The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Thursday, March 14, 2013
TIME: 11:00 a.m.—1:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1392** Simpson (Compare CS/H 7011)	Retirement; Providing that a member initially enrolled in the Florida Retirement System after a certain date is vested in the pension plan after 10 years of creditable service; prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class after a specified date; requiring certain employees initially enrolled in the Florida Retirement System on or after a specified date to be compulsory members of the investment plan; authorizing certain employees to elect to participate in the pension plan, rather than the default investment plan, within a specified time, etc. GO 03/14/2013 Fav/CS CA AP	Fav/CS Yeas 8 Nays 0
2	**SB 452** Health Policy (Similar H 7085)	OGSR/Joshua Abbot Organ and Tissue Registry/Donor Information; Providing an exemption from public records requirements for personal identifying information of a donor held in the Joshua Abbott Organ and Tissue Registry; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption, etc. GO 03/14/2013 Favorable RC	Favorable Yeas 8 Nays 0

A proposed committee substitute for the following bill (SB 304) is available:

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 304** Criminal Justice (Similar H 7079)	OGSR/Agency Employee/Victim of Domestic Violence or Sexual Violence; Amending a provision which provides a public records exemption for certain records submitted to an agency by an employee who is a victim of domestic violence or sexual violence; eliminating the scheduled repeal of the exemption under the Open Government Sunset Review Act, etc. GO 03/14/2013 Fav/CS RC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 84** Community Affairs / Diaz de la Portilla (Compare CS/H 85, S 238)	Public-private Partnerships; Providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose; providing for notice to affected local jurisdictions; providing for comprehensive agreements between a public and a private entity; providing for financing sources for certain projects by a private entity; providing for the applicability of sovereign immunity for public entities with respect to qualified projects, etc. CA 01/23/2013 Fav/CS GO 03/14/2013 Fav/CS AGG AP	Fav/CS Yeas 8 Nays 0
5	**CS/SB 60** Health Policy / Hays (Identical CS/H 529)	Public Records/Identifying Information of Department of Health Personnel; Providing an exemption from public records requirements for certain identifying information of specific current and former personnel of the Department of Health and the spouses and children of such personnel, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 02/21/2013 Fav/CS GO 03/14/2013 Favorable RC	Favorable Yeas 8 Nays 0
6	**SB 1142** Gibson (Similar H 985)	Small Business Participation in State Contracting; Defining the terms “contract bundling” and “small business”; directing that agencies avoid contract bundling under certain circumstances; requiring agencies to conduct market research and include written summaries and analyses of such research in solicitations for bundled contracts; requiring agencies to award a specified percentage of contracts to small businesses; prohibiting agencies, general contractors, or prime contractors from requiring certain bonds or other sureties for certain contracts, etc. GO 03/14/2013 Temporarily Postponed CM AGG AP	Temporarily Postponed

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1150** Benacquisto / Brandes (Similar H 1261, Compare S 1764)	State Contracting; Requiring agreements funded with state or federal financial assistance to include additional provisions; revising provisions relating to the Chief Financial Officer's intergovernmental contract tracking system under the Transparency Florida Act; repealing provisions relating to a requirement that state agencies report certain contract information to the Department of Financial Services and transferring that requirement to s. 215.985, F.S., etc. GO 03/14/2013 Fav/CS BI	Fav/CS Yeas 8 Nays 0
8	**CS/SB 134** Education / Ring (Identical CS/H 127)	Meetings of District School Boards; Requiring district school boards to convene at least one regular meeting each quarter during a school year during the evening hours and to create written criteria for convening such a meeting, etc. ED 02/19/2013 Fav/CS GO 03/14/2013	Amendment Adopted - Temporarily Postponed
9	**SB 230** Ring (Identical H 323)	Flag Etiquette; Requiring that the Governor adopt a protocol on flag display; requiring the protocol to have guidelines for proper flag display and for lowering the state flag to half-staff on certain occasions; authorizing the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag, etc. GO 03/14/2013 Favorable RC	Favorable Yeas 7 Nays 0
10	**SB 298** Brandes (Similar CS/H 137)	Department of Citrus; Reverting certain references to the Department of Citrus that were changed to references to the Department of Agriculture and Consumer Services by specified provisions; providing for retroactive application; providing for the transfer of certain rules of the Department of Agriculture and Consumer Services to the Department of Citrus, etc. AG 02/05/2013 Favorable GO 03/14/2013 Fav/CS	Fav/CS Yeas 8 Nays 0
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1392
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Simpson
SUBJECT:	Florida Retirement System
DATE:	March 14, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Fav/CS**
2.			CA	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1392 makes the following changes to the Florida Retirement System (FRS), **for members initially enrolled in the FRS on or after January 1, 2014**:

- Changes the vesting period in the pension plan from 8 to 10 years;
- Mandates that Elected Officers' Class and Senior Management Service Class members may only join the investment plan;
- Changes the default for members who do not affirmatively choose a plan from the pension plan to the investment plan;
- Closes the Senior Management Service Optional Annuity Program to new members; and
- Changes the out of service disability retirement vesting period from 8 to 10 years.

The bill also lowers the employee's contribution rate from 3% to 2% for all members of the investment plan.

The overall actuarial impact of this legislation on the Florida Retirement System has not been determined at this time.

This bill substantially amends sections 121.021, 121.051, 121.052, 121.055, 121.091, 121.4501, 121.591, 121.71, 121.35, 238.072, 413.051, and 1012.875 of the Florida Statutes.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the pension plan, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.[1] The FRS is a contributory system, with all members contributing 3 percent of their salaries.[2]

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

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

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

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

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

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

[4] *Id.*, at 38.

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

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

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

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

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

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

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 benefit plan, also known as the pension plan; and
- The defined contribution plan, also known as the investment plan.

According to information supplied by the State Board of Administration, approximately 50,000 new hires are processed each year for a retirement plan choice. Historically, about 25% have actively elected the Investment Plan, 21% have actively elected the Pension Plan and 54% have defaulted into the Pension Plan. The following table shows the election statistics for the last 4.5 years:

	Default to Pension Plan	**Pension Plan**	**Investment Plan**
FY 08-09	25,923 (**56%**)	10,672 **(22%)**	11,116 **(23%)**
FY 09-10	21,501 **(56%)**	8,158 **(21%)**	9,071 **(23%)**
FY 10-11	21,049 **(53%)**	9,042 **(23%)**	9,960 **(25%)**
FY 11-12	20,064 **(53%)**	6,976 **(18%)**	10,937 **(29%)**
FY 12-13*	13,861 **(57%)**	3,985 **(16%)**	6,400 **(24%)**
TOTAL	96,125 **(54%)**	37,020 **(21%)**	44,145 **(25%)**

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

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

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

A member vests immediately in all employee contributions paid to the investment plan.[11] With respect to the employer contributions, a member vests after completing one work year with an FRS employer.[12] Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.[13] The investment plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits.[14] An FRS member who qualifies for disability while enrolled in the investment plan must apply

[11] Section 121.4501(6)(a), F.S.
[12] If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.
[13] Section 121.591, F.S.
[14] See s. 121.4501(16), F.S.

for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.[15]

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

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

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

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

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

[15] Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an inline-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.
[16] Section 121.4501(8), F.S.
[17] Section 4, Art. IV, Fla. Const.
[18] Section 121.025, F.S.
[19] Section 121.021(45)(a), F.S.
[20] Section 121.021(45)(b), F.S.
[21] Section 121.091, F.S.
[22] Section 121.021(29)(a)1., F.S.
[23] Section 121.021(29)(b)1., F.S.
[24] Sections 121.021(29)(a)2. and (b)2., F.S.
[25] The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

- Members of a Florida college may elect to enroll in the State Community College System
- Optional Retirement Program.[27]

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

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

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

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

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

[26] Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.
[27] If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.
[28] Section 121.70(1), F.S.
[29] Section 121.71(4), F.S.
[30] Section 121.71(3), F.S.
[31] *See* sections 121.4503 and 121.72(1), F.S.

III. Effect of Proposed Changes:

Ten Year Vesting for New Members

Section 1 amends the definition of "vested" or "vesting" in Chapter 121, F.S., to require that members initially enrolled in the FRS on or after January 1, 2014, vest in the pension plan after 10 years of creditable service.

Investment Plan Compulsory for Elected Officer's Class and Senior Management Service Class

Section 2 amends s. 121.051, F.S., to provide that employees initially enrolled on or after January 1, 2014, in positions covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of the investment plan,[32] are not permitted to become members of the pension plan, and are not eligible to use the 2nd election opportunity specified in s. 121.4501(4), F.S.[33] Investment plan membership continues if there is subsequent employment in a position covered by another membership class.

Section 6 amends provisions in s. 121.4501(4), F.S., relating to the FRS Investment Plan, to provide that employees initially enrolled on or after January 1, 2014, in positions covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of the investment plan.

The bill also amends the existing member plan choice education component, to provide that new Elected Officers' Class and Senior Management Service Class members need not be provided that education, since they will be mandatory members of the investment plan.

Prohibits New Elected Officers' Class Members from Joining the Senior Management Service Class or the Senior Management Service Optional Annuity Program

Section 3 amends s. 121.052, F.S., to prohibit new Elected Officers' Class members from joining the Senior Management Service Class.

Section 4 amends s. 121.055, F.S., to provide that on or after January 1, 2014, elected officers eligible for membership in the Elected Officer's Class may not be enrolled in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program, which is closed to all new members. Current members of the optional annuity program may retain their membership in the program.

[32] Unless the member chooses to withdraw entirely from the FRS pursuant to s. 121.052(3)(d) or s. 121.055(1)(b)2., F.S.
[33] Employees eligible to participate for optional retirement programs under s. 121.051(2)(c) or s. 121.35, F.S., may choose to participate in the optional retirement program or the investment plan. Eligible employees required to participate pursuant to s. 121.051(1)(a), F.S., in the optional retirement program as provided under s. 121.35, F.S., must participate in the investment plan when employed in a position not eligible for the optional retirement program.

Default to Investment Plan

Section 6 amends s. 121.4501, F.S., to provide that an employee eligible to participate in the Investment Plan is initially enrolled in the pension plan, and has five months to make an irrevocable election to participate in either the pension plan or the investment plan. If the employee fails to make an election, the employee is deemed to have elected the investment plan.

Out of Service Disability Retirement Benefit Vesting Period Increased

Sections 5 and 7 amends ss. 121.091, F.S., and 121.591, F.S., respectively, to provide that a member of the pension plan initially enrolled on or after January 1, 2014, who becomes totally and permanently disabled after completing 10 years of creditable service is entitled to a monthly disability benefit.

Regardless of amount of service, a member who becomes totally and permanently disabled *in the line of duty* is entitled to a monthly disability benefit.

Lowered Contribution Rate for Investment Plan Members

Section 8 amends s. 121.71, F.S., to lower the required employee contribution rate for all investment plan members from 3% to 2%, which will require higher employer contributions.

Cross References

Sections 9 through 11 amend ss. 121.35, 238.072, and 413.051, F.S., respectively, to change cross references consistent with the changes in this bill.

Employer Contribution Rates

Section 13 sets up the changes to the contribution rates which will be necessary to fund the benefit changes in the bill. The amounts are currently unknown until an actuarial study is requested and completed.

Important State Interest

Section 14 makes a finding that the bill fulfills an important state interest.

Effective Date

The effective date of the bill is January 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires cities and counties to spend money or take action that requires the expenditure of money, the mandates provision of Art. VII, s. 18, of the State Constitution may apply. If those constitutional provisions do apply, in order for the law to

be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 14 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

This bill contains a statement indicating that the bill fulfills an important state interest and the bill applies to similarly situated persons (all employers who participate in the FRS) so it appears that this exception would apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Actuarial Requirements
Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

> SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

Contractual Obligations
Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.[34] This "preservation of rights" provision[35] was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.[36] The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.[37]

The Florida Supreme Court further held that the "preservation of rights" provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.[38] More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.[39]

This bill does not change any benefits that a member earned prior to January 1, 2014.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[34] Section 121.011(3)(d), F.S.
[35] The "preservation of rights" provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So.2d 1033, 1037 (Fla. 1981).
[36] *Id*. at 1035.
[37] *Id*. at 1036.
[38] *Id*. at 1037.
[39] *Rick Scott, et al. v. George Williams, et al*., 2013 WL 173955 (Fla. 2013).

C. Government Sector Impact:

A number of the provisions of the bill will require actuarial studies to determine the fiscal impact on the Florida Retirement System. This legislation impacts the Florida Retirement System in the following ways:

- Shifts new members of the FRS to the investment plan if the member does not take an action to select participation in the pension plan of the FRS;
- Restricts new members initially enrolling in the Senior Management Class or the Elected Officers' Class from participating in the pension plan of the FRS;
- Increases the service credit needed to vest in the pension plan of the FRS from 8 years to 10 years;
- Reduces the employee contributions required for participation in the investment plan, resulting in increased employer contributions on behalf of those same participants.

The Department of Management Services has commissioned an actuarial study to determine the overall fiscal impacts of the policy modifications included in this legislation; the study is expected to be completed by April 12, 2013. In lieu of the overall study, the fiscal impacts of the component parts of the legislation are noted below. It should be noted that the fiscal impacts of the components should not be aggregated as a final estimate.

Investment Plan as the default plan
Milliman, Inc., completed an actuarial study[40], dated March 14, 2013, to determine the actuarial impact on the Florida Retirement System of setting the investment plan as the default plan of participation when the newly enrolled member otherwise fails to make a plan participation election. Based on this special study, the savings associated with setting the default plan to the investment plan for the Regular Class and the Special Risk Class is shown in the table below. The savings reflect the potential annul reductions in employer contributions to be paid into the Florida Retirement System.

Employer	Annualized Impact	Estimated General Revenue Costs	Estimated Trust Fund Costs
State agencies	($1.2 m)	($0.7 m)	($0.5 m)
School Boards	($2.4 m)	($2.4 m)	0
Universities	($0.7 m)	($0.7 m)	0
Colleges	($0.2 m)	($0.2 m)	0
Local Governments	($3.0 m)	0	0
Total	($7.5 m)	($4.0 m)	($.5 m)

[40] "Study Reflecting the Impact to the Florida Retirement System of Members Initially Enrolled on or after January 1, 2104 Defaulting into Investment Plan, prepared by Milliman, Inc. and dated March 13, 2013 (copy on file with the Senate Governmental Oversight and Accountability Committee).

Restricting Participation in the pension plan
Milliman, Inc., completed an actuarial study, dated March 1, 2013, to determine the actuarial impact of mandating members initially enrolling in the Florida Retirement on or after January 1, 0214, to be compulsory members of the investment plan. While the Milliman study was broader than the provisions of this legislation (which only mandate members initially enrolling in the FRS on or after January 1, 2014 as members of the Senior Management Class or the Elected Officers' Class to participate in the investment plan), the portion of the study limited to these two affected classes may be illustrative of the actuarial impacts of this legislation.

Based on the March 1 actuarial study, this policy medication has an insignificant actuarial impact on the FRS.

Ten year vesting in the pension plan
In 2012, Milliman, Inc., completed a special study[41] to determine the actuarial impact of increasing the vesting period for the pension plan from 8 years to 10 years for members initially enrolling on or after July 1, 2012. While this study should not be relied upon for budgeting purposes related to this legislation for the current year, it is illustrative of the magnitude of the potential impact of this policy modification.

Based on this special study, dated January 13, 2012, the savings associated with extending the vesting period in the FRS pension plan is shown in the table below. The savings reflect the potential reductions in employer contributions to be paid into the Florida Retirement System.

