.26%	60.66%	52.59%	25.95%	5.59%	8.29%	5.80%
2. Projected Payroll	\$23,739,856	\$4,346,448	\$3,729	\$114,991	\$7,177	\$49,410	\$589,732	\$28,831,343	\$2,364,056	\$31,195,399
3. Total Employer UAL Contribution [(1) x (2)] —PYE 2021	\$1,011,318	\$389,007	\$1,151	\$32,496	\$4,354	\$25,985	\$147,945	\$1,612,156	\$195,980	\$1,808,136
E. Defined Contribution FRS Investment Plan Projected Payroll										
	\$5,663,268	\$774,118	\$1,021	\$16,582	\$1,743	\$20,089	\$201,290	\$6,678,111	\$0	\$6,678,111
F. Total System UAL Contribution (FRS Pension Plan + FRS Investment Plan)										
1. Total UAL Contribution [(D3)]	\$1,011,318	\$389,007	\$1,151	\$32,496	\$4,354	\$25,985	\$147,945	\$1,612,156	\$195,980	\$1,808,136
2. Total System Projected Payroll [(D2) + (E)]	\$29,403,424	\$5,120,565	\$4,750	\$131,573	\$8,920	\$69,499	\$771,022	\$35,509,494	\$2,364,056	\$37,873,510
3. "Blended" UAL Contribution Rate As a Percentage of Total Payroll [(F1) / (F2)] ²	3.44%	7.60%	24.23%	24.70%	48.81%	37.35%	19.18%	4.54%	8.29%	4.77%

Blended Proposed Statutory Uniform Contribution Rates ²**G. Total Employer Contribution Rate (FRS Pension Plan + FRS Investment Plan)**

1. "Blended" Normal Cost Contribution Rate [(C3)]	4.84%	15.13%	9.89%	13.31%	8.38%	10.07%	6.35%	6.57%	7.03%	6.60%
2. "Blended" UAL Contribution Rates [(F3)]	3.44%	7.60%	24.23%	24.70%	48.81%	37.35%	19.18%	4.54%	8.29%	4.77%
3. Total Blended Contribution Rate ² —PYE 2021 [(G1) + (G2)]	8.28%	22.73%	34.12%	38.01%	57.19%	47.45%	25.57%	11.11%	15.32%	11.37%

¹ As reported in the July 1, 2019 actuarial valuation report – Table 4-11² Rates shown do not include the Health Insurance Subsidy contribution rate or FRS Investment Plan education and administration assessment.
³ Employers of employee groups subject to only the UAL contribution rate will pay the rates shown in line (G2).

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

MILLIMAN

12/5/2019



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper
Committee on Government Oversight and
Accountability

Subject: Committee Agenda Request

Date: January 21, 2019

I respectfully request that **Senate Bill #1146**, relating to **Special Risk Class of the Florida Retirement System**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/20

Meeting Date

SB 1146

Bill Number (if applicable)

Topic Special Risk Class of the FL Retirement System

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Executive Director

Address 1300 N Adams St.

Phone 321-223-4232

Street

Tallahassee

City

FL

State

32307

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Juvenile Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/2020

Meeting Date

SB1146

Bill Number (if applicable)

Topic Special Risk For Juvenile Detention Officers

Amendment Barcode (if applicable)

Name Rachel Moscascu

Job Title Director of Legislative Affairs for Dept. of Juvenile Justice

Address 2737 Centerview Dr.

Phone 717-2716

Street

Talbossee

FL

32399

City

State

Zip

Email rachel.moscascu@djj.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Dept. of Juvenile Justice

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 1170

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Baxley and Hutson

SUBJECT: Public Records and Meetings/Division of State Technology

DATE: February 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Favorable
2.	Hackett	McVaney	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1170 expands two existing public records exemptions relating to information technology records. While the bill makes numerous changes, the net effect is to add “network schematics, hardware and software configurations, and encryption” records to an existing exemption; and streamline and simplify the exemptions by deleting duplicative provisions and restructuring the remaining provisions to maintain the same effect. The bill provides for retroactive application of the exemption.

The bill also creates a public meetings exemption for those portions of a public meeting which would reveal records that the above-discussed provisions make exempt. No exempt portion of an exempt meeting may be off the record, but must be recorded and transcribed. A recording and transcript is confidential and exempt from disclosure unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

Pursuant to the Open Government Sunset Review Act, this public records exemption is scheduled to repeal October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill is not expected to have an impact on state revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, 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 Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

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

¹⁷ *Id.*

¹⁸ FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁹ or the “Sunshine Law,”²⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²¹ The board or commission must provide the public reasonable notice of such meetings.²² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²³ Minutes of a public meeting must be promptly recorded and open to public inspection.²⁴ Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁷ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.³⁰

time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

³⁰ Section 286.0113, F.S.

Open Government Sunset Review Act

The Open Government Sunset Review Act³¹ (the act) prescribes a legislative review process for newly created or substantially amended³² public records or open meetings exemptions, with specified exceptions.³³ 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.³⁴

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.³⁵ 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;³⁶
- 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;³⁷ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁸

The act also requires specified questions to be considered during the review process.³⁹ 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.⁴⁰ 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

³¹ Section 119.15, F.S.

³² 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.

³³ 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.

³⁴ Section 119.15(3), F.S.

³⁵ Section 119.15(6)(b), F.S.

³⁶ Section 119.15(6)(b)1., F.S.

³⁷ Section 119.15(6)(b)2., F.S.

³⁸ Section 119.15(6)(b)3., F.S.

³⁹ 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?

⁴⁰ See generally s. 119.15, F.S.

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.⁴¹

Security of State Agency Data and Information Technology

Section 282.318, F.S., is the Information Technology Security Act. It makes the Department of Management Services (department) responsible for the security of data and information technology for all state agencies.⁴² The department's responsibilities include:

- Developing and annually updating a statewide information technology security strategic plan that includes security goals and objectives, risk management, incident management, and disaster recovery planning;
- Establishing asset management procedures;
- Completing comprehensive risk assessments;
- Identifying protection procedures;
- Establishing agency computer security incident response teams for responding to security incidents;
- Developing agency strategic and operational information technology security plans; and
- Establishing the safeguards for protecting data and information technology resources.

Each state agency is required to conduct, and update every three years, a risk assessment to determine the security threats to data, information, and information technology resources. The risk assessment is confidential and exempt from s. 119.07(1), F.S, except that it is available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴³

Each state agency is required to develop, and periodically update, written internal policies and procedures, which include procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Division of State Technology within the department, and which must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), F.S., except that the information is available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴⁴

⁴¹ Section 119.15(7), F.S.

⁴² For these purposes, the term state agencies includes any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government, including the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services; the Justice Administrative Commission; and the Public Service Commission,. The term does not include university boards of trustees or state universities. ss. 282.319(2) and 282.0041(27), F.S.

⁴³ Section 282.318(4)(d), F.S.

⁴⁴ Section 282.318(4)(e), F.S.

Each state agency is required to conduct periodic internal audits and evaluations of the agency's information technology security program for the data, information, and information technology resources of the agency. The results of these audits and evaluations are confidential information and exempt from s. 119.07(1), F.S., except that such information is available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.⁴⁵

Each state agency is required to develop a process for detecting, reporting, and responding to threats, breaches, or information technology security incidents which is consistent with the security rules, guidelines, and processes established by the Agency for State Technology. All information technology security incidents and breaches must be reported to the Division of State Technology within the department and the Cybercrime Office of the Department of Law Enforcement. Records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- Information technology resources, which includes:
 - Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

These records are available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁶

Finally, the portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security program for the data, information, and information technology resources of the state agency which are held by a state agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- Information technology resources, which include:

⁴⁵ Section 282.318(4)(g), F.S.

⁴⁶ Section 282.318(4)(j), F.S.

- Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
- Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.⁴⁷

Such portions of records are available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. Such portions of records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁸

III. Effect of Proposed Changes:

Section 1 amends s. 282.318, F.S., to make changes to the existing public records exemption in s. 282.318(4)(j)3., F.S.

Subparagraph (4)(j)3. currently exempts from public record law records held by a state agency which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information or information technology, including specified types of information. The bill expands the exemption to exempt the portion of records containing network schematics, hardware and software configurations, and encryption. The bill also makes the records available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. The expanded exemption is retroactive. The exemptions are subject to the Open Government Sunset Review Act (OGSR).

The bill also creates a public meetings exemption under s. 282.318(7), F.S., for those portions of a public meeting which would reveal records that the above provisions makes exempt. No exempt portion of an exempt meeting may be off the record but must be recorded and transcribed. A recording and transcript is confidential and exempt from disclosure unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the recording and transcript which reveals nonexempt data and information may be disclosed to a third party.

The OGSR process for the exemptions provides for an automatic repeal on October 2, 2025 unless reviewed and saved by the legislature before then.

⁴⁷ Section 282.318(5), F.S.

⁴⁸ *Id.*

The bill makes a legislative finding that both public records exemptions, as amended, are a public necessity for the following reasons.

- Network schematics, hardware and software configurations, encryption, and information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigations of the incidents or breaches. The release of portions of records held by a state agency which contain such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of such information before an active investigation is completed could jeopardize the ongoing investigation.
- An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers and personal financial and health information. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.
- Disclosure of a record containing information that would reveal weaknesses in a state agency's data security, including a computer forensic analysis, could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.
- Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.
- The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state agency data and information technology resources, which would significantly impair the administration of vital state programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of state agencies.
- It is valuable, prudent, and critical to a state agency to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the agency's information technology program or related systems. Such documents would likely include an analysis of the agency's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

The bill makes a legislative finding of a public necessity to exempt those portions of a public meeting which would reveal data and information that the bill makes exempt from public records law, and of a public necessity to exempt the resulting recordings and transcripts, for the following reasons.

- Such meetings must be made exempt from open meetings requirements in order to protect agency information technology systems, resources, and data. This information would clearly identify a state agency's information technology systems and its vulnerabilities and disclosure of such information would jeopardize the information technology security of the state agency and compromise the integrity and availability of state agency data and

information technology resources. Such disclosure would significantly impair the administration of state programs.

- It is necessary that the resulting recordings and transcripts be made confidential and exempt from public record requirements in order to protect state information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state agency's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the agency and compromise the integrity and availability of state data and information technology resources, which would significantly impair the administration of state programs.

The bill also makes a legislative finding that these public meeting and public records exemptions must be given retroactive application because they are remedial in nature.

The bill takes effect upon becoming a law.

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 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 or public meetings requirements. This bill expands an existing public records exemption to include portions of records which contain network schematics, hardware and software configurations, or encryption and creates a new public meetings exemption for the portion of a meeting at which specified exempt records are discussed. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

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 state agency data and information technology. This bill expands existing provisions to exempt only portions of records which contain

network schematics, hardware and software configurations, or encryption from the public records requirements and creates a public meetings exemption to exempt only those portions of meetings discussing the information relating to state agency data and information technology security which are already exempt or made exempt by the bill. The exemptions do 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 be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should continue to be offset by authorized fees.⁴⁹ The government sector will experience a slight impact in recording and transcribing the closed portions of the meeting.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴⁹ Section 119.07(2) and (4), F.S.

VIII. Statutes Affected:

This bill substantially amends section 282.318 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 February 3, 2020:

The CS moves the definition of “external audit” on lines 275-277 flush left after a hard return, as it applies to the entire subsection.

- B. **Amendments:**

None.

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



527806

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2020	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 275
and insert:
technology systems.

For purposes of this subsection, the term

By Senator Baxley

12-01201-20

20201170__

1 A bill to be entitled
2 An act relating to public records and meetings;
3 amending s. 282.318, F.S.; revising a provision to
4 reflect the abolishment of the Agency for State
5 Technology; providing an exemption from public records
6 requirements for portions of records held by a state
7 agency which contain network schematics, hardware and
8 software configurations, or encryption; removing the
9 scheduled repeal of a certain public records
10 exemption; providing an exemption from public meetings
11 requirements for portions of meetings which would
12 reveal certain records; requiring the recording and
13 transcription of exempt portions of such meetings;
14 providing an exemption from public records
15 requirements for such recordings and transcripts;
16 providing an exception; revising applicability of
17 provisions requiring and authorizing certain records
18 to be made available to certain entities; providing
19 for future legislative review and repeal under the
20 Open Government Sunset Review Act of the exemptions;
21 providing for retroactive application of the
22 exemptions; providing statements of public necessity;
23 providing an effective date.

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

26
27 Section 1. Section 282.318, Florida Statutes, is amended to
28 read:

29 282.318 Security of data and information technology.—

12-01201-20

20201170__

(1) This section may be cited as the "Information Technology Security Act."

(2) As used in this section, the term "state agency" has the same meaning as provided in s. 282.0041, except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services.

(3) The department is responsible for establishing standards and processes consistent with generally accepted best practices for information technology security, to include cybersecurity, and adopting rules that safeguard an agency's data, information, and information technology resources to ensure availability, confidentiality, and integrity and to mitigate risks. The department shall also:

(a) Designate a state chief information security officer who must have experience and expertise in security and risk management for communications and information technology resources.

(b) Develop, and annually update by February 1, a statewide information technology security strategic plan that includes security goals and objectives for the strategic issues of information technology security policy, risk management, training, incident management, and disaster recovery planning.

(c) Develop and publish for use by state agencies an information technology security framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and managed consistent with their relative importance to the

12-01201-20

20201170__

agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and information technology security audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency computer security incident response teams and describing their responsibilities for responding to information technology security incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to an information technology security incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing an information technology security incident reporting process that includes procedures and tiered reporting timeframes for notifying the department and the Department of

12-01201-20

20201170__

88 Law Enforcement of information technology security incidents.
89 The tiered reporting timeframes shall be based upon the level of
90 severity of the information technology security incidents being
91 reported.

92 10. Incorporating information obtained through detection
93 and response activities into the agency's information technology
94 security incident response plans.

95 11. Developing agency strategic and operational information
96 technology security plans required pursuant to this section.

97 12. Establishing the managerial, operational, and technical
98 safeguards for protecting state government data and information
99 technology resources that align with the state agency risk
100 management strategy and that protect the confidentiality,
101 integrity, and availability of information and data.

102 (d) Assist state agencies in complying with this section.

103 (e) In collaboration with the Cybercrime Office of the
104 Department of Law Enforcement, annually provide training for
105 state agency information security managers and computer security
106 incident response team members that contains training on
107 information technology security, including cybersecurity,
108 threats, trends, and best practices.

109 (f) Annually review the strategic and operational
110 information technology security plans of executive branch
111 agencies.

112 (4) Each state agency head shall, at a minimum:

113 (a) Designate an information security manager to administer
114 the information technology security program of the state agency.
115 This designation must be provided annually in writing to the
116 department by January 1. A state agency's information security

12-01201-20

20201170__

manager, for purposes of these information security duties,
shall report directly to the agency head.

(b) In consultation with the department and the Cybercrime Office of the Department of Law Enforcement, establish an agency computer security incident response team to respond to an information technology security incident. The agency computer security incident response team shall convene upon notification of an information technology security incident and must comply with all applicable guidelines and processes established pursuant to paragraph (3) (c).

(c) Submit to the department annually by July 31, the state agency's strategic and operational information technology security plans developed pursuant to rules and guidelines established by the department.

1. The state agency strategic information technology security plan must cover a 3-year period and, at a minimum, define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and disaster recovery. The plan must be based on the statewide information technology security strategic plan created by the department and include performance metrics that can be objectively measured to reflect the status of the state agency's progress in meeting security goals and objectives identified in the agency's strategic information security plan.

2. The state agency operational information technology security plan must include a progress report that objectively measures progress made towards the prior operational information technology security plan and a project plan that includes

12-01201-20

20201170__

activities, timelines, and deliverables for security objectives that the state agency will implement during the current fiscal year.

(d) Conduct, and update every 3 years, a comprehensive risk assessment, which may be completed by a private sector vendor, to determine the security threats to the data, information, and information technology resources, including mobile devices and print environments, of the agency. The risk assessment must comply with the risk assessment methodology developed by the department and is confidential and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(e) Develop, and periodically update, written internal policies and procedures, which include procedures for reporting information technology security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Division of State Technology within the department. Such policies and procedures must be consistent with the rules, guidelines, and processes established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the

12-01201-20

20201170__

Department of Law Enforcement, the Division of State Technology within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(f) Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the department to address identified risks to the data, information, and information technology resources of the agency.

(g) Ensure that periodic internal audits and evaluations of the agency's information technology security program for the data, information, and information technology resources of the agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Division of State Technology within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.

(h) Ensure that the information technology security and cybersecurity requirements in both the written specifications for the solicitation and service-level agreement of information technology and information technology resources and services meet or exceed the applicable state and federal laws, regulations, and standards for information technology security and cybersecurity. Service-level agreements must identify service provider and state agency responsibilities for privacy and security, protection of government data, personnel background screening, and security deliverables with associated frequencies.

(i) Provide information technology security and

12-01201-20

20201170__

cybersecurity awareness training to all state agency employees in the first 30 days after commencing employment concerning information technology security risks and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement.

(j) Develop a process for detecting, reporting, and responding to threats, breaches, or information technology security incidents which is consistent with the security rules, guidelines, and processes established by the Division of State Technology within the department ~~Agency for State Technology~~.

1. All information technology security incidents and breaches must be reported to the Division of State Technology within the department and the Cybercrime Office of the Department of Law Enforcement and must comply with the notification procedures and reporting timeframes established pursuant to paragraph (3)(c).

2. For information technology security breaches, state agencies shall provide notice in accordance with s. 501.171.

(5)3. Portions of records held by a state agency which contain network schematics, hardware and software configurations, or encryption, or which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction

12-01201-20

20201170__

of:

(a)~~a.~~ Data or information, whether physical or virtual; or

(b)~~b.~~ Information technology resources, which includes:

1.~~(I)~~ Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2.~~(II)~~ Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems.

~~Such records shall be available to the Auditor General, the Division of State Technology within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. Such records may be made available to a local government, another state agency, or a federal agency for information technology security purposes or in furtherance of the state agency's official duties. This exemption applies to such records held by a state agency before, on, or after the effective date of this exemption. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(6)~~(5)~~ The portions of risk assessments, evaluations, external audits, and other reports of a state agency's information technology security program for the data, information, and information technology resources of the state

12-01201-20

20201170__

agency which are held by a state agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a) Data or information, whether physical or virtual; or

(b) Information technology resources, which include:

1. Information relating to the security of the agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2. Security information, whether physical or virtual, which relates to the agency's existing or proposed information technology systems. For purposes of this subsection, the term "external audit" means an audit that is conducted by an entity other than the state agency that is the subject of the audit.

(7) Those portions of a public meeting as specified in s. 286.011 which would reveal records that are confidential and exempt under subsection (5) or subsection (6) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such meeting shall be recorded and transcribed. Such recordings and transcripts are confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, after an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the

12-01201-20

20201170__

291 recording and transcript which reveals nonexempt data and
292 information may be disclosed to a third party.

293 (8) The ~~Such~~ portions of records made confidential and
294 exempt in subsections (5), (6), and (7) shall be available to
295 the Auditor General, the Cybercrime Office of the Department of
296 Law Enforcement, the Division of State Technology within the
297 department, and, for agencies under the jurisdiction of the
298 Governor, the Chief Inspector General. Such portions of records
299 may be made available to a local government, another state
300 agency, or a federal agency for information technology security
301 purposes or in furtherance of the state agency's official
302 duties. ~~For purposes of this subsection, "external audit" means~~
303 ~~an audit that is conducted by an entity other than the state~~
304 ~~agency that is the subject of the audit.~~

305 (9) The exemptions contained in subsections (5), (6), and
306 (7) apply ~~This exemption applies to such~~ records held by a state
307 agency before, on, or after the effective date of this
308 exemption.

309 (10) Subsections (5), (6), and (7) are ~~This subsection is~~
310 subject to the Open Government Sunset Review Act in accordance
311 with s. 119.15 and shall stand repealed on October 2, 2025 ~~2021~~,
312 unless reviewed and saved from repeal through reenactment by the
313 Legislature.

314 (11) ~~(6)~~ The department shall adopt rules relating to
315 information technology security and to administer this section.

316 Section 2. (1)(a) The Legislature finds it is a public
317 necessity that the following data or information held by a state
318 agency be made confidential and exempt from s. 119.07(1),
319 Florida Statutes, and s. 24(a), Article I of the State

12-01201-20

20201170__

320 Constitution:

321 1. Portions of records held by a state agency which contain
322 network schematics, hardware and software configurations,
323 encryption, or which identify detection, investigation, or
324 response practices for suspected or confirmed information
325 technology security incidents, including suspected or confirmed
326 breaches, if the disclosure of such records would facilitate
327 unauthorized access to or the unauthorized modification,
328 disclosure, or destruction of:

329 a. Data or information, whether physical or virtual; or

330 b. Information technology resources, which include:

331 (I) Information relating to the security of the agency's
332 technologies, processes, and practices designed to protect
333 networks, computers, data processing software, and data from
334 attack, damage, or unauthorized access; or

335 (II) Security information, whether physical or virtual,
336 which relates to the agency's existing or proposed information
337 technology systems.

338 2. Portions of risk assessments, evaluations, external
339 audits, and other reports of a state agency's information
340 technology security programs, if the disclosure of such portions
341 of records would facilitate unauthorized access to or the
342 unauthorized modification, disclosure, or destruction of:

343 a. Data or information, whether physical or virtual; or

344 b. Information technology resources, which include:

345 (I) Information relating to the security of the state
346 agency's technologies, processes, and practices designed to
347 protect networks, computers, data processing software, and data
348 from attack, damage, or unauthorized access; or

12-01201-20

20201170__

349 (II) Security information, whether physical or virtual,
350 which relates to the agency's existing or proposed information
351 technology systems.

352 (b) Such records must be made confidential and exempt from
353 public records requirements for the following reasons:

354 1. Portions of records held by a state agency which contain
355 network schematics, hardware and software configurations,
356 encryption, or which identify information technology detection,
357 investigation, or response practices for suspected or confirmed
358 information technology security incidents or breaches are likely
359 to be used in the investigations of the incidents or breaches.
360 The release of such information could impede the investigation
361 and impair the ability of reviewing entities to effectively and
362 efficiently execute their investigative duties. In addition, the
363 release of such information before an active investigation is
364 completed could jeopardize the ongoing investigation.

365 2. An investigation of an information technology security
366 incident or breach is likely to result in the gathering of
367 sensitive personal information, including identification numbers
368 and personal financial and health information. Such information
369 could be used to commit identity theft or other crimes. In
370 addition, release of such information could subject possible
371 victims of the security incident or breach to further harm.

372 3. Disclosure of a record, including a computer forensic
373 analysis, or other information that would reveal weaknesses in a
374 state agency's data security could compromise that security in
375 the future if such information were available upon conclusion of
376 an investigation or once an investigation ceased to be active.

377 4. Such records are likely to contain proprietary

12-01201-20

20201170__

information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state agency data and information technology resources, which would significantly impair the administration of vital state programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of state agencies.

6. It is valuable, prudent, and critical to a state agency to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the agency's information technology program or related systems. Such documents would likely include an analysis of the agency's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

(2)(a)1. The Legislature also finds that it is a public necessity that those portions of a public meeting which would reveal data and information described in paragraph (1)(a) be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution.

2. Such meetings must be made exempt from open meetings

12-01201-20

20201170__

requirements in order to protect agency information technology systems, resources, and data. This information would clearly identify a state agency's information technology systems and its vulnerabilities and disclosure of such information would jeopardize the information technology security of the state agency and compromise the integrity and availability of state agency data and information technology resources. Such disclosure would significantly impair the administration of state programs.

(b)1. The Legislature further finds that it is a public necessity that the recordings and transcripts of the portions of meetings specified in subparagraph (a)1. be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

2. It is necessary that the resulting recordings and transcripts be made confidential and exempt from public record requirements in order to protect state information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state agency's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the agency and compromise the integrity and availability of state data and information technology resources, which would significantly impair the administration of state programs.