Employer	Annualized Impact	Estimated General Revenue Costs	Estimated Trust Fund Costs
State agencies	($2.2 m)	($1.2 m)	($1.0 m)
School Boards	($5.9 m)	($5.9 m)	0
Universities	($0.2 m)	($0.2 m)	0
Colleges	($0.4 m)	($0.4 m)	0
Local Governments	($4.4 m)	0	0
Total	($13.1 m)	($7.7 m)	($1.0 m)

Reducing employee contributions for investment plan members
This legislation reduces the retirement contribution paid by employees participating in the investment plan from 3 percent of salary to 2 percent of salary; however, the amounts deposited into the investment plan member accounts are not reduced. This results in an offsetting increase in the employer-paid contribution on behalf of the investment plan members. Based on data from the Department of Management Services, the aggregate employee contributions paid during calendar year 2012 were roughly $135.1 million. The table below shows the shift in costs from members to the applicable employers. These

[41] "Study Reflecting the Impact to the Florida Retirement System of Increasing the Vesting Period for Members Initially Enrolled on or after July 1, 2012", prepared by Milliman, Inc. and dated January 13, 2012 (copy on file with the Senate Governmental Oversight and Accountability Committee).

costs reflect the estimated increases in employer contributions to be paid into the Florida Retirement System.

Employer	2012 Employee Contributions	2012 Payroll	1% member contribution	Estimated General Revenue Cost	Estimated Trust Fund Cost
State agencies	$26,168,300	$872,276,682	$8,722,766	$4.8 m	$3.9 m
School Boards	$51,490,241	$1,716,341,380	$17,163,413	$17.2 m	0
Universities	$7,244,173	$241,472,457	$2,414,724	$2.4 m	0
Colleges	$6,588,547	$219,618,263	$2,196,182	$2.2 m	0
Local Governments	$43,648,599	$1,454,953,301	$14,549,533	0	0
Total	$135,139,862	$4,504,662,083	$45,046,620	$26.6 m	$3.9 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on March 14, 2013:
The CS makes technical and clarifying changes.

B. Amendments:

None.

446806

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 269
and insert:
pension plan is not permitted except as provided in s. 121.591(2). Employees initially enrolled in the Florida Retirement System prior to January 1, 2014, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in s. 121.4501(4)(f). Employees initially enrolled on

886870

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 283 - 292.

596540

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 740
and insert:
participate in the investment plan, except as provided in paragraph (g), by reason of employment in a

114816

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 1003

and insert:

permitted except as provided in s. 121.591(2). Employees initially enrolled in the Florida Retirement System prior to January 1, 2014, may retain their membership in the pension plan or investment plan and are eligible to use the election opportunity specified in s. 121.4501(4)(f).

By Senator Simpson

18-00985C-13 20131392__

A bill to be entitled

An act relating to retirement; amending s. 121.021, F.S.; revising the definition of "vested" or "vesting"; providing that a member initially enrolled in the Florida Retirement System after a certain date is vested in the pension plan after 10 years of creditable service; amending s. 121.051, F.S.; providing for compulsory membership in the Florida Retirement System Investment Plan for employees in the Elected Officers' Class or the Senior Management Service Class initially enrolled after a specified date; conforming cross-references to changes made by the act; amending s. 121.052, F.S.; prohibiting members of the Elected Officers' Class from joining the Senior Management Service Class after a specified date; amending s. 121.055, F.S.; prohibiting an elected official eligible for membership in the Elected Officers' Class from enrolling in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program; closing the Senior Management Optional Annuity Program to new members after a specified date; amending s. 121.091, F.S.; providing that certain members are entitled to a monthly disability benefit; revising provisions to conform to changes made by the act; amending s. 121.4501, F.S.; requiring certain employees initially enrolled in the Florida Retirement System on or after a specified date to be compulsory members of the investment plan; revising the definition of "member"

18-00985C-13 20131392__

or "employee"; revising a provision relating to acknowledgement of an employee's election to participate in the investment plan; placing certain employees in the pension plan from their date of hire until they are automatically enrolled in the investment plan or timely elect enrollment in the pension plan; authorizing certain employees to elect to participate in the pension plan, rather than the default investment plan, within a specified time; providing for the transfer of certain contributions; revising the education component; deleting the obligation of system employers to communicate the existence of both retirement plans; conforming provisions and cross-references to changes made by the act; amending s. 121.591, F.S.; revising provisions relating to disability retirement benefits; amending s. 121.71, F.S.; decreasing the employee retirement contribution rates for investment plan members; amending ss. 121.35, 238.072, 413.051, and 1012.875, F.S.; conforming cross-references; providing for contribution rate increases to fund the changes made by this act; directing the Division of Law Revision and Information to adjust contribution rates set forth in s. 121.071, F.S.; providing that the act fulfills an important state interest; providing an effective date.

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

Section 1. Subsection (45) of section 121.021, Florida Statutes, is amended to read:

121.021 Definitions.—The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(45) "Vested" or "vesting" means the guarantee that a member is eligible to receive a future retirement benefit upon completion of the required years of creditable service for the employee's class of membership, even though the member may have terminated covered employment before reaching normal or early retirement date. Being vested does not entitle a member to a disability benefit. Provisions governing entitlement to disability benefits are set forth under s. 121.091(4).

(a) Effective July 1, 2001, through June 30, 2011, a 6-year vesting requirement shall be implemented for the Florida Retirement System Pension Plan:

1. Any member employed in a regularly established position on July 1, 2001, who completes or has completed a total of 6 years of creditable service is considered vested.

2. Any member initially enrolled in the Florida Retirement System before July 1, 2001, but not employed in a regularly established position on July 1, 2001, shall be deemed vested upon completion of 6 years of creditable service if such member is employed in a covered position for at least 1 work year after July 1, 2001. However, a member is not required to complete more years of creditable service than would have been required for that member to vest under retirement laws in effect before July 1, 2001.

3. Any member initially enrolled in the Florida Retirement

System on July 1, 2001, through June 30, 2011, shall be deemed vested upon completion of 6 years of creditable service.

(b) Any member initially enrolled in the Florida Retirement System on ~~or after~~ July 1, 2011, through December 31, 2013, shall be vested in the pension plan upon completion of 8 years of creditable service.

(c) Any member initially enrolled in the Florida Retirement System on or after January 1, 2014, shall be vested in the pension plan upon completion of 10 years of creditable service.

Section 2. Paragraph (c) of subsection (2) of section 121.051, Florida Statutes, is amended, present subsections (3) through (9) of that section are renumbered as subsections (4) through (10), respectively, and a new subsection (3) is added to that section, to read:

121.051 Participation in the system.—

(2) OPTIONAL PARTICIPATION.—

(c) Employees of public community colleges or charter technical career centers sponsored by public community colleges, designated in s. 1000.21(3), who are members of the Regular Class of the Florida Retirement System and who comply with the criteria set forth in this paragraph and s. 1012.875 may, in lieu of participating in the Florida Retirement System, elect to withdraw from the system altogether and participate in the State Community College System Optional Retirement Program provided by the employing agency under s. 1012.875.

1.a. Through June 30, 2001, the cost to the employer for benefits under the optional retirement program equals the normal cost portion of the employer retirement contribution which would be required if the employee were a member of the pension plan's

Regular Class, plus the portion of the contribution rate required by s. 112.363(8) which would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund.

b. Effective July 1, 2001, through June 30, 2011, each employer shall contribute on behalf of each member of the optional program an amount equal to 10.43 percent of the employee's gross monthly compensation. The employer shall deduct an amount for the administration of the program.

c. Effective July 1, 2011, through June 30, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3)(a). The employer shall contribute on behalf of each program member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

d. Effective July 1, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3)(a). The employer shall contribute on behalf of each program member an amount equal to the difference between 8.15 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

e. The employer shall contribute an additional amount to the Florida Retirement System Trust Fund equal to the unfunded actuarial accrued liability portion of the Regular Class contribution rate.

2. The decision to participate in the optional retirement program is irrevocable as long as the employee holds a position eligible for participation, except as provided in subparagraph

3. Any service creditable under the Florida Retirement System is retained after the member withdraws from the system; however, additional service credit in the system may not be earned while a member of the optional retirement program.

3. An employee who has elected to participate in the optional retirement program shall have one opportunity, at the employee's discretion, to transfer from the optional retirement program to the pension plan of the Florida Retirement System or to the investment plan established under part II of this chapter, subject to the terms of the applicable optional retirement program contracts.

a. If the employee chooses to move to the investment plan, any contributions, interest, and earnings creditable to the employee under the optional retirement program are retained by the employee in the optional retirement program, and the applicable provisions of s. 121.4501(4) govern the election.

b. If the employee chooses to move to the pension plan of the Florida Retirement System, the employee shall receive service credit equal to his or her years of service under the optional retirement program.

(I) The cost for such credit is the amount representing the present value of the employee's accumulated benefit obligation for the affected period of service. The cost shall be calculated as if the benefit commencement occurs on the first date the employee becomes eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the Florida Retirement System Pension Plan liabilities in the most recent actuarial valuation. The calculation must include any service already maintained under

the pension plan in addition to the years under the optional retirement program. The present value of any service already maintained must be applied as a credit to total cost resulting from the calculation. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary.

(II) The employee must transfer from his or her optional retirement program account and from other employee moneys as necessary, a sum representing the present value of the employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of service in the pension plan and service in the optional retirement program.

4. Participation in the optional retirement program is limited to employees who satisfy the following eligibility criteria:

a. The employee is otherwise eligible for membership or renewed membership in the Regular Class of the Florida Retirement System, as provided in s. 121.021(11) and (12) or s. 121.122.

b. The employee is employed in a full-time position classified in the Accounting Manual for Florida's Public Community Colleges as:

(I) Instructional; or

(II) Executive Management, Instructional Management, or Institutional Management and the community college determines that recruiting to fill a vacancy in the position is to be conducted in the national or regional market, and the duties and responsibilities of the position include the formulation,

interpretation, or implementation of policies, or the performance of functions that are unique or specialized within higher education and that frequently support the mission of the community college.

c. The employee is employed in a position not included in the Senior Management Service Class of the Florida Retirement System as described in s. 121.055.

5. Members of the program are subject to the same reemployment limitations, renewed membership provisions, and forfeiture provisions applicable to regular members of the Florida Retirement System under ss. 121.091(9), 121.122, and 121.091(5), respectively. A member who receives a program distribution funded by employer and required employee contributions is deemed to be retired from a state-administered retirement system if the member is subsequently employed with an employer that participates in the Florida Retirement System.

6. Eligible community college employees are compulsory members of the Florida Retirement System until, pursuant to s. 1012.875, a written election to withdraw from the system and participate in the optional retirement program is filed with the program administrator and received by the division.

a. A community college employee whose program eligibility results from initial employment shall be enrolled in the optional retirement program retroactive to the first day of eligible employment. The employer and employee retirement contributions paid through the month of the employee plan change shall be transferred to the community college to the employee's optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions

based upon subparagraph 1.

b. A community college employee whose program eligibility is due to the subsequent designation of the employee's position as one of those specified in subparagraph 4., or due to the employee's appointment, promotion, transfer, or reclassification to a position specified in subparagraph 4., must be enrolled in the program on the first day of the first full calendar month that such change in status becomes effective. The employer and employee retirement contributions paid from the effective date through the month of the employee plan change must be transferred to the community college to the employee's optional program account, and, effective the first day of the next month, the employer shall pay the applicable contributions based upon subparagraph 1.

7. Effective July 1, 2003, through December 31, 2008, any member of the optional retirement program who has service credit in the pension plan of the Florida Retirement System for the period between his or her first eligibility to transfer from the pension plan to the optional retirement program and the actual date of transfer may, during employment, transfer to the optional retirement program a sum representing the present value of the accumulated benefit obligation under the defined benefit retirement program for the period of service credit. Upon transfer, all service credit previously earned under the pension plan during this period is nullified for purposes of entitlement to a future benefit under the pension plan.

(3) INVESTMENT PLAN MEMBERSHIP COMPULSORY.—

(a) Employees initially enrolled on or after January 1, 2014, in positions covered by the Elected Officers' Class or the

Senior Management Service Class are compulsory members of the investment plan, except those eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those eligible for optional retirement programs under paragraph (1)(a), paragraph (2)(c), or s. 121.35. Investment plan membership continues if there is subsequent employment in a position covered by another membership class. Membership in the pension plan is not permitted. Employees initially enrolled on or after January 1, 2014, are not eligible to use the election opportunity specified in s. 121.4501(4)(f).

(b) Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may choose to withdraw from the system or to participate in the investment plan as provided in these sections. Employees eligible for optional retirement programs under paragraph (2)(c) or s. 121.35 may choose to participate in the optional retirement program or the investment plan as provided in this paragraph or this section. Eligible employees required to participate pursuant to (1)(a) in the optional retirement program as provided under s. 121.35 must participate in the investment plan when employed in a position not eligible for the optional retirement program.

(c) Notwithstanding the provisions of subsection (a), any former member of the pension plan who terminated covered employment in the Florida Retirement System before the availability to join the investment plan during the initial rollout, or the provisions of 121.4501(4)(a)1., and who subsequently returns to covered employment under the system on or after January 1, 2014, shall be reenrolled in the pension plan effective on their date of employment and may use the

second election opportunity specified in s. 121.4501(4)(f)to transfer to the investment plan.

Section 3. Paragraph (c) of subsection (3) of section 121.052, Florida Statutes, is amended to read:

121.052 Membership class of elected officers.—

(3) PARTICIPATION AND WITHDRAWAL, GENERALLY.—Effective July 1, 1990, participation in the Elected Officers' Class shall be compulsory for elected officers listed in paragraphs (2)(a)-(d) and (f) assuming office on or after said date, unless the elected officer elects membership in another class or withdraws from the Florida Retirement System as provided in paragraphs (3)(a)-(d):

(c) Before January 1, 2014, any elected officer may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers, elect membership in the Senior Management Service Class as provided in s. 121.055 in lieu of membership in the Elected Officers' Class. Any such election made by a county elected officer shall have no effect upon the statutory limit on the number of nonelective full-time positions that may be designated by a local agency employer for inclusion in the Senior Management Service Class under s. 121.055(1)(b)1.

Section 4. Paragraph (f) of subsection (1) and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, are amended to read:

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

(1)

(f) Effective July 1, 1997, through December 31, 2013:

1. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

2. Except as provided in subparagraphs ~~subparagraph~~ 3. and 4., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.

3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, as an elected official eligible for the Elected Officers' Class may not be enrolled in renewed membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in

subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class.

4. On or after January 1, 2014, an elected officer eligible for membership in the Elected Officers' Class may not be enrolled in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6).

(6)

(c) *Participation.*—

1. An eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participating in the Senior Management Service Class. Such election must be made in writing and filed with the department and the personnel officer of the employer on or before May 1, 1987. An eligible employee who is employed on or before February 1, 1987, and who fails to make an election to participate in the optional annuity program by May 1, 1987, shall be deemed to have elected membership in the Senior Management Service Class.

2. Except as provided in subparagraph 6., an employee who becomes eligible to participate in the optional annuity program by reason of initial employment commencing after February 1, 1987, may, within 90 days after the date of commencing employment, elect to participate in the optional annuity program. Such election must be made in writing and filed with the personnel officer of the employer. An eligible employee who does not within 90 days after commencing employment elect to participate in the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

3. A person who is appointed to a position in the Senior Management Service Class and who is a member of an existing retirement system or the Special Risk or Special Risk Administrative Support Classes of the Florida Retirement System may elect to remain in such system or class in lieu of participating in the Senior Management Service Class or optional annuity program. Such election must be made in writing and filed with the department and the personnel officer of the employer within 90 days after such appointment. An eligible employee who fails to make an election to participate in the existing system, the Special Risk Class of the Florida Retirement System, the Special Risk Administrative Support Class of the Florida Retirement System, or the optional annuity program shall be deemed to have elected membership in the Senior Management Service Class.

4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable if the employee continues to be employed in an eligible position and continues to meet the eligibility requirements set forth in this paragraph.

5. Effective from July 1, 2002, through September 30, 2002, an active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to the Florida Retirement System Pension Plan.

a. The election must be made in writing and must be filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee

who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.

b. The employee shall receive service credit under the pension plan equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit is the amount representing the present value of that employee's accumulated benefit obligation for the affected period of service.

c. The employee must transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee must pay a sum representing the remainder of the amount due. The employee may not retain any employer contributions or earnings from the Senior Management Service Optional Annuity Program account.

6. A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, may not renew membership in the Senior Management Service Optional Annuity Program.

7. Effective January 1, 2014, the Senior Management Service Optional Annuity Program is closed to new members. Members enrolled in the Senior Management Service Optional Annuity Program before January 1, 2014, may retain their membership in the annuity program.

Section 5. Paragraph (a) of subsection (4) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not

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

(4) DISABILITY RETIREMENT BENEFIT.—

(a) *Disability retirement; entitlement and effective date.*—

1.a. A member who becomes totally and permanently disabled, as defined in paragraph (b), after completing 5 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit; except that any member with less than 5 years of creditable service on July 1, 1980, or any person who becomes a member of the Florida Retirement System on or after such date must have completed 10 years of creditable service before becoming totally and permanently disabled in order to receive disability retirement benefits for any disability which occurs other than in the line of duty. However, if a member employed on July 1, 1980, who has less than 5 years of creditable service as of that date becomes totally and permanently disabled after completing 5 years of creditable service and is found not to have attained fully

insured status for benefits under the federal Social Security Act, such member is entitled to a monthly disability benefit.

b. Effective July 1, 2001, a member of the pension plan initially enrolled before January 1, 2014, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

c. Effective January 1, 2014, a member of the pension plan initially enrolled on or after January 1, 2014, who becomes totally and permanently disabled, as defined in paragraph (b), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

2. If the division has received from the employer the required documentation of the member's termination of employment, the effective retirement date for a member who applies and is approved for disability retirement shall be established by rule of the division.

3. For a member who is receiving Workers' Compensation payments, the effective disability retirement date may not precede the date the member reaches Maximum Medical Improvement (MMI), unless the member terminates employment before reaching MMI.

Section 6. Subsection (1), paragraph (i) of subsection (2), paragraph (b) of subsection (3), subsection (4), paragraph (c) of subsection (5), subsection (8), and paragraphs (a), (b), (c),

and (h) of subsection (10) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(1) The Trustees of the State Board of Administration shall establish a defined contribution program called the "Florida Retirement System Investment Plan" or "investment plan" for members of the Florida Retirement System under which retirement benefits will be provided for eligible employees who elect to participate in the program and for employees initially enrolled on or after January 1, 2014, in positions covered by the Elected Officers' Class or the Senior Management Service Class and are compulsory members of the investment plan unless otherwise eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or to participate in an optional retirement program under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35. Investment plan membership continues if there is subsequent employment in a position covered by another membership class. The retirement benefits shall be provided through member-directed investments, in accordance with s. 401(a) of the Internal Revenue Code and related regulations. The employer and employee shall make contributions, as provided in this section and ss. 121.571 and 121.71, to the Florida Retirement System Investment Plan Trust Fund toward the funding of benefits.

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

(i) "Member" or "employee" means an eligible employee who enrolls in or is defaulted into the investment plan as provided in subsection (4), a terminated Deferred Retirement Option Program member as described in subsection (21), or a beneficiary or alternate payee of a member or employee.

(3) RETIREMENT SERVICE CREDIT; TRANSFER OF BENEFITS.—

(b) Notwithstanding paragraph (a), an eligible employee who elects to participate in or is defaulted into the investment plan and establishes one or more individual member accounts may elect to transfer to the investment plan a sum representing the present value of the employee's accumulated benefit obligation under the pension plan, except as provided in paragraph (4)(b). Upon transfer, all service credit earned under the pension plan is nullified for purposes of entitlement to a future benefit under the pension plan. A member may not transfer the accumulated benefit obligation balance from the pension plan after the time period for enrolling in the investment plan has expired.

1. For purposes of this subsection, the present value of the member's accumulated benefit obligation is based upon the member's estimated creditable service and estimated average final compensation under the pension plan, subject to recomputation under subparagraph 2. For state employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on June 30, 2002; for district school board employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on September 30, 2002; and for local government employees, initial estimates shall be based upon creditable service and average final compensation as of midnight on December 31, 2002. The dates specified are the "estimate date" for these employees. The actuarial present value of the employee's accumulated benefit obligation shall be based on the following:

a. The discount rate and other relevant actuarial

assumptions used to value the Florida Retirement System Trust Fund at the time the amount to be transferred is determined, consistent with the factors provided in sub-subparagraphs b. and c.

b. A benefit commencement age, based on the member's estimated creditable service as of the estimate date.

c. Except as provided under sub-subparagraph d., for a member initially enrolled:

(I) Before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 62; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) On or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 65; or

(B) The age the member would attain if the member completed 33 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

d. For members of the Special Risk Class and for members of the Special Risk Administrative Support Class entitled to retain the special risk normal retirement date:

(I) Initially enrolled before July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 55; or

(B) The age the member would attain if the member completed 25 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

(II) Initially enrolled on or after July 1, 2011, the benefit commencement age is the younger of the following, but may not be younger than the member's age as of the estimate date:

(A) Age 60; or

(B) The age the member would attain if the member completed 30 years of service with an employer, assuming the member worked continuously from the estimate date, and disregarding any vesting requirement that would otherwise apply under the pension plan.

e. The calculation must disregard vesting requirements and early retirement reduction factors that would otherwise apply under the pension plan.

2. For each member who elects to transfer moneys from the pension plan to his or her account in the investment plan, the division shall recompute the amount transferred under subparagraph 1. within 60 days after the actual transfer of funds based upon the member's actual creditable service and actual final average compensation as of the initial date of participation in the investment plan. If the recomputed amount

differs from the amount transferred by $10 or more, the division shall:

a. Transfer, or cause to be transferred, from the Florida Retirement System Trust Fund to the member's account the excess, if any, of the recomputed amount over the previously transferred amount together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon the effective annual interest equal to the assumed return on the actuarial investment which was used in the most recent actuarial valuation of the system, compounded annually.

b. Transfer, or cause to be transferred, from the member's account to the Florida Retirement System Trust Fund the excess, if any, of the previously transferred amount over the recomputed amount, together with interest from the initial date of transfer to the date of transfer under this subparagraph, based upon 6 percent effective annual interest, compounded annually, pro rata based on the member's allocation plan.

3. If contribution adjustments are made as a result of employer errors or corrections, including plan corrections, following recomputation of the amount transferred under subparagraph 1., the member is entitled to the additional contributions or is responsible for returning any excess contributions resulting from the correction. However, any return of such erroneous excess pretax contribution by the plan must be made within the period allowed by the Internal Revenue Service. The present value of the member's accumulated benefit obligation shall not be recalculated.

4. As directed by the member, the state board shall transfer or cause to be transferred the appropriate amounts to

the designated accounts within 30 days after the effective date of the member's participation in the investment plan unless the major financial markets for securities available for a transfer are seriously disrupted by an unforeseen event that causes the suspension of trading on any national securities exchange in the country where the securities were issued. In that event, the 30-day period may be extended by a resolution of the state board. Transfers are not commissionable or subject to other fees and may be in the form of securities or cash, as determined by the state board. Such securities are valued as of the date of receipt in the member's account.

5. If the state board or the division receives notification from the United States Internal Revenue Service that this paragraph or any portion of this paragraph will cause the retirement system, or a portion thereof, to be disqualified for tax purposes under the Internal Revenue Code, the portion that will cause the disqualification does not apply. Upon such notice, the state board and the division shall notify the presiding officers of the Legislature.

(4) PARTICIPATION; ENROLLMENT.—

(a)1. Effective June 1, 2002, through February 28, 2003, a 90-day election period was provided to each eligible employee participating in the Florida Retirement System, preceded by a 90-day education period, permitting each eligible employee to elect membership in the investment plan, and an employee who failed to elect the investment plan during the election period remained in the pension plan. An eligible employee who was employed in a regularly established position during the election period was granted the option to make one subsequent election,

as provided in paragraph (f). With respect to ~~an~~ eligible employees who did not participate in the initial election period or who are initially ~~employee who is~~ employed in a regularly established position after the close of the initial election period but before January 1, 2014, ~~on June 1, 2002, by a state employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by August 31, 2002, or, in the case of an active employee who is on a leave of absence on April 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a~~

~~regularly established position with a state employer commencing after April 1, 2002:~~

~~a. Any~~ such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (f)~~(g)~~.

a.~~b.~~ If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The retirement contributions paid through the month of the employee plan change shall be transferred to the investment program, and, effective the first day of the next month, the employer and employee must pay the applicable contributions based on the employee membership class in the program.

b.~~c.~~ An employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.

2.~~3.~~ With respect to employees who become eligible to participate in the investment plan pursuant to s. 121.051(2)(c)3. or s. 121.35(3)(i), the employee may elect to participate in the investment plan in lieu of retaining his or her membership in the State Community College System Optional Retirement Program or the State University System Optional

Retirement Program. The election must be made in writing or by electronic means and must be filed with the third-party administrator. This election is irrevocable, except as provided in paragraph (f)~~(g)~~. Upon making such election, the employee shall be enrolled as a member in the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's participation in the State Community College System Optional Retirement Program or the State University System Optional Retirement Program terminates. The employee's enrollment in the investment plan is effective on the first day of the month for which a full month's employer and employee contribution is made to the investment plan.

(b)1. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position commencing on or after January 1, 2014, any such employee shall be enrolled in the pension plan at the commencement of employment and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the pension plan or the investment plan. Eligible employees may make a plan election only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay.

2. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the pension plan or investment plan is irrevocable, except as provided in paragraph (f).

3. If the employee fails to make an election of the pension plan or investment plan within 5 months following the month of hire, the employee is deemed to have elected the investment plan and will be defaulted into the investment plan retroactively to the employee's date of employment. The employee's option to participate in the pension plan is forfeited, except as provided in paragraph (f).

4. The amount of the employee and employer contributions paid before the default to the investment plan shall be transferred to the investment plan and shall be placed in a default fund as designated by the State Board of Administration. The employee may move the contributions once an account is activated in the investment plan.

5. Effective the first day of the month after an eligible employee makes a plan election of the pension plan or investment plan, or after the month of default to the investment plan, the employee and employer shall pay the applicable contributions based on the employee membership class in the pension plan or investment plan.

~~4. For purposes of this paragraph, "state employer" means any agency, board, branch, commission, community college, department, institution, institution of higher education, or water management district of the state, which participates in the Florida Retirement System for the benefit of certain employees.~~

~~(b)1. With respect to an eligible employee who is employed in a regularly established position on September 1, 2002, by a district school board employer:~~

~~a. Any such employee may elect to participate in the~~

~~investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party administrator by November 30, or, in the case of an active employee who is on a leave of absence on July 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a member of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment program.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a district school board employer commencing after July 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic~~

~~means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "district school board employer" means any district school board that participates in the Florida Retirement System for the benefit of certain employees, or a charter school or charter technical career center that participates in the Florida Retirement System as provided in s. 121.051(2)(d).~~

~~(c)1. With respect to an eligible employee who is employed in a regularly established position on December 1, 2002, by a local employer:~~

~~a. Any such employee may elect to participate in the investment plan in lieu of retaining his or her membership in the pension plan. The election must be made in writing or by electronic means and must be filed with the third-party~~

~~administrator by February 28, 2003, or, in the case of an active employee who is on a leave of absence on October 1, 2002, by the last business day of the 5th month following the month the leave of absence concludes. This election is irrevocable, except as provided in paragraph (g). Upon making such election, the employee shall be enrolled as a participant of the investment plan, the employee's membership in the Florida Retirement System is governed by the provisions of this part, and the employee's membership in the pension plan terminates. The employee's enrollment in the investment plan is effective the first day of the month for which a full month's employer contribution is made to the investment plan.~~

~~b. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~2. With respect to employees who become eligible to participate in the investment plan by reason of employment in a regularly established position with a local employer commencing after October 1, 2002:~~

~~a. Any such employee shall, by default, be enrolled in the pension plan at the commencement of employment, and may, by the last business day of the 5th month following the employee's month of hire, elect to participate in the investment plan. The employee's election must be made in writing or by electronic means and must be filed with the third-party administrator. The election to participate in the investment plan is irrevocable, except as provided in paragraph (g).~~

~~b. If the employee files such election within the prescribed time period, enrollment in the investment plan is effective on the first day of employment. The employer retirement contributions paid through the month of the employee plan change shall be transferred to the investment plan, and, effective the first day of the next month, the employer shall pay the applicable contributions based on the employee membership class in the investment plan.~~

~~c. Any such employee who fails to elect to participate in the investment plan within the prescribed time period is deemed to have elected to retain membership in the pension plan, and the employee's option to elect to participate in the investment plan is forfeited.~~

~~3. For purposes of this paragraph, "local employer" means any employer not included in paragraph (a) or paragraph (b).~~

(c) ~~(d)~~ Contributions available for self-direction by a member who has not selected one or more specific investment products shall be allocated as prescribed by the state board. The third-party administrator shall notify the member at least quarterly that the member should take an affirmative action to make an asset allocation among the investment products.

(d) ~~(c)~~ On or after July 1, 2011, a member of the pension plan who obtains a refund of employee contributions retains his or her prior plan choice upon return to employment in a regularly established position with a participating employer.

(e) ~~(f)~~ A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A retiree who is initially reemployed in a regularly established position on or after July

1, 2010, is not eligible to be enrolled in renewed membership.

(f) ~~(g)~~ After the period during which an eligible employee had the choice to elect the pension plan or the investment plan, or the month following the receipt of the eligible employee's plan election, if sooner, the employee shall have one opportunity, at the employee's discretion, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan. Eligible employees may elect to move between plans only if they are earning service credit in an employer-employee relationship consistent with s. 121.021(17)(b), excluding leaves of absence without pay. Effective July 1, 2005, such elections are effective on the first day of the month following the receipt of the election by the third-party administrator and are not subject to the requirements regarding an employer-employee relationship or receipt of contributions for the eligible employee in the effective month, except when the election is received by the third-party administrator. This paragraph is contingent upon approval by the Internal Revenue Service. This paragraph is not applicable to compulsory investment plan members under paragraph (g).

1. If the employee chooses to move to the investment plan, the provisions of subsection (3) govern the transfer.

2. If the employee chooses to move to the pension plan, the employee must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the present value of that employee's accumulated benefit obligation immediately following the time of such movement, determined assuming that attained service equals the sum of

service in the pension plan and service in the investment plan. Benefit commencement occurs on the first date the employee is eligible for unreduced benefits, using the discount rate and other relevant actuarial assumptions that were used to value the pension plan liabilities in the most recent actuarial valuation. For any employee who, at the time of the second election, already maintains an accrued benefit amount in the pension plan, the then-present value of the accrued benefit is deemed part of the required transfer amount. The division must ensure that the transfer sum is prepared using a formula and methodology certified by an enrolled actuary. A refund of any employee contributions or additional member payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

3. Notwithstanding subparagraph 2., an employee who chooses to move to the pension plan and who became eligible to participate in the investment plan by reason of employment in a regularly established position with a state employer after June 1, 2002; a district school board employer after September 1, 2002; or a local employer after December 1, 2002, must transfer from his or her investment plan account, and from other employee moneys as necessary, a sum representing the employee's actuarial accrued liability. A refund of any employee contributions or additional member ~~participant~~ payments made which exceed the employee contributions that would have accrued had the member remained in the pension plan and not transferred to the investment plan is not permitted.

4. An employee's ability to transfer from the pension plan

to the investment plan pursuant to paragraphs (a) and (b) ~~paragraphs (a)-(d)~~, and the ability of a current employee to have an option to later transfer back into the pension plan under subparagraph 2., shall be deemed a significant system amendment. Pursuant to s. 121.031(4), any resulting unfunded liability arising from actual original transfers from the pension plan to the investment plan must be amortized within 30 plan years as a separate unfunded actuarial base independent of the reserve stabilization mechanism defined in s. 121.031(3)(f). For the first 25 years, a direct amortization payment may not be calculated for this base. During this 25-year period, the separate base shall be used to offset the impact of employees exercising their second program election under this paragraph. The actuarial funded status of the pension plan will not be affected by such second program elections in any significant manner, after due recognition of the separate unfunded actuarial base. Following the initial 25-year period, any remaining balance of the original separate base shall be amortized over the remaining 5 years of the required 30-year amortization period.