(3) The Legislature further finds that these public meeting and public records exemptions must be given retroactive application because they are remedial in nature.

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

THE FLORIDA SENATE

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY

12th District

January 14, 2020

The Honorable Chairman Ed Hooper
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Hooper,

I would like to request that SB 1170, Public Records and Meetings/Division of State Technology be placed on the next Governmental Oversight and Accountability Committee agenda.

SB 1170 revises a provision to reflect the abolishment of the Agency for State Technology and provides an exemption from public records requirements for portions of records held by the state agency.

Your favorable consideration is appreciated, please do not hesitate to contact me if you have any questions or need additional information.

Onward & Upward,



Senator Dennis Baxley
Florida State Senate – District 12

DKB/dd

cc: Joe McVaney, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/03/20

Meeting Date

SB 1170

Bill Number (if applicable)

Topic IT Public Records Exemption

Amendment Barcode (if applicable)

Name Cody Farrill

Job Title Deputy Chief of Staff

Address 4650 Esplanade Way

Phone 850 482 7001

Street

Tallahassee

FL

32311

City

State

Zip

Email cody.farrill@dms.nyfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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)

From: [Dennis, Debbie](#)
To: [Hooper, Ed](#)
Cc: [McVane, Joe](#); [Redig, Tamra](#)
Subject: SB 1170 Public Records and Meetings/Division of State Technology
Date: Monday, February 3, 2020 8:39:14 AM

Senator Hooper,

Senator Baxley would like to request that Senator Bean present SB 1170 Public Records and Meetings/Division of State Technology in the Governmental Oversight committee meeting today. Senator Baxley is needed in the Education Committee which is meeting at the same time.

Thank you for your consideration.

Debbie Dennis, Chief Legislative Assistant
Senator Baxley, SD 12
(850) 487-5012

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 1270

INTRODUCER: Senator Lee

SUBJECT: Fiduciary Duty of Care for Appointed Public Officials and Executive Officers

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 1270 creates part IX of chapter 112, F.S., to establish an express fiduciary duty of care for appointed public officials' and executive officers acting on behalf of governmental entities.

The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill provides definitions for relevant terms including, but not limited to "appointed public official," "executive officer," and "governmental entity."

The bill establishes training requirements for each appointed public official and executive officer to begin on January 1, 2021. The bill specifies that a minimum of five hours of board governance training must be completed for each term served. The bill excludes appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000 and appointed officials who hold elected office in another capacity from the training requirement. The bill requires appointed public officials and executive officers to provide written certification of compliance with the board governance training.

The bill requires the Department of Business and Professional Regulation (DBPR), by January 1, 2021, to either (i) contract for or approve a board governance training program that includes an affordable web-based electronic media option; or (ii) publish a list of approved Training providers. The bill grants rulemaking authority to the DBPR.

The bill requires the appointment of an executive officer or general counsel be subject to approval by a majority vote of the governing body of the governmental entity. The bill specifies that all legal counsel employed by a governmental entity must represent the legal interest and position of the governing body of the governmental entity and not the interest of any individual or employee.

The bill will have an indeterminate fiscal impact on the private sector to the extent entities are selected by DBPR to provide training. The bill will have an indeterminate fiscal impact on the local and state government. The DPBR may experience a slightly negative impact in complying with the bill's board governance training program requirements. Additionally, local governments will experience an indeterminate negative impact to the extent its appointed public officials and executive officers are subject to the training requirement.

Section 3 will take effect on July 1, 2020.

II. Present Situation:

Chapter 112

Chapter 112, F.S., contains general provisions governing public officers and employees. Part III of ch. 112, F.S., establishes a Code of Ethics for Public Officers and Employees that sets forth standards of conduct required for public officers and employees in the performance of their official duties.¹ In order to enforce the Code of Ethics, the legislature created the Commission on Ethics (Commission).²

Section 112.3145, F.S., requires state and local officers and specified state employees to file a statement of financial interest with the Commission. This section defines a "local officer" to include persons elected to office in any political subdivision of the state, and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.³

Additionally, the term includes *appointed* members of specified boards. Specifically, s. 112.3145(1)(a)2., F.S., provides that "public officer" means:

Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:

- a. The governing body of the political subdivision, if appointed;
- b. A community college or junior college district board of trustees;
- c. A board having the power to enforce local code provisions;
- d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating

¹ Sections 112.311 -112.3261, F.S.

² Section 112.320, F.S.

³ Section 112.3145(1)(a)1., F.S.

committees, and such other groups who only have the power to make recommendations to planning or zoning boards;

e. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or

f. Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

A “state officer” is defined to mean:

- Any elected public officer, excluding those elected to the U.S. Senate and House of Representatives, not covered elsewhere in this part an any person who is appointed to fill a vacancy for an unexpired term in such an elective office;
- An *appointed* member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body;
- A member of the Board of Governors of the State University System or a state university board of trustees, in Chancellor and Vice Chancellors of the State University System, and the president of a state university; or
- A member of the judicial nominating commission for any district court of appeal or any judicial circuit.⁴

Fiduciary Duty of Care

A Fiduciary Relationship and Breach of Fiduciary Duty

Black’s Law Dictionary defines “fiduciary relationship” as:

A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. • Fiduciary relationships—such as ... principal-agent ...—require an unusually high degree of care. Fiduciary relationships usu[ally] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.⁵

As explained by the Florida Supreme Court, a fiduciary relationship exists “where confidence is reposed by one party and trust is accepted by the other, or where confidence has been acquired or abused.”⁶ In Florida, a breach of fiduciary duty is considered a tort.⁷ In order to state a claim for

⁴ Section 112.3145(1)(c), F.S.

⁵ *Black’s Law Dictionary*, 744 (10th ed. 2014).

⁶ *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002).

⁷ *Doe v. Evans*, 814 So.2d 370, 374 (Fla. 2002)(“ ‘[a] fiduciary who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act. . . [t]he liability is not dependent solely upon an agreement or

breach of fiduciary duty, a plaintiff must show three elements: (1) the existence of a fiduciary duty, (2) the breach of that duty, and (3) damages resulting from the breach.⁸

A fiduciary relationship may be either express or implied.⁹ “Express fiduciary relationships are created by contract, such as principal/agent or can be created by legal proceedings, as in the case of a guardian/ward.”¹⁰ On the other hand, an implied in law fiduciary relationship may be found based on the “specific factual situation surrounding the transaction and the relationship of the parties.”¹¹ Under Florida law, for an implied fiduciary relationship to exist “there must be substantial evidence showing some dependency by one party and some undertaking by the other party to advise, counsel, and protect the weaker party.”¹²

The most basic duty of a fiduciary is the duty of loyalty, which obligates the fiduciary to put the interests of the beneficiary first, ahead of the fiduciary’s self-interest, and to refrain from exploiting the relationship for the fiduciary’s personal benefit.¹³ In addition to a duty of loyalty, a fiduciary also owes a duty care to carry out its responsibilities in an informed and considered manner and to act as an ordinary prudent person would act in the management of his own affairs. For example, under s. 518.11(1)(a), F.S., a trustee has the duty to invest or manage assets of an estate prudently – “as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.”¹⁴

Enforcement of Fiduciary Obligations owed by Public Officials

“Public officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest.”¹⁵ Accordingly, a public official’s fiduciary duty is a general one rather than a specific one.¹⁶ Stated differently, a public official owes a fiduciary to the constituents he or she serves generally, but not to each individual constituents he or she serves.¹⁷ Additionally,

contractual relation between the fiduciary and the beneficiary but results from the relation.’ ”) (quoting Restatement (Second) of Torts § 874 cmt. B(1979)).

⁸ *Gracey v. Eaker*, 837 So.2d 348, 353 (Fla.2002).

⁹ *Capital Bank v. MVB, Inc.*, 644 So.2d 515, 518 (Fla. 3d DCA 1994).

¹⁰ *MediaXposure Ltd. v. Harrington*, No. 8:11–CV–410–T–TGW, 2012 WL 1805493, at *6 (M.D.Fla.2012)

¹¹ *Id.* See e.g., *Fla. Software Svs., Inc. v. Columbia/HCA Healthcare Corp.*, 46 F.Supp.2d 1276, 1286 (M.D.Fla.1999) (stating that “Florida law recognizes fiduciary relationships arising out of joint ventures.”); *Askew v. Allstate Title & Abstract Co., Inc.*, 603 So.2d 29, 31 (Fla. 2d DCA 1992) (stating that “the title agent has a fiduciary duty to both the buyer and the seller”); *Cohen v. Hattaway*, 595 So.2d 105, 107 (Fla. 5th DCA 1992) (stating that “[c]orporate directors and officers owe a fiduciary obligation to the corporation and its shareholders and must act in good faith and in the best interest of the corporation.”).

¹² *Lanz v. Resolution Trust Corp.*, 764 F.Supp. 176, 179 (S.D.Fla.1991); See *Masztal v. City of Miami*, 971 So.2d 803, 809 (Fla. 3d DCA 2007).

¹³ See Restatement (Third) of Agency §8.01 (2006); see also *Capital Bank*, 644 So. 2d at 520.

¹⁴ See *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 475 (2003) (a fiduciary administering trust property owes a fundamental common law duty as trustee to preserve and maintain trust assets; “the standard of responsibility is ‘such care and skill as a man of ordinary prudence would exercise in dealing with his own property’”) (citations omitted).

¹⁵ *U.S. v. deVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999).

¹⁶ *Id.*

¹⁷ See *Maryelin Albertov v. Housing Authority of the City of Fort Lauderdale et al.*, 2018 WL 7108227 (Fla.Cir.Ct.) See also *Nussbaum v. Weeks*, 214 Cal. App. 3d 1580, 1598-99 (1990) (holding that the general manager of a water district, as a public official, owed a fiduciary duty to the residents of the water district generally, but not to each resident specifically).

Florida recognizes that public officials occupy a fiduciary relationship with respect to public property in that such property is held in trust.¹⁸

It is well settled in Florida that – absent a constitutional challenge - a taxpayer may bring suit only upon a showing of special injury¹⁹ which is distinct from that suffered by other taxpayers.²⁰ Thus, a private citizen is precluded from filing a taxpayer complaint to challenge government action unless the private citizen alleges and proves a “special injury,” which is an injury that is different from that of the general public.²¹ Thus, Florida law permits a very limited – if nonexistent- remedy in the public official context as opposed to private law. Even if a plaintiff could establish that a public official owed them a special fiduciary duty, they would still have to prove that the official exploited his or her position for private benefit – that is the essence of a breach of fiduciary duty claim.

The Department of Business and Professional Regulation

The Florida DBPR, through various divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Pari-mutuel Wagering;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.²²

The Department through its various divisions oversees and administers certain training programs related to the professions it regulates. Additionally, under the Condominium Act, Chapter 718, and the Cooperative Act, Chapter 719, F.S., require the Division of Florida Condominiums, Timeshares and Mobile Homes (Division) to provide training and educational programs for condominium and cooperative association board members and unit owners.²³ The training may include web-based electronic media, and live training seminars in various locations throughout the state. The Division is permitted to review and approve education and training programs for

¹⁸ See e.g., *City of Coral Gables v. Hepkins*, 144 So. 385(Fla. 1932).

¹⁹ This has been termed the “Special injury rule” or “Rickman rule.”

²⁰ *Dep’t of Rev. v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981); see also *Rickman v. Whitehurst*, 74 So. 205, 207 (Fla. 1917) (Generally, for a taxpayer to have standing to challenge a government’s compliance with the law, the taxpayer must establish a “special damage to his individual interests, distinct from that of every other inhabitant”); *School Bd. of Volusia Co. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997) (requirement of special injury for taxpayer standing is “consistent with long established precedent”).

²¹ *N. Broward Hosp. Dist. v. Fornes*, 476 So.2d 154 (Fla.1985); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1917).

²² Section 20.165, F.S.

²³ See Sections 718.501 and 719.501, F.S.

board members and unit owners offered by providers and must maintain and make available a current list of approved programs and providers.²⁴

Elected and appointed members and directors of the board of a residential condominium association must certify in writing, within 90 days after being elected or appointed, to the secretary of the association that he or she:

- Has read the association's declaration of condominium, articles of incorporation, bylaws and current written policies;
- That he or she will work to uphold such documents and policies to the best of his or her ability; and
- That he or she will faithfully discharge his or her fiduciary responsibility to the association's members.²⁵

To meet the requirements of an educational curriculum for a condominium educational curriculum for a condominium education program under s. 718.112(2)(d)4.b., F.S., the program must cover at least four of the following topics:

- Budgets and reserves.
- Elections.
- Financial reporting.
- Condominium operations.
- Records maintenance, including unit owner access to records.
- Dispute resolution.
- Bids and contracts.²⁶

Each condominium association which operates more than two units must pay the Division an annual fee in the amount of \$4 for each residential unit in the condominiums operated by the association.²⁷ The association is assessed a penalty of 10 percent of the amount due, if the fee is not paid by March 1.²⁸ Additionally, until the amount due, plus any penalty, is paid, the association will not have standing to maintain or defend any action in the courts.²⁹

III. Effect of Proposed Changes:

Section 1 creates part IX of chapter 112, F.S., consisting of s. 112.89, F.S., to be entitled "Fiduciary Duty of Care for Appointed Public Officials and Executive Officers."

Section 2 creates s. 112.89, F.S., to establish a fiduciary duty of care for appointed public officials and executive officers acting on behalf of governmental entities. The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and

²⁴ Section 718.501(1)(j), F.S.

²⁵ Section 718.112(2)(d)4.b., F.S.

²⁶ Rule 61B-19.001, F.A.C.

²⁷ Section 718.501(2)(a), F.S.

²⁸ *Id.*

²⁹ *Id.*

- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill includes the following definitions:

- “Appointed public official” means either a “local officer” as defined in s. 112.3145(1)(a)2. or a “state officer” as defined in s. 112.3145(1)(c)2. and 3;³⁰
- “Department” means the DBPR;
- “Executive officer” means the chief executive officer of a governmental entity; and
- “Governmental entity” means the entity, or a board, a council, a commission, an authority, or other body thereof, to which an appointed public official or an executive officer is appointed or hired.

The bill establishes an express fiduciary duty of care for each appointed public official and executive director owed to the governmental entity he or she serves. The bill specifies that each appointed public official and executive officer has the duty to:

- Act in accordance with the laws, ordinances, rules, policies, and terms governing his or her office or employment;
- Act with the care, competence, and diligence normally exercised by private business professionals in similar corporate and proprietary circumstances;
- Act only within the scope of his or her authority;
- Refrain from conduct that is likely to damage the financial or economic interests of the governmental entity;
- Use reasonable efforts to maintain documentation in accordance with applicable laws; and
- Maintain reasonable oversight of any delegated authority and discharge his or her duties with the care that a reasonably prudent person in a like private business position would believe appropriate under the circumstances.

The bill provides that the duty to maintaining reasonable oversight includes (i) becoming reasonably informed in connection with any decision-making function and when devoting attention to any oversight function; and (ii) keeping reasonably informed concerning the affairs of the governmental entity concerning the performance of a governmental entity’s executive officers or other officers, agents, or employees. While this provision creates express fiduciary duties for appointed public officials and state officers, it does not create a private cause of action or enforcement mechanism.

Section 2 also establishes training requirements. Each appointed public official and executive officer, beginning January 1, 2021, must complete a minimum of 5 hours of board governance training (Training) for each term served. For those holding office or employed by a governmental entity on January 1, 2021, he or she is required to complete 5 hours of Training before the expiration of his or her term of service. If the appointed public official or appointed executive officer is appointed, reappointed, or hired after January 1, 2021, the bill specifies that

³⁰ Approximately 16,785 individuals report under these provisions (approximately 15,195 reporting under subsection (1)(a)(2)2.; approximately 1,415 reporting under subsection (1)(c)2., and approximately 175 under subsection (1)(c)3.) Telephone Interview with Steven Zuilkowski, Attorney, Florida Commission on Ethics (January 30, 2020).

he or she shall complete 5 hours of Training within 180 days of the appointment, reappointment or hire.

The bill requires DBPR, by January 1, 2021, to either (i) contract for or approve a Training program that includes an affordable web-based electronic media option; or (ii) publish a list of approved Training providers. The bill provides that the Training programs, at a minimum, must include education materials and instruction related to:

- Generally accepted corporate board governance principles and best practices;
- Corporate board fiduciary duty of care legal analyses;
- Corporate board oversight and evaluation procedures;
- Governmental entity responsibilities;
- Executive officer responsibilities;
- Executive officer performance evaluations;
- Selecting, monitoring, and evaluating an executive management team;
- Reviewing and approving proposed investments, expenditures, and budget plans;
- Financial accounting and capital allocation principles and practices;
- New governmental entity member orientation; and
- The fiduciary duty of care and liabilities imposed upon appointed public officials and executive officers pursuant to this section.

The bill sets forth Training compliance requirements and allows governmental entities with annual revenues of less than \$300,000 to use in-house counsel or the unit of government that created the entity, to provide training as long as it comports with the minimum course content established by DBPR rule. Each appointed public official and executive officer must certify, in writing or electronic form and under oath to DBPR that she or he has completed the Training, has read the laws and policies applicable to her position, will work to uphold such laws and policies, and will faithfully discharge his or her fiduciary responsibility. This certification must be submitted within 30 days of completing the Training.

The bill provides exceptions to the training requirement for appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000, or to appointed officials who hold elected office in another capacity.

The bill grants rulemaking authority to the DBPR.

The bill requires approval by a majority vote of the governing body of the governmental entity for the appointment of any executive officer or general counsel.

The bill provides standards for legal counsel requiring all legal counsel employed by a governmental entity must represent the legal interest and position of the *governing body* of the governmental entity and not the interest of any individual or employee of the governmental entity. (emphasis added).

Section 3 will take effect on 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 may incur costs relating to the board governance training. However, the mandate requirements do not apply to laws having an insignificant impact which, for impact, which, for Fiscal Year 2020-2021, is forecast at slightly over \$2.1 million.^{31,32,33} The impact of this bill on cities and counties is indeterminate.

If such costs are determined to exceed \$2.1 million in the aggregate, 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., applies to all persons similarly situated (i.e., cities, counties, and all other state and local governing entities with appointed officials) 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.

³¹ FLA. CONST. art. VII, s. 18(d).

³² 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).

³³ 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).

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

None.

B. Private Sector Impact:

The private sector will experience an indeterminate positive fiscal impact to the extent DBPR contracts with private entities for the required Training.

C. Government Sector Impact:

The DBPR will experience a slightly negative fiscal impact as it uses resources to implement the provisions of the bill related to Training and processes the certification of completed Training. Additionally, governmental entities that fall under this bill will be required to expend funds in providing the Training to its appointed public officials or executive officers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines “executive officer” to mean the chief executive officer of a governmental entity. “Governmental entity” is defined under the bill to mean the entity, or a board, a council, a commission, an authority, or other body thereof, to which an appointed public official or an executive officer is appointed or hired. Thus, the definition of “executive officer” could encompass a “secretary” of a state agency as defined under s. 20.03, F.S. If the bill is not intended to reach individuals appointed by the Governor to head a department, it is suggested consideration be given to amending the definition and/or providing exclusions.

VIII. Statutes Affected:

This bill creates the following section of the Florida Statutes: 112.89.

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 Lee

20-01665E-20

20201270__

A bill to be entitled

An act relating to the fiduciary duty of care for appointed public officials and executive officers; providing a directive to the Division of Law Revision to create part IX of ch. 112, F.S.; creating s. 112.89, F.S.; providing legislative findings and purpose; defining terms; establishing standards for the fiduciary duty of care for appointed public officials and executive officers of specified governmental entities; requiring training on board governance beginning on a specified date; requiring the Department of Business and Professional Regulation to contract for or approve such training programs or publish a list of approved training providers; specifying requirements for such training; authorizing training to be provided by in-house counsel for certain governmental entities; requiring appointed public officials and executive officers to certify their completion of the annual training; requiring the department to adopt rules; providing an exception to the training requirement; specifying requirements for the appointment of executive officers and general counsels of governmental entities; specifying standards for legal counsel; providing an effective date.

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

Section 1. The Division of Law Revision is directed to

20-01665E-20

20201270__

30 create part IX of chapter 112, Florida Statutes, consisting of
31 s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of
32 Care for Appointed Public Officials and Executive Officers."

33 Section 2. Section 112.89, Florida Statutes, is created to
34 read:

35 112.89 Fiduciary duty of care.—

36 (1) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds
37 that appointed public officials and executive officers acting on
38 behalf of governmental entities owe a fiduciary duty to the
39 entities they serve. The Legislature finds that codifying a
40 fiduciary duty of care will require that appointed public
41 officials and executive officers stay adequately informed of
42 affairs, perform due diligence, perform reasonable oversight,
43 and practice fiscal responsibility regarding decisions involving
44 corporate and proprietary commitments on behalf of a
45 governmental entity.

46 (2) DEFINITIONS.—

47 (a) "Appointed public official" means either a "local
48 officer" as defined in s. 112.3145(1)(a)2. or a "state officer"
49 as defined in s. 112.3145(1)(c)2. and 3.

50 (b) "Department" means the Department of Business and
51 Professional Regulation.

52 (c) "Executive officer" means the chief executive officer
53 of a governmental entity.

54 (d) "Governmental entity" means the entity, or a board, a
55 council, a commission, an authority, or other body thereof, to
56 which an appointed public official or an executive officer is
57 appointed or hired.

58 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official

20-01665E-20

20201270__

and executive officer owes a fiduciary duty of care to the
governmental entity he or she serves and has a duty to:

(a) Act in accordance with the laws, ordinances, rules,
policies, and terms governing his or her office or employment.

(b) Act with the care, competence, and diligence normally
exercised by private business professionals in similar corporate
and proprietary circumstances.

(c) Act only within the scope of his or her authority.

(d) Refrain from conduct that is likely to damage the
financial or economic interests of the governmental entity.

(e) Use reasonable efforts to maintain documentation in
accordance with applicable laws.

(f) Maintain reasonable oversight of any delegated
authority and discharge his or her duties with the care that a
reasonably prudent person in a like private business position
would believe appropriate under the circumstances, and must:

1. Become reasonably informed in connection with any
decisionmaking function;

2. Become reasonably informed when devoting attention to
any oversight function;

3. Keep reasonably informed concerning the affairs of the
governmental entity; and

4. Keep reasonably informed concerning the performance of a
governmental entity's executive officers or other officers,
agents, or employees.

(4) TRAINING REQUIREMENT.—

(a) Beginning January 1, 2021, each appointed public
official and executive officer of a governmental entity shall
complete a minimum of 5 hours of board governance training for

20-01665E-20

20201270__

each term served.

1. An appointed public official or executive officer holding office or employed by a governmental entity on January 1, 2021, shall complete the 5 hours of board governance training before the expiration of his or her term of service.

2. An appointed public official or executive officer who is appointed, reappointed, or hired after January 1, 2021, shall complete the 5 hours of board governance training within 180 days after the date of his or her appointment, reappointment, or hire.

(b) By January 1, 2021, the department shall:

1. Contract for or approve a board governance training program that includes an affordable web-based electronic media option; or

2. Publish a list of approved board governance training providers on its website. A provider may include a Florida College System institution, a state university, a nationally recognized entity specializing in board governance education, or any other entity deemed qualified by the department as capable of providing the minimum training requirements specified in this subsection.

(c) The board governance training programs must provide, at a minimum, educational materials and instruction on the following:

1. Generally accepted corporate board governance principles and best practices; corporate board fiduciary duty of care legal analyses; corporate board oversight and evaluation procedures; governmental entity responsibilities; executive officer responsibilities; executive officer performance evaluations;

20-01665E-20

20201270__

117 selecting, monitoring, and evaluating an executive management
118 team; reviewing and approving proposed investments,
119 expenditures, and budget plans; financial accounting and capital
120 allocation principles and practices; and new governmental entity
121 member orientation.

122 2. The fiduciary duty of care and liabilities imposed upon
123 appointed public officials and executive officers pursuant to
124 this section.