5. If the employee chooses to transfer from the investment plan to the pension plan and retains an excess account balance in the investment plan after satisfying the buy-in requirements under this paragraph, the excess may not be distributed until the member retires from the pension plan. The excess account balance may be rolled over to the pension plan and used to purchase service credit or upgrade creditable service in the pension plan.

(g)1. All employees initially enrolled on or after January

1, 2014, in positions covered by the Elected Officers' Class or the Senior Management Service Class are compulsory members of the investment plan, except those eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2., or those eligible for optional retirement programs under s. 121.051(1)(a), s. 121.051(2)(c), or s. 121.35. Employees eligible to withdraw from the system under s. 121.052(3)(d) or s. 121.055(1)(b)2. may choose to withdraw from the system or to participate in the investment plan as provided in those sections. Employees eligible for optional retirement programs under s. 121.051(2)(c) or s. 121.35, except as provided in s. 121.051(1)(a), may choose to participate in the optional retirement program or the investment plan as provided in those sections. Investment plan membership continues if there is subsequent employment in a position covered by another membership class. Membership in the pension plan is not permitted except as provided in s. 121.591(2).

2. Employees initially enrolled on or after January 1, 2014, are not permitted to use the election opportunity specified in paragraph (f).

3. The amount of retirement contributions paid by the employee and employer, as required under s. 121.72, shall be placed in a default fund as designated by the state board, until an account is activated in the investment plan, at which time the member may move the contributions from the default fund to other funds provided in the investment plan.

(5) CONTRIBUTIONS.—

(c) The state board, acting as plan fiduciary, must ensure that all plan assets are held in a trust, pursuant to s. 401 of

the Internal Revenue Code. The fiduciary must ensure that such contributions are allocated as follows:

1. The employer and employee contribution portion earmarked for member accounts shall be used to purchase interests in the appropriate investment vehicles as specified by the member, or in accordance with paragraph (4)(c) ~~(4)(d)~~.

2. The employer contribution portion earmarked for administrative and educational expenses shall be transferred to the Florida Retirement System Investment Plan Trust Fund.

3. The employer contribution portion earmarked for disability benefits shall be transferred to the Florida Retirement System Trust Fund.

(8) INVESTMENT PLAN ADMINISTRATION.—The investment plan shall be administered by the state board and affected employers. The state board may require oaths, by affidavit or otherwise, and acknowledgments from persons in connection with the administration of its statutory duties and responsibilities for the investment plan. An oath, by affidavit or otherwise, may not be required of a member at the time of enrollment. Acknowledgment of an employee's election to participate in the program shall be no greater than necessary to confirm the employee's election except for members initially enrolled on or after January 1, 2014, as provided in paragraph (4)(g). The state board shall adopt rules to carry out its statutory duties with respect to administering the investment plan, including establishing the roles and responsibilities of affected state, local government, and education-related employers, the state board, the department, and third-party contractors. The department shall adopt rules necessary to administer the

investment plan in coordination with the pension plan and the disability benefits available under the investment plan.

(a)1. The state board shall select and contract with a third-party administrator to provide administrative services if those services cannot be competitively and contractually provided by the division. With the approval of the state board, the third-party administrator may subcontract to provide components of the administrative services. As a cost of administration, the state board may compensate any such contractor for its services, in accordance with the terms of the contract, as is deemed necessary or proper by the board. The third-party administrator may not be an approved provider or be affiliated with an approved provider.

2. These administrative services may include, but are not limited to, enrollment of eligible employees, collection of employer and employee contributions, disbursement of contributions to approved providers in accordance with the allocation directions of members; services relating to consolidated billing; individual and collective recordkeeping and accounting; asset purchase, control, and safekeeping; and direct disbursement of funds to and from the third-party administrator, the division, the state board, employers, members, approved providers, and beneficiaries. This section does not prevent or prohibit a bundled provider from providing any administrative or customer service, including accounting and administration of individual member benefits and contributions; individual member recordkeeping; asset purchase, control, and safekeeping; direct execution of the member's instructions as to asset and contribution allocation; calculation of daily net

asset values; direct access to member account information; or periodic reporting to members, at least quarterly, on account balances and transactions, if these services are authorized by the state board as part of the contract.

(b)1. The state board shall select and contract with one or more organizations to provide educational services. With approval of the state board, the organizations may subcontract to provide components of the educational services. As a cost of administration, the state board may compensate any such contractor for its services in accordance with the terms of the contract, as is deemed necessary or proper by the board. The education organization may not be an approved provider or be affiliated with an approved provider.

2. Educational services shall be designed by the state board and department to assist employers, eligible employees, members, and beneficiaries in order to maintain compliance with United States Department of Labor regulations under s. 404(c) of the Employee Retirement Income Security Act of 1974 and to assist employees in their choice of pension plan or investment plan retirement alternatives. Educational services include, but are not limited to, disseminating educational materials; providing retirement planning education; explaining the pension plan and the investment plan; and offering financial planning guidance on matters such as investment diversification, investment risks, investment costs, and asset allocation. An approved provider may also provide educational information, including retirement planning and investment allocation information concerning its products and services.

(c)1. In evaluating and selecting a third-party

administrator, the state board shall establish criteria for evaluating the relative capabilities and qualifications of each proposed administrator. In developing such criteria, the state board shall consider:

a. The administrator's demonstrated experience in providing administrative services to public or private sector retirement systems.

b. The administrator's demonstrated experience in providing daily valued recordkeeping to defined contribution programs.

c. The administrator's ability and willingness to coordinate its activities with employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, monthly management reports, quarterly member reports, and ad hoc reports requested by the department or state board.

d. The cost-effectiveness and levels of the administrative services provided.

e. The administrator's ability to interact with the members, the employers, the state board, the division, and the providers; the means by which members may access account information, direct investment of contributions, make changes to their accounts, transfer moneys between available investment vehicles, and transfer moneys between investment products; and any fees that apply to such activities.

f. Any other factor deemed necessary by the state board.

2. In evaluating and selecting an educational provider, the state board shall establish criteria under which it shall consider the relative capabilities and qualifications of each

proposed educational provider. In developing such criteria, the state board shall consider:

a. Demonstrated experience in providing educational services to public or private sector retirement systems.

b. Ability and willingness to coordinate its activities with the employers, the state board, and the division, and to supply to such employers, the board, and the division the information and data they require, including, but not limited to, reports on educational contacts.

c. The cost-effectiveness and levels of the educational services provided.

d. Ability to provide educational services via different media, including, but not limited to, the Internet, personal contact, seminars, brochures, and newsletters.

e. Any other factor deemed necessary by the state board.

3. The establishment of the criteria shall be solely within the discretion of the state board.

(d) The state board shall develop the form and content of any contracts to be offered under the investment plan. In developing the contracts, the board shall consider:

1. The nature and extent of the rights and benefits to be afforded in relation to the contributions required under the plan.

2. The suitability of the rights and benefits provided and the interests of employers in the recruitment and retention of eligible employees.

(e)1. The state board may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the

investment plan. The state board may enter into a contract with one or more vendors to provide low-cost investment advice to members, supplemental to education provided by the third-party administrator. All fees under any such contract shall be paid by those members who choose to use the services of the vendor.

2. The department may contract for professional services, including legal, consulting, accounting, and actuarial services, deemed necessary to implement and administer the investment plan in coordination with the pension plan. The department, in coordination with the state board, may enter into a contract with the third-party administrator in order to coordinate services common to the various programs within the Florida Retirement System.

(f) The third-party administrator may not receive direct or indirect compensation from an approved provider, except as specifically provided for in the contract with the state board.

(g) The state board shall receive and resolve member complaints against the program, the third-party administrator, or any program vendor or provider; shall resolve any conflict between the third-party administrator and an approved provider if such conflict threatens the implementation or administration of the program or the quality of services to employees; and may resolve any other conflicts. The third-party administrator shall retain all member records for at least 5 years for use in resolving any member conflicts. The state board, the third-party administrator, or a provider is not required to produce documentation or an audio recording to justify action taken with regard to a member if the action occurred 5 or more years before the complaint is submitted to the state board. It is presumed

that all action taken 5 or more years before the complaint is submitted was taken at the request of the member and with the member's full knowledge and consent. To overcome this presumption, the member must present documentary evidence or an audio recording demonstrating otherwise.

(10) EDUCATION COMPONENT.—

(a) The state board, in coordination with the department, shall provide for an education component for eligible employees ~~system members~~ in a manner consistent with the provisions of this subsection ~~section~~. ~~The education component must be available to eligible employees at least 90 days prior to the beginning date of the election period for the employees of the respective types of employers.~~

(b) The education component must provide system members with impartial and balanced information about plan choices except for members initially enrolled on or after January 1, 2014, as provided in paragraph (4)(g). The education component must involve multimedia formats. Program comparisons must, to the greatest extent possible, be based upon the retirement income that different retirement programs may provide to the member. The state board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the state board.

(c) The state board, in coordination with the department, shall provide for an initial and ongoing transfer education component to provide system members except for those members initially enrolled on or after January 1, 2014, as provided in paragraph (4)(g), with information necessary to make informed

plan choice decisions. The transfer education component must include, but is not limited to, information on:

1. The amount of money available to a member to transfer to the defined contribution program.

2. The features of and differences between the pension plan and the defined contribution program, both generally and specifically, as those differences may affect the member.

3. The expected benefit available if the member were to retire under each of the retirement programs, based on appropriate alternative sets of assumptions.

4. The rate of return from investments in the defined contribution program and the period of time over which such rate of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the pension plan.

5. The historical rates of return for the investment alternatives available in the defined contribution programs.

6. The benefits and historical rates of return on investments available in a typical deferred compensation plan or a typical plan under s. 403(b) of the Internal Revenue Code for which the employee may be eligible.

7. The program choices available to employees of the State University System and the comparative benefits of each available program, if applicable.

8. Payout options available in each of the retirement programs.

~~(h) Pursuant to subsection (8), all Florida Retirement System employers have an obligation to regularly communicate the existence of the two Florida Retirement System plans and the plan choice in the natural course of administering their~~

~~personnel functions, using the educational materials supplied by the state board and the Department of Management Services.~~

Section 7. Paragraph (b) of subsection (2) of section 121.591, Florida Statutes, is amended to read:

121.591 Payment of benefits.—Benefits may not be paid under the Florida Retirement System Investment Plan unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed as prescribed by the state board or the department. Benefits, including employee contributions, are not payable under the investment plan for employee hardships, unforeseeable emergencies, loans, medical expenses, educational expenses, purchase of a principal residence, payments necessary to prevent eviction or foreclosure on an employee's principal residence, or any other reason except a requested distribution for retirement, a mandatory de minimis distribution authorized by the administrator, or a required minimum distribution provided pursuant to the Internal Revenue Code. The state board or department, as appropriate, may cancel an application for retirement benefits if the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities, the state board and the department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application if the required information or documents are not received. The state board and the department, as appropriate, are authorized to cash out a de minimis account of a member who has been terminated from Florida Retirement System covered employment for a minimum

of 6 calendar months. A de minimis account is an account containing employer and employee contributions and accumulated earnings of not more than $5,000 made under the provisions of this chapter. Such cash-out must be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the member. Any nonvested accumulations and associated service credit, including amounts transferred to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6), shall be forfeited upon payment of any vested benefit to a member or beneficiary, except for de minimis distributions or minimum required distributions as provided under this section. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the state board shall cancel the instrument and credit the amount of the instrument to the suspense account of the Florida Retirement System Investment Plan Trust Fund authorized under s. 121.4501(6). Any amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings attributable to employer contributions shall be forfeited. Any forfeited amounts are assets of the trust fund and are not

subject to chapter 717.

(2) DISABILITY RETIREMENT BENEFITS.—Benefits provided under this subsection are payable in lieu of the benefits that would otherwise be payable under the provisions of subsection (1). Such benefits must be funded from employer contributions made under s. 121.571, transferred employee contributions and funds accumulated pursuant to paragraph (a), and interest and earnings thereon.

(b) *Disability retirement; entitlement.*—

1.a. A member of the investment plan initially enrolled before January 1, 2014, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 8 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of length of service, is entitled to a monthly disability benefit.

b. A member of the investment plan initially enrolled on or after January 1, 2014, who becomes totally and permanently disabled, as defined in paragraph (d), after completing 10 years of creditable service, or a member who becomes totally and permanently disabled in the line of duty regardless of service, is entitled to a monthly disability benefit.

2. In order for service to apply toward the ~~8~~ years of creditable service required for regular disability benefits, or toward the creditable service used in calculating a service-based benefit as provided under paragraph (g), the service must be creditable service as described below:

a. The member’s period of service under the investment plan shall be considered creditable service, except as provided in subparagraph d.

b. If the member has elected to retain credit for service under the pension plan as provided under s. 121.4501(3), all such service shall be considered creditable service.

c. If the member elects to transfer to his or her member accounts a sum representing the present value of his or her retirement credit under the pension plan as provided under s. 121.4501(3), the period of service under the pension plan represented in the present value amounts transferred shall be considered creditable service, except as provided in subparagraph d.

d. If a member has terminated employment and has taken distribution of his or her funds as provided in subsection (1), all creditable service represented by such distributed funds is forfeited for purposes of this subsection.

Section 8. Subsection (3) of section 121.71, Florida Statutes, is amended to read:

121.71 Uniform rates; process; calculations; levy.—

(3)(a) Required employee retirement contribution rates for each membership class and subclass of the Florida Retirement System for the pension plan ~~both retirement plans~~ are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2011

Regular Class	3.00%
Special Risk Class	3.00%
Special Risk Administrative Support Class	3.00%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	3.00%
Elected Officers' Class— Justices, Judges	3.00%
Elected Officers' Class— County Elected Officers	3.00%
Senior Management Service Class	3.00%
DROP	0.00%

(b) Required employee retirement contribution rates for each membership class and subclass of the Florida Retirement System for the investment plan are as follows:

Membership Class	Percentage of	Percentage of

	Gross Compensation, Effective July 1, 2011	Gross Compensation, Effective January 1, 2014
Regular Class	3.00%	2.00%
Special Risk Class	3.00%	2.00%
Special Risk Administrative Support Class	3.00%	2.00%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	3.00%	2.00%
Elected Officers' Class— Justices, Judges	3.00%	2.00%
Elected Officers' Class— County Elected Officers	3.00%	2.00%
Senior Management Service Class	3.00%	2.00%

Section 9. Paragraph (a) of subsection (4) of section 121.35, Florida Statutes, is amended to read:

121.35 Optional retirement program for the State University System.—

(4) CONTRIBUTIONS.—

(a)1. Through June 30, 2001, each employer shall contribute on behalf of each member of the optional retirement program an amount equal to the normal cost portion of the employer retirement contribution which would be required if the employee were a regular member of the Florida Retirement System Pension Plan, plus the portion of the contribution rate required in s. 112.363(8) that would otherwise be assigned to the Retiree Health Insurance Subsidy Trust Fund.

2. Effective July 1, 2001, through June 30, 2011, each employer shall contribute on behalf of each member of the optional retirement program an amount equal to 10.43 percent of the employee's gross monthly compensation.

3. Effective July 1, 2011, through June 30, 2012, each member of the optional retirement program shall contribute an

amount equal to the employee contribution required in s. 121.71(3)(a). The employer shall contribute on behalf of each such member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the amount equal to the employee's required contribution based on the employee's gross monthly compensation.

4. Effective July 1, 2012, each member of the optional retirement program shall contribute an amount equal to the employee contribution required in s. 121.71(3)(a). The employer shall contribute on behalf of each such member an amount equal to the difference between 8.15 percent of the employee's gross monthly compensation and the amount equal to the employee's required contribution based on the employee's gross monthly compensation.

5. The payment of the contributions, including contributions by the employee, shall be made by the employer to the department, which shall forward the contributions to the designated company or companies contracting for payment of benefits for members of the program. However, such contributions paid on behalf of an employee described in paragraph (3)(c) may not be forwarded to a company and do not begin to accrue interest until the employee has executed a contract and notified the department. The department shall deduct an amount from the contributions to provide for the administration of this program.