125 (d) A governmental entity complies with the training
126 requirement under this subsection by providing a department-
127 approved program or contracting with a provider listed by the
128 department under subparagraph (b)2. However, for governmental
129 entities with annual revenues of less than \$300,000, board
130 governance training may be provided by in-house counsel of the
131 governmental entity or the unit of government that created the
132 governmental entity, if applicable, so long as the training
133 complies with the minimum course content established by
134 department rule.

135 (e) Within 30 days after completion of the board governance
136 training, each appointed public official and executive officer
137 shall certify, in writing or electronic form and under oath, to
138 the department that he or she:

139 1. Has completed the training required by this subsection;

140 2. Has read the laws and relevant policies applicable to
141 his or her position;

142 3. Will work to uphold such laws and policies to the best
143 of his or her ability; and

144 4. Will faithfully discharge his or her fiduciary
145 responsibility, as imposed by this section.

20-01665E-20

20201270__

146 (f) The department shall adopt rules to implement this
147 subsection.

148 (g) This subsection does not apply to appointed public
149 officials and executive officers of governmental entities whose
150 annual revenues are less than \$100,000 or to appointed public
151 officials who hold elected office in another capacity.

152 (5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL
153 COUNSELS.—The appointment of any executive officer or general
154 counsel is subject to approval by a majority vote of the
155 governing body of the governmental entity.

156 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel employed
157 by a governmental entity must represent the legal interest and
158 position of the governing body of the governmental entity and
159 not the interest of any individual or employee of the
160 governmental entity.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #1270**, relating to Fiduciary Duty of Care for Appointed Public Officials and Executive Officers, be placed on the:

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

A handwritten signature in blue ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/2020
Meeting Date

SB 1270
Bill Number (if applicable)

Topic Fiduciary Duties

Amendment Barcode (if applicable)

Name Commissioner Laura Raybin Miller

Job Title Commissioner - Board Member - South Broward Hospital District

Address Memorial Healthcare System Phone 954 560-7845

Street

3111 Sterling Rd. Ft Lauderdale FL 33311

City

State

Zip

Email LRaybinmiller@mhhs.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself / private citizen / board member appointed

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/3/20

Meeting Date

1270

Bill Number (if applicable)

Topic Fiduciary Duty of Care

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
Street

Phone 222 9684

Tallah. FL 32302
City State Zip

Email rohara@flcities.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Fla 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)

Feb 3 2020

Meeting Date

SB 1270

Bill Number (if applicable)

Topic Fiduciary duty of Care

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address 200 W College Ave

Phone _____

Street

TLH FL

City

State

Zip

Email decheverri@afphg.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Americans For Prosperity

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 1292

INTRODUCER: Senator Perry

SUBJECT: Public Records/Nonjudicial Arrest Record of a Minor

DATE: January 31, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Favorable
2. Hackett	McVane	GO	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 1292 is the public records exemption linked to SB 700. This bill provides that the nonjudicial records of arrest of minors who have successfully completed a diversion program and are eligible for expunction are made confidential and exempt from public disclosure, except that the record must be made available only to criminal justice agencies for specified purposes. SB 700 amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense. Additionally, SB 700 amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense to lawfully deny or fail to acknowledge his or her participation in the program.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect on the same date as SB 700 or similar legislation takes effect. As amended, CS/SB 700 is effective when this bill 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

¹ FLA. CONST. art. I, s. 24(a).

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, s. 11.0431, 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, ch. 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 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

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).

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).

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

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

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., provides 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.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- 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

Juvenile Diversion Program Expunction

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed²⁷ or expunged.²⁸ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody of the record.²⁹ The following are authorized expungement processes for the criminal history record of a juvenile:

- Juvenile diversion;³⁰
- Automatic juvenile;³¹ and
- Early juvenile.³²

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 "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

²⁸ Section 943.053(3)(b), F.S.

²⁹ Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

³⁰ Section 943.0582, F.S.

³¹ Section 943.0515, F.S.

³² Section 943.0515(1)(b)2., F.S.

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.³³

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer that confronted the juvenile at the time of the incident or the state attorney that has been referred the case. While participation in a diversion program may be restricted to misdemeanor offenses, there are some programs that enable a juvenile who has committed a felony to participate. In FY 2018-19, there were 4,965 juveniles who were referred to post arrest diversion programs for felony offenses.³⁴

After completing an eligible diversion program, a juvenile seeking to have his or her nonjudicial arrest record expunged must:

- Submit an application for diversion expunction to the FDLE.
- Submit, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that:
 - He or she has completed the diversion program;
 - The arrest was for a misdemeanor; and
 - He or she has not otherwise been charged by the state attorney with or have been found to have committed, any criminal offense or comparable ordinance violation.
- Have not, before the application for expunction, been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.³⁵

If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.³⁶

A criminal history record that is expunged under this section is only available to criminal justice agencies for the purpose of determining eligibility for diversion programs, a criminal investigation, or making a prosecutorial decision. Records that are eligible for expunction under this section must be sealed.³⁷ A juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and the expunction of the nonjudicial arrest record, unless the inquiry is made by a criminal justice agency³⁸ for one of the purposes stated above.³⁹

³³ Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last accessed January 9, 2020).

³⁴ Florida Department of Juvenile Justice, *Delinquency Profile 2018, Statewide Diversion – Felony Arrests*, (September 13, 2019), available at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last accessed January 9, 2020).

³⁵ Section 943.0582(3), F.S.

³⁶ Section 943.0582(3), F.S.

³⁷ Section 943.0582(2)(b), F.S.

³⁸ “Criminal justice agency” means: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. Section 942.045(11), F.S.

³⁹ Section 985.126(5), F.S.

A juvenile who receives an expunction under this section is not prevented from petitioning for the expunction or sealing of a later criminal history record for human trafficking victim expunction,⁴⁰ court ordered expunction,⁴¹ or court ordered sealing,⁴² if the juvenile is otherwise eligible for relief under those sections.⁴³

III. Effect of Proposed Changes:

SB 1292 is the public records exemption linked to SB 700. This bill provides that the non-judicial records of arrest of minors who have successfully completed a diversion program and are eligible for expunction are made confidential and exempt from public disclosure, except that the record must be made available only to criminal justice agencies for specified purposes.⁴⁴

SB 700 amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense, including *felony offenses*. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense, including a *felony or subsequent offense*, to lawfully deny or fail to acknowledge his or her participation in the program. This expands the current law, which only permits a juvenile who completes diversion for a *first-time misdemeanor offense* to lawfully deny or fail to acknowledge his or her participation in the program.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from the repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that the nonjudicial record of the arrest of a minor who successfully completed a diversion program for minors, which is sealed or expunged pursuant to s. 943.0582, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The purpose of diversion programs is to redirect youth from the justice system with opportunities for programming, rehabilitation, and restoration. This purpose will be undermined if the nonjudicial record of arrest is not confidential and exempt. The presence of a nonjudicial record of arrest of a minor who completed a diversion program can jeopardize his or her ability to obtain education, employment, and other opportunities necessary

⁴⁰ Section 943.0583, F.S.

⁴¹ Section 943.0585, F.S.

⁴² Section 943.059, F.S.

⁴³ Section 943.0582, F.S.

⁴⁴ Section 943.0582(2)(b), F.S., provides that the criminal history record of a person whose record is expunged pursuant to this section must be made available only to criminal justice agencies for the purpose of: determining eligibility for diversion programs; a criminal investigation; or making a prosecutorial decision under s. 985.15, F.S.

to become a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was successfully diverted from further delinquency proceedings through the completion of a diversion program. For these reasons, the Legislature finds that it is a public necessity that the criminal history records of minors which have received an expunction due to the successful completion of a diversion program be confidential and exempt from public records requirements.

This bill takes effect on the same date as SB 700 or similar legislation takes effect. As filed, SB 700 is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meeting exemption. The bill creates a public record exemption for sealed and expunged criminal records and therefore requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public exemption. The bill creates a public record exemption for a nonjudicial record of arrest of a juvenile who has successfully completed a diversion program that is sealed or expunged. Section 2 of the bill provides a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt limited types of criminal records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

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:

Indeterminate. The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Indeterminate. The department will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

This bill takes effect on the same date as SB 700 or similar legislation takes effect. As amended, however, CS/SB 700 is effective when this bill takes effect. One of the two paired bills should contain an actual effective date, contingent upon the other's passage.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0582 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Perry

8-01761-20

20201292__

A bill to be entitled
An act relating to public records; amending s.
943.0582, F.S.; providing an exemption from public
records requirements for a nonjudicial record of the
arrest of a minor who has successfully completed a
diversion program; providing for retroactive
application; providing for future legislative review
and repeal of the exemption 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. Subsection (5) is added to section 943.0582,
Florida Statutes, to read:

943.0582 Diversion program expunction.—

(5) A nonjudicial record of the arrest of a minor who has
successfully completed a diversion program which is sealed or
expunged under this section and which is retained by the
department is confidential and exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution, except that the record
may be made available to criminal justice agencies only for the
purposes specified in subparagraph (2)(b)1. The exemption under
this subsection applies to records held by the department
before, on, or after July 1, 2020. This subsection is subject to
the Open Government Sunset Review Act 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.

8-01761-20

20201292__

30 Section 2. The Legislature finds that it is a public
31 necessity that the nonjudicial record of the arrest of a minor
32 who successfully completed a diversion program for minors, which
33 is sealed or expunged pursuant to s. 943.0582, Florida Statutes,
34 be made confidential and exempt from s. 119.07(1), Florida
35 Statutes, and s. 24(a), Article I of the State Constitution. The
36 purpose of diversion programs is to redirect youth from the
37 justice system with opportunities for programming,
38 rehabilitation, and restoration. This purpose will be undermined
39 if the nonjudicial record of arrest is not confidential and
40 exempt. The presence of a nonjudicial record of arrest of a
41 minor who completed a diversion program can jeopardize his or
42 her ability to obtain education, employment, and other
43 opportunities necessary to become a productive, contributing,
44 self-sustaining member of society. Such negative consequences
45 are unwarranted in cases in which the minor was successfully
46 diverted from further delinquency proceedings through the
47 completion of a diversion program. For these reasons, the
48 Legislature finds that it is a public necessity that the
49 criminal history records of minors which have received an
50 expunction due to the successful completion of a diversion
51 program be confidential and exempt from public records
52 requirements.

53 Section 3. This act shall take effect on the same date that
54 SB 700 or similar legislation takes effect, if such legislation
55 is adopted in the same legislative session or an extension
56 thereof and becomes a law.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 16, 2020

I respectfully request that **Senate Bill #1292**, relating to Public Records/Nonjudicial Arrest Record of a Minor, 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 large, stylized "P" at the end.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/3/2020

Meeting Date

1292

Bill Number (if applicable)

Topic Public Records/ Non Judicial Arrest Record of a Minor

Amendment Barcode (if applicable)

Name Kristina Wiggins

Job Title Executive Director

Address 103 North Gadsden Street Suite 103

Phone 850-488-6850

Street

Tallahassee

FL

32310

City

State

Zip

Email kwiggins@flpda.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/3/20

Meeting Date

SB 1292

Bill Number (if applicable)

Topic Public Records / Non judicial arrest Record of a minor

Amendment Barcode (if applicable)

Name Candice Brower

Job Title Regional Counsel, 1st Region

Address 227 N. Bronough Street

Phone 352 681-0293

Street

Tallahassee

FL

32301

City

State

Zip

Email candice.brower@ncfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Office of Criminal Conflict & Civil Regional Counsel, 1st Region

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/20
Meeting Date

SB 1292
Bill Number (if applicable)

Topic Public Records/Non-Judicial Arrest Record of a Minor

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Executive Director

Address 1300 N Adams St.
Street

Phone 321-223-4232

Tallahassee FL 32303
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Juvenile Justice Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1292

~~1392~~

Bill Number (if applicable)

Meeting Date _____

Topic _____

Amendment Barcode (if applicable)

Name Jasmyne Henderson

Job Title Lobbyist

Address 1028 East Park Avenue

Phone (950) 216-1002

Street

Tallahassee

Florida

32301

City

State

Zip

Email jasmyne@pittman-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward 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.

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 1398

INTRODUCER: Senator Flores

SUBJECT: Regional Planning Council Meetings

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	Favorable
2.	Hackett	McVaney	GO	Favorable
3.			RC	

I. Summary:

SB 1398 provides requirements for establishing a quorum for meetings of regional planning councils when a voting member appears via telephone, real-time video conferencing, or similar real-time electronic or video communication.

The bill does not have an impact on state or local revenues or expenditures.

The bill takes effect July 1, 2020.

II. Present Situation:

Open Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.¹ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.² This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.³

¹ FLA CONST., art. I, s. 24(b).

² *Id.*

³ FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”⁴ or the “Sunshine Law,”⁵ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.⁶ The board or commission must provide the public reasonable notice of such meetings.⁷ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.⁸ Minutes of a public meeting must be promptly recorded and open to public inspection.⁹ Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.¹⁰ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹¹

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.¹² The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹³ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹⁴

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.¹⁵

Administrative Procedure Act

The Administrative Procedure Act (APA)¹⁶ outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering citizen

⁴ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

⁵ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

⁶ Section 286.011(1)-(2), F.S.

⁷ *Id.*

⁸ Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(1), F.S.

¹¹ Section 286.011(3), F.S. Penalties include a fine of up to \$500 or a second degree misdemeanor.

¹² FLA CONST., art. I, s. 24(c).

¹³ *Id.*

¹⁴ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹⁵ Section 286.0113, F.S. “Team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

¹⁶ See ch. 120, F.S.

involvement. The process subjects state agencies to a uniform procedure in enacting rules and issuing orders and allows citizens to challenge an agency's decision.¹⁷

The term "agency" is defined in s. 120.52(1), F.S., as:

- The Governor, each state officer and state department, and each departmental unit described in s. 20.04, F.S.;¹⁸
- The Board of Governors of the State University System;
- The Commission on Ethics;
- The Fish and Wildlife Conservation Commission;
- A regional water supply authority;
- A regional planning agency;
- A multicounty special district, but only if a majority of its governing board is comprised of non-elected persons;
- Educational units;
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.;
- Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county; and
- Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.¹⁹

Use of Electronic Media and Public Meetings

Section 120.54(5)(b)2, F.S., requires the Administration Commission²⁰ to promulgate rules to create uniform rules of procedure for state agencies to use when conducting public meetings, hearings or workshops, including procedures for conducting meetings in person and by means of communications media technology.²¹ The agency must state in the notice that the public meeting, hearing, or workshop will be conducted by means of communications media technology, or if attendance may be provided by such means.²² The notice must also state how individuals interested in attending may do so.²³ Notwithstanding the use of electronic media technology, all evidence, testimony, and argument presented at the public meeting must be afforded equal consideration, regardless of the method of communication.²⁴ In addition to agencies required to

¹⁷ See Joint Administrative Procedures Committee, *A Primer on Florida's Administrative Procedure Act*, available at <http://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf> (last visited Jan. 15, 2020).

¹⁸ Section 20.04, F.S., specifies the structure of the executive branch of state government.

¹⁹ The definition of agency does not include a municipality or legal entity created solely by a municipality and expressly excludes certain legal entities or organizations found in chs. 343, 348, and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

²⁰ Section 14.202, F.S. The Administration Commission is composed of the Governor and the Cabinet (The Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet. Section 20.03(1), F.S.).

²¹ Section 120.54(5)(b)2, F.S. The term "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

comply with ch. 120, F.S., certain entities created by an interlocal agreement may conduct public meetings and workshops via communications media technology.²⁵

While current law allows state agencies and certain entities created by an interlocal agreement to conduct meetings and vote by means of communications media technology, there has been a question over whether or not local boards or agencies may conduct meetings in the same fashion.²⁶ The Office of Attorney General has opined that only state agencies can conduct meetings and vote via communications media technology, thus rejecting a school board's request to conduct board meetings via electronic means.²⁷ The Attorney General reasoned that s. 120.54(5)(b)2, F.S., limits its terms only to uniform rules that apply to state agencies.²⁸ The Attorney General explained that "allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission."²⁹

The Attorney General reasoned that a similar rationale is not applicable to local boards and commissions even though it may be convenient and save money since the representation on these boards and commissions are local thus, "such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting."³⁰ However, if a quorum of a local board is physically present at the public meeting, a board may allow a member who is unavailable to physically attend the meeting due to extraordinary circumstances such as illness, to participate and vote at the meeting via communications media technology.³¹

Florida Regional Planning Councils

The Florida Regional Planning Council Act³² allows the creation of regional planning councils (RPC). The Legislature has recognized RPCs as the "only multipurpose regional entity that is in position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than local issues, provide technical assistance to local governments, and meet other needs of the communities in each region."³³ RPCs span multiple counties within the geographical boundaries of any one comprehensive planning district.³⁴ The voting membership of a RPC must consist of representatives living within the geographical area covered by the council.³⁵ The ten RPCs are as follows: West Florida, Apalachee, North Central Florida, Northeast Florida, East Central Florida, Tampa Bay, Central Florida, Southwest Florida, Treasure Coast, and South

²⁵ Section 163.01(18), F.S. (Allowing public agencies located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of communications media technology).

²⁶ Robert Eschenfelder, *Modern Sunshine: Attending Public Meetings in the Digital Age*, 84 Fla. B.J. 28 (2010).

²⁷ Op. Att'y Gen. Fla. 98-28 (1998).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Section 186.501–186.513, F.S.

³³ Section 186.502(4), F.S.

³⁴ Section 186.504, F.S.

³⁵ Section 186.504(2), F.S.

Florida.³⁶ Each RPC consists of anywhere from three (South Florida) to 12 counties (North Central Florida).³⁷

III. Effect of Proposed Changes:

Section 1 amends s. 120.525, F.S., to authorize the use of communication media technology for board meetings of RPCs that cover three or more counties. Specifically, a voting member who appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication that is broadcast publicly at the meeting location may be counted toward the quorum requirement if at least one-third of the voting members of such RPC are physically present at the meeting location.

The bill also requires the member to provide oral, written, or electronic notice of his or her intent to appear via communications media technology to their respective planning council at least 24 hours before the scheduled meeting.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

³⁶ Section 186.512, F.S.

³⁷ *Id.*

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Authorizing RPCs to use media technology for quorum purposes may save on travel time and cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 120.525 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Flores

39-01530-20

20201398__

1 A bill to be entitled
2 An act relating to regional planning council meetings;
3 amending s. 120.525, F.S.; providing requirements for
4 establishing a quorum for meetings of certain councils
5 when a voting member appears via telephone, real-time
6 videoconferencing, or similar real-time electronic or
7 video communication; requiring the member to give
8 notice of intent to appear via telephone, real-time
9 videoconferencing, or similar real-time electronic or
10 video communication by a specified time; providing an
11 effective date.

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

14
15 Section 1. Subsection (4) is added to section 120.525,
16 Florida Statutes, to read:

17 120.525 Meetings, hearings, and workshops.—

18 (4) For purposes of establishing a quorum at meetings of
19 regional planning councils that cover three or more counties, a
20 voting member who appears via telephone, real-time
21 videoconferencing, or similar real-time electronic or video
22 communication that is broadcast publicly at the meeting location
23 may be counted toward the quorum requirement if at least one-
24 third of the voting members of the regional planning council are
25 physically present at the meeting location. A member must
26 provide oral, written, or electronic notice of his or her intent
27 to appear via telephone, real-time videoconferencing, or similar
28 real-time electronic or video communication to the regional
29 planning council at least 24 hours before the scheduled meeting.

39-01530-20

20201398__

30

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 23, 2020

I respectfully request that **Senate Bill #1398**, relating to Regional Planning Council Meetings, be placed on the:

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

A handwritten signature in black ink that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 39

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/3/2020

1398

Meeting Date

Bill Number (if applicable)

Topic Regional Planning Councils

Amendment Barcode (if applicable)

Name Rana Brown

Job Title consultant

Address 104 W Jefferson Street

Phone 850.224.3427

Street

Tallahassee

FL

32301

Email rana@rlbookpa.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Regional Council'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 1490

INTRODUCER: Governmental Oversight and Accountability and Senator Bradley and others

SUBJECT: Public Officers and Employees

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Roberts</u>	<u>EE</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1490 amends the Florida Code of Ethics and the Legislative Branch Expenditure Ban to allow a state employee to receive gifts or compensation in certain circumstances.

The Florida Code of Ethics and other statutory gift bans prohibit a number of state employees from receiving gifts or donations, no matter the purpose of the funds. The bill allows gifts or compensation, regardless of value, to be accepted by the following, so long as the employee or official, or his or her child, has suffered serious bodily injury or has been diagnosed with a serious disease or illness:

- A non-elected state employee or agency official required, pursuant to Article II, section 8 of the Florida Constitution or s. 112.3145, F.S., to file full or limited public disclosure of his or her financial interests;
- A state procurement employee; or
- A legislative employee.

The bill requires any gift or compensation to be used toward expenses directly incurred, or in connection with, the care and treatment of the employee or official, or his or her child. The reporting requirements of s. 112.3148, F.S., apply to any such gifts.

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

The bill takes effect on July 1, 2020.

II. Present Situation:

Public Employee Gifts

Gifts to public officers and employees are regulated pursuant to s. 112.3148, F.S. “Gift” is defined in s. 112.312(12)(a), (b), (c), and (d), F.S., and encompasses nearly anything of value. Under s. 112.3148, F.S., a reporting individual or procurement employee is prohibited from soliciting any gift from a vendor doing business with the reporting individual’s or procurement employee’s agency, a political committee, a lobbyist who lobbies the reporting individual’s or procurement employee’s agency, or an employer, principal, partner or firm of such lobbyist where such gift is for the personal benefit of the reporting individual or procurement employee, another reporting individual or procurement employer, or any member of the immediate family of a reporting individual or procurement employee.

A “reporting individual” is anyone who is required to file financial disclosure, including candidates.¹ A “procurement employee” is an employee of an officer, department, board, commission, or council of the executive or judicial branch of state government who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in s. 287.012, F.S., if the cost of such services or commodities exceeds \$10,000 in any year.²

Additionally, a reporting individual or procurement employee is prohibited from knowingly accepting a gift from a vendor doing business with the reporting individual’s or procurement employee’s agency, a political committee, a lobbyist, or an employer, principal, partner or firm of a lobbyist if the gift is valued over \$100. A vendor doing business with the reporting individual’s or procurement employee’s agency; a political committee; a lobbyist who lobbies the reporting individual’s or procurement employee’s agency; the partner, firm, principal, or employer of such lobbyist; or another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist is prohibited from giving, either directly or indirectly, a gift that has a value in excess of \$100 to the reporting individual or procurement employee or any other person on his or her behalf.

If a vendor, political committee, lobbyist, or an employer, principal, partner or firm of a lobbyist gives a gift valued between \$25 and \$100 to a reporting individual or procurement employee, the donor of the gift is required to report the gift on a quarterly basis using a CE Form 30.

Each reporting individual or procurement employee must file a statement (Form 9, Quarterly Gift Disclosure) with the Commission on Ethics not later than the last day of each calendar quarter, for the previous calendar quarter, containing a list of gifts which he or she believes to be in excess of \$100 in value, if any, accepted by him or her, for which compensation was not provided by the donee to the donor within 90 days of receipt of the gift to reduce the value to \$100 or less. Gifts from relatives, gifts prohibited from being accepted, and gifts required to be

¹ Section 112.3148(2)(d), F.S.

² Section 112.3148(2)(e), F.S.

disclosed elsewhere are not reported on Form 9. The form need not be filed if no such gift was received during the calendar quarter.³

Gifts from Certain Political Committees

Political committees are statutory entities authorized in s. 106.03, F.S., to engage in certain political activities. Currently, s. 112.3148, F.S., prohibits a reporting individual or procurement employee from soliciting a “gift” from a political committee. “Gift” is defined in s. 112.312(12)(a), (b), (c), and (d), F.S., and encompasses nearly anything of value. However, there are some items in that definition which are specifically excluded from the definition of “gift,” the most significant of which is a campaign contribution or expenditure regulated by ch. 106, F.S., and/or federal law.⁴

Current law also prohibits a reporting individual or procurement employee from accepting anything over \$100 in value. If a reporting individual or procurement employee accepts a “gift” valued less than \$100, but greater than \$25, the political committee must disclose the gift by filing a CE Form 30 with the Florida Commission on Ethics.

Legislative Branch Expenditure Ban

Section 11.045, F.S., contains provisions requiring legislative lobbying registration and legislative lobbyist compensation reports, and it contains the “Legislative Branch Expenditure Ban.” Section 11.045(4)(a), F.S., provides in pertinent part, that “no lobbyist or principal shall make, directly or indirectly, and no member or employee of the legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session.”

A “principal” is defined as “the person, firm, corporation, or other entity which has employed or retained a lobbyist.”⁵ For purposes of this statute, the term “expenditure” means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4).⁶ The term “lobbying” means “influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.”⁷

The following penalties can be imposed for violation of the Legislative Branch Expenditure Ban:

- A fine of not more than \$5,000;
- Reprimand;

³ Section 112.3148(8), F.S.

⁴ Section 112.312(12)(b)2., F.S.

⁵ Section 11.045(1)(i), F.S.

⁶ Section 11.045(1)(c), F.S.

⁷ Section 11.045(1)(e), F.S.

- Censure;
- Probation; or
- Prohibition on lobbying for a period not to exceed 24 months.⁸

Executive Branch Expenditure Ban

The “Executive Branch Expenditure Ban” is found in s. 112.3215, F.S. That section is the sister provision to the “Legislative Branch Expenditure Ban” in s. 11.045, F.S. The “Executive Branch Expenditure Ban” requires individuals to register with the Commission on Ethics prior to engaging in lobbying the executive branch. Each lobbying firm is required to make certain disclosures and is required to maintain records corroborating those disclosures.⁹

Under the “Executive Branch Expenditure Ban,” an official, member, or employee of the executive branch is prohibited from soliciting or accepting, directly or indirectly, an expenditure from a lobbyist or principal.¹⁰ For purposes of this prohibition, the terms “agency official” or “employee” mean any individual who is required by law to file full or limited public disclosure of his or her financial interests. For purposes of this prohibition, the term “expenditure” means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term “expenditure” does not include contributions or expenditures reported pursuant to ch. 106, F.S., or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or an affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4). A lobbying firm is subject to a fine of up to \$5,000 for violating the “Executive Branch Expenditure Ban.”¹¹

Cumulative Effects

The effect of these statutory gift bans is to reduce significantly the universe of donors a state employee could receive financial assistance from in the event of catastrophic medical expenses necessitated by the treatment of severe illness or injury.

III. Effect of Proposed Changes:

SB 1490 amends the Florida Code of Ethics and the Legislative Branch Expenditure Ban to allow a state employee to receive gifts or compensation in certain circumstances.

Section 1 amends s. 112.3148, F.S., which prohibits the receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees.¹² This section allows a reporting individual, not including any elected officer, or a procurement employee to accept any gift or compensation, regardless of value, if the reporting individual or procurement employee, or his or her child, has suffered serious bodily injury or has been diagnosed with a

⁸ Section 11.045(7), F.S.

⁹ Section 112.3215(5), F.S.

¹⁰ Section 112.3215(6)(a), F.S.

¹¹ Section 112.3215(10), F.S.

¹² Section 112.3148, F.S.

serious disease or illness. This section also allows a person to give the gift to the reporting individual or procurement employee.

The term “serious bodily injury” is defined to mean an injury that consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ and requires care and treatment for an extended period of time. The term “serious disease or illness” is defined to mean any disease or illness, including cancer, which causes significant functional impairment requiring care and treatment for an extended period of time.

Any gift or compensation must be used toward expenses directly incurred, or in connection with, the care and treatment of the reporting individual, procurement employee, or child. Reporting requirements of s. 112.3148, F.S., apply to any such gifts.

Section 2 amends s. 11.045, F.S., relating to the Legislative Branch Expenditure Ban, to allow a lobbyist or principal to make, and a legislative employee to accept, an expenditure for a donation toward the care and treatment of a serious bodily injury or a serious disease or illness of the employee or his or her child. Any such expenditure must be in accordance with the same requirements and limitations governing the receipt of such gifts added in section 1 of the bill.

In like fashion, **section 3** amends s. 112.3215, F.S., relating to the Executive Branch Expenditure Ban, to allow a lobbyist or principal to make, and a nonelected agency official or employee¹³ to accept, an expenditure for a donation toward the care and treatment of a serious bodily injury or a serious disease or illness of the official or employee or his or her child. Any such expenditure must be in accordance with the same requirements and limitations governing the receipt of such gifts added in section 1 of the bill.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ For purposes of this section, these terms refer to an individual who is required by law to file full or limited public disclosure of his or her financial interests. See s. 112.3215(1)(b), F.S.

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:

This bill substantially amends sections 112.3148, 11.045, and 112.3215 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 February 3, 2020:

The CS clarifies that a person is permitted to give the gift to the reporting individual or procurement officer for the permitted purpose.

B. Amendments:

None.



711636

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 36 - 37
and insert:
section, a vendor doing business with the reporting individual's
or procurement employee's agency; a lobbyist who lobbies a
reporting individual's or procurement employee's agency; the
partner, firm, employer, or principal of a lobbyist; or another
person on behalf of the lobbyist or partner, firm, principal, or
employer of the lobbyist may provide, and a reporting



711636

individual, not including any elected officer, or a procurement
employee may solicit or accept, any gift or

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

And the title is amended as follows:

Delete lines 4 - 8

and insert:

authorizing the giving, solicitation, and acceptance
of gifts or compensation to be used toward costs
incurred due to a serious bodily injury or the
diagnosis of a serious disease or illness of specified
reporting individuals, procurement employees, or a
child

By Senator Bradley

5-00569-20

20201490__

A bill to be entitled
An act relating to public officers and employees;
amending s. 112.3148, F.S.; defining terms;
authorizing specified reporting individuals and
procurement employees to accept gifts or compensation
to be used toward costs incurred due to a serious
bodily injury or the diagnosis of a serious disease or
illness of the individual, employee, or a child
thereof; specifying limitations and requirements;
amending ss. 11.045 and 112.3215, F.S.; revising
provisions regarding prohibited lobbying expenditures
in the legislative and executive branches to conform
to changes made by the act; providing an effective
date.

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

Section 1. Present subsections (9) and (10) of section
112.3148, Florida Statutes, are renumbered as subsections (10)
and (11), respectively, and a new subsection (9) is added to
that section, to read:

112.3148 Reporting and prohibited receipt of gifts by
individuals filing full or limited public disclosure of
financial interests and by procurement employees.—

(9) (a) As used in this subsection, the term:

1. "Serious bodily injury" means an injury that consists of
a physical condition that creates a substantial risk of death,
serious personal disfigurement, or protracted loss or impairment
of the function of a bodily member or organ and requires care

5-00569-20

20201490__

and treatment for an extended period of time.

2. "Serious disease or illness" means any disease or illness, including cancer, which causes significant functional impairment requiring care and treatment for an extended period of time.

(b) Notwithstanding the limitations established in this section, a reporting individual, not including any elected officer, or a procurement employee may accept any gift or compensation, regardless of value, if the reporting individual or procurement employee, or his or her child, has suffered serious bodily injury or has been diagnosed with a serious disease or illness. Any gift or compensation accepted pursuant to this subsection must be used toward expenses directly incurred, or in connection with, the care and treatment of the reporting individual, procurement employee, or a child thereof. The reporting requirements under this section apply to any gift made pursuant to this subsection.

Section 2. Paragraph (a) of subsection (4) of section 11.045, Florida Statutes, is amended to read:

11.045 Lobbying before the Legislature; registration and reporting; exemptions; penalties.—

(4) (a) Notwithstanding s. 112.3148, s. 112.3149, or any other provision of law to the contrary, no lobbyist or principal shall make, directly or indirectly, and no member or employee of the Legislature shall knowingly accept, directly or indirectly, any expenditure, except floral arrangements or other celebratory items given to legislators and displayed in chambers the opening day of a regular session. However, a lobbyist or principal may make, and an employee of the Legislature may accept, an

5-00569-20

20201490__

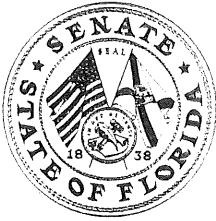
59 expenditure for a donation toward the care and treatment of a
60 serious bodily injury or a serious disease or illness of the
61 employee, or a child thereof, in accordance with the
62 requirements and limitations of s. 112.3148(9).

63 Section 3. Paragraph (a) of subsection (6) of section
64 112.3215, Florida Statutes, is amended to read:

65 112.3215 Lobbying before the executive branch or the
66 Constitution Revision Commission; registration and reporting;
67 investigation by commission.—

68 (6)(a) Notwithstanding s. 112.3148, s. 112.3149, or any
69 other provision of law to the contrary, no lobbyist or principal
70 shall make, directly or indirectly, and no agency official,
71 member, or employee shall knowingly accept, directly or
72 indirectly, any expenditure. However, a lobbyist or principal
73 may make, and a nonelected agency official or employee may
74 accept, an expenditure for a donation toward the care and
75 treatment of a serious bodily injury or a serious disease or
76 illness of the official or employee, or a child thereof, in
77 accordance with the requirements and limitations of s.
78 112.3148(9).

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Finance and Tax
Innovation, Industry, and Technology
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR ROB BRADLEY

5th District

January 27, 2020

Senator Ed Hooper, Chair
Committee on Government Oversight & Accountability
310 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Hooper:

I respectfully request that Senate Bill 1490 be placed on the committee's agenda at your earliest convenience. This bill addresses an issue concerning state employees who are currently prohibited from accepting gifts under state statutes. The bill would allow for the acceptance of gifts or compensation to be used toward expenses directly incurred, or in connection with, the care and treatment of the employee or official, or his or her child in cases of a serious disease or illness. This would place our employees on the same level playing field as other Floridian's should a serious illness impact them and their family.

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to be "Rob Bradley", written in a cursive style.

Rob Bradley

REPLY TO:

- ☐ 1279 Kingsley Avenue, Suite 107, Orange Park, Florida 32073 (904) 278-2085
- ☐ 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/3/20

Meeting Date

1490

Bill Number (if applicable)

Topic Gift ban

Amendment Barcode (if applicable)

Name Alexis Lambert

Job Title

Address 3821 Overlook Dr.

Phone

Street

TLH

FL

State

32311

Zip

Email

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

self

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-3-20
Meeting Date

1490
Bill Number (if applicable)

Topic PUBLIC OFFICERS & EMPLOYEES

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

City

State

Zip

Email snuzzo@jamesmadison.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

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

2/3/20

Meeting Date

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

1490

Bill Number (if applicable)

Topic Public Offices + Employees

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
Street

Phone 222 9684

Tallah FL 32302
City State Zip

Email roham@flcities.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla 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

2-3-20 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)
Meeting Date

1490
Bill Number (if applicable)

Topic Gift Ban

Amendment Barcode (if applicable)

Name Erin Collins

Job Title _____

Address 4600 Kilmerlin Drive

Phone (561) 635-4168

Bulohvasee FL 32309
City State Zip

Email erin.choy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
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 1570

INTRODUCER: Senator Perry

SUBJECT: Division of Library and Information Services

DATE: January 31, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Favorable
2.			ATD	
3.			AP	

I. Summary:

SB 1570 amends s. 257.22, F.S., to remove redundant language and to provide that the certification of funds by the Division of Library and Information Services (Division) to the Chief Financial Officer must be made *annually* – as opposed to by December 1 of each year, as provided under current law.

The bill makes conforming revisions to s. 257.35, F.S., and eliminates the requirement that the Division encourage and imitate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government.

The bill amends s. 257.36, F.S., to require the Division to analyze, develop, establish, and coordinate standard procedures, and techniques of record-making and recordkeeping, including standards and guidelines for retention, storage, security, and disposal of records.

The bill amends s. 257.36, F.S., to clarify, in certain instances, the Division's specific responsibilities when records are stored by other agencies in a record center it operates. The bill specifies the role and responsibility of an agency's records management liaison officer.

The bill repeals s. 257.34, F.S., relating to the creation, duties and responsibilities of the Florida International Archive and Repository. The Division has adequate authority pursuant to s. 257.35, F.S., relating to the Florida State Archives, to continue to perform this function.¹

¹ See Department of State, *Senate Bill 1570 Agency Legislative Analysis* (January 22, 2020) (on file with the Senate Committee on Governmental Oversight and Accountability)

The bill amends s. 257.42, F.S., to remove the cap of \$400,000 on an annual grant from the state available to the administrative unit of a library cooperative for the purpose of sharing library resources and to make conforming changes.

The bill amends s. 120.54, F.S., to correct cross-references.

With the removal of the statutory cap of \$400,000, the bill will have an indeterminate impact for multitype library cooperatives who seek funds under the library cooperative grant program.

The bill will take effect on July 1, 2020.

II. Present Situation:

The Division of Library and Information Services – Allocation of State Funds

State funds allocated to libraries must be expended only for library purposes in the manner prescribed by the Division.² Such funds may not be expended for the purchase or construction of a library building or library quarters except such funds specifically appropriated for construction purposes.³

The Division must establish operating standards under which libraries will be eligible to receive state moneys⁴ and under which a library cooperative is eligible to receive state moneys.⁵ The Division is required to certify to the Chief Financial Officer the amount of funds paid to each county, municipality, special district, or special tax district on or before December 1 of each year.

The Florida International Archive and Repository and The Florida State Archives

Section 257.34, F.S., establishes within the Division, the Florida International Archive and Repository for the preservation of public records, as defined in s. 119.011, F.S., including manuscripts, international judgements involving disputes between domestic and foreign business, and all other public matters the Department of State or the Florida Council of International Relations deems relevant to international issues. The Division is charged with:

- Organizing and administer the Florida International Archive and Repository;
- Preserving and administering records that are transferred to its custody; accepting, arranging, and preserving them according to approved archival and repository practices; and permitting them, at reasonable times and under the supervision of the division, to be inspected and copied. All public records transferred to the custody of the division are subject to the provisions of s. 119.07(1), F.S.;
- Assisting the records and information management program in the determination of retention values for records;

² Section 257.24, F.S.

³ *Id.*

⁴ Section 257.15, F.S.

⁵ Section 257.41(2), F.S. (further providing that the Division must issue a certificate to each library cooperative that meets the standards and rules established).

- Cooperating with and assisting state institutions, departments, agencies, counties, municipalities, and individuals engaged in internationally related activities;
- Providing a public research room where, under rules established by the division, the materials in the international archive and repository may be studied;
- Conducting, promoting, and encouraging research in international trade, government, and culture and maintaining a program of information, assistance, coordination, and guidance for public officials, educational institutions, libraries, the scholarly community, and the general public engaged in such research;
- Cooperating with and assisting agencies, libraries, institutions, and individuals in projects concerned with internationally related issues and preserving original materials relating to internationally related issues; and
- Assisting and cooperating with the records and information management program in the training and information program described in s. 257.36(1)(g), F.S.

Section 257.35, F.S., creates the Florida State Archives within the Division for the preservation of those public records as defined in s. 119.011(12), F.S., manuscripts, and other archival material that have been determined by the division to have sufficient historical or other value to warrant their continued preservation and have been accepted by the division for deposit in its custody. The Division performs similar duties for the Florida State Archives as it does for the Florida International Archive, including:

- Organizing and administering the Florida State Archives;
- Preserving and administering such records as shall be transferred to its custody; accepting, arranging, and preserving them, according to approved archival practices; and permitting them, at reasonable times and under the supervision of the division, to be inspected and copied;
- Assisting the records and information management program in the determination of retention values for records;
- Cooperating with and assisting state institutions, departments, agencies, counties, municipalities, and individuals engaged in activities in the field of state archives, manuscripts, and history and accept from any person any paper, book, record, or similar material which in the judgment of the division warrants preservation in the state archives;
- Providing a public research room where, under rules established by the division, the materials in the state archives may be studied;
- Conducting, promoting, and encouraging research in Florida history, government, and culture and maintain a program of information, assistance, coordination, and guidance for public officials, educational institutions, libraries, the scholarly community, and the general public engaged in such research;
- Cooperating with and assisting agencies, libraries, institutions, and individuals in projects designed to preserve original source materials relating to Florida history, government, and culture and prepare and publish handbooks, guides, indexes, and other literature directed toward encouraging the preservation and use of the state's documentary resources;
- Encouraging and initiating efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government; and

- Assisting and cooperating with the records and information management program in the training and information program described in s. 257.36(1)(g), F.S.⁶

Records and Information Management

Section 257.36(1), F.S., creates within the Division a records management program. The program's purpose is directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.⁷ The Division must establish and operate a records center or centers primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space.⁸

The Division must create retention schedules which govern when public records may be destroyed or otherwise disposed of.⁹

The Division must institute and maintain a training program in (i) all phases of records and information management to bring approved practices to the attention of all agencies; and (ii) the requirements relating to access to public records under chapter 119, F.S.¹⁰

Section 257.36, F.S., provides that each agency¹¹ has the duty to cooperate with the Division in complying with the provisions of Chapter 257, F.S., and must designate a records management liaison officer. Further, each agency must establish and maintain an active and continuing program for the economical and efficient management of records.¹²

Library Cooperatives and Library Cooperative Grants

The Legislature intended that library cooperative programs be established to augment the local library resources with regional and statewide services.¹³ A multitype library cooperative (MLC) means a not-for-profit corporation, qualified or registered pursuant to Chapter 617, F.S., and in good standing, consisting of two or more libraries under separate governance and of more than one type, including any combination of academic, school, special, state institution and public libraries as required by s. 257.41(1), F.S.¹⁴

The administrative unit of a library cooperative is eligible to receive an annual grant (Library Cooperative Grants) from the state of not more than \$400,000 for the purpose of sharing library

⁶ Section 257.35(1), F.S.

⁷ Section 257.36(1)(a), F.S.

⁸ Section 257.36(b), F.S.

⁹ Section 257.36(6), F.S.

¹⁰ Section 257.36(1)(g), F.S.

¹¹ Section 257.36(5), F.S., defines "agency", for purposes of this section, to mean any state, county, district, or municipal officer, department, division, bureau, board, commission, or other separate unit of government created or established by law. See s. 257.36(5), F.S.

¹² *Id.*

¹³ Section 257.40, F.S.

¹⁴ *Library Cooperative Grant Guidelines*, <https://dos.myflorida.com/media/697739/coopguidelinesstrikeunderapril2017.pdf> (last visited January 28, 2020).

resources.¹⁵ Grant funds may not be used to supplant local funds or other funds.¹⁶ Additionally, a library cooperative must provide from local sources matching cash funds equal to 10 percent of the grant award.¹⁷ Florida's priority of use of the Library Cooperative Grants and matching funds is for the purpose of sharing library resources between members of the Florida Library Information Network.¹⁸ Library Cooperative Grants and local matching funds must be expended on resource sharing activities and related training, provided services to all Florida Information Network member libraries.

Florida's five MLCs and their service areas for purpose of the Library Cooperative Grant Program are as follows:

- NEFLIN - Northeast Florida Library Information Network service area includes: Alachua, Baker, Bradford, Brevard, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Madison, Marion, Nassau, Putnam, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union and Volusia counties.
- PLAN - Panhandle Library Access Network service area includes: Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Santa Rosa, Wakulla, Walton and Washington counties.
- SEFLIN - Southeast Florida Library Information Network service area includes: Broward, Martin, Miami-Dade and Palm Beach counties.
- SWFLN - Southwest Florida Library Network service area includes: Charlotte, Collier, Hendry, Lee and Monroe counties.
- TBLC - Tampa Bay Library Consortium service area includes: Citrus, DeSoto, Glades, Hardee, Hernando, Highlands, Hillsborough, Indian River, Lake, Manatee, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Sarasota and St. Lucie counties.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 257.22, F.S., to remove redundant language. Additionally, it revises this section to provide that the certification of funds by the division to the Chief Financial Officer be made *annually* – as opposed to by December 1 of each year. (emphasis added).²⁰

Section 2 repeals s. 257.34, F.S., relating to the creation, duties and responsibilities of the Florida International Archive and Repository. The Division has adequate authority pursuant to s. 257.35, F.S., relating to the Florida State Archives, to continue to perform this function.

Section 3 amends s. 257.35, F.S., relating to the Florida State Archives, to make conforming changes and to eliminate the requirement that the division encourage and initiate efforts to

¹⁵ Section 257.42, F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *supra* note 14.

¹⁹ *Id.*

²⁰ The Department of State indicates the Division currently must provide two certifications to the Chief Financial Officer. The first is submitted by the statutory deadline of December 1 and contains estimated grant amounts. The second certification is submitted later and reflects the actual final grant amounts. Thus, the bill will allow the Division to make one certification of funds). See Department of State, *Senate Bill 1570 Agency Legislative Analysis* (January 22, 2020) (on file with the Senate Committee on Governmental Oversight and Accountability)

preserve, collect, process, transcribe, index, and research the oral history of Florida government. According to the Department of State, these activities have not been undertaken by the department in the past.²¹

Section 4 amends s. 257.36, F.S., relating to the records and information management program, to require the division to analyze, develop, establish, and coordinate standard procedures, and techniques of record-making and recordkeeping, including, but not limited to, standards and guidelines for retention, storage, security, and disposal of records.

This section also provides that an agency's records management liaison officer is to serve as the primary point of contact between the agency and the division for records management purposes and to conduct any records management functions assigned by the agency. This section also clarifies, in certain instances, the Division's specific responsibilities when records are stored by other agencies in a storage center operated by the Division.

Section 5 amends s. 257.42, F.S., to remove the cap of \$400,000 on an annual grant from the state available to the administrative unit of a library cooperative for the purpose of sharing library resources. Thus, the legislature will have more discretion in making appropriations for Library Cooperative Grants.

This section also makes conforming changes.

Section 6 amends s. 120.54, F.S., to correct cross-references.

Section 7 provides that the act takes effect on 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.

²¹ Department of State, *Senate Bill 1570 Agency Legislative Analysis* (January 22, 2020) (on file with the Senate Committee on Governmental Oversight and Accountability)

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 does not alter existing, recurring appropriations for Library Cooperative Grants. However, the bill changes how those appropriations may be used.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 257.22, 257.35, 257.36, 257.42 and 120.54.

This bill repeals the following sections of the Florida Statutes: 257.34.

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 Perry

8-01372A-20

20201570__

A bill to be entitled

An act relating to the Division of Library and Information Services; amending s. 257.22, F.S.; removing the date by which the division must submit an annual report regarding the allocation of library funding to the Chief Financial Officer; repealing s. 257.34, F.S., relating to the Florida International Archive and Repository; amending s. 257.35, F.S.; revising the duties and responsibilities of the division in the administration of the Florida State Archives; conforming a cross-reference to changes made by the act; amending s. 257.36, F.S.; revising the duties and responsibilities of the division in the administration of the records and information management program; clarifying provisions governing the storage of records transferred to the division for storage; removing the requirement that the division notify an agency by certified mail of a record's eligibility for destruction; deleting a provision that provides for title of a record to pass to the division under specified circumstances; deleting a provision specifying the effect of a preservation duplicate of a record; specifying the role and duties of records management liaison officers; amending s. 257.42, F.S.; removing a limitation on the annual grant amount that the administrative unit of a library cooperative may receive from the state for purposes of sharing library resources; amending s. 120.54, F.S.; conforming a cross-reference to changes made by the act; providing

8-01372A-20

20201570__

an effective date.

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

Section 1. Section 257.22, Florida Statutes, is amended to read:

257.22 Division of Library and Information Services; allocation of funds.—Any moneys that may be appropriated for use by a county, a municipality, a special district, or a special tax district for the maintenance of a library or library service shall be administered and allocated by the division ~~of Library and Information Services~~ in the manner prescribed by law. ~~On or before December 1 of each year,~~ The division shall annually certify to the Chief Financial Officer the amount to be paid to each county, municipality, special district, or special tax district.