Section 10. Section 238.072, Florida Statutes, is amended to read:

238.072 Special service provisions for extension personnel.—All state and county cooperative extension personnel holding appointments by the United States Department of

Agriculture for extension work in agriculture and home economics in this state who are joint representatives of the University of Florida and the United States Department of Agriculture, as provided in s. 121.051(8) ~~121.051(7)~~, who are members of the Teachers' Retirement System, chapter 238, and who are prohibited from transferring to and participating in the Florida Retirement System, chapter 121, may retire with full benefits upon completion of 30 years of creditable service and shall be considered to have attained normal retirement age under this chapter, any law to the contrary notwithstanding. In order to comply with the provisions of s. 14, Art. X of the State Constitution, any liability accruing to the Florida Retirement System Trust Fund as a result of the provisions of this section shall be paid on an annual basis from the General Revenue Fund.

Section 11. Subsection (11) of section 413.051, Florida Statutes, is amended to read:

413.051 Eligible blind persons; operation of vending stands.—

(11) Effective July 1, 1996, blind licensees who remain members of the Florida Retirement System pursuant to s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~ shall pay any unappropriated retirement costs from their net profits or from program income. Within 30 days after the effective date of this act, each blind licensee who is eligible to maintain membership in the Florida Retirement System under s. 121.051(7)(b)1. ~~121.051(6)(b)1.~~, but who elects to withdraw from the system as provided in s. 121.051(7)(b)3. ~~121.051(6)(b)3.~~, must, on or before July 31, 1996, notify the Division of Blind Services and the Department of Management Services in writing of his or her election to

withdraw. Failure to timely notify the divisions shall be deemed a decision to remain a compulsory member of the Florida Retirement System. However, if, at any time after July 1, 1996, sufficient funds are not paid by a blind licensee to cover the required contribution to the Florida Retirement System, that blind licensee shall become ineligible to participate in the Florida Retirement System on the last day of the first month for which no contribution is made or the amount contributed is insufficient to cover the required contribution. For any blind licensee who becomes ineligible to participate in the Florida Retirement System as described in this subsection, no creditable service shall be earned under the Florida Retirement System for any period following the month that retirement contributions ceased to be reported. However, any such person may participate in the Florida Retirement System in the future if employed by a participating employer in a covered position.

Section 12. Paragraph (a) of subsection (4) of section 1012.875, Florida Statutes, is amended to read:

1012.875 State Community College System Optional Retirement Program.—Each Florida College System institution may implement an optional retirement program, if such program is established therefor pursuant to s. 1001.64(20), under which annuity or other contracts providing retirement and death benefits may be purchased by, and on behalf of, eligible employees who participate in the program, in accordance with s. 403(b) of the Internal Revenue Code. Except as otherwise provided herein, this retirement program, which shall be known as the State Community College System Optional Retirement Program, may be implemented and administered only by an individual Florida College System

institution or by a consortium of Florida College System institutions.

(4)(a)1. Through June 30, 2011, each college must contribute on behalf of each program member an amount equal to 10.43 percent of the employee's gross monthly compensation.

2. Effective July 1, 2011, through June 30, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3)(a). The employer shall contribute on behalf of each program member an amount equal to the difference between 10.43 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

3. Effective July 1, 2012, each member shall contribute an amount equal to the employee contribution required under s. 121.71(3)(a). The employer shall contribute on behalf of each program member an amount equal to the difference between 8.15 percent of the employee's gross monthly compensation and the employee's required contribution based on the employee's gross monthly compensation.

4. The college shall deduct an amount approved by the district board of trustees of the college to provide for the administration of the optional retirement program. Payment of this contribution must be made directly by the college or through the program administrator to the designated company contracting for payment of benefits to the program member.

Section 13. (1) In order to fund the benefit changes provided for in this act, the required employer contribution rates of the Florida Retirement System established in 121.71(4), Florida Statutes, shall be adjusted as follows:

(a) The Regular Class is increased by X.XX percentage points.

(b) The Special Risk Class is increased by X.XX percentage points.

(c) The Special Risk Administrative Support Class is increased by X.XX percentage points.

(d) The Elected Officers' Class—Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders is increased by X.XX percentage points.

(e) The Elected Officers' Class—Justices, Judges is increased by X.XX percentage points.

(f) The Elected Officer's Class—County Elected Officers is increased by X.XX percentage points.

(g) The Senior Management Service Class is increased by X.XX percentage points.

(h) The DROP class is increased by X.XX percentage points.

(2) In order to fund for the benefit changes provided for in this act, the required employer contribution rates for the unfunded actuarial liability of the Florida Retirement System established in s. 121.71(5), Florida Statutes, shall be adjusted as follows:

(a) The Regular Class is increased by X.XX percentage points.

(b) The Special Risk Class is increased by X.XX percentage points.

(c) The Special Risk Administrative Support Class is increased by X.XX percentage points.

(d) The Elected Officers' Class—Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders is

increased by X.XX percentage points.

(e) The Elected Officers' Class—Justices, Judges is increased by X.XX percentage points.

(f) The Elected Officer's Class—County Elected Officers is increased by X.XX percentage points.

(g) The Senior Management Service Class is increased by X.XX percentage points.

(h) The DROP class is increased by X.XX percentage points.

(3) The adjustments provided in subsections (1) and (2) shall be made in addition to other changes to such contribution rates which may be enacted into law to take effect on July 1, 2013, and July 1, 2014. The Division of Law Revision and Information is requested to adjust accordingly the contribution rates provided in s. 121.71, Florida Statutes.

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

Section 15. This act shall take effect January 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-13
Meeting Date

Topic Florida Retirement System
Bill Number SB 1392 *(if applicable)*

Name David Murrell
Amendment Barcode *(if applicable)*

Job Title Director of Legislative Services

Address 300 East Brevard Street
Street
Tallahassee, Florida 32301
City *State* *Zip*

Phone 850-222-3329

E-mail davidm@flpba.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic Retirement
Bill Number 1392 *(if applicable)*

Name Leticia Adams
Amendment Barcode *(if applicable)*

Job Title Director of Governance Policy

Address 136 S. Bronough St.
Street
Tall FL 32301
City *State* *Zip*

Phone 850 544 6866

E-mail

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic _____ Bill Number 1392 *(if applicable)*

Name GARY Rainey Amendment Barcode _____ *(if applicable)*

Job Title President

Address 345 W MADISON ST Phone 224 7333
Street

TLH FL 32301 E-mail raineygs@gmail.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing FL. Professional Firefighters

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic _____ Bill Number 1392 *(if applicable)*

Name ROWAN TAYLOR Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 8000 NW 21 ST Phone _____
Street

MIAMI FL 33122 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing MIAMI-DADE FIREFIGHTERS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic RETIREMENT Bill Number 1392 *(if applicable)*

Name ROBERT SUAREZ Amendment Barcode *(if applicable)*

Job Title VICE PRESIDENT, FLORIDA FIREFIGHTERS

Address 345 W MADISON STREET Phone 305 984 3299
Street

TALLAHASSEE FL E-mail
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing FLORIDA PROFESSIONAL FIREFIGHTERS

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic Retirement Bill Number 1392 *(if applicable)*

Name Jon Costello Amendment Barcode *(if applicable)*

Job Title

Address Phone
Street

E-mail
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-13
Meeting Date

Topic FRS

Bill Number 1392 *(if applicable)*

Name BRETT SANDLIN

Amendment Barcode _____ *(if applicable)*

Job Title PRESIDENT ALACHUA COUNTY FIREFIGHTERS

Address 1595 NE 23RD AVE

Phone _____

Street

GAINESVILLE FL 32609

E-mail _____

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing ALACHUA COUNTY FIRE FIGHTERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate

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 452
INTRODUCER:	Health Policy Committee
SUBJECT:	OGSR/Joshua Abbott Organ and Tissue Registry/Donor Information
DATE:	March 14, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall		**hp SPB 7004 as introduced**
2.	Naf	McVaney	GO	**Favorable**
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 452 is the result of an Open Government Sunset Review by the Health Policy Committee.

Current law provides a public records exemption for personal identifying information held in the Joshua Abbott Organ and Tissue Registry, which is an interactive web-based organ and tissue donor registry that allows for online organ donor registration. Specifically, information that identifies a donor is confidential and exempt from public records requirements. Such information may be disclosed under specified circumstances.

The public records exemption is subject to review under the Open Government Sunset Review Act and will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature. This bill reenacts the exemption.

This bill does not expand the scope of the public records exemption and therefore does not require a two-thirds vote of the members present and voting in each house of the Legislature for passage.

This bill amends section 765.51551 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[11]

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).
[11] Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[13]

The Act also requires specified questions to be considered during the review process.[14]

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[15] A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception[16] to the exemption is created.[17]

Organ Donations in Florida

Over 3,500 people in Florida are registered and waiting for organ transplants, and thousands more wait for tissue donations.[18] The most common types of organ transplants include the kidneys, liver, heart, lungs and pancreas, but many other organs and tissues can be transplanted or used for various other medical procedures.[19] Nationwide, nearly 6,000 people die each year waiting for an organ donation.[20]

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[12] Section 119.15(6)(b), F.S.
[13] *Id*.
[14] Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[15] An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.
[16] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.
[17] *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).
[18] *FAQs About Donation*, Donate Life Florida, 2009, available at: http://www.donatelifeflorida.org/content/about/facts/faq/#faq_22, (last visited Jan. 16, 2013).
[19] Id.
[20] Id.

Four major organ and tissue procurement agencies operate in Florida to facilitate the process of organ donation. These agencies are certified by the U.S. Centers for Medicare and Medicaid Services (CMS) and operate in Florida to increase the number of registered donors and coordinate the donation process when organs become available. [21] Each agency serves a different region of the state. [22] In addition to federal certification of organ procurement organizations, the Agency for Healthcare Administration (AHCA) also certifies these organ procurement organizations and other eye and tissue organizations.[23]

The Joshua Abbott Organ and Tissue Donor Registry[24] (Donor Registry)

In 2008,[25] Florida's Legislature found that a shortage of organ and tissue donors existed in Florida, and that there was a need for a statewide donor registry with online donor registration capability and enhanced donor education to increase the number of organ and tissue donors. This online registry would afford more persons who are awaiting organ or tissue transplants the opportunity for a full and productive life.[26] As directed by the legislature, the AHCA and the Department of Highway Safety and Motor Vehicles (DHSMV) jointly contracted for the operation of Florida's interactive web-based donor registry that, through electronic means, allows for online donor registration and the recording of organ and tissue donation records submitted through the driver's license identification program or through other sources. The AHCA and the DHSMV selected Donate Life Florida, which is a coalition of Florida's organ, tissue, and eye donor programs, to run the donor registry and maintain donor records.

Floridians who are age 18 or older can join the donor registry either online,[27] at the DHSMV (or their local drivers license office), or by contacting Donate Life Florida for a paper application. Children ages 13 to 17 may join the registry, but the final decision on any organ donation of a minor rests with the parent or guardian. The registry collects personal information from each donor including, but not limited to, his or her name, address, date and place of birth, race, ethnicity, and driver's license number.

Since 2007, the number of donors registered in the donor registry has increased by over 1,500,000.[28] As of January 16, 2013, there were 6,938,301 people registered in the donor registry.[29] Its large number of registered donors ranks the Joshua Abbott Organ and Tissue Donor Registry as the second largest donor registry in the United States in terms of enrollment. [30]

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[21] Organ Procurement Organizations, Organdonor.gov, available at http://organdonor.gov/materialsresources/materialsopolist.html, (last visited Jan. 16, 2013).
[22] Id.; LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves east Florida, and LifeAlliance Organ Recovery Services serves south Florida.
[23] AHCA's authority for certifying organ, eye, and tissue banks can be found in s. 765.542, F.S., and a list of organ, eye and tissue banks is available on FloridaHealthFinder at www.floridahealthfinder.gov, (last visited on Jan. 16, 2013.)
[24] Section 765.5155(5), F.S., designates the donor registry as the Joshua Abbott Organ and Tissue Registry, however it is currently referred to as the Joshua Abbott Organ and Tissue Donor Registry.
[25] Chapter 2008-223, L.O.F.
[26] Section 765.5155(1), F.S.
[27] At https://www.donatelifeflorida.org/ (last visited on Jan. 16, 2013)
[28] There were 5,215,437 registered donors reported in the DHSMV's annual report for 2007-2008, which is available at: http://www.flhsmv.gov/html/AgencyAnnualReport2008.pdf, (last visited Sept. 27, 2012).
[29] http://www.donatelifeflorida.org/content/about/facts/faq/#faq_22, (last visited Jan. 16, 2013).
[30] From Donate Life Florida's annual report to AHCA for 2011. This report is on file with the Senate Health Policy Committee.

Organ Donor Registration at the DHSMV

Section 765.521, F.S., which predates the establishment of the donor registry, requires that the AHCA and the DHSMV implement a system to encourage potential donors to make anatomical gifts through the process of issuing and renewing driver's licenses. Though the DHSMV no longer maintains an organ donor database, it still gives out organ donor cards in its offices around the state. The DHSMV will collect those cards if they are returned to its offices, but donors are encouraged to register with the donor registry electronically or to mail their organ donation cards directly to Donate Life Florida. Any donor cards collected by the DHSMV are mailed directly to Donate Life Florida for entry into the donor registry without copies of the information being made. The DHSMV maintains in its driver's license database a flag marking the person as a donor.[31]

Donor Registry Public Records Law Exemption

Section 765.51551, F.S., enacted in 2008,[32] makes all personal identifying information in the donor registry confidential and exempt from s. 119.07(1), F.S., and Article I, s. 24 of the State Constitution.

However, the statute authorizes the protected information to be made available to:

- Organ, tissue and eye procurement organizations that have been certified by the AHCA for purposes of ascertaining or effectuating the existence of a gift; and
- Persons engaged in bona fide research who agree to:
  - Submit a research plan to the AHCA that specifies the exact nature of the requested information and the intended use of such information;
  - Maintain the confidentiality of the records or information made available;
  - Destroy any confidential records or information once the research is concluded; and
  - Not directly or indirectly contact, for any purpose, any donor or donee.[33]

In enacting the public records exemption for the donor registry, the Florida Legislature found that it was a public necessity to make confidential and exempt from disclosure all information held in the donor registry which would identify a donor because:

- Making such information publicly available could open up donors in the registry to invasion of their personal privacy;
- The disclosure of such information could hinder the effective and efficient administration of the organ and tissue donor program;
- Opening such information up to the public could reduce donations and the availability of potentially life-saving organs and tissues; and

[31] Email memo from Deborah Todd, program manager for Division of Motorist Services at the DHSMV, on file with the Senate Health Regulation Committee.
[32] Chapter 2008-222, L.O.F.
[33] Section 765.51551(2), F.S.

- Access to such information could be used to stalk, harass, solicit, or intimidate organ and tissue donors.[34]

Section 765.51551, F.S., does not exempt any information which is collected by the DHSMV before it is sent to Donate Life Florida for entry into the donor registry. However, personal identifying information[35] pertaining to a motor vehicle record collected by the DHSMV is protected from disclosure by the federal Driver Privacy Protection Act[36] and other Florida Statutes.[37]

Open Government Sunset Review for Section 765.51551, F.S.

Senate professional staff of the Health Policy Committee conducted a review of the public records exemption in s. 765.51551, F.S., as required by the Open Government Sunset Review Act.[38] This review included gathering information on the past and current status of the Joshua Abbott Organ and Tissue Donor Registry and the public records exemption in s. 765.51551, F.S. Senate professional staff distributed a questionnaire to various interested parties, including the AHCA, the DHSMV, Donate Life Florida, and multiple organ and tissue procurement agencies, in order to determine the necessity of maintaining the public records exemption.[39] All organizations responding to the questionnaire supported the reenactment of this public records exemption.

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption for information that identifies a donor and that is held in the donor registry.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal government.