Section 2. Section 257.34, Florida Statutes, is repealed.

Section 3. Paragraphs (h) and (i) of subsection (1) of section 257.35, Florida Statutes, are amended to read:

257.35 Florida State Archives.—

(1) There is created within the Division of Library and Information Services of the Department of State the Florida State Archives for the preservation of those public records, as defined in s. 119.011(12), manuscripts, and other archival material that have been determined by the division to have sufficient historical or other value to warrant their continued preservation and have been accepted by the division for deposit in its custody. It is the duty and responsibility of the division to:

8-01372A-20

20201570__

(h) ~~Encourage and initiate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government.~~

~~(i)~~ Assist and cooperate with the records and information management program in the training and information program described in s. 257.36(1)(d) ~~s. 257.36(1)(g)~~.

Section 4. Section 257.36, Florida Statutes, is amended to read:

257.36 Records and information management.—

(1) There is created within the Division of Library and Information Services of the Department of State a records and information management program. It is the duty and responsibility of the division to:

(a) Establish and administer a records management program directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records.

(b) Analyze, develop, establish, and coordinate standards, procedures, and techniques of recordmaking and recordkeeping, including, but not limited to, standards and guidelines for retention, storage, security, and disposal of records.

(c) Establish and operate a records center or centers primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or space. To this end, the records center shall:

~~(e) Analyze, develop, establish, and coordinate standards, procedures, and techniques of recordmaking and recordkeeping.~~

1. ~~(d)~~ Ensure the maintenance and security of stored records

8-01372A-20

20201570__

which are deemed appropriate for preservation.

2.~~(e)~~ Establish safeguards against unauthorized or unlawful removal or loss of stored records.

3.~~(f)~~ Initiate appropriate action to recover stored records removed unlawfully or without authorization.

(d)~~(g)~~ Institute and maintain a training and information program in:

1. All phases of records and information management to bring approved and current practices, methods, procedures, and devices for the efficient and economical management of records to the attention of all agencies.

2. The requirements relating to access to public records under chapter 119.

(e)~~(h)~~ Make continuous surveys of recordkeeping operations.

(f)~~(i)~~ Recommend improvements in current records management practices, including the use of space, equipment, supplies, and personnel in creating, maintaining, and servicing records.

(g)~~(j)~~ Establish and maintain a program in cooperation with each agency for the selection and preservation of records considered essential to the operation of government and to the protection of the rights and privileges of citizens.

~~(k) Make, or have made, preservation duplicates, or designate existing copies as preservation duplicates, to be preserved in the place and manner of safekeeping as prescribed by the division.~~

(2) (a) All records transferred to the division for storage may be held ~~by it~~ in its a records center or centers, to be designated by the division ~~it~~, for such time as in its judgment retention therein is deemed necessary. At such time as it is

8-01372A-20

20201570__

established by the division, such records as are determined by it as having historical or other value warranting continued preservation shall be transferred to the Florida State Archives.

(b) Title to any record stored ~~detained~~ in any records center operated by the division remains ~~shall remain~~ in the agency transferring such record to the division. When the Legislature transfers any duty or responsibility of an agency to another agency, the receiving agency shall be the custodian of public records with regard to the public records associated with that transferred duty or responsibility, and shall be responsible for the records storage service charges of the division. If an agency is dissolved and the legislation dissolving that agency does not assign an existing agency as the custodian of public records for the dissolved agency's records, then the Cabinet is the custodian of public records for the dissolved agency, unless the Cabinet otherwise designates a custodian. The Cabinet or the agency designated by the Cabinet shall be responsible for the records storage service charges of the division.

(c) When a record held in a records center is eligible for destruction, the division shall notify, in writing, ~~by certified mail,~~ the agency that ~~which~~ transferred the record. The agency shall ~~have 90 days from receipt of that notice to respond by~~ either requesting continued retention of the record or authorizing destruction or disposal of the record. ~~If the agency does not respond within that time, title to the record shall pass to the division.~~

(3) The division may charge fees for supplies and services, including, but not limited to, shipping containers, pickup,

8-01372A-20

20201570__

146 delivery, reference, and storage. Fees shall be based upon the
147 actual cost of the supplies and services and shall be deposited
148 in the Records Management Trust Fund.

149 ~~(4) (a) Any preservation duplicate of any record made~~
150 ~~pursuant to this chapter shall have the same force and effect~~
151 ~~for all purposes as the original record. A transcript,~~
152 ~~exemplification, or certified copy of such preservation~~
153 ~~duplicate shall be deemed, for all purposes, to be a transcript,~~
154 ~~exemplification, or certified copy of the original record.~~

155 ~~(5)~~ For the purposes of this section, the term "agency"
156 means ~~shall mean~~ any state, county, district, or municipal
157 officer, department, division, bureau, board, commission, or
158 other separate unit of government created or established by law.

159 (b) It is the duty of each agency to:

160 1. ~~(a)~~ Cooperate with the division in complying with ~~the~~
161 ~~provisions of this chapter.~~

162 2. and Designate a records management liaison officer to
163 serve as the primary point of contact between the agency and the
164 division for records management purposes and to conduct any
165 records management functions assigned by the agency.

166 3. ~~(b)~~ Establish and maintain an active and continuing
167 program for the economical and efficient management of records.

168 (5) ~~(6)~~ A public record may be destroyed or otherwise
169 disposed of only in accordance with retention schedules
170 established by the division. The division shall adopt reasonable
171 rules not inconsistent with this chapter which shall be binding
172 on all agencies relating to the destruction and disposition of
173 records. Such rules must ~~shall~~ provide, but are not ~~be~~ limited
174 to:

8-01372A-20

20201570__

(a) Procedures for complying and submitting to the division records-retention schedules.

(b) Procedures for the physical destruction or other disposal of records.

(c) Standards for the reproduction of records for security or with a view to the disposal of the original record.

Section 5. Section 257.42, Florida Statutes, is amended to read:

257.42 Library cooperative grants.—The administrative unit of a library cooperative is eligible to receive an annual grant from the state ~~of not more than \$400,000~~ for the purpose of sharing library resources based upon an annual plan of service and expenditure and an annually updated 5-year, long-range plan of cooperative library resource sharing. Those plans, which must include a component describing how the cooperative will share technology and the use of technology, must be submitted to the division ~~of Library and Information Services of the Department of State~~ for evaluation and possible recommendation for funding in the division's legislative budget request. Grant funds may not be used to supplant local funds or other funds. A library cooperative must provide from local sources matching cash funds equal to 10 percent of the grant award.

Section 6. Subsection (8) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(8) RULEMAKING RECORD.—In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:

(a) All notices given for the proposed rule.

8-01372A-20

20201570__

(b) Any statement of estimated regulatory costs for the rule.

(c) A written summary of hearings on the proposed rule.

(d) The written comments and responses to written comments as required by this section and s. 120.541.

(e) All notices and findings made under subsection (4).

(f) All materials filed by the agency with the committee under subsection (3).

(g) All materials filed with the Department of State under subsection (3).

(h) All written inquiries from standing committees of the Legislature concerning the rule.

Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under s. 257.36(5) ~~s. 257.36(6)~~.

Section 7. This act shall take effect July 1, 2020.



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of State

<u>BILL INFORMATION</u>	
BILL NUMBER:	<u>SB 1570</u>
BILL TITLE:	<u>Division of Library and Informational Services</u>
BILL SPONSOR:	<u>Senator Perry</u>
EFFECTIVE DATE:	<u>July 1, 2020</u>

<u>COMMITTEES OF REFERENCE</u>
1) Governmental Oversight and Accountability
2) Appropriations Subcommittee on Transportation, Tourism, and Economic Development
3) Appropriations
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<u>CURRENT COMMITTEE</u>
Governmental Oversight and Accountability

<u>SIMILAR BILLS</u>	
BILL NUMBER:	HB 1455
SPONSOR:	Rodriquez (AM)

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?
Yes

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	Click or tap here to enter text.
LEAD AGENCY ANALYST:	Brittany Dover
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
LEGAL ANALYST:	Carlos Rey
FISCAL ANALYST:	Click or tap here to enter text.

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Division of Library and Information Services; Removing the date by which the division must submit an annual report regarding the allocation of library funding to the Chief Financial Officer; revising the duties and responsibilities of the division in the administration of the Florida State Archives; revising the duties and responsibilities of the division in the administration of the records and information management program; removing a limitation on the annual grant amount that the administrative unit of a library cooperative may receive from the state for purposes of sharing library resources, etc. Effective Date: 7/1/2020

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:**

Chapter 257 contains some agency direction which is no longer required. In addition, there are some parts of the chapter that are duplicative in nature

2. **EFFECT OF THE BILL:**

Florida Statutes 257.22 – eliminates the December 1 deadline. Currently, the Division supplies two versions of the same report to the Chief Financial Officer (CFO). The first version, because it is submitted by December 1, includes estimated grant amounts. The second version of the report, submitted later, reflects the actual final grant amounts. The requested change would allow the Division to submit one report to the CFO with the actual grant amounts.

Florida Statutes 257.34 – repeals 257.34 Florida International Archive and Repository, this function is provided within Ch. 257.35.

Florida Statutes 257.35 – eliminates language requiring the Division to encourage and imitate efforts to preserve, collect, process, transcribe, index, and research the oral history of Florida government. The division has never performed these activities and has neither the resources nor the staff expertise to carry out the duties.

Florida Statutes 257.36 –

(1)(a) through (f) clarifies distinction between division's general responsibilities for public records and division's specific responsibilities for records stored by other agencies in a records center operated by the division.

(1)(k) eliminates language regarding a responsibility that is no longer a function of the division.

(2)(a) clarifies that records are being stored by the division but are not being transferred to the legal custody of the division, making consistent with (2)(b).

(2)(b) clarifies that records center referenced are operated by the division.

(2)(c) safeguards public records from premature destruction and protects the division from engaging in premature destruction of public records.

(4) eliminates language already provided for in Section 92.29 Florida Statutes.

(5) clarifies agencies' responsibility to designate a records management liaison officer and to assign them duties.

Florida Statutes 257.42 – eliminates a specific maximum award amount.

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:	.
Is the change consistent with the agency's core mission?	Y ☐ N ☐
Rule(s) impacted (provide references to F.A.C., etc.):	

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

Proponents and summary of position:	F.S. Ch. 257.42 - Grant applicant stakeholder group is supportive of the change to eliminate the cap on the state funding in the Library Cooperative
-------------------------------------	--

	Grant program. In 2019-20 this group successfully received additional funding (above the capped amount) through proviso language. F.S. Ch. 257.22, 257.35, and 257.36 not applicable.
Opponents and summary of position:	Not applicable.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

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

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
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?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☐ N ☒

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation contain a State Government appropriation?	Click or tap here to enter text.
If yes, was this appropriated last year?	Click or tap here to enter text.

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

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Other:	Click or tap here to enter text.

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

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

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.

Click or tap here to enter text.

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.

Click or tap here to enter text.

ADDITIONAL COMMENTS**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments:



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 16, 2020

I respectfully request that **Senate Bill #1570**, relating to Division of Library and Information 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

APPEARANCE RECORD

2/3/20

Meeting Date

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

1570

Bill Number (if applicable)

Topic Division of Library & Informational Services

Amendment Barcode (if applicable)

Name Brittany Dover

Job Title Legislative Affairs Director

Address 500 S. Bronough St.

Phone _____

Street

Tallahassee

FL.

32399

City

State

Zip

Email brittany.dover@dos.mylflorida.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of State

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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 1714

INTRODUCER: Senator Bradley

SUBJECT: Sale of Surplus State-owned Office Buildings and Associated Nonconservation Lands

DATE: February 3, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hackett	McVaney	GO	Favorable
2. _____	_____	AEG	_____
3. _____	_____	AP	_____

I. Summary:

SB 1714 amends ss. 215.196 and 253.0341, F.S., to provide that funds received through the sale of surplus state-owned office buildings and associated nonconservation lands are deposited into the Architects Incidental Trust Fund as opposed to the Internal Improvement Trust Fund, and must be used for the acquisition, lease, planning, entitlement, design, permitting, construction, or maintenance of state-owned office buildings.

The bill also removes the requirement that state universities and Florida College System institutions be offered to lease a building or parcel of land with priority consideration before the same is offered to another government entity or private party.

The bill also provides that when appraising surplus lands' value, the Division of State Lands must base the value on the "highest and best use" of the property after considering any applicable developmental rights.

The bill may have a positive impact on state government revenues. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2020.

II. Present Situation:

Architects Incidental Trust Fund

The Architects Incidental Trust Fund was created to provide sufficient funds for the operation of the facilities development activities of the Department of Management Services (department). The department may levy and assess an amount necessary to cover costs associated with fixed capital outlay projects (real property, including additions, replacements, major repairs,

furnishing, and renovations) on which it serves as owner representative. The assessment rate is provided in the General Appropriations Act based on estimated operating cost projections for the services to be rendered. Assessments collected are transferred into the Architects Incidental Trust Fund and the beginning of each fiscal year.¹

The Internal Improvement Trust Fund and Surplus of State-Owned Lands

In 1855, the Trustees of the Internal Improvement Fund (IITF) was created to oversee the management, sale and development of public lands granted to the State through Congressional acts.² The Governor and Cabinet serve as the Board of Trustees of the IITF.³ This board is charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state or any of its agencies, departments, boards, or commissions.⁴ The board of the IITF controls land vested to it, including the sale or lease of any such land.

The board of the IITF further determines which lands owned by the IITF may be surplus.⁵ Before a building or parcel of land is offered for lease or sale to a local or federal unit of government or a private party, the IITF must first offer the building or parcel to state agencies, state universities, and Florida College System institutions. Priority is given to universities and institutions, who have 60 days to submit a leasing plan to the board regarding the intended use. In the last five years there have been at least five leases given to universities and one land exchange with a university following the universities' exercise of priority rights. State agencies requesting the land must also submit a plan within 60 days; their plan must include the intended use, the estimated cost of renovation, a capital improvement plan for any building, and evidence that the building or parcel meets and existing need that cannot otherwise be met.⁶

In practice, such a lease can be executed for up to fifty years. Pursuant to Rule 18-2.020(8), F.A.C., an annual administrative fee of \$300 to occupy state-owned nonconservation land is assessed. No other fees are assessed to a state university or college.⁷

The sale price of surplus lands is determined by the Division of State Lands in consultation with an outside appraisal, a comparable sales analysis, or a broker's opinion. An individual or entity that requests to purchase the surplus land pays all costs associated with determining the property's value, if any.⁸ The sale price of lands Funds received through any sales of such land are deposited in the IITF with no specified use.⁹

¹ Section 215.196, F.S.

² See Internal Improvement Fund, <http://digitalcollections.fiu.edu/iif/about.htm> (last visited January 30, 2020); see also s. 253.01, F.S.

³ FLA CONST Art. IV, s. 1(4)(f)

⁴ Section 253.03(1), F.S.

⁵ Section 253.0341(1), F.S.

⁶ Section 253.0341(7), F.S.

⁷ Department of Management Services, Agency Analysis of 2020 Senate Bill 1714, Jan 29, 2020 (on file with Senate Committee on Government Oversight and Accountability).

⁸ Section 253.0341(8), F.S.

⁹ 253.0341(14), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 215.196, F.S., to provide that funds received through the sale of surplus state-owned office buildings¹⁰ and associated nonconservation lands must be used for the acquisition, lease, planning, entitlement, design, permitting, construction, or maintenance of state-owned office buildings.

The bill also revises the purpose of the Architects Incidental Trust Fund to include collecting and diverting funds received through the sale of surplus state-owned buildings.

Section 2 amends s. 253.0341 to remove the requirement that state universities and Florida College System institutions be offered to lease a building or parcel of land with priority consideration before the same is offered to another government entity or private party. The section also removes related language for the university or institution submitting the plan for intended use.

The bill also provides that when appraising surplus lands' value, the Division of State Lands must base the value on the "highest and best use" of the property after considering any applicable developmental rights. The bill defines "highest and best use" as the reasonable, probable, and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and results in the highest value.

The bill also provides that funds received from the sale of surplus state-owned office buildings and associated nonconservation lands shall be deposited into the Architects Incidental Trust Fund.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

¹⁰ Section 255.248(9), F.S., "State-owned office building" means any building whose title is vested in the state and which is used by one or more executive agencies predominantly for administrative direction and support functions. The term excludes:

- (a) District or area offices established for field operations where law enforcement, military, inspections, road operations, or tourist welcoming functions are performed.
- (b) All educational facilities and institutions under the supervision of the Department of Education.
- (c) All custodial facilities and institutions used primarily for the care, custody, or treatment of wards of the state.
- (d) Buildings or spaces used for legislative activities.
- (e) Buildings purchased or constructed from agricultural or citrus trust funds.

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 may have a positive fiscal impact for the state. Removing the state universities' and Florida College System institutions' right of first refusal will allow the state to further maximize the sale price of surplus state-owned office buildings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 215.196 and 253.0341, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Bradley

5-01404A-20

20201714__

1 A bill to be entitled
2 An act relating to the sale of surplus state-owned
3 office buildings and associated nonconservation lands;
4 amending s. 215.196, F.S.; revising the purpose of the
5 Architects Incidental Trust Fund; requiring funds
6 relating to the sale of surplus state-owned office
7 buildings and associated nonconservation lands to be
8 used for certain purposes; amending s. 253.0341, F.S.;
9 revising the entities that the Board of Trustees of
10 the Internal Improvement Trust Fund must offer a lease
11 to before offering certain surplus lands for sale to
12 other specified entities; requiring an appraisal,
13 comparable sales analysis, or broker's opinion of the
14 surplus land's value to consider the highest and best
15 use of the property; defining the term "highest and
16 best use"; requiring funds from the sale of surplus
17 state-owned office buildings and associated
18 nonconservation lands to be deposited into the
19 Architects Incidental Trust Fund; providing an
20 effective date.

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

23
24 Section 1. Section 215.196, Florida Statutes, is amended to
25 read:

26 215.196 Architects Incidental Trust Fund; creation;
27 assessment.—

28 (1) There is created the Architects Incidental Trust Fund
29 for the purpose of:

5-01404A-20

20201714__

(a) Collecting all funds received through the sale of surplus state-owned office buildings, as defined in s. 255.248, and the nonconservation lands associated with such buildings;

(b) Diverting funds referenced in s. 253.0341(14)(b); and

(c) Providing sufficient funds for the operation of the facilities development activities of the Department of Management Services.

(2) The department may ~~is authorized to~~ levy and assess an amount necessary to cover the cost of administration by the department of fixed capital outlay projects on which it serves as owner representative on behalf of the state. The assessment rate is to be provided in the General Appropriations Act and statement of intent and shall be based on estimated operating cost projections for the services rendered. The total assessment shall be transferred into the Architects Incidental Trust Fund at the beginning of each fiscal year.

(3) Funds received through the sale of surplus state-owned office buildings and the nonconservation lands associated with such buildings must be used for the acquisition, lease, planning, entitlement, design, permitting, construction, or maintenance of state-owned office buildings, as defined in s. 255.248, and the nonconservation lands associated with such buildings.

Section 2. Subsections (7), (8), and (14) of section 253.0341, Florida Statutes, are amended to read:

253.0341 Surplus of state-owned lands.—

(7) Before a building or parcel of land is offered for lease or sale to a local or federal unit of government or a private party, it must ~~shall~~ first be offered for lease to state

5-01404A-20

20201714__

59 ~~agencies, state universities, and Florida College System~~
60 ~~institutions, with priority consideration given to state~~
61 ~~universities and Florida College System institutions. Within 60~~
62 ~~days after the offer for lease of a surplus building or parcel,~~
63 ~~a state university or Florida College System institution that~~
64 ~~requests the lease must submit a plan for review and approval by~~
65 ~~the Board of Trustees of the Internal Improvement Trust Fund~~
66 ~~regarding the intended use, including future use, of the~~
67 ~~building or parcel of land before approval of a lease. Within 60~~
68 ~~days after the offer for lease of a surplus building or parcel,~~
69 a state agency that requests the lease of such facility or
70 parcel must submit a plan for review and approval by the board
71 of trustees regarding the intended use. The state agency plan
72 must, at a minimum, include the proposed use of the facility or
73 parcel, the estimated cost of renovation, a capital improvement
74 plan for the building, evidence that the building or parcel
75 meets an existing need that cannot otherwise be met, and other
76 criteria developed by rule by the board of trustees. The board
77 or its designee shall compare the estimated value of the
78 building or parcel to any submitted business plan to determine
79 if the lease or sale is in the best interest of the state. The
80 board of trustees shall adopt rules pursuant to chapter 120 for
81 the implementation of this section.

82 (8) The sale price of lands determined to be surplus
83 pursuant to this section and s. 253.82 shall be determined by
84 the Division of State Lands, which shall consider an appraisal
85 of the property or, if the estimated value of the land is
86 \$500,000 or less, a comparable sales analysis or a broker's
87 opinion of value. The value must be based on the highest and

5-01404A-20

20201714__

88 best use of the property, considering all applicable
89 developmental rights, to ensure the maximum benefit and use to
90 the state as provided in s. 253.03(7)(a). The division may
91 require a second appraisal. The individual or entity that
92 requests to purchase the surplus parcel shall pay all costs
93 associated with determining the property's value, if any. As
94 used in this subsection, the term "highest and best use" means
95 the reasonable, probable, and legal use of vacant land or an
96 improved property which is physically possible, appropriately
97 supported, financially feasible, and results in the highest
98 value.

99 (a) A written valuation of land determined to be surplus
100 pursuant to this section and s. 253.82, and related documents
101 used to form the valuation or which pertain to the valuation,
102 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
103 I of the State Constitution.

104 1. The exemption expires 2 weeks before the contract or
105 agreement regarding the purchase, exchange, or disposal of the
106 surplus land is first considered for approval by the board of
107 trustees.

108 2. Before expiration of the exemption, the Division of
109 State Lands may disclose confidential and exempt appraisals,
110 valuations, or valuation information regarding surplus land:

111 a. During negotiations for the sale or exchange of the
112 land;

113 b. During the marketing effort or bidding process
114 associated with the sale, disposal, or exchange of the land to
115 facilitate closure of such effort or process;

116 c. When the passage of time has made the conclusions of

5-01404A-20

20201714__

117 value invalid; or

118 d. When negotiations or marketing efforts concerning the
119 land are concluded.

120 (b) A unit of government that acquires title to lands
121 pursuant to this section for less than appraised value may not
122 sell or transfer title to all or any portion of the lands to any
123 private owner for 10 years. A unit of government seeking to
124 transfer or sell lands pursuant to this paragraph must first
125 allow the board of trustees to reacquire such lands for the
126 price at which the board of trustees sold such lands.

127 (14) (a) Funds received from the sale of surplus
128 nonconservation lands or lands that were acquired by gift, by
129 donation, or for no consideration shall be deposited into the
130 Internal Improvement Trust Fund.

131 (b) Notwithstanding paragraph (a), funds received from the
132 sale of surplus state-owned office buildings, as defined in s.
133 255.248, and the nonconservation lands associated with such
134 buildings shall be deposited into the Architects Incidental
135 Trust Fund, as established pursuant to s. 215.196.

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



2020 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Management Services

BILL INFORMATION

BILL NUMBER:	SB 1714
BILL TITLE:	Sale of Surplus State-Owned Office Buildings and Associated Nonconservation Lands
BILL SPONSOR:	Bradley
EFFECTIVE DATE:	07/01/2020

COMMITTEES OF REFERENCE

1) Governmental Oversight and Accountability
2) Appropriations Subcommittee on Agriculture, Environment, and General Government
3) Appropriations
4) N/A
5) N/A

CURRENT COMMITTEE

Governmental Oversight and Accountability

SIMILAR BILLS

BILL NUMBER:	HB 1387
SPONSOR:	Grant (J)

PREVIOUS LEGISLATION

BILL NUMBER:	HB 1075
SPONSOR:	Caldwell
YEAR:	2016
LAST ACTION:	Approved by Governor; Ch. 2016-233

IDENTICAL BILLS

BILL NUMBER:	N/A
SPONSOR:	N/A

Is this bill part of an agency package?

Yes

BILL ANALYSIS INFORMATION

DATE OF ANALYSIS:	January 29, 2020
LEAD AGENCY ANALYST:	Cody Farrill, Legislative Affairs Director
ADDITIONAL ANALYST(S):	Tom Berger, Director of Real Estate Development & Management
LEGAL ANALYST:	Sean Gellis, Interim General Counsel
FISCAL ANALYST:	Morgan Helton, Budget Director

POLICY ANALYSIS

1. **EXECUTIVE SUMMARY**

The bill amends the process in which the Board of Trustees (BOT) of the Internal Improvement Trust Fund (IITF) can surplus buildings and land by removing the requirement that the building and associated parcel of land first be offered for lease to state universities and Florida college system institutions before being offered for sale.

The bill revises the purpose of the Architects Incidental Trust Fund (AITF) by requiring that funds related to the sale of surplus state-owned office buildings and associated nonconservation lands be deposited into the AITF for the entitlement, acquisition, planning, lease, design, permitting, construction, or maintenance of state-owned office buildings. The bill also directs that the value of the asset be based on the highest and best use, to ensure a maximum benefit to the state and be completed prior to sale.

2. **SUBSTANTIVE BILL ANALYSIS**

1. **PRESENT SITUATION:**

Currently, before a state-owned office building and associated non-conservation land is sold, the building and associated non-conservation land must first be offered to state agencies, state universities, and Florida college system institutions, with preference given to universities and Florida college system institutions.

Pursuant to s. 253.0341(7), Florida Statutes, before a building or parcel of land is offered for lease or sale it shall first be offered for lease to state agencies, state universities, or Florida College Systems with priority consideration given to state universities and Florida College institutions. For a state university or college to be granted a lease, a Business Plan must be formally approved by the BOT.

In current practice, the lease can be executed for up to fifty years. Pursuant to Rule 18-2.020(8), Florida Administrative Code, an annual administrative fee of three-hundred dollars (\$300) to occupy state-owned nonconservation land is assessed in July of each year. There are no other fees, such as lease fees, assessed to a state university or college. If a state-owned office building and associated non-conservation is determined to be suited for sale, and state agency, university, or college system institution claim first right of lease, funds received through the sale are deposited in the Internal Improvement Trust Fund with no specified use.

2. **EFFECT OF THE BILL:**

Section 1: Amends the purpose, source, and use of the Architects Incidental Trust Fund (AITF) by requiring that funds received through the sale of surplus state-owned office buildings, defined in s. 255.248 and the associated nonconservation lands be deposited into the AITF. The bill provides direction that funds received be used for the acquisition, lease, planning, entitlement, design, permitting, construction, or maintenance of state-owned office buildings and the associated nonconservation lands associated with such buildings.

Section 2: Amends the surplus process for state buildings or land by deleting requirements that buildings or parcels must be offered to state universities or Florida college system institutions prior to sale. Maintains current law that a building or parcel of land must first be offered to state agencies. Provides that the sale value must be based on the highest and best use to ensure maximum benefit to the state and defines the term "highest and best use," to mean the reasonable, probable, and legal use of vacant land or an improved property which is physically possible, appropriately supported, financially feasible, and results in the highest value.

Clarifies that funds received only from the sale of surplus state-owned office buildings and associated nonconservation lands be deposited into the AITF. Funds received from the sale of nonconservation lands or lands received through a specified purpose as prescribed within law will continue to be deposited into the IITF.

Section 3: Provides an effective date of July 1, 2020.

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 ☐ N ☐
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

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:	None.
Expenditures:	None.
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:	Positive Impact to Revenues if a state-owned office building and associated nonconservation land is sold.
Expenditures:	None.
Does the legislation contain a State Government appropriation?	No.
If yes, was this appropriated last year?	N/A

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

Revenues:	None.
Expenditures:	None.
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

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
--	-----

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
--	-----

ADDITIONAL COMMENTS

This bill does not have an impact to local or state government revenues, all proceeds from the surplus of state-owned office buildings and associated nonconservation land remain deposited with a state agency. There is no impact to the private sector, does not increase/decrease taxes, fees or fines, nor have a technology or federal impact. This bill will allow for the funds deposited to further the care and maintenance of state office buildings for many agencies, including the Florida Facilities Pool, ensure the highest and best value is received for the surplus of these properties and provide for the planning, design, permit, construction and management as funds become available.

The bill does not eliminate the ability for the Board of Trustees of the Internal Improvement Trust Fund to lease property, rather the bill removes the requirement that buildings or parcels must be offered to state universities or Florida college system institutions prior to sale.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	No legal issues identified as to the Department. This bill would require, among other things, that the value of surplus lands be based on the "highest and best use," but the Division of State Lands at DEP would be responsible for administering this provision and not the Department.
---------------------------	--



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Finance and Tax
Innovation, Industry, and Technology
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR ROB BRADLEY
5th District

January 27, 2020

Senator Ed Hooper, Chair
Committee on Government Oversight & Accountability
310 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Hooper:

I respectfully request that Senate Bill 1714 be placed on the committee's agenda at your earliest convenience. This bill relates to the sale of surplus state-owned office buildings and associated nonconservation lands.

Thank you for your consideration.

Sincerely,

Rob Bradley

REPLY TO:

- ☐ 1279 Kingsley Avenue, Suite 107, Orange Park, Florida 32073 (904) 278-2085
- ☐ 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/03/2020

Meeting Date

SB 1714

Bill Number (if applicable)

N/A

Topic Sale of State-owned Office Buildings and Associated Nonconservation Lands

Amendment Barcode (if applicable)

Name John Schrader

Job Title Deputy Director, Office of Legislative Affairs

Address 3900 Commonwealth Boulevard

Phone (850) 245-2144

Street

Tallahassee

FL

32399

Email John.Schrader@FloridaDEP.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Environmental Protection

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)

02/03/20
Meeting Date

SB 1714
Bill Number (if applicable)

Topic Real Estate Surplus Bill

Amendment Barcode (if applicable)

Name Cody Farrill

Job Title Deputy Chief of Staff

Address 4050 Esplanade Way

Phone 950 487 7001

Street

Jalisco

FL

32311

City

State

Zip

Email cody.farrill@dms.mysflca

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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)

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 1042

INTRODUCER: Senator Albritton

SUBJECT: Aquatic Preserves

DATE: January 31, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Anderson	Rogers	EN	Favorable
2. Hackett	McVane	GO	Favorable
3. _____	_____	RC	_____

I. Summary:

SB 1042 designates the coastal region of Pasco, Hernando, and Citrus counties as the Nature Coast Aquatic Preserve and provides legislative intent. The bill provides the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) with the authority to maintain the preserve in a manner that is in the public interest and specifies authorized and prohibited activities within the preserve. The bill requires the Board of Trustees to adopt and enforce rules related to the management and preservation of the preserve and specifies that the creation of the preserve shall not infringe upon the riparian rights of adjacent property owners. The bill provides for civil penalties and specifies the preserve is subject to the Power Plant Siting Act.

The Department of Environmental Protection estimates to need 3 full-time equivalent positions and roughly \$400,000 in the 2020-21 fiscal year to implement the aquatic preserve. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2020.

II. Present Situation:

Sovereign Submerged Lands

Upon attaining statehood in 1845, “the state of Florida by virtue of its sovereignty assumed title to and sovereignty over the navigable waters in the state and lands thereunder.”¹ The title to lands under navigable waters passed from the United States to the state through operation of the

¹ *Merrill-Stevens Co. v. Durkee*, 62 Fla. 549, 57 So. 428, 432 (1912).

federal “equal footing” doctrine,² and included the submerged bed up to the “ordinary high water mark” of navigable rivers and lakes.³

The Florida Constitution⁴ provides that:

The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.

Sovereign submerged lands include, but are not limited to, tidal lands, islands, sandbars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters. Title to sovereign submerged lands is held by the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees).⁵ The Board of Trustees is responsible for the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by the state, including all sovereign submerged lands.⁶ The Department of Environmental Protection’s Office of Resilience and Coastal Protection carries out the Aquatic Preserve Program on behalf of the Board of Trustees.

Aquatic Preserves

The Florida Aquatic Preserve Act of 1975⁷ was created to ensure that the state-owned submerged lands in areas which have exceptional biological, aesthetic, and scientific value be set aside forever as aquatic preserves or sanctuaries for the benefit of future generations.⁸ An aquatic preserve is an exceptional area of submerged lands and its associated waters set aside to be maintained in its natural condition.⁹ Florida has 41 aquatic preserves, encompassing about 2.2 million acres.¹⁰ All but four of these submerged lands are located along Florida’s 8,400 miles of coastline, in the shallow waters of marshes and estuaries. The other four are located inland, near springs and rivers. Aquatic preserves serve many valuable ecological and economic functions, including providing nurseries for juvenile fish and other aquatic life, and providing habitat for shorebirds. The aquatic preserves are also valuable for recreation, providing a host of outdoor activities such as fishing, swimming, and boating.¹¹

² *Pollard v. Hagan*, 44 U.S. 212 (1845) (Under the Equal Footing Doctrine, the new states admitted into the Union since the adoption of the Constitution were given the same rights in submerged lands as the original states).

³ *Coastal Petroleum Co. v. American Cyanamid Co.*, 492 So. 2d 339, 342 (Fla 1986); *Tilden v. Smith*, 94 Fla. 502, 113 So. 708, 712 (1927) (Concerning the boundary of fresh waters, the ordinary high water mark is the point where the presence and action of the water are so common and usual as to leave a mark upon the soil).

⁴ Art. X, s. 11 of the Florida Constitution.

⁵ DEP, *Submerged Land Management*, <https://floridadep.gov/lands/bureau-public-land-administration/content/submerged-lands-management> (last visited Jan. 13, 2020).

⁶ Section 253.03, F.S.

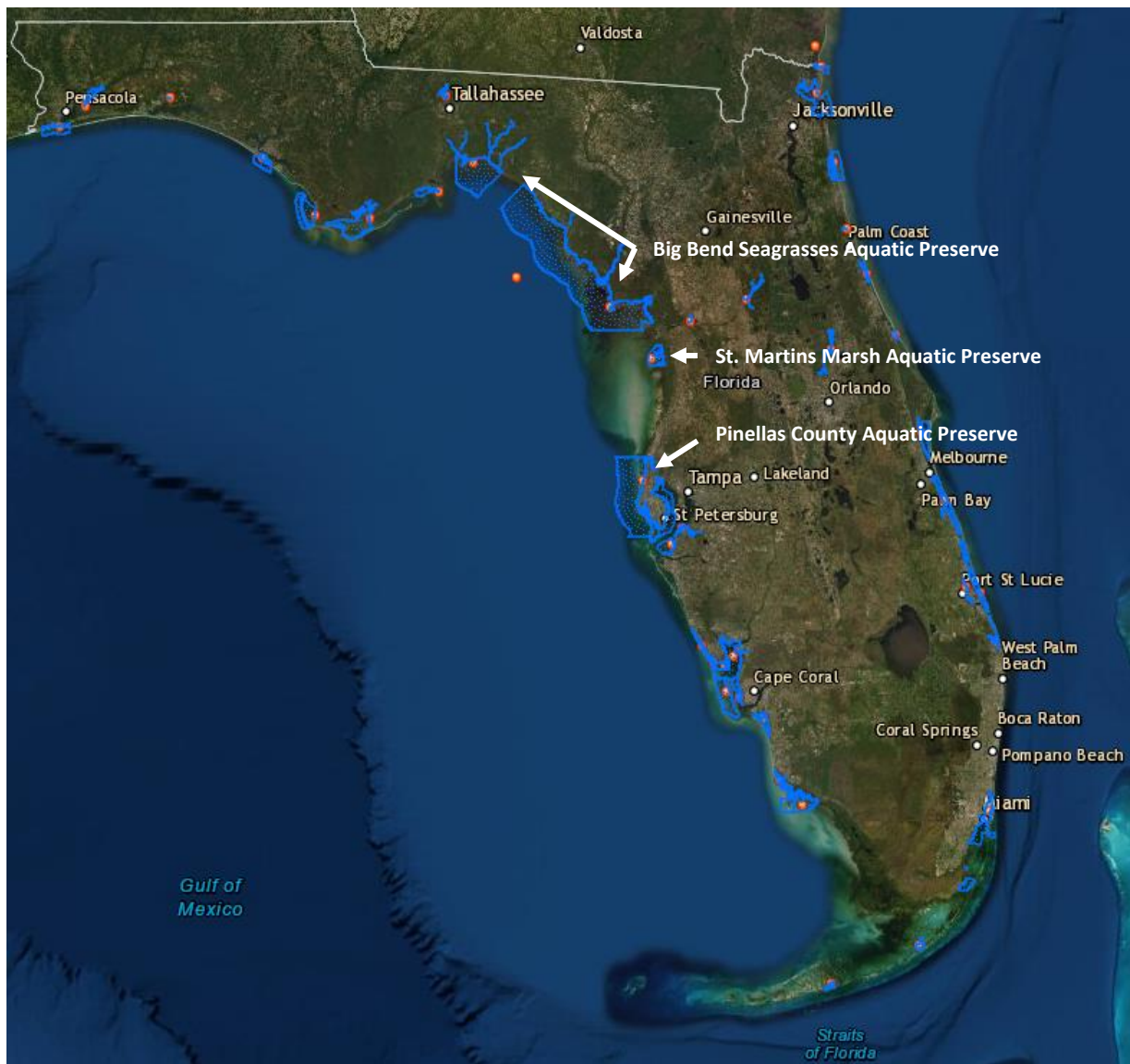
⁷ Section 258.35, F.S.

⁸ Section 258.36, F.S.

⁹ Section 258.37, F.S.

¹⁰ DEP, *Aquatic Preserve Program*, <https://floridadep.gov/rcp/aquatic-preserve> (last visited Jan. 1, 2020).

¹¹ *Id.*



Above is a map of Florida's aquatic preserves¹² with the Big Bend Seagrasses Aquatic Preserve, the Pinellas County Aquatic Preserve, and the St. Martins March Aquatic Preserve specifically identified (each are mentioned in the bill as the proposed preserve would lie between them).

Current law¹³ restricts certain activities, such as the construction of utility cables and pipes and spoil disposal, in aquatic preserves in order to conserve their unique biological, aesthetic, and scientific value. Section 258.42, F.S., directs the Board of Trustees to maintain aquatic preserves subject to the following requirements:

¹² DEP, Aquatic Preserves of Florida StoryMap Component, <https://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=4cf441902aef48dfac100d90f37df3f0> (last visited Jan. 4, 2020).

¹³ Section 258.42, F.S.

- No further sale, lease, or transfer of sovereign submerged lands may be approved or consummated by the Board of Trustees except when such sale, lease, or transfer is in the public interest.
- The Board of Trustees cannot approve the waterward relocation or setting of bulkhead lines waterward of the line of mean high water within the preserve except when public road and bridge construction projects have no reasonable alternative and it is shown to be not contrary to the public interest.
- No further dredging or filling of submerged lands may be approved by the Board of Trustees except for certain activities that must be authorized pursuant to a permit.

The Board of Trustees' rules further provide that only minimal or maintenance dredging is permitted in a preserve, and any alteration of the preserves' physical conditions is restricted unless the alteration enhances the quality or utility of the preserve or the public health generally.¹⁴ Minerals may not be mined (with the exception of oyster shells), and oil and gas well drilling is prohibited. However, the state is not prohibited from leasing the oil and gas rights and permitting drilling from outside the preserve to explore for oil and gas if approved by the Board of Trustees. Docking facilities and structures for shore protection are restricted as to size and location.¹⁵

No wastes or effluents may be discharged into the preserve which substantially inhibit the accomplishment of the purposes of this act. Riparian owners may selectively trim or alter mangroves on adjacent publicly owned submerged lands, provided that the selective trimming or alteration is in compliance with the requirements of state law including permit requirements for mangrove trimming.¹⁶

Fees

Leases of sovereign submerged lands are significantly more expensive for leases within aquatic preserves. The annual fee for standard term leases is six percent of the annual income, the base fee (currently \$0.1413/sq. ft.), or the minimum annual fee (currently \$423.89). Leases in aquatic preserves carry an additional charge equal to twice the base fee, which currently amounts to \$0.2826 per square foot. The additional charge is applied as long as 75% or more of the lease shoreline and the adjacent 1000 feet on either side of the leased area is in a natural, unbulkheaded, non-seawalled or non-riprapped condition.¹⁷

Nature Coast

"The Nature Coast" is located along Florida's Big Bend region and encompasses 980,000 acres across eight counties (Citrus, Dixie, Hernando, Jefferson, Pasco, Levy, Taylor, and Wakulla) and

¹⁴ Fla. Admin. Code R. 18-20.004. Note that every aquatic preserve in the state has specific restrictions and policies that are set out in the Florida Administrative Code and/or ch. 258, F.S.

¹⁵ Section 258.42, F.S. Administrative rules applicable to aquatic preserves generally may be found in Chapters 18-20, F.A.C., Management Policies, Standards and Criteria.

¹⁶ Section 258.42, F.S.

¹⁷ Fla. Admin. Code Rule 18-21.011.

the City of Dunnellon.¹⁸ This area is a sanctuary to endangered species¹⁹ and has many natural resources, including mangroves, spring fed rivers, limestone outcroppings, sandy beaches, oyster bars, mud flats, and seagrass beds.²⁰

Florida Electrical Power Plant Siting Act

The Power Plant Siting Act (PPSA)²¹ is the state's centralized process for licensing large power plants. DEP acts as the lead agency in the certification process, which replaces local and state permits.²² The certification addresses permitting, land use and zoning, and property interests. A certification grants approval for the location of the power plant and its associated facilities such as a natural gas pipeline supplying the plant's fuel, rail lines for bringing coal to the site, and roadways and electrical transmission lines carrying power to the electrical grid, among others. As it relates to aquatic preserves, the PPSA specifically provides that the certification can exempt the applicant from state statutes or rules protecting aquatic preserves upon a finding that the public interests set forth in the PPSA override the public interest protected by the statute or rule.²³

¹⁸ Nature Coast Coalition, Nature Coast History, <http://www.naturecoastcoalition.com/nchistory.htm> (last visited Jan. 13, 2020), see also Florida Nature Coast, *Where would you like to go?*, <http://floridanaturecoast.org/> (last visited Jan. 14, 2020).

¹⁹ *Id.*

²⁰ Department of Environmental Protection, *House Bill 1123*, 2 (Feb. 27, 2014)(on file with the Senate Committee on Environmental and Natural Resources).

²¹ Sections 403.501-403.518, F.S.

²² Section 403.504, F.S.

²³ Section 403.511(2)(b)2., F.S.

III. Effect of Proposed Changes:



SB 1042 creates the Nature Coast Aquatic Preserve in the area described by the map above.

The bill creates the “Nature Coast Aquatic Preserve” in the area identified above. The intent of the designation is that the Nature Coast Aquatic Preserve be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.

The following restrictions will be applicable within the aquatic preserve:

- The Board of Trustees may not sell, transfer, or lease sovereign submerged lands in the preserve, except upon a showing of extreme hardship on the part of the applicant and a determination by the board that such sale, transfer, or lease is in the public interest.
- The Board of Trustees may not approve the further dredging or filling of submerged lands of the preserve except:
 - Minimum dredging and spoiling of submerged lands may be authorized for existing public navigation projects, as a public necessity, or for preservation of the preserve.

- Other alterations of the physical conditions of the submerged lands, including the placement of riprap, may be authorized as necessary to enhance the quality and utility of the aquatic preserve.
- The Board of Trustees may authorize minimum dredging and filling of the submerged lands for the construction and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads. Such projects may be authorized only upon a specific finding by the board that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality, valuable habitats, and utility of the preserve. This provision does not authorize the connection of upland canals to the waters of the preserve.
- The Board of Trustees may authorize the dredging of submerged lands if the Board of Trustees determines that such dredging is necessary to eliminate conditions hazardous to the public health or to eliminate stagnant waters, islands, and spoil banks, and that such dredging would enhance the aesthetic and environmental quality, habitats, and utility of the preserve and is clearly in the public interest as determined by the board.
- Before approving any dredging or filling the board must provide for public notice of such dredging or filling.
- There may not be any drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with activity that is authorized by the bill.
- The Board of Trustees may not approve the seaward relocation of bulkhead lines or the further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline. Construction, replacement, or relocation of a seawall is prohibited without the approval of the Board of Trustees, which approval may be granted only if riprap construction is used in the seawall. Approval is granted by a letter of consent.
- The Board of Trustees may, for lands lying within the preserve:
 - Enter into agreements for and establish lines delineating sovereignty and privately owned lands.
 - Enter into agreements for the exchange of, and exchange, sovereignty lands for privately owned lands.
 - Accept gifts of land within or contiguous to the preserve.
 - Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use of any of such lands.
 - Take any action that is convenient or necessary to accomplish any of the acts and matters authorized under this paragraph.
 - Conduct restoration and enhancement efforts in the preserve and its tributaries.
 - Stabilize eroding shorelines of the preserve and its tributaries which are contributing to turbidity by planting natural vegetation to the greatest extent feasible and placing riprap, as determined by Pasco, Hernando, and Citrus Counties in conjunction with the Department of Environmental Protection.

The Board of Trustees is required to adopt and enforce rules that provide:

- Additional preserve management criteria as necessary to accommodate special circumstances.

- Regulation of human activity within the preserve in such a manner as not to interfere unreasonably with lawful and traditional public uses of the preserve, such as sport fishing, commercial fishing, boating, and swimming.
- Other uses of the preserve, or human activity within the preserve, although not originally contemplated, may be authorized, but only after a formal finding of compatibility with the purposes of the aquatic preserve.

The establishment or the management of the preserve is not authorized to infringe upon the riparian rights of upland property owners adjacent to or within the preserve. Reasonable improvement for ingress and egress, mosquito control, shore protection, public utility expansion, and similar purposes may be authorized by the board or the Department of Environmental Protection, subject to any other applicable laws under the jurisdiction of other agencies. However, before approving any such improvements, the board or the department must give public notice. In addition, the bill authorizes enforcement pursuant to the Environmental Protection Act,²⁴ and authorizes the Department of Legal Affairs to bring a civil action with a penalty of \$5,000 per day against a person who violates the provisions of the bill.

The bill clarifies that it is subject to the Florida Electrical Power Plant Siting Act.

The bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

²⁴ Section 403.412, F.S., is the Environmental Protection Act, which authorizes the Department of Legal Affairs, any political subdivision, or citizen of the state to maintain an action for injunctive relief against any agency with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state to compel such governmental authority to enforce such laws, rules, and regulations.

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

None.

B. Private Sector Impact:

Sovereign submerged lands leases within the area identified for the Nature Coast Aquatic Preserve will become more expensive under the current fee schedules. This negatively impacts future lessees.

C. Government Sector Impact:**Revenues**

Fees for leases of sovereign submerged lands located within the new aquatic preserve will increase under the current fee schedule, resulting in higher revenues for the state.

Expenditures

The Department of Environmental Protection estimates it will incur roughly \$216,000 in recurring costs, as well as roughly \$175,000 in non-recurring start-up costs. These costs include three additional full-time equivalent positions to establish and maintain the new aquatic preserve. These costs and workload needs are an amount higher than the Department of Environmental Protection is able to absorb within current funding.

The Department of Environmental Protection will incur some costs associated with the adoption of rules required by this bill. Such costs should be absorbed within the department's current level of resources.

The bill allows the Department of Legal Affairs to bring an action for civil penalties of \$5,000 per day for persons who violate provisions relating to the Nature Coast Aquatic Preserve. This would have a positive fiscal impact to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 258.3991 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Albritton

26-01332-20

20201042__

A bill to be entitled
An act relating to aquatic preserves; creating s.
258.3991, F.S.; creating the Nature Coast Aquatic
Preserve; designating the preserve for inclusion in
the aquatic preserve system; describing the boundaries
of the preserve; outlining the authority of the Board
of Trustees of the Internal Improvement Trust Fund in
respect to the preserve; requiring the board to adopt
rules; prohibiting the establishment and management of
the preserve from infringing upon the riparian rights
of upland property owners adjacent to or within the
preserve; providing civil penalties; providing
applicability; providing an effective date.