B. Public Records/Open Meetings Issues:

This bill saves from repeal the existing public records exemption in s. 765.51551, F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of the members present and voting in each house of the Legislature for passage.

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[34] Chapter 2008-222, L.O.F.
[35] Including a driver's social security number, driver's license number, name, address, telephone number, and medical and disability information.
[36] 18 U.S.C. 2721-2725
[37] Section 322.142(4), F.S., protects the driver's photograph; s. 322.126, F.S., protects the driver's medical and disability information; and see generally s. 119.0712(2), F.S.
[38] Section 119.15, F.S.
[39] These completed questionnaires are on file with the Senate Health Policy Committee.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Health Policy

588-01017-13 2013452__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 765.51551, F.S., which provides an exemption from public records requirements for personal identifying information of a donor held in the Joshua Abbott Organ and Tissue Registry; saving the exemption from repeal under the Open Government Sunset Review Act; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 765.51551, Florida Statutes, is amended to read:

765.51551 Donor registry; public records exemption.—

(1) Information held in the donor registry which identifies a donor is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) Such information may be disclosed to the following:

(a) Procurement organizations that have been certified by the agency for the purpose of ascertaining or effectuating the existence of a gift under s. 765.522.

(b) Persons engaged in bona fide research if the person agrees to:

1. Submit a research plan to the agency which ~~that~~ specifies the exact nature of the information requested and the intended use of the information;

2. Maintain the confidentiality of the records or information if personal identifying information is made

588-01017-13 2013452__

available to the researcher;

3. Destroy any confidential records or information obtained after the research is concluded; and

4. Not directly or indirectly contact, for any purpose, any donor or donee.

~~(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, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

693344

585-02126-13

Proposed Committee Substitute by the Committee on Governmental Oversight and Accountability

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 741.313, F.S., relating to an exemption from public record requirements for certain information submitted to an agency by an agency employee who is a victim of domestic violence or sexual violence; making clarifying changes; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (7) of section 741.313, Florida Statutes, is amended to read:

741.313 Unlawful action against employees seeking protection.—

(7)(a) Personal identifying information ~~that is~~ contained in records documenting an act of domestic violence or sexual violence, ~~and that is~~ submitted by an agency employee to an agency, as defined in chapter 119, ~~by an agency employee~~ under the requirements of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A written request for leave ~~that is~~ submitted by an agency employee under the requirements of this section, and any agency time sheet that reflects such a request, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until 1 year after the leave has been taken.

693344

585-02126-13

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 304
INTRODUCER:	Committee on Governmental Oversight and Accountability and Criminal Justice Committee
SUBJECT:	OGSR/Certain Personal Identifying Information of Domestic & Sexual Violence Victims
DATE:	March 14, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon		**cj SPB 7000 as introduced**
2.	Naf	McVaney	GO	**Fav/CS**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 304 is the result of an Open Government Sunset Review performed by the Committee on Criminal Justice.

Current law[1] provides a public records exemption for certain information documenting an act of domestic violence or sexual violence submitted to an agency by an agency employee. Specifically, personal identifying information that is contained in records documenting an act of domestic or sexual violence and that is submitted to an agency by an agency employee is confidential and exempt from public records requirements. In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such a request, are confidential and exempt until one year after the leave has been taken.

[1] Section 741.313(7), F.S.

The public records exemption is subject to review under the Open Government Sunset Review Act.[2] It will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature. This bill reenacts the exemption and makes clarifying drafting changes.

This bill does not expand the scope of the public records exemption and therefore does not require a two-thirds vote of the members present and voting in each house of the Legislature for passage.

This bill amends section 741.313(7) of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[3] The records of the legislative, executive, and judicial branches are specifically included.[4]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[5] guarantees every person's right to inspect and copy any state or local government public record[6] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[7]

Only the Legislature may create an exemption to public records requirements.[8] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[9] Further, the exemption must be no broader than necessary to

[2] Section 119.15, F.S.
[3] FLA. CONST., art. I, s. 24(a).
[4] *Id*.
[5] Chapter 119, F.S.
[6] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[7] Section 119.07(1)(a), F.S.
[8] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[9] FLA. CONST., art. I, s. 24(c).

accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[10] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[11]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[12] 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.[13]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[14] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[15]

The Act also requires specified questions to be considered during the review process.[16]

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[17] A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or

[10] The bill may, however, contain multiple exemptions that relate to one subject.
[11] FLA. CONST., art. I, s. 24(c).
[12] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).
[13] Section 119.15(3), F.S.
[14] Section 119.15(6)(b), F.S.
[15] *Id*.
[16] 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?

[17] An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception[18] to the exemption is created.[19]

Employee Leave for Domestic Violence or Sexual Violence

Section 741.313, F.S., applies to public and private employers with 50 or more employees and to employees who have been employed by an employer for at least three months.[20] An employee may take up to three days of leave in any 12 month period if the employee or family member is a victim of domestic or sexual violence. The leave may be with or without pay, at the discretion of the employer.[21] An employee may use the leave from work to do any of the following:

- Seek a protective injunction against domestic, sexual, dating, or repeat violence;
- Obtain medical care or mental health counseling related to the act of domestic or sexual violence;
- Obtain services from a victim services organization as a result of the act of domestic or sexual violence;
- Seek safe housing; or
- Seek legal assistance in addressing issues relating to the domestic or sexual violence, including attending or preparing for court proceedings.[22]

An employee is required to provide sufficient documentation of the act of domestic or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family. Additionally, he or she must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.[23]

Current Exemption Under Review

In 2007, the Legislature created a public records exemption for certain information documenting an act of domestic violence that is submitted to an agency[24] by an agency employee.[25] In 2008, the Legislature extended the same protection to victims of sexual violence.[26] Specifically, s. 741.313(7), F.S., protects from public disclosure personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee. In addition, a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, and any agency time sheet that reflects such a

[18] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.
[19] *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).
[20] Section 741.313(3), F.S.
[21] Section 741.313(2)(a), F.S.
[22] Section 741.313(2)(b), F.S.
[23] Section 741.313(4), F.S.
[24] For purposes of the public records exemption, "agency" means an agency as defined in s. 119.011(2), F.S. (*see* footnote 6 for definition).
[25] Chapter 2007-108, s. 1, Laws of Fla.
[26] Chapter 2008-254, s. 1, Laws of Fla.

request, is confidential and exempt from public record requirements until one year after the leave has been taken.[27]

This public records exemption stands repealed on October 2, 2013, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.[28]

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Criminal Justice Committee recommends that the Legislature retain the public records exemption established in s. 741.313(7), F.S. This recommendation is made in light of information gathered for the Open Government Sunset Review, indicating that there is a public necessity to continue to protect personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee because disclosure would jeopardize their safety and cause emotional distress.[29]

III. Effect of Proposed Changes:

This bill removes the repeal date in s. 741.313(7), F.S., thereby reenacting the public records exemption for certain personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee, including a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, and any agency time sheet that reflects such a request until one year after the leave has been taken.

The bill also makes clarifying drafting changes to the exemption.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that

[27] *Id.* The public necessity statement in the original legislation creating the exemption states that the leave request is temporary and available one year after the leave has been taken so as to provide continued public oversight of public moneys.
[28] Section 741.313(7)(c), F.S.
[29] According to a majority of survey responses (48 out of 65) from 23 state agencies and 41 city and county governmental entities, and input from the Florida Coalition Against Domestic Violence and the Florida Council Against Sexual Violence, this exemption should be reenacted because it protects information that is personal and highly sensitive, the release of which could subject the employee to embarrassment, emotional distress, escalation of violence, and could deter the employee from seeking assistance from the agency or availing themselves of the benefits of the statute. Twenty-seven respondents recommended reenactment with no other changes. Eight respondents thought law enforcement should have access to the information. Nine respondents suggested reenactment as well as deleting the one-year time limitation. (*But see* note 22 *supra* indicating that the original public necessity statement regarding the time limitation was to provide continued public oversight of public moneys.) Three respondents recommended repealing the exemption, while 14 had no opinion either way. Survey respondents also indicated receiving ten leave requests since January 2008. The First Amendment Foundation stated that it would not oppose reenacting the exemption because the exemption is sufficiently narrow. Survey responses from this Open Government Sunset Review are on file with the Senate Criminal Justice Committee in Tallahassee, Florida.

counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

This bill reenacts an existing public records exemption. The bill does not expand the scope of the exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is not required.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on March 14, 2013:
The CS differs from the original bill in that it makes clarifying drafting changes to the existing public records exemption.

B. Amendments:

None.

By the Committee on Criminal Justice

591-00645-13 2013304__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 741.313, F.S., which provides a public records exemption for certain records submitted to an agency by an employee who is a victim of domestic violence or sexual violence; eliminating the scheduled repeal of the exemption under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Subsection (7) of section 741.313, Florida Statutes, is amended to read:

741.313 Unlawful action against employees seeking protection.—

(7)(a) Personal identifying information that is contained in records documenting an act of domestic violence or sexual violence and that is submitted to an agency, as defined in chapter 119, by an agency employee under the requirements of this section is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) A written request for leave that is submitted by an agency employee under the requirements of this section and any agency time sheet that reflects such a request are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until 1 year after the leave has been taken.

~~(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2013, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic Criminal Justice

Bill Number SB 304 *(if applicable)*

Name Greg Pound

Amendment Barcode *(if applicable)*

Job Title DJJ

Address 9166 Sunrise Dr.
Street
Largo Fla.
City *State* *Zip*

Phone —

E-mail Savingsfamilies7@Gma...

Speaking: ☐ For ☐ Against ☒ Information

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/CS/SB 84
INTRODUCER:	Governmental Oversight and Accountability Committee, Community Affairs Committee, and Senator Diaz de la Portilla
SUBJECT:	Public-private Partnerships
DATE:	March 18, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	**Fav/CS**
2.	McKay	McVaney	GO	**Fav/CS**
3.			AGG	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/CS/SB 84 creates a new section of law to facilitate public-private partnerships, when cost-effective, to construct public-purpose projects. The bill provides legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose. The bill creates a task force to provide guidelines for public entities on the types of factors public entities should review and consider when processing requests for public-private partnership projects. The bill provides for notice to affected local jurisdictions as well as for comprehensive agreements between a public and a private entity. The bill specifies the requirements for such partnership. The bill lays out the financing sources for certain projects by a private entity. The applicability of sovereign immunity for public entities with respect to qualified projects is provided for in the bill.

The bill amends chapter 336, F.S., to authorize procedures for the creation and operation of public-private partnerships for transportation facilities within a county.

The bill creates sections 287.05712 and 336.71 of the Florida Statutes.

II. Present Situation:

Public-Private Partnerships

Overview

A public-private partnership (PPP) is a contractual agreement formed between a public agency and a private sector entity that allows for greater private sector participation in the delivery and financing of public building and infrastructure projects.[1] Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public.[2] In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.[3]

There are different types of PPPs with varying levels of private sector involvement. The most common is called a Design-Build-Finance-Operate (DBFO) transaction, where the government grants a private sector partner the right to develop a new piece of public infrastructure.[4] The private entity takes on full responsibility and risk for delivery and operation of the public project against pre-determined standards of performance established by government. The private entity is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a "shadow toll" or "availability charge"). Any increases in the user charge or payment for performance typically are set out in advance and regulated by a binding contract.[5]

Another PPP procurement process is the Unsolicited Proposal Procurement Model (UPPM). This allows for the receipt of unsolicited bids from private entities to contract for the design, construction, operation, and financing of public infrastructure.[6] Generally, the public entity requires a processing or review fee to cover costs for the technical and legal review.[7]

Florida Department of Transportation Public-Private Partnership

The Florida Department of Transportation (FDOT) currently has a public-private partnership program in place.[8] The Florida Legislature declared that there is a public need for rapid construction of safe and efficient transportation facilities for the purpose of travel within the state, and that it is in the public's interest to provide for the construction of additional safe, convenient, and economical transportation facilities.[9]

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[1] *See* The Federal Highway Administration, United States Department of Transportation, Innovative Program Delivery webpage, available at: http://www.fhwa.dot.gov/ipd/p3/defined/index.htm (last visited on January 15, 2013).
[2] *See generally* The National Council for Public-Private Partnerships webpage, *How PPPs Work*, available at: http://ncppp.org/howpart/index.shtml#define (last visited on January 15, 2013).
[3] *Id.*
[4] *See* The Oregon Department of Transportation, The Power of Public-Private Partnerships, available at: http://www.oregon.gov/ODOT/HWY/OIPP/docs/PowerofPublicPrivate050806.pdf (last visited on January 15, 2013).
[5] *Id.*
[6] *See Innovative Models for the Design, Build, Operation and Financing of Public Infrastructure*, John J. Fumero, at 3.
[7] *Id.*
[8] *See* s. 334.30, F.S.
[9] Section 334.30, F.S.

Florida law provides that a private transportation facility constructed pursuant to s. 334.30, F.S., must comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; FDOT rules, policies, procedures, and standards for transportation facilities; and any other conditions that FDOT determines to be in the public's best interest.[10]

Current law allows FDOT to advance projects programmed in the adopted 5-year work program using funds provided by public-private partnerships or private entities to be reimbursed from FDOT funds for the project.[11] In accomplishing this, FDOT may use state resources to participate in funding and financing the project as provided for under FDOT's enabling legislation for projects on the State Highway System.[12]

FDOT may receive or solicit proposals and, with legislative approval as evidenced by approval of the project in the department's work program, enter into agreements with private entities, or consortia thereof, for the building, operation, ownership, or financing of transportation facilities.[13] If FDOT receives an unsolicited solicitation or proposal, it is required to publish a notice in the Florida Administrative Register and a newspaper of general circulation stating that FDOT has received the proposal and it will accept other proposals for the same project.[14] In addition, FDOT requires an initial payment of $50,000 accompany any unsolicited proposal to cover the costs of evaluating the proposal.[15]

Current law governing FDOT's PPP provides for a solicitation process that is similar to the Consultants' Competitive Negotiation Act.[16] FDOT may request proposals from private entities for public-private transportation projects.[17] The partnerships must be qualified by FDOT as part of the procurement process outlined in the procurement documents.[18] These procurement documents must include provisions for performance of the private entity and payment of subcontractors, including surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees.[19] FDOT must rank the proposals in the order of preference. [20] FDOT may then begin negotiations with the top firm. If that negotiation is unsuccessful, FDOT must terminate negotiations and move to the second-ranked firm, and if unsuccessful again, move to the third-ranked firm.[21] FDOT must provide independent analyses of the proposed PPP that demonstrates the cost effectiveness and overall public benefit prior to moving forward with the procurement and prior to awarding the contract.[22]

[10] Section 334.30(3), F.S.
[11] Section 334.30(1), F.S.
[12] *Id.*
[13] *Id.*
[14] Section 334.30(6)(a), F.S.
[15] *See* Fla. Admin. Code R. 14-107.0011.
[16] *See* s. 287.055, F.S.
[17] Section 334.30(6)(a), F.S.
[18] Section 334.30(6)(b), F.S.
[19] Section 334.30(6)(c).
[20] *See* s. 334.30(6)(d), F.S., [i]n ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for state funds to deliver the project.
[21] Section 334.30(6)(d), F.S.
[22] Section 334.30(6)(e), F.S.

Current law authorizes FDOT to use innovative finance techniques associated with PPPs, including federal loans, commercial bank loans, and hedges against inflation from commercial banks or other private sources.[23] PPP agreements under s. 334.30, F.S., must be limited to a term not to exceed 50 years. In addition, FDOT may not utilize more than 15 percent of total federal and state funding in any given year to fund PPP projects.[24]

Procurement of Personal Property and Services

Chapter 287, F.S., regulates state agency[25] procurement of personal property and services. The Department of Management Services (department) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[26] The Division of State Purchasing in the department establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.[27]

Current law requires contracts for commodities or contractual services in excess of $35,000 to be procured utilizing a competitive solicitation process.[28,29]

The Consultants' Competitive Negotiation Act

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

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted in 1973,[30] to specify the procedures to follow when procuring the services of architects and engineers. The CCNA did not prohibit discussion of compensation in the initial vendor selection phase until 1988, when the Legislature enacted a provision requiring that consideration of compensation occur only during the selection phase.[31]

Currently, the CCNA specifies the process to follow when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or

[23] Section 334.30(7), F.S.
[24] Section 334.30(12), F.S.
[25] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[26] *See* ss. 287.032 and 287.042, F.S.
[27] Chapter 287, F.S., provides requirements for the procurement of personal property and services. Part I of that chapter pertains to commodities, insurance, and contractual services, and part II pertains to motor vehicles.
[28] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold provided in s. 287.017, F.S., to be competitively bid.
[29] As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[30] Chapter 73-19, L.O.F.
[31] Chapter 88-108, L.O.F.

registered surveyor and mapper.[32] The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:

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

The CCNA provides a two-phase selection process.[33] In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the three bidders, ranked in order of preference, that it considers most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the three most highly qualified bidders including: willingness to meet time and budget requirements; past performance; location; recent, current, and projected firm workloads; volume of work previously awarded to the firm; and whether the firm is certified as a minority business.[34]

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid. Current law defines the term "compensation" to mean "the amount paid by the agency for professional services," regardless of whether stated as compensation or as other types of rates.[35]

In the second phase, the "competitive negotiation," the agency then negotiates compensation with the most qualified of the three selected firms. If a satisfactory contract cannot be negotiated, the agency must then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract. If a satisfactory contract cannot be negotiated with any of the three selected, the agency must begin the selection process again.

Procurement of Construction Services

Chapter 255, F.S., regulates construction services[36] for public property and publically owned buildings. The Department of Management Services is responsible for establishing, through administrative rules, the following:

- Procedures for determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts;
- Procedures for awarding each state agency construction project to the lowest qualified bidder;
- Procedures to govern negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the secretary of the Department of Management Services to be in the best interest of the state; and

[32] Section 287.055, F.S.
[33] Section 287.055(4) and (5), F.S.
[34] *See* s. 287.055(4)(b), F.S.
[35] Section 287.055(2)(d), F.S.
[36] As defined in s. 255.072(2), F.S., "construction services" means all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or any other improvements to real property. The term "construction services" does not include contracts or work performed for the Department of Transportation.

- Procedures for entering into performance-based contracts for the development of public facilities when the Department of Management Services determines the use of such contracts to be in the best interest of the state.[37]

State contracts for construction projects that are projected to cost in excess of $200,000 must be competitively bid.[38] In addition, such projects must be advertised in the Florida Administrative Register at least 21 days prior to the bid opening.[39,40] Counties, municipalities, special districts,[41] or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of $300,000.[42]

III. Effect of Proposed Changes:

Section 1 creates s. 287.05712, F.S., relating to public-private partnerships.

Definitions

Subsection (1) provides the following relevant definitions, amongst others. "Responsible public entity" means a county, municipality, school board, or university, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project. "Qualifying project" means a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, power-generating facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; or a water, wastewater, or surface water management facility or other related infrastructure.

Legislative Findings and Intent

In subsection (2), the bill specifies that the Legislature finds that there is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion,

[37] Section 255.29, F.S.
[38] *See* 60D-5.0073, F.A.C.; *see also* s. 255.0525, F.S.
[39] Section 255.0525(1), F.S.
[40] State construction projects that are projected to exceed $500,000 are required to be published 30 days prior to bid opening in the Florida Administrative Register, and at least once in a newspaper of general circulation in the county where the project is located. *See* s. 255.0525(1), F.S.
[41] As defined in s. 189.403(1), F.S., "special district" means a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), F.S., special districts must be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.
[42] *See* s. 255.20(1), F.S.

equipping, maintenance, operation, implementation, or installation of public projects, that such public need may not be wholly satisfied by existing methods of procurement, and that it has been demonstrated that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public. The Legislature declares it is the intent of this bill is to encourage investment in the state by private entities, to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need, and to provide the greatest possible flexibility to public and private entities to contract for the provision of public services.

Task Force

Subsection (3) creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force to establish guidelines for public entities on the types of factors public entities should review and consider when processing requests for public-private partnership projects. The task force members are follows:

- One member of the Senate, appointed by the President of the Senate.
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- The Secretary of Management Services or his or her designee.
- Six members appointed by the Governor, as follows:
  - One county government official.
  - One municipal government official.
  - One district school board member.
  - Three representatives of the business community.

The task force must provide guidelines to public entities no later than July 1, 2014, to include:

- Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal.
- Reasonable criteria for choosing among competing proposals.
- Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.
- Authorization for accelerated selection and review and documentation timelines for proposals involving a qualifying project that the responsible public entity deems a priority.
- Procedures for financial review and analysis.
- Consideration of the nonfinancial benefits of a proposed qualifying project.
- A mechanism for the appropriating body to review a proposed comprehensive agreement before execution.
- Analysis of the adequacy of the information released when seeking competing proposals, and providing for the enhancement of that information, if deemed necessary, to encourage competition, as well as establishing standards to maintain the confidentiality of financial and proprietary terms of an unsolicited proposal, which shall be disclosed only in accordance with the bidding procedures of competing proposals.
- Authority for the responsible public entity to engage the services of qualified professionals.

Procurement Procedures

Subsection (4) provides that a responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrade, operation, ownership, or financing of facilities. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal.

The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The timeframe in which other proposals may be accepted may be determined by the public entity, but must be no less than 21 days, and no more than 120 days.

A public entity that is a school board may enter into a comprehensive agreement under this section of law only with the approval of the local governing body.

Before approval, the responsible public entity must determine that the proposed project:

- Is in the public's best interest.
- Is for a facility that is owned by the responsible public entity or will be conveyed to the responsible public entity.
- Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity.
- Has adequate safeguards in place to ensure that the responsible public entity or the private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
- Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

Projects Approval Requirements

Subsection (5) provides that an unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

- A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
- A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
- The name and address of a person who may be contacted for further information concerning the proposal.

- The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.
- Any additional material or information that the responsible public entity reasonably requests.

Project Qualification and Process

Subsection (6) specifies that the private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects. The responsible public entity must ensure that provisions are made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05, F.S. Also the responsible public entity must ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors as well as ensure that provisions are made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

Notice to Affected Local Jurisdictions

Subsection (7) provides that the responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

Interim Agreement

Subsection (8) specifies that before or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity proposing the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and

development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

Comprehensive Agreements

Subsection (9) specifies that before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:
- The delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity.
- The review of the plans and specifications for the qualifying project by the responsible public entity and, if the plans and specifications conform to standards acceptable to the responsible public entity, the approval by the responsible public entity.
- The inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.
- The maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self insurance.
- The monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.
- The periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.
- The procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity.
- The fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project.
- The duties of the private entity, including the terms and conditions that the responsible public entity determine serve the public purpose of this Act.

The comprehensive agreement may include other specified provisions.

Fees

Subsection (10) provides that an agreement entered into pursuant to this bill may authorize the private entity to impose fees for the use of the facility. The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships. The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive

agreement. The responsible public entity may lease existing fee for-use facilities through a public-private partnership agreement. Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement. A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

Financing

Subsection (11) provides that a private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement. The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this Act. The responsible public entity may use innovative finance techniques associated with a public-private partnership under this Act, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, and the required payment obligation must be appropriated before other noncontractual obligations of the responsible public entity.

Powers and Duties of the Private Entity

Subsection (12) specifies that the private entity shall develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement. The private entity shall maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement. Also, the private entity shall cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity. And the private entity shall comply with the comprehensive agreement and any lease or service contract.

Expiration or Termination of Agreements

Subsection (13) provides that upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity.

Sovereign Immunity

Subsection (14) provides that this bill does not waive the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

Construction

Subsection (15) provides that the bill is to be liberally construed to effectuate its purposes. The Act does not waive any requirement of s. 287.055, F.S.

Section 2 creates s. 336.71, F.S., on the creation of public-private transportation facilities in a county. The provisions in this section appear to mirror provisions in s. 334.30, F.S.

A county may receive or solicit proposals and enter into agreements with private entities or consortia thereof to build, operate, own, or finance highways, bridges, multimodal transportation systems, transit-oriented development nodes, transit stations, and related transportation facilities located solely within the county, including municipalities therein. Before approval, the county must determine that a proposed project:

- Is in the best interest of the public.
- Would not require county funds to be used unless the project is on the county road system or would provide increased mobility on the county road system.
- Would have adequate safeguards.
- Would be owned by the county upon completion or termination of the agreement.

The county shall ensure that all reasonable costs to the county related to transportation facilities that are not part of the county road system are borne by the private entity that develops or operates the facilities.

The county may request proposals and receive unsolicited proposals for public-private transportation facilities. Agreements entered into pursuant to this section may authorize the county or the private project owner, lessee, or operator to impose, collect, and enforce tolls or fares for the use of the transportation facility. Each public-private transportation facility constructed pursuant to this section must comply with all requirements of federal, state, and local laws. The governing body of the county may exercise any of its powers, including eminent domain, to facilitate the development and construction of transportation projects pursuant to this section. Except as otherwise provided in this section, this section is not intended to amend existing law by granting additional powers to or imposing further restrictions on local governmental entities with regard to regulating and entering into cooperative arrangements with the private sector for the planning, construction, and operation of transportation facilities. This section does not authorize a county or counties to enter into agreements with private entities or consortia thereof to build, operate, own, or finance a transportation facility that would extend beyond the geographical boundaries of a single county.

Public-private partnership agreements under this section shall be limited to a term not exceeding 75 years.

Section 3 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

An agreement entered into pursuant to this bill may authorize the private entity to impose fees for the use of the facility. A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

B. Private Sector Impact:

The bill may provide for more opportunities for the private sector to enter into contracts for certain qualified projects with political subdivisions of the state.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on political subdivisions of the state that enter into public-private partnerships. Expenditures would be based on currently unidentified agreements with public-private partnerships. This bill may provide for more projects at a lower risk to political subdivisions of the state.

The bill creates a task force to be administratively supported by an unspecified department, which would presumably be responsible for reimbursing the travel and per diem expenses incurred by task force members, if any.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that "the department" will provide support to the task force, but doesn't specify which department.

The provisions of the bill address partnerships between local governments and private contractors, so the Legislature may wish to consider whether someone from the Department of Economic Opportunity should be on the task force, instead of the Secretary of DMS.

VIII. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on March 14, 2013:
The CS/CS makes the following changes to the CS:

- Creates a Partnership for Public Facilities and Infrastructure Act Guidelines Task Force;
- Extends the timeframe in which proposals may be accepted;
- Authorizes the use of interim agreements, which allow for specified terms to be agreed to prior to entering into a comprehensive agreement;
- Authorizes the creation of public-private partnerships for transportation facilities within a county; and
- Makes technical and clarifying changes.

CS by Community Affairs on January 23, 2013:
The CS makes technical and clarifying changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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03/14/2013	.	
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The Committee on Governmental Oversight and Accountability (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 287.05712, Florida Statutes, is created to read:

287.05712 Public-private partnerships.—

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

(a) "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.

(b) "Develop" means to plan, design, finance, lease,

acquire, install, construct, or expand.

(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

(d) "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project.

(e) "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

(f) "Operate" means to finance, maintain, improve, equip, modify, or repair.

(g) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public-benefit corporation, nonprofit entity, or other private business entity.

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or

infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; or

3. A water, wastewater, or surface water management facility or other related infrastructure.

(j) "Responsible public entity" means a county, municipality, school board, or university, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) "Revenues" means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(l) "Service contract" means a contract between a public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective

acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods.

2. There are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.

3. There may be state and federal tax incentives that promote partnerships between public and private entities to develop and operate qualifying projects.

4. A procurement under this section serves the public purpose of this section if such procurement facilitates the timely development or operation of a qualifying project.

(b) It is the intent of the Legislature to encourage investment in the state by private entities; to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing

to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

(3) PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE.-

(a) The Partnership for Public Facilities and Infrastructure Act Guidelines Task Force is created to establish guidelines for public entities on the types of factors public entities should review and consider when processing requests for public-private partnership projects pursuant to this section, including consistent requirements for private entities seeking to participate in the construction or development of a qualifying project throughout the state.

(b) The task force shall consist of nine members, as follows:

1. One member of the Senate, appointed by the President of the Senate.

2. One member of the House of Representatives, appointed by the Speaker of the House of Representatives.

3. The Secretary of Management Services or his or her designee.

4. Six members appointed by the Governor, as follows:

a. One county government official.

b. One municipal government official.

c. One district school board member.

d. Three representatives of the business community.

(c) Task force members shall serve for a term of 2 years each and shall elect a chair and a vice chair. The task force shall meet as necessary. Administrative and technical support shall be provided by the department. Task force members shall

serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061. The task force shall terminate on July 1, 2015.

(d) The task force shall provide guidelines to public entities no later than July 1, 2014. The guidelines shall include:

1. Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal.

2. Reasonable criteria for choosing among competing proposals.

3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.

4. Authorization for accelerated selection and review and documentation timelines for proposals involving a qualifying project that the responsible public entity deems a priority.

5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project.

6. Consideration of the nonfinancial benefits of a proposed qualifying project.

7. A mechanism for the appropriating body to review a proposed comprehensive agreement before execution.

8. Analysis of the adequacy of the information released when seeking competing proposals, and providing for the enhancement of that information, if deemed necessary, to encourage competition, as well as establishing standards to maintain the confidentiality of financial and proprietary terms

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of an unsolicited proposal, which shall be disclosed only in accordance with the bidding procedures of competing proposals.

9. Authority for the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity. Professional services as defined in s. 287.055 must be engaged pursuant to s. 287.055.

(e) The establishment of guidelines pursuant to this section by the task force or the adoption of such guidelines by a public entity is not required for the public entity to request or receive proposals for a qualifying project or to enter into a comprehensive agreement for a qualifying project. A public entity may adopt guidelines before the establishment of guidelines by the task force, which may remain in effect as long as such guidelines are not inconsistent with the guidelines established by the task force. A guideline that is inconsistent with the guidelines of the task force must be amended as necessary to maintain consistency with the task force guidelines.

(4) PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for

the building, upgrading, operating, ownership, or financing of facilities.

(a) The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section. The fee must be sufficient to pay the costs of evaluating the proposal. The responsible public entity may engage the services of a private consultant to assist in the evaluation.

(b) The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept other proposals for the same project. The timeframe within which the public entity may accept other proposals shall be determined by the public entity on a project-by-project basis based upon the complexity of the project and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. A copy of the notice must be mailed to each local government in the affected area. The scope of the proposal may be publicized for the purpose of soliciting competing proposals; however, the financial terms of the proposal may not be disclosed until the terms of all competing bids are simultaneously disclosed in accordance with the applicable law governing procurement procedures for the qualifying project.

(c) A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.

(d) Before approval, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest.

2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.

3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity.

4. Has adequate safeguards in place to ensure that the responsible public entity or the private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.

5. Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

(e) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (11), the project cost, revenues by source, available financing, major assumptions, internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project, and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the agreement.

(f) In considering an unsolicited proposal, the responsible

public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

(5) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments

over time.

(f) Additional material or information that the responsible public entity reasonably requests.

(6) PROJECT QUALIFICATION AND PROCESS.—

(a) The private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that provision is made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative

design techniques or cost-reduction terms, and finance plans. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the public entity is not satisfied with the results of the negotiations, the public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.

2. The estimated cost of the qualifying project is

reasonable in relation to similar facilities.

3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

(7) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

(a) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project.

(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending

plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

(8) INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

(a) Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.

(b) Establish the process and timing of the negotiation of

the comprehensive agreement.

(c) Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

(9) COMPREHENSIVE AGREEMENT.—

(a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

1. The delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.

2. The review of the plans and specifications for the qualifying project by the responsible public entity and, if the plans and specifications conform to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

3. The inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.

4. The maintenance of a policy of public liability

insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. The monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. The periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. The procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments,

or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. The duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.

(b) The comprehensive agreement may include:

1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.

(10) FEES.—An agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships.