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

Section 1. Section 258.3991, Florida Statutes, is created
to read:

258.3991 Nature Coast Aquatic Preserve.—

(1) DESIGNATION.—The area described in subsection (2) which
lies within Pasco, Hernando, and Citrus Counties, is designated
by the Legislature for inclusion in the aquatic preserve system
under the Florida Aquatic Preserve Act of 1975 and shall be
known as the "Nature Coast Aquatic Preserve." It is the intent
of the Legislature that the Nature Coast Aquatic Preserve be
preserved in an essentially natural condition so that its
biological and aesthetic values may endure for the enjoyment of
future generations.

(2) BOUNDARIES.—For the purposes of this section, the

26-01332-20

20201042__

30 Nature Coast Aquatic Preserve consists of the state-owned
31 submerged lands lying west of the right-of-way of U.S. Highway
32 19 within the boundaries of Pasco County, as described in s.
33 7.51, Hernando County, as described in s. 7.27, and Citrus
34 County, as described in s. 7.09, to the south boundary of St.
35 Martins Marsh Aquatic Preserve, as described in s. 258.39(20),
36 and the westerly projection thereof, and also including all the
37 state-owned submerged lands within Citrus County lying west of
38 the west boundary of St. Martins Marsh Aquatic Preserve, lying
39 north of the westerly projection of the south boundary of St.
40 Martins Marsh Aquatic Preserve, and lying south of a line
41 extending westerly along northerly coordinate 1663693 feet,
42 Florida West Zone (NAD83), where the northern and southern
43 boundaries of the Nature Coast Aquatic Preserve will be
44 continuous with the southern boundary of the Big Bend Seagrasses
45 Aquatic Preserve and the northern boundary of the Pinellas
46 County Aquatic Preserve, respectively.

47 (3) AUTHORITY OF TRUSTEES.—The Board of Trustees of the
48 Internal Improvement Trust Fund shall maintain the aquatic
49 preserve subject to the following:

50 (a) The board may not approve or consummate the further
51 sale, transfer, or lease of sovereign submerged lands in the
52 preserve, except upon a showing of extreme hardship on the part
53 of the applicant and a determination by the board that such
54 sale, transfer, or lease is in the public interest.

55 (b) The board may not approve the further dredging or
56 filling of submerged lands of the preserve except:

57 1. Minimum dredging and spoiling of submerged lands may be
58 authorized for existing public navigation projects, as a public

26-01332-20

20201042__

necessity, or for preservation of the preserve according to the expressed intent of this section.

2. Other alterations of the physical conditions of the submerged lands, including the placement of riprap, may be authorized as necessary to enhance the quality and utility of the aquatic preserve.

3. The board may authorize minimum dredging and filling of the submerged lands for the construction and maintenance of marinas, piers, or docks and the maintenance of existing attendant navigation channels and access roads. Such projects may be authorized only upon a specific finding by the board that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality, valuable habitats, and utility of the preserve. This subparagraph does not authorize the connection of upland canals to the waters of the preserve.

4. The board may authorize the dredging of submerged lands if the board determines that such dredging is necessary to eliminate conditions hazardous to the public health or to eliminate stagnant waters, islands, and spoil banks, and that such dredging would enhance the aesthetic and environmental quality, habitats, and utility of the preserve and is clearly in the public interest as determined by the board.

(c) Before approving any dredging or filling as provided in paragraph (b), the board must give public notice of such dredging and filling as required under s. 253.115.

(d) There may not be any drilling of wells, excavation for shell or minerals, or erection of structures other than docks within the preserve unless such activity is associated with

26-01332-20

20201042__

activity that is authorized under this section.

(e) The board may not approve the seaward relocation of bulkhead lines or the further establishment of bulkhead lines except when a proposed bulkhead line is located at the line of mean high water along the shoreline. Construction, replacement, or relocation of a seawall is prohibited without the approval of the board, which approval may be granted only if riprap construction is used in the seawall. The board may grant approval under this paragraph by a letter of consent.

(f) Notwithstanding this section, the board may, for lands lying within the preserve:

1. Enter into agreements for and establish lines delineating sovereignty and privately owned lands.

2. Enter into agreements for the exchange of, and exchange, sovereignty lands for privately owned lands.

3. Accept gifts of land within or contiguous to the preserve.

4. Negotiate or enter into agreements with owners of lands contiguous to public lands for any public or private use of any of such lands.

5. Take any action that is convenient or necessary to accomplish any of the acts and matters authorized under this paragraph.

6. Conduct restoration and enhancement efforts in the preserve and its tributaries.

7. Stabilize eroding shorelines of the preserve and its tributaries which are contributing to turbidity by planting natural vegetation to the greatest extent feasible and placing riprap, as determined by Pasco, Hernando, and Citrus Counties in

26-01332-20

20201042__

117 conjunction with the Department of Environmental Protection.

118 (4) RULES.—

119 (a) The board shall adopt and enforce reasonable rules to
120 carry out this section and to provide:

121 1. Additional preserve management criteria as necessary to
122 accommodate special circumstances.

123 2. Regulation of human activity within the preserve in such
124 a manner as not to interfere unreasonably with lawful and
125 traditional public uses of the preserve, such as sport fishing,
126 commercial fishing, boating, and swimming.

127 (b) Other uses of the preserve, or human activity within
128 the preserve, although not originally contemplated, may be
129 authorized by the board, but only subsequent to a formal finding
130 of compatibility with the purposes of this section.

131 (5) RIPARIAN RIGHTS.—The establishment or the management of
132 the preserve may not operate to infringe upon the riparian
133 rights of upland property owners adjacent to or within the
134 preserve. Reasonable improvement for ingress and egress,
135 mosquito control, shore protection, public utility expansion,
136 and similar purposes may be authorized by the board or the
137 Department of Environmental Protection, subject to any other
138 applicable laws under the jurisdiction of other agencies.
139 However, before approving any such improvements, the board or
140 the department must give public notice as required under s.
141 253.115.

142 (6) ENFORCEMENT.—This section may be enforced in accordance
143 with s. 403.412. In addition, the Department of Legal Affairs
144 may bring an action for civil penalties of \$5,000 per day
145 against a person as defined in s. 1.01(3) who violates this

26-01332-20

20201042__

section or any rule or regulation issued hereunder.

(7) APPLICABILITY.—This section is subject to the Florida
Electrical Power Plant Siting Act, as described in ss. 403.501-
403.518.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #1042**, relating to Aquatic Preserves, be placed on the:

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

A handwritten signature in blue ink, which appears to read "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-3-20

Meeting Date

1042

Bill Number (if applicable)

Topic Aquatic Preserve

Amendment Barcode (if applicable)

Name Trip Aukeman Coastal Conservation Assoc.

Job Title Director of Advocacy

Address _____

Street

Phone 850-559-0060

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/20

Meeting Date

1042

Bill Number (if applicable)

Topic Aquatic Preserves

Amendment Barcode (if applicable)

Name Jennifer Ungru

Job Title _____

Address Dean Mead
Street

Phone _____

City

State

Zip

Email jungru@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The American Sportfishing 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 1188

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Albritton

SUBJECT: Public Records/Records of Insurers/Department of Financial Services

DATE: February 4, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Palecki</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2. <u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3. _____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1188 creates section 631.195, F.S., to make confidential and exempt from public inspection and copying requirements certain information held by the Department of Financial Services (DFS) relating to the personal financial and health information of insurance consumers, and underwriting, personnel, payroll, and consumer claim information, which, if not exempted from the public records disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, may result in public disclosure of traditionally private financial and health information and thereby create the opportunity for theft and fraud, jeopardizing the financial security of the subject person(s).

This bill also makes confidential and exempt from public inspection and copying requirements certain sensitive business information held by DFS which is protected from public records disclosure requirements if held by the Office of Insurance Regulation (OIR). Disclosure of the exempted information, which includes Own-Risk and Solvency Assessment (ORSA) summary reports, corporate governance annual disclosures, and information received from the NAIC and other governmental entities, would injure the subject insurer or insurance group in the marketplace by providing competitors with confidential business information.

Pursuant to the Open Government Sunset Review Act, this public records exemption is scheduled to repeal October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The DFS will incur some costs associated with redacting exempt and confidential and exempt information in response to public records requests.

This bill takes effect July 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, s. 11.0431, 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, ch. 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

Transfer of Records upon Delinquency Proceedings

Along with the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR) is tasked with enforcing the provisions of the Florida Insurance Code, chs. 624-632, 634-636, 641-642, 648 and 651, F.S.²⁷ OIR is responsible for examining the affairs, transactions, accounts, records, and assets of each authorized insurer.²⁸ In the event that the OIR determines

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 See Sections 624.307(1) and 624.01, F.S.

²⁸ Section 624.316(1)(a), F.S.

that one or more grounds²⁹ for the initiation of delinquency proceedings against an insurer exist, such as insolvency,³⁰ the Insurers Rehabilitation and Liquidation Act³¹ requires the Director of the OIR to notify DFS of that determination, and to provide DFS with all necessary documentation and evidence, thereby enabling DFS to initiate the delinquency proceeding.³² This documentation and evidence may include confidential and sensitive information. Upon such notice, DFS is tasked with initiating delinquency proceedings pursuant to ch. 631, F.S., which constitute the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer.³³

The nature of DFS's statutory duties regarding delinquency proceedings require DFS to assume custodianship of insurer records. When DFS is appointed as receiver of an insurer during the course of a delinquency proceeding, Florida Statutes expressly vest DFS with the title to all of the property of the insurer, including all of the books and records, wherever located.³⁴ Similarly, orders to rehabilitate or liquidate a domestic insurer must direct DFS to take possession of the property of the insurer.³⁵ Orders to liquidate the business of a United States branch of an alien insurer having trustee assets in this state shall be on the same terms as those prescribed for domestic insurers, but DFS only takes possession of the assets within that branch.³⁶ Orders to conserve the assets of a foreign or alien insurer likewise must require DFS to take possession of the property of the insurer within this state.³⁷

Consumer Personal Financial and Health Information

Insurance companies routinely possess records of policyholders and claimants during the normal course of business which include personal, private financial and medical information.³⁸ Such information held by solvent insurers is not freely available to any person or entity. If such

²⁹ Grounds for rehabilitation generally include, but are not limited to, impairment, insolvency, failure to comply with OIR orders or to submit records for examination, and other violations of law. See Section 631.051, F.S. Grounds for liquidation include imminent or actual insolvency, an attempt or actual commencement of voluntary liquidation or dissolution, and a failure to timely complete organization and obtain a certificate of authority. Section 631.061, F.S. DFS may also apply to the circuit court for an order appointing it as ancillary receiver of, and directing it to liquidate the business and assets of, a foreign insurer which has assets, business, or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator, or other officer by whatever name called for the purpose of liquidating the business of such insurer. Section 631.091, F.S. Grounds for conservation of foreign insurers include the same as those for rehabilitation and liquidation, or when the insurer's property has been sequestered in its domiciliary sovereignty or in any other sovereignty. Section 631.071, F.S. Grounds for the conservation of alien insurers are the same, but additionally include an insurer's failures to timely comply with an OIR order to make good an impairment of trustee funds. Section 631.081, F.S.

³⁰ "Insolvency" means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. Section 631.011(14), F.S. Depending on the context, insolvency also includes and is defined as "impairment of surplus" and "impairment of capital" as defined in s. 631.011(13) and (12), F.S., respectively. *Id.*

³¹ Part I of Chapter 631, F.S.

³² Section 631.031(1), F.S.

³³ Section 631.021(3), F.S.

³⁴ See s. 631.141(1)-(2), F.S.

³⁵ See ss. 631.101 and 631.111, F.S., respectively.

³⁶ Section 631.121, F.S.

³⁷ Section 631.131(1), F.S.

³⁸ Department of Financial Services, *Bill Analysis of SB 1188*, January 2, 2020 (on file with the Senate Banking and Insurance Committee).

records are made available, it is usually through confidentiality agreements or court orders, and with reference to certain state and federal privileges and confidentiality laws and regulations.³⁹ The Legislature often enacts public records exemptions to restrict disclosure of private financial and medical information, an example of which is found in s. 624.23, F.S., which makes confidential and exempt the personal financial and health information held by the DFS or OIR relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191, F.S.

ORSA Summary Reports, Corporate Governance Annual Disclosures, and NAIC Information

Section 624.4212(3)(a)-(b), F.S., provides that, except for information obtained by the OIR that would otherwise be available for public inspection, the following information held by the OIR is confidential and exempt from the disclosure requirements of s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- *ORSA Reports.* Own-Risk and Solvency Assessments (ORSA) are internal assessments conducted by insurers and insurance groups of the material and relevant risks associated with their business plan and the sufficiency of their capital resources to support those risks.⁴⁰ An ORSA Summary Report is a high-level ORSA summary of an insurer or insurance group, consisting of a single report or combination of reports.⁴¹ Insurers are required to conduct an ORSA at least annually.⁴² Unless an insurer or insurance group is exempted from this requirement or compliance is otherwise waived, insurers must submit an ORSA summary report to the OIR once every calendar year.⁴³
- *Corporate Governance Annual Disclosures.* Corporate governance annual disclosures are reports filed with the OIR by insurers and insurance groups which describe the corporate governance framework and structure of the insurer or insurance group, the policies and practices for directing senior management and of the most senior governing entity and its significant committees, and the processes by which the board, its committees, and senior management ensure the appropriate amount of oversight to critical risk areas that impact the insurer's business activities.⁴⁴ Insurers, or insurer members of an insurance group of which the OIR is the lead state regulator, must submit corporate governance annual disclosure to the OIR annually.⁴⁵

In addition to being confidential and exempt from the disclosure requirements of s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution, both ORSA summary reports and corporate governance annual disclosures, along with related documents, are considered privileged and confidential. OIR may not produce these documents in response to a subpoena or other discovery directed to the OIR, and any such filings and related documents are not admissible as evidence in any private civil action. Disclosure of these records to the OIR under any provision of the

³⁹ *Id.*

⁴⁰ Section 628.8015(1)(d), F.S.

⁴¹ Section 628.8015(1)(f), F.S.

⁴² Section 628.8015(2)(b), F.S.

⁴³ Section 628.8015(2)(c)1.a.(I), F.S. See Section 628.8015(2)(d), F.S., for exemptions, and s. 628.8015(2)(e), F.S., for waiver requirements.

⁴⁴ Section 628.8015(1)(a) and (3)(c)4.a.-d., F.S.

⁴⁵ Section 628.8015(3)(b)1.a.-c., F.S.

Insurance Code or by the OIR pursuant to an exception of the public records exemption does not constitute a waiver of any applicable claim of privilege. The OIR, and any person in receipt of these documents while acting under the authority of the OIR, are not permitted or required to testify in any civil action concerning the documents.⁴⁶

Section 624.4212(4), F.S., provides that information received from the National Association of Insurance Commissioners (NAIC), a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity, and which is held by the OIR for use in the performance of its duties relating to insurer valuation and solvency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

There are limited circumstances under which the OIR may disclose this confidential and exempt information, including:

- Upon the prior written consent of the subject insurer;
- Pursuant to a court order;
- To the Actuarial Board for Counseling and Discipline, upon a request stating that the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory for preserving the confidentiality of the information;
- To other states, federal and international agencies, the NAIC and its affiliates and subsidiaries, and state, federal, and international law enforcement authorities, including members of a supervisory college described in s. 628.805, F.S., if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has certified in writing its legal authority to maintain such confidentiality; and
- For the purpose of aggregating information on an industrywide basis and disclosing the information to the public, only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.⁴⁷

The Public Records Act is liberally construed in favor of open government, and public records exemptions are construed narrowly and limited to their stated purpose.⁴⁸ The above exemptions expressly apply to ORSA summary reports, corporate governance annual disclosures, and information from NAIC or another government entity when held by OIR. Currently, no public records exemption exists for these records when held by DFS.

III. Effect of Proposed Changes:

Section 1 creates s. 631.195, F.S. Subsection (1) provides definitions of “consumer” and “personal financial and health information.” “Consumer” is defined to encompass prospective purchasers, purchasers, beneficiaries of, and applicants for any insurance product or service, along with the family members and dependents of such persons. “Personal financial and health information” includes information regarding a consumer’s personal health condition, disease, or injury; any history of a consumer’s personal medical diagnosis or treatment; the existence, identification, nature, or value of a consumer’s assets, liabilities, or net worth; the existence or

⁴⁶ Section 628.8015(4), F.S.

⁴⁷ Section 624.4212(5)(a)-(e), F.S.

⁴⁸ *Marino v. University of Florida*, 107 So. 3d 1231, 1233 (Fla. 1st DCA 2013).

content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; and the existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

Subsection (2) designates certain insurer records made or received by DFS while acting as receiver as confidential and exempt from the public records disclosure requirements of from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. These records include personal financial and health information of a consumer, customarily maintained underwriting files, personnel and payroll records, consumer claim files, ORSA summary reports, corporate governance annual disclosures and supporting documents, and information received from the NAIC or other governmental entity which is confidential and exempt if held by that entity. The exemptions would create parity for policy holders and claimants regardless of the solvency of their insurance provider.⁴⁹

Subsection (3) provides that the exemptions in subsection (2) applies retroactively to those records held by DFS before the date the bill takes effect, along with those records held by DFS on or after that date.

Subsection (4) describes the circumstances under which the records made confidential and exempt by subsection (2) may be released. Disclosure of these records is authorized upon the following circumstances:

- Upon the written request of any state or federal agency, but only if disclosure is necessary for the receiving entity to perform its duties and responsibilities. Receiving agencies are required to maintain the confidential and exempt status of those records.
- When required by a properly authorized civil, criminal, or regulatory investigation, a subpoena, or a summons issued by a federal, state or local authority;
- When released to the NAIC and its affiliates or subsidiaries, but only if the recipient agrees in writing to maintain the confidential and exempt status of the records;
- When released to the guaranty associations and funds of the various states who are receiving, adjudicating, and paying the claims of an insolvent insurer upon delinquency proceedings. Recipients are required to maintain the confidential and exempt status of the records.
- Upon the written request of a designated employee whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts; and
- Upon the written request of a consumer or their legally authorized representative, DFS may release the personal financial and health information of that consumer.

Subsection (5) provides that the section is subject to the Open Government Sunset Review Act, and shall stand repealed on October 2, 2025, unless reviewed and reenacted by the Legislature.

Section 2 provides public necessity statements describing the justifications for the exemptions in Section 1. Subsection (1) lists the information the legislature has found it a public necessity to hold confidential and exempt: personal financial and health information of a consumer, customarily maintained underwriting files, personnel and payroll records, consumer claim files, ORSA summary reports, corporate governance annual disclosures and supporting documents,

⁴⁹ Department of Financial Services, *Bill Analysis of SB 1188*, January 2, 2020 (on file with the Senate Banking and Insurance Committee).

and information received from the NAIC or other governmental entity which is confidential and exempt if held by that entity.

Subsection (2)(a) indicates that disclosure of the specified financial, health, underwriting, personnel, payroll, and consumer claim information would create the opportunity for theft and fraud, and thereby jeopardize the financial security of the subject person. Limiting disclosure of such information held by DFS protects the financial interests of the subject persons, and recognizes the expectation of and right to privacy in all matters concerning a person's financial interests. Furthermore, matters of personal health are traditionally private and disclosure may have a negative effect on a person's business and personal relationships, and could result in detrimental financial consequences.

Subsection (2)(b) states that ORSA reports, or substantially similar ORSA reports, and the supporting documents contain highly sensitive and strategic information about an insurer or insurance group which provides the OIR with an effective early warning mechanism for preventing insolvencies, assisting the OIR to protect policy holders and promote a stable insurance market. However, public disclosure of this information would injure the insurer or insurance group by providing competitors with detailed insight into their financial position, risk management strategies, business plans, pricing and market strategies, management systems, and operational protocols.

Subsection (2)(c) states that corporate governance annual disclosures describe the governance structure and internal practices and procedures used in conducting the business affairs of insurers. Insurers use this information to make strategic operational decisions affecting their competitive position, and to manage their financial condition; regulators utilize this information to promote market integrity. Given the sensitive nature of the information, is a public necessity to make such information confidential and exempt, as release would injure the subject insurers or insurance group in the marketplace by providing competitors with confidential business information.

Subsection (2)(d) states that divulgence of confidential or exempt information received from the NAIC or other governments could impede the exchange of information and communication among regulators, thus jeopardizing the ability of regulators to effectively supervise insurers.

Subsection (3) declares that the harm that may result from the release of any of the described information outweighs any public benefit from disclosure of the information.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for certain records held by DFS, including financial, health, underwriting, personnel, payroll, and consumer claim information, ORSA summary reports, corporate governance annual disclosures, and confidential information received from NAIC and other governmental entities. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for justifying 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 exemptions for financial, health, underwriting, personnel, payroll, and consumer claim information is to protect insurance consumers and employees from fraud, identity theft, and other harm that may result from public disclosure of their financial interests. The purpose of the exemptions for ORSA reports and corporate governance annual disclosures is to protect insurers and insurance groups from competitive harm in the marketplace resulting from public disclosure of confidential business information. The purpose of exempting information received from NAIC or other governmental entities is to encourage the exchange of information among regulators, thereby protecting their ability to effectively supervise insurers and insurance groups. This bill exempts only traditionally private health and financial information and confidential business information from the public records requirements. These exemptions do 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 be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The DFS will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 631.195 of the Florida Statutes.

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 February 3, 2020:

The CS amends the exemptions to hold personal health and financial information, personnel and payroll files, and other sensitive insurance documents confidential as well as exempt. The CS further combines subsections two and three of the original bill's first section for clarity. Finally, the CS revises the public necessity statement to match the content and structure of the exemption itself.

B. Amendments:

None.



492256

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/03/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 631.195, Florida Statutes, is created to
read:

631.195 Records of insurers; public records exemptions.—

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

(a) "Consumer" means a prospective purchaser of, a



492256

purchaser of, a beneficiary of, or an applicant for any insurance product or service. The term also includes a family member or dependent of such person.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or injury;

2. A history of a consumer's personal medical diagnosis or treatment;

3. The existence, nature, source, or amount of a consumer's personal income or expenses;

4. Records of, or relating to, a consumer's personal financial transactions of any kind;

5. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

6. The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

(2) The following records, in whatever form, of an insurer which are made or received by the department, acting as receiver pursuant to this chapter, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) All personal financial and health information of a consumer.

(b) Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer.



492256

(c) Personnel and payroll records of the insurer.

(d) Consumer claim files.

(e) An ORSA summary report, a substantially similar ORSA summary report, and supporting documents submitted to the office pursuant to s. 628.8015.

(f) A corporate governance annual disclosure and supporting documents submitted to the office pursuant to s. 628.8015.

(g) Information received from the National Association of Insurance Commissioners, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the department for use in the performance of its duties relating to insurer solvency.

(3) The exemptions in subsection (2) applies to records held by the department before, on, and after July 1, 2020.

(4) Records or portions of records made confidential and exempt by this section may be released under any of the following circumstances:

(a) To any state or federal agency, upon written request, if disclosure is necessary for the receiving entity to perform its duties and responsibilities. The receiving agency shall maintain the confidential and exempt status of such record or portion of such record.

(b) To comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by a federal, state, or local authority.

(c) To the National Association of Insurance Commissioners and its affiliates and subsidiaries, if the recipient agrees in writing to maintain the confidential and exempt status of the



492256

records.

(d) To the guaranty associations and funds of the various states which are receiving, adjudicating, and paying claims of the insolvent insurer subject to delinquency proceedings pursuant to this chapter. The receiving guaranty association shall maintain the confidential and exempt status of such record or portion of such record.

(e) Upon written request, to persons identified as designated employees as described in s. 626.989(4)(d), whose responsibilities include the investigation and disposition of claims relating to suspected fraudulent insurance acts.

(f) In the case of personal financial and health information of a consumer, upon written request of the consumer or the consumer's legally authorized representative.

(5) This section is subject to the Open Government Sunset Review Act 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 it is a public necessity to make confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. All personal financial and health information of a consumer;

2. Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer;

3. Personnel and payroll records of an insurer;

4. Consumer claim files;



492256

5. An own-risk and solvency assessment (ORSA) summary report, a substantially similar ORSA summary report, and supporting documents submitted to the Office of Insurance Regulation pursuant to s. 628.8015, Florida Statutes;

6. A corporate governance annual disclosure and supporting documents submitted to the office pursuant to s. 628.8015, Florida Statutes; and

7. Information received from the National Association of Insurance Commissioners, a governmental entity in this or another state, the Federal Government, or a government of another nation which is confidential or exempt if held by that entity and which is held by the department for use in the performance of its duties relating to insurer solvency.

(2) (a) Disclosure of financial, health, underwriting, personnel, payroll, or consumer claim information would create the opportunity for theft or fraud, thereby jeopardizing the financial security of a person. Limiting disclosure of such information held by the department is also necessary in order to protect the financial interests of the persons to whom that information pertains. Such information could be used for fraudulent or other illegal purposes, including identity theft, and could result in substantial financial harm. Furthermore, every person has an expectation of and a right to privacy in all matters concerning his or her financial interests. Additionally, matters of personal health are traditionally private and confidential concerns between the patient and his or her health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. Public disclosure of health information could have a



492256

negative effect upon a person's business and personal
relationships and could also have detrimental financial
consequences.

(b) In conducting an ORSA, an insurer or insurance group
identifies and evaluates the material and relevant risks to the
insurer or insurance group and the adequacy of capital resources
to support these risks. The ORSA summary report, substantially
similar ORSA report, and supporting documents contain highly
sensitive and strategic financial information about an insurer
or insurer group. Having a comprehensive and unbiased assessment
provides the office with an effective early warning mechanism
for preventing insolvencies and protecting policyholders and
promotes a stable insurance market. Divulging the ORSA summary
report, substantially similar ORSA summary report, and
supporting documents will injure the insurer or insurance group
by providing competitors with detailed insight into their
financial position, risk management strategies, business plans,
pricing and marketing strategies, management systems, and
operational protocols.

(c) The corporate governance annual disclosure describes an
insurer's governance structure and the internal practices and
procedures used in conducting the business affairs of the
company, making strategic operational decisions affecting its
competitive position, and managing its financial condition.
Release of the corporate governance annual disclosure and
supporting documents will injure the insurer or insurance group
in the marketplace by providing competitors with the insurer's
or the insurance group's confidential business information.
Broad disclosure will give state regulators a thorough



492256

understanding of the corporate governance structure and internal policies and practices used by insurers and promote market integrity. Effective governance mechanisms will enable insurers to take any necessary corrective actions and achieve strategic goals while allowing the office to perform its regulatory duties effectively and efficiently.

(d) Divulgence of confidential or exempt information received from the National Association of Insurance Commissioners or governments could impede the exchange of information and communication among regulators across multiple agencies and jurisdictions and jeopardize the ability of regulators to effectively supervise insurers and groups operating in multiple jurisdictions and engaged in significant cross-border activities.

(3) The legislature finds that the harm that may result from the release of such location information outweighs any public benefit that may be derived from the disclosure of the information.

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 public records; creating s.
631.195, F.S.; defining the terms "consumer" and
"personal financial and health information"; exempting
from public records requirements when made or received



492256

by the Department of Financial Services acting as receiver as to an insurer: consumer personal financial and health information, certain underwriting files, insurer personnel and payroll records, consumer claim files, certain reports and documents held by the department relating to insurer own-risk, solvency assessments, corporate governance annual disclosures, and certain information received from the National Association of Insurance Commissioners or governments; providing retroactive applicability; providing that exempted records may be released under specified circumstances; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing an effective date.

By Senator Albritton

26-00996A-20

20201188__

A bill to be entitled
An act relating to public records; creating s.
631.195, F.S.; defining the terms "consumer" and
"personal financial and health information"; exempting
from public records requirements consumer personal
financial and health information, certain underwriting
files, insurer personnel and payroll records, and
consumer claim files that are made or received by the
Department of Financial Services acting as receiver as
to an insurer; exempting from public records
requirements certain reports and documents held by the
department relating to insurer own-risk and solvency
assessments and corporate governance annual
disclosures and certain information received from the
National Association of Insurance Commissioners or
governments; providing retroactive applicability;
providing that exempted records may be released under
specified circumstances; providing for future
legislative review and repeal of the exemptions;
providing statements of public necessity; providing an
effective date.

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

Section 1. Section 631.195, Florida Statutes, is created to
read:

631.195 Records of insurers; public records exemptions.—

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

(a) "Consumer" means a prospective purchaser of, a

26-00996A-20

20201188__

purchaser of, a beneficiary of, or an applicant for any insurance product or service. The term also includes a family member or dependent of such person.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or injury;

2. A history of a consumer's personal medical diagnosis or treatment;

3. The existence, nature, source, or amount of a consumer's personal income or expenses;

4. Records of, or relating to, a consumer's personal financial transactions of any kind;

5. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

6. The existence or content of, or any individual coverage or status under a consumer's beneficial interest in, any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

(2) The following records, in whatever form, of an insurer which are made or received by the department, acting as receiver pursuant to this chapter, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) All personal financial and health information of a consumer.

(b) Underwriting files of a type customarily maintained by an insurer transacting lines of insurance similar to those lines transacted by the insurer.

26-00996A-20

20201188__

59 (c) Personnel and payroll records of the insurer.

60 (d) Consumer claim files.

61 (3) The following records held by the department are
62 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
63 of the State Constitution:

64 (a) An ORSA summary report, a substantially similar ORSA
65 summary report, and supporting documents submitted to the office
66 pursuant to s. 628.8015.

67 (b) A corporate governance annual disclosure and supporting
68 documents submitted to the office pursuant to s. 628.8015.

69 (c) Information received from the National Association of
70 Insurance Commissioners, a governmental entity in this or
71 another state, the Federal Government, or a government of
72 another nation which is confidential or exempt if held by that
73 entity and which is held by the department for use in the
74 performance of its duties relating to insurer solvency.

75 (4) The exemptions in subsections (2) and (3) apply to
76 records held by the department before, on, and after July 1,
77 2020.

78 (5) Records or portions of records made confidential and
79 exempt by this section may be released under any of the
80 following circumstances:

81 (a) To any state or federal agency, upon written request,
82 if disclosure is necessary for the receiving entity to perform
83 its duties and responsibilities. The receiving agency shall
84 maintain the confidential and exempt status of such record or
85 portion of such record.

86 (b) To comply with a properly authorized civil, criminal,
87 or regulatory investigation or a subpoena or summons by a

26-00996A-20

20201188__

88 federal, state, or local authority.

89 (c) To the National Association of Insurance Commissioners
90 and its affiliates and subsidiaries, if the recipient agrees in
91 writing to maintain the confidential and exempt status of the
92 records.

93 (d) To the guaranty associations and funds of the various
94 states which are receiving, adjudicating, and paying claims of
95 the insolvent insurer subject to delinquency proceedings
96 pursuant to this chapter. The receiving guaranty association
97 shall maintain the confidential and exempt status of such record
98 or portion of such record.

99 (e) Upon written request, to persons identified as
100 designated employees as described in s. 626.989(4)(d), whose
101 responsibilities include the investigation and disposition of
102 claims relating to suspected fraudulent insurance acts.

103 (f) In the case of personal financial and health
104 information of a consumer, upon written request of the consumer
105 or the consumer's legally authorized representative.

106 (6) This section is subject to the Open Government Sunset
107 Review Act in accordance with s. 119.15 and shall stand repealed
108 on October 2, 2025, unless reviewed and saved from repeal
109 through reenactment by the Legislature.

110 Section 2. (1) The Legislature finds it is a public
111 necessity to exempt from s. 119.07(1), Florida Statutes, and s.
112 24(a), Article I of the State Constitution all personal
113 financial and health information of a consumer, underwriting
114 files of a type customarily maintained by an insurer transacting
115 lines of insurance similar to those lines transacted by the
116 insurer, personnel and payroll records of an insurer, and

26-00996A-20

20201188__

117 consumer claim files that are made or received by the Department
118 of Financial Services acting as receiver as to an insurer.
119 Disclosure of financial, health, underwriting, personnel,
120 payroll, or consumer claim information would create the
121 opportunity for theft or fraud, thereby jeopardizing the
122 financial security of a person. Limiting disclosure of such
123 information held by the department is also necessary in order to
124 protect the financial interests of the persons to whom that
125 information pertains. Such information could be used for
126 fraudulent or other illegal purposes, including identity theft,
127 and could result in substantial financial harm. Furthermore,
128 every person has an expectation of and a right to privacy in all
129 matters concerning his or her financial interests. The
130 Legislature further finds that it is a public necessity that
131 health information held by the department be made confidential
132 and exempt because matters of personal health are traditionally
133 private and confidential concerns between the patient and his or
134 her health care provider. The private and confidential nature of
135 personal health matters pervades both the public and private
136 health care sectors. Moreover, public disclosure of health
137 information could have a negative effect upon a person's
138 business and personal relationships and could also have
139 detrimental financial consequences.

140 (2) (a) The Legislature further finds that it is a public
141 necessity to exempt from s. 119.07(1), Florida Statutes, and s.
142 24(a), Article I of the State Constitution the following records
143 held by the department:

144 1. An own-risk and solvency assessment (ORSA) summary
145 report, a substantially similar ORSA summary report, and

26-00996A-20

20201188__

supporting documents submitted to the Office of Insurance
Regulation pursuant to s. 628.8015, Florida Statutes;

2. A corporate governance annual disclosure and supporting
documents submitted to the office pursuant to s. 628.8015,
Florida Statutes; and

3. Information received from the National Association of
Insurance Commissioners, a governmental entity in this or
another state, the Federal Government, or a government of
another nation which is confidential or exempt if held by that
entity and which is held by the department for use in the
performance of its duties relating to insurer solvency.

(b) In conducting an ORSA, an insurer or insurance group
identifies and evaluates the material and relevant risks to the
insurer or insurance group and the adequacy of capital resources
to support these risks. The ORSA summary report, substantially
similar ORSA report, and supporting documents contain highly
sensitive and strategic financial information about an insurer
or insurer group. Having a comprehensive and unbiased assessment
provides the office with an effective early warning mechanism
for preventing insolvencies and protecting policyholders and
promotes a stable insurance market. Divulging the ORSA summary
report, substantially similar ORSA summary report, and
supporting documents will injure the insurer or insurance group
by providing competitors with detailed insight into their
financial position, risk management strategies, business plans,
pricing and marketing strategies, management systems, and
operational protocols.

(c) The corporate governance annual disclosure describes an
insurer's governance structure and the internal practices and

26-00996A-20

20201188__

175 procedures used in conducting the business affairs of the
176 company, making strategic operational decisions affecting its
177 competitive position, and managing its financial condition.
178 Release of the corporate governance annual disclosure and
179 supporting documents will injure the insurer or insurance group
180 in the marketplace by providing competitors with the insurer's
181 or the insurance group's confidential business information.
182 Broad disclosure will give state regulators a thorough
183 understanding of the corporate governance structure and internal
184 policies and practices used by insurers and promote market
185 integrity. Effective governance mechanisms will enable insurers
186 to take any necessary corrective actions and achieve strategic
187 goals while allowing the office to perform its regulatory duties
188 effectively and efficiently.

189 (d) Divulgence of confidential or exempt information
190 received from the National Association of Insurance
191 Commissioners or governments could impede the exchange of
192 information and communication among regulators across multiple
193 agencies and jurisdictions and jeopardize the ability of
194 regulators to effectively supervise insurers and groups
195 operating in multiple jurisdictions and engaged in significant
196 cross-border activities.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #1188**, relating to Public Records/Records of Insurers/DFS, be placed on the:

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

A handwritten signature in blue ink, which appears to read "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE

APPEARANCE RECORD

02/03/20

Meeting Date

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

1188

Bill Number (if applicable)

492256

Amendment Barcode (if applicable)

Topic Public Records / Records of Insurers / Dept of Financial Services

Name Meredith Stanfield

Job Title Director of Legislative and Capient Affairs

Address PL 11, The Capitol

Street

Tallahassee

City

FL

State

32399

Zip

Phone (850) 413-2890

Email meredith.stanfield@myFloridaCFO.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Department of Financial 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)

THE FLORIDA SENATE

APPEARANCE RECORD

02/03/20

Meeting Date

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

1188

Bill Number (if applicable)

Topic

Public Records / Records of Insurers / Dept. of Financial Services

Amendment Barcode (if applicable)

Name

Meredith Stanfield

Job Title

Director of Legislative & Cabinet Affairs

Address

PL 11, The Capitol

Phone

(850) 413-2890

Street

Tallahassee

FL

State

32399

Zip

Email

meredith.stanfield@myfloridacfo.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Department of Financial 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)

CourtSmart Tag Report

Room: SB 301
Caption: Senate Governmental Oversight and Accountability Committee

Case No.:

Type:
Judge:

Started: 2/3/2020 1:31:30 PM

Ends: 2/3/2020 2:15:21 PM **Length:** 00:43:52

1:31:29 PM Meeting called to order
1:31:33 PM Roll Call - Quorum is present
1:31:43 PM Comments by Chair Hooper
1:32:14 PM Tab 11 - SB 1490 by Senator Bradley - Public Officers and Employees
1:33:33 PM Amendment 711636 by Senator Bradley
1:34:44 PM Questions on Amendment? None
1:34:53 PM Appearance Cards on Amendment? None
1:34:56 PM Debate? None
1:34:59 PM Objection to adoption of amendment?
1:35:06 PM Amendment is adopted
1:35:11 PM Questions?
1:35:14 PM Senator Rader
1:35:22 PM Senator Bradley
1:36:01 PM Appearance Cards?
1:36:08 PM Alexis Lambert, representing herself, speaking for information
1:38:39 PM Sal Nuzzo, VP of Policy, The James Madison Institute, waives in support
1:39:40 PM Rebecca O'Hara, Deputy General Counsel, FL League of Cities, waives in support
1:39:46 PM Erin Collins, representing self, waives in support
1:40:00 PM Debate?
1:41:05 PM Senator Rader
1:41:10 PM Senator Bradley in closing
1:41:23 PM Senator Torres in debate
1:42:19 PM Senator Bradley continues close
1:43:19 PM Roll Call on CS/SB 1490
1:43:31 PM Tab 13 - SB 1714 by Senator Bradley - Sale of Surplus State-owner Office Buildings and Associated Nonconservation Lands
1:44:12 PM Questions? None
1:44:54 PM Appearance Cards?
1:45:00 PM John Shrader, Deputy Director, Office of Legislative Affairs, Dept. of Environmental Services, waives in support
1:45:00 PM Cody Farrill, Deputy Chief of Staff, Dept. of Management Services, waives in support
1:45:09 PM Debate? None
1:45:15 PM Senator Bradley waives close
1:45:21 PM Roll Call on SB 1714
1:45:34 PM Tab 9 - SB 1292 by Senator Perry, Public Records/Nonjudicial Arrest Record of a Minor
1:46:07 PM Questions? None
1:46:10 PM Appearance Cards?
1:46:16 PM Candice Brower, Regional Counsel, 1st Region, Office of Criminal Conflict & Civil Regional Counsel, waives in support
1:46:17 PM Christian Minor, ED, Florida Juvenile Justice Association, waives in support
1:46:25 PM Kristina Wiggins, ED, FL Public Defender Association, waives in support
1:46:47 PM Jasmyne Henderson, Lobbyist, Broward County, waives in support
1:47:10 PM Senator Perry waives close
1:47:16 PM Roll Call on SB 1292
1:47:25 PM Tab 12 - SB 1570 by Senator Perry - Division by Library and Information Services
1:47:56 PM Questions? None
1:48:07 PM Appearance Cards?
1:48:12 PM Brittany Dover, Legislative Affairs Director, Department of State, waives in support
1:48:17 PM Debate? None
1:48:21 PM Senator Perry waives close
1:48:26 PM Roll Call on SB 1570
1:48:40 PM Tab 3 - SB 786 by Senator Gainer - Public Records/Aquaculture Records/Department of Agriculture and

Consumer Services

1:50:02 PM Questions? None
1:50:06 PM Appearance Cards?
1:50:09 PM Jim Spratt, FL Aquaculture Association, waives in support
1:50:16 PM Landon Hoffman, Legislative Affairs, FL Farm Bureau, waives in support
1:50:23 PM Emily Duda Buckley, Legislative Affairs Director, FDACS, waives in support
1:50:33 PM Debate? None
1:50:36 PM Senator Gainer waives close
1:50:42 PM Roll Call on SB 786
1:50:54 PM Tab 6 - CS/SB 1146 by Senator Brandes - Special Risk Class of the Florida Retirement System
1:51:08 PM Questions? None
1:51:26 PM Appearance Cards?
1:51:29 PM Christian Minor, ED, FL Juvenile Justice Association, waives in support
1:51:33 PM Rachel Moscoso, Dir. of Leg. Affairs for Dept. of Juvenile Justice, waives in support
1:51:57 PM Debate? None
1:52:01 PM Senator Brandes waives close
1:52:06 PM Roll Call on CS/SB 1146
1:52:15 PM Tab 2 - SB 716 by Senator Mayfield - County Boundaries
1:52:31 PM Questions? None
1:52:59 PM Appearance Cards?
1:53:04 PM Ken Pruitt, Indian River county Board of County Commissioners, waives in support
1:53:09 PM Nicole Fogarty, Leg. Affairs Dir., St. Lucie County, waives in support
1:53:18 PM Debate? None
1:53:21 PM Senator Mayfield waives close
1:53:28 PM Roll Call on SB 716
1:53:36 PM Tab 5 - CS/SB 1060 by Senator Thurston - Public Records and Meetings/ 911 or E911
1:53:56 PM Questions? None
1:54:39 PM Appearance Cards?
1:54:41 PM Tonnette Graham. Associate Director of Public Policy, FL Association of Counties, waives in support
1:54:50 PM Daphnee Sainvil, Legislative Policy Advisor, Broward County Board of County Commissioners, waives in support
1:54:54 PM Debate? None
1:54:59 PM Senator Thurston waives close
1:55:06 PM Roll Call on CS/SB 1060
1:55:16 PM Tab 7 - SB 1170 by Senator Baxley presented by Senator Bean - Public Records and Meetings/Division
1:56:34 PM Questions on bill?
1:56:39 PM Amendment 527806 by Senator Baxley explained by Senator Bean
1:56:52 PM Questions on amendment?
1:56:58 PM Debate on amendment? None
1:57:05 PM Opposition to Amendment? Seeing none amendment is adopted
1:57:09 PM Back on bill as amended
1:57:14 PM Cody Farrill, Deputy Chief of Staff, Dept. of Mgmt. Services, waives in support
1:57:20 PM Debate?
1:57:21 PM Senator Bean waives close
1:57:28 PM Roll Call on CS/SB 1170
1:57:42 PM Tab 10 - SB 1398 by Senator Flores, Regional Planning Council Meetings
1:58:36 PM Questions? None
1:58:41 PM Appearance Cards?
1:58:46 PM Appearance Cards?
1:58:48 PM Debate? None
1:58:51 PM Senator Flores waives close
1:58:57 PM Roll Call on SB 1398
1:59:09 PM Tab 1 - CS/SB 668 by Senator Book - Government-sponsored Recreation Programs
2:00:33 PM Amendment 677346 by Senator Book
2:01:17 PM Questions on Amendment? None
2:02:17 PM Appearance Cards?
2:02:20 PM Brian Hickey, Fl. Afterschool Network, waives in support
2:02:28 PM Debate? None
2:02:31 PM Objections to Amendment? None
2:02:37 PM Amendment is adopted
2:02:41 PM Amendment 341376 by Senator Book
2:03:13 PM Questions? None

2:03:20 PM Appearance Cards? None
 2:03:26 PM Debate?
 2:03:29 PM Objection to amendment 341376? None
 2:03:34 PM Back on bill as amended
 2:03:41 PM Questions?
 2:03:43 PM Appearance Cards?
 2:03:47 PM Rev. Robert Gibbs, FL Impact for Hunger, waives in support
 2:04:03 PM Beth Labasky, consultant, Florida Impact to End Hunger, waives in support
 2:04:11 PM Katie Williams, COO, FL Impact to End Hunger, waives in support
 2:04:15 PM Kelli Greene, Administrative Coordinator, FL Impact to End Hunger, waives in support
 2:04:21 PM Kyle Shephard, Dir. of Intergovernmental Relations, City of Orland, waives in support
 2:04:27 PM Debate?
 2:04:37 PM Senator Torres
 2:05:03 PM Senator Book to close
 2:05:12 PM Roll Call on CS/SB 668
 2:05:34 PM Tab 4 - CS/SB 812 by Senator Hutson
 2:05:35 PM Senator Hutson explains bill
 2:06:03 PM Delete-all amendment 460032 by Senator Hutson
 2:06:38 PM Questions on amendment? None
 2:06:49 PM Appearance Cards on amendment?
 2:06:52 PM Jessica Crawford, Legislative Affairs Director, FL Fish & Wildlife Conservation Commission, waives in support
 2:06:59 PM Debate on amendment? None
 2:07:03 PM Objection to adopt delete-all amendment? None
 2:07:07 PM Amendment is adopted
 2:07:09 PM Back on bill as amended
 2:07:15 PM Questions?
 2:07:18 PM Appearance Cards?
 2:07:21 PM Jessica Crawford, waives in support
 2:07:23 PM Debate? None
 2:07:27 PM Senator Hutson waives close
 2:07:33 PM Roll Call on CS/CS/SB 812
 2:07:39 PM Tab 14 - SB 1042 by Senator Albritton - Aquatic Preserves
 2:08:26 PM Questions? None
 2:09:26 PM Appearance Cards?
 2:09:33 PM Trip Aukeman, Director of Advocacy, Coastal Conservation Association, waives in support
 2:09:36 PM Jennifer Ungru, The American Sport Fishing Association, waives in support
 2:09:40 PM Debate? None
 2:09:44 PM Senator Albritton waives close
 2:09:50 PM Roll Call on SB 1402
 2:10:04 PM Tab 15 - SB 1188 by Senator Albritton, Public Records of Insurers/Department of financial Services
 2:10:15 PM Delete-all Amendment 492256 by Senator Albritton
 2:10:55 PM Questions on amendment? None
 2:11:37 PM Appearance Cards on amendment?
 2:11:41 PM Meredith Stanfield, Director of Legislative and Cabinet Affairs, Dept. of Financial Services, waives in support
 2:11:47 PM Debate on amendment? None
 2:11:50 PM Objection to delete-all. Adopted
 2:12:02 PM Back on bill as amended
 2:12:10 PM Meredith Stanfield, waives in support
 2:12:11 PM Debate? None
 2:12:14 PM Senator Albritton waives close
 2:12:20 PM Roll Call on CS/SB 1188
 2:12:43 PM Recording Paused
 2:13:08 PM Recording Resumed
 2:13:09 PM Comments by Chair Hooper
 2:13:11 PM Comments regarding SB 1270 on agenda
 2:13:23 PM Senator Lee is unavailable to present SB 1270. It will be placed on next agenda.
 2:13:41 PM Senators that would like to record their votes on missed bills?
 2:13:47 PM Senator Albritton would like to be shown as voting favorable for SB's 1490, 1714, 1292, 1570, 786, 1146, 716 and 1060.
 2:14:13 PM Motion is adopted

2:14:18 PM No further business?

2:14:20 PM Senator Rader

2:14:47 PM Vice Chair Rader moves to adjourn. No objections. The meeting is adjourned.