(b) The public-private partnership agreement must ensure

that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a public-private partnership agreement.

(d) Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

(11) FINANCING.—

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.

(b) The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a

qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing by the responsible public entity with a pledge of security interest, and any such provision is void.

(d) A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, from the enterprise or other government fund from which the qualifying projects will be funded. This required payment obligation must be appropriated before other noncontractual obligations payable from the same enterprise or other government fund.

(12) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

(a) The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.

2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.

3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by

the responsible public entity in accordance with the provisions of the comprehensive agreement.

4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and such other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

(13) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all

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financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(14) SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(15) CONSTRUCTION.—This section shall be liberally construed to effectuate the purposes of this section.

(a) This section does not limit a state agency or political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory authority.

(b) Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.

(c) This section does not waive any requirement of s. 287.055.

Section 2. Section 336.71, Florida Statutes, is created to read:

336.71 Public-private transportation facilities.—

(1) A county may receive or solicit proposals and enter into agreements with private entities or consortia thereof to build, operate, own, or finance highways, bridges, multimodal transportation systems, transit-oriented development nodes, transit stations, and related transportation facilities located solely within the county, including municipalities therein. Before approval, the county must determine that a proposed project:

(a) Is in the best interest of the public.

(b) Would not require county funds to be used unless the project is on the county road system or would provide increased mobility on the county road system.

(c) Would have adequate safeguards to ensure that additional costs or unreasonable service disruptions are not realized by the traveling public and citizens of the state in the event of default or cancellation of the agreement by the county.

(d) Would be owned by the county upon completion or termination of the agreement.

(2) The county shall ensure that all reasonable costs to the county related to transportation facilities that are not part of the county road system are borne by the private entity that develops or operates the facilities. The county shall also ensure that all reasonable costs to the county and substantially affected local governments and utilities related to the private transportation facility are borne by the private entity for transportation facilities that are owned by private entities. For projects on the county road system or that provide increased mobility on the county road system, the county may use county resources to participate in funding and financing the project pursuant to the county's financial policies and ordinances.

(3) The county may request proposals and receive unsolicited proposals for public-private transportation facilities. Upon a determination by the governing body of the county to issue a request for proposals, the governing body of the county must publish a notice of the request for proposals in a newspaper of general circulation in the county at least once a week for 2 weeks. Upon receipt of an unsolicited proposal, the governing body of the county must publish a notice in a newspaper of general circulation in the county at least once a week for 2 weeks stating that it has received the proposal and

will accept, for 60 days after the initial date of publication, other proposals for the same project purpose. A copy of the notice must be mailed to the governing body of each local government in the affected area. After the public notification period has expired, the governing body of the county shall rank the proposals in order of preference. In ranking the proposals, the governing body of the county shall consider professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans, and the need for county funds to complete the project. If the governing body of the county is not satisfied with the results of the negotiations, it may terminate negotiations with the proposer. If negotiations are unsuccessful, the governing body of the county may negotiate with the private entity that has the next highest ranked proposal, using the same procedure. If only one proposal is received, the governing body of the county may negotiate in good faith and may, if not satisfied with the results, terminate negotiations with the proposer. The governing body of the county may, at its discretion, reject all proposals at any point in the process up to completion of a contract with the proposer. Any private entity submitting an unsolicited proposal shall submit with the proposal a fee of $25,000 to be used by the governing body of the county for the costs associated with the review and analysis of the proposal, and such entity shall remain liable for any additional costs and expenses incurred by the governing body of the county for such review and analysis.

(4) Agreements entered into pursuant to this section may authorize the county or the private project owner, lessee, or operator to impose, collect, and enforce tolls or fares for the

use of the transportation facility. However, the amount and use of toll or fare revenue shall be regulated by the county to avoid unreasonable costs to users of the facility.

(5) Each public-private transportation facility constructed pursuant to this section shall comply with all requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the county's rules, policies, procedures, and standards for transportation facilities; and any other conditions that the county determines to be in the best interest of the public.

(6) The governing body of the county may exercise any of its powers, including eminent domain, to facilitate the development and construction of transportation projects pursuant to this section. The governing body of the county may pay all or part of the cost of operating and maintaining the facility and may provide services to the private entity, for which services it shall receive full or partial reimbursement.

(7) Except as otherwise provided in this section, this section is not intended to amend existing law by granting additional powers to or imposing further restrictions on local governmental entities with regard to regulating and entering into cooperative arrangements with the private sector for the planning, construction, and operation of transportation facilities.

(8) Public-private partnership agreements under this section shall be limited to a term not exceeding 75 years.

(9) This section does not authorize a county or counties to enter into agreements with private entities or consortia thereof to build, operate, own, or finance a transportation facility

that would extend beyond the geographical boundaries of a single county.

Section 3. This act shall take effect July 1, 2013.

========== 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-private partnerships; creating s. 287.05712, F.S.; providing definitions; providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose; creating a task force to establish specified guidelines; providing procurement procedures; providing requirements for project approval; providing project qualifications and process; providing for notice to affected local jurisdictions; providing for interim and comprehensive agreements between a public and a private entity; providing for use fees; providing for financing sources for certain projects by a private entity; providing powers and duties of private entities; providing for expiration or termination of agreements; providing for the applicability of sovereign immunity for public entities with respect to qualified projects; providing for construction of the act; creating s. 336.71, F.S.; authorizing counties to enter into public-private

partnership agreements for construction, operation, ownership, and financing of transportation facilities; providing requirements and limitations for such agreements; providing procurement procedures; requiring a fee for certain proposals; providing an effective date.

By the Committee on Community Affairs; and Senator Diaz de la Portilla

578-01022-13 201384c1

A bill to be entitled

An act relating to public-private partnerships; creating s. 287.05712, F.S.; providing definitions; providing legislative findings and intent relating to the construction or improvement by private entities of facilities used predominantly for a public purpose; providing procurement procedures; providing requirements for project approval; providing project qualifications and process; providing for notice to affected local jurisdictions; providing for comprehensive agreements between a public and a private entity; providing for use fees; providing for financing sources for certain projects by a private entity; providing powers and duties for private entities; providing for expiration or termination of agreements; providing for the applicability of sovereign immunity for public entities with respect to qualified projects; providing for construction of the act; providing an effective date.

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

Section 1. Section 287.05712, Florida Statutes, is created to read:

287.05712 Public-private partnerships.—

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

(a) "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.

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(b) "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand.

(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

(d) "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project.

(e) "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

(f) "Operate" means to finance, maintain, improve, equip, modify, or repair.

(g) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public-benefit corporation, nonprofit entity, or other private business entity.

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, power-generating facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used

or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; or

3. A water, wastewater, or surface water management facility or other related infrastructure.

(j) "Responsible public entity" means a county, municipality, school board, or university, or any other political subdivision of the state; a public body politic and corporate; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) "Revenues" means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(l) "Service contract" means a contract between a public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of the facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of public projects, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods.

2. There are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.

3. There are state and federal tax incentives that promote partnerships between public and private entities to develop and operate qualifying projects.

4. A procurement under this section serves the public purpose of this section if such action facilitates the timely development or operation of a qualifying project.

(b) It is the intent of the Legislature to encourage investment in the state by private entities; to facilitate various bond financing mechanisms, private capital, and other

funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

(3) PROCUREMENT PROCEDURES.—A responsible public entity may receive unsolicited proposals or may solicit proposals for qualifying projects and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for the building, upgrade, operation, ownership, or financing of facilities.

(a) The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section. The fee must be sufficient to pay the costs of evaluating the proposal. The responsible public entity may engage the services of a private consultant to assist in the evaluation.

(b) The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept for 21 days after the initial date of publication other proposals for the same project. A copy of the notice must be mailed to each local government in the affected area. The scope of the proposal may be publicized for the purpose of soliciting competing proposals; however, the financial terms of the proposal may not be disclosed until the

terms of all competing bids are simultaneously disclosed in accordance with the applicable law governing procurement procedures for the qualifying project.

(c) A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.

(d) Before approval, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest;

2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity;

3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the agreement by the responsible public entity;

4. Has adequate safeguards in place to ensure that the responsible public entity or the private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes; and

5. Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.

(e) Before signing any comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (9), the project cost, revenues by source, available financing, major assumptions, internal rate of return on private investments, if any governmental funds are assumed in order to deliver a cost-

feasible project, and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the agreement.

(f) In considering an unsolicited proposal, the responsible public entity may require from the private entity an investment-grade technical study prepared by a nationally recognized expert who is accepted by national bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants having relevant experience.

(4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure any necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for further information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time.

(f) Any additional material or information that the responsible public entity reasonably requests.

(5) PROJECT QUALIFICATION AND PROCESS.—

(a) The private entity must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provisions are made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that provisions are made for the transfer of the private entity's obligations if the comprehensive agreement is terminated or a material default occurs.

(c) After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In

ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the public entity is not satisfied with the results of the negotiations, the public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a governmental facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

1. There is a public need for or benefit derived from a

project of the type that the private entity proposes as the qualifying project.

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.

3. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

(6) NOTICE TO AFFECTED LOCAL JURISDICTIONS.—

(a) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the proposal to each affected local jurisdiction when considering a proposal for a qualifying project.

(b) Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project may, within 60 days after receiving the notice, submit in writing any comments to the responsible public entity and

indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan. The responsible public entity shall consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. If an affected local jurisdiction fails to respond to the responsible public entity within the time provided in this paragraph, the nonresponse is deemed an acknowledgement by the affected local jurisdiction that the qualifying project is compatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, or other governmental spending plan.

(7) COMPREHENSIVE AGREEMENT.—

(a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

1. The delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.

2. The review of the plans and specifications for the qualifying project by the responsible public entity and, if the plans and specifications conform to standards acceptable to the responsible public entity, the approval by the responsible

public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

3. The inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the public entity in accordance with the comprehensive agreement.

4. The maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. The monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. The periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. The procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must

provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. The fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. The duties of the private entity, including the terms and conditions that the responsible public entity determine serve the public purpose of this section.

(b) The comprehensive agreement may include:

1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local

jurisdiction, to the affected local jurisdiction for public use.

(8) FEES.—An agreement entered into pursuant to this section may authorize the private entity to impose fees for the use of the facility. The following provisions apply to the agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through agreements with public-private partnerships.

(b) The public-private partnership agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a public-private partnership agreement.

(d) Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.

(9) FINANCING.—

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.

(b) The responsible public entity may lend funds to private

entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing by the responsible public entity with a pledge of security interest, and any such provisions are void.

(d) A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, and the required payment obligation must be appropriated before other noncontractual obligations of the responsible public entity.

(10) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

(a) The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in

accordance with the provisions of the comprehensive agreement.

2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.

3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity.

4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and any other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

(11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the

expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(12) SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of the state, any responsible public entity, any affected local jurisdiction, or any officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with

any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(13) CONSTRUCTION.—This section shall be liberally construed to effectuate the purposes of this section.

(a) This section does not limit any state agency or political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory authority.

(b) Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.

(c) This section does not waive any requirement of s. 287.055.

Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic PPP

Bill Number 84 *(if applicable)*

Name Richard Watson

Amendment Barcode _____ *(if applicable)*

Job Title Legislative Counsel

Address P.O. Box 10038
Street
Tallahassee, FL 32302
City *State* *Zip*

Phone 850 222 0000

E-mail rick@rwatsonandassociates.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Associated Builders and Contractors of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic PPP

Bill Number 84 *(if applicable)*

Name Jon Costello

Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____
Street
_____
City *State* *Zip*

Phone _____

E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic Public-Private Partnerships Bill Number SB 84 *(if applicable)*

Name Mark Anderson Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 121 N. Monroe St. Phone 813-205-0658
Street

Tallahassee, FL 32301 E-mail _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing Nassau 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic SB84 - Public-Private Partnerships Bill Number SB 84 *(if applicable)*

Name LAURA LENHART Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ Phone _____
Street

_____ E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Banking and Insurance
Children, Families, and Elder Affairs
Ethics and Elections
Rules
Transportation

JOINT COMMITTEE:
Joint Committee on Administrative Procedures

SENATOR MIGUEL DIAZ de la PORTILLA
40th District

March 13, 2013

The Honorable Jeremy Ring
Chair, Governmental Oversight and Accountability

Via email

Dear Chairman Ring:

My Senate Bill CS/SB 84, Public-private Partnerships, is on the agenda in the Governmental Oversight and Accountability meeting on March 14. Thank you for putting this great bill on the agenda.

I regret that due to a personal business matter, I need to be in Miami tomorrow. I respectfully request that my legislative assistant, Pat Gosney, present the bill on my behalf.

Thank you.

Personal regards,

Miguel Diaz de la Portilla
State Senator, District 40

REPLY TO:
❒ 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
❒ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 60
INTRODUCER:	Health Policy Committee and Senate Hays
SUBJECT:	Public Records/Personal Identifying Information of Dept. of Health Personnel
DATE:	March 14, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McElheney	Stovall	HP	**Fav/CS**
2.	Naf	McVaney	GO	**Favorable**
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 60 creates a public records exemption for certain personal identification and location information of:

- Current or former Department of Health (DOH) personnel whose duties include the investigation or prosecution of complaints against health care practitioners or the inspection of practitioners or facilities licensed by the DOH; and
- Spouses and children of such current or former DOH personnel.

The exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

This bill substantially amends section 119.071 of the Florida Statutes.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] It

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[11] The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12]

Public Records Exemptions for Public Employee Identification and Location Information

Current law provides public records exemptions for identification and location information of certain current or former public employees and their spouses and children.[13] Public employees covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;[14]
- Firefighters;[15]
- Justices and judges;[16]
- Local and statewide prosecuting attorneys;[17]
- Magistrates, administrative law judges, and child support hearing officers;[18]
- Local government agency and water management district human resources administrators;[19]
- Code enforcement officers;[20]
- Guardians ad litem;[21]
- Specified Department of Juvenile Justice Personnel;[22]
- Public defenders and criminal conflict and civil regional counsel;[23]
- Investigators or inspectors of the Department of Business and Professional Regulation;[24] and
- County tax collectors.[25]

Although the types of exempt information vary, the following information is exempt[26] from public records requirements for all the above-listed public employees:

[11] Section 119.15(3), F.S.
[12] Section 119.15(6)(b), F.S.
[13] *See* s. 119.071(4)(d), F.S.
[14] *See* s. 119.071(4)(d)1.a., F.S.
[15] *See* s. 119.071(4)(d)1.b., F.S.
[16] *See* s. 119.071(4)(d)1.c., F.S.
[17] *See* s. 119.071(4)(d)1.d., F.S.
[18] *See* s. 119.071(4)(d)1.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.
[19] *See* s. 119.071(4)(d)1.f., F.S.
[20] *See* s. 119.071(4)(d)1.g., F.S.
[21] *See* s. 119.071(4)(d)1.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.
[22] *See* s. 119.071(4)(d)1.i., F.S.
[23] *See* s. 119.071(4)(d)1.j, F.S.
[24] *See* s. 119.071(4)(d)1.k, F.S.
[25] *See* s. 119.071(4)(d)1.l, F.S.
[26] 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 of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by the children of the public employees.

If exempt information is held by an agency[27] that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.[28]

Department of Health

Regulatory and Reporting Duties

The DOH is responsible for the licensure and regulation of a variety of health care practitioners to ensure that those health care practitioners comply with the rules and standards set by the Legislature, professional boards, and the DOH.[29] Such regulation includes periodic inspections of facilities of health care practitioners.[30] The DOH may issue citations for violations of law or rule that do not pose a serious threat to patient safety or involve a standard of care violation that resulted in patient injury.[31]

The DOH also is responsible for investigating complaints against health care practitioners. It must investigate any complaint that is legally sufficient and that meets other statutory requirements,[32] and may initiate an investigation if it believes a violation of law or rule has

public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

[27] Section 119.011(2), F.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 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.

[28] Section 119.071(4)(d)2., F.S.

[29] *See* ss. 20.43(1)(g), 456.013(1)(a), and 456.069, F.S. Regulated professions include acupuncture; general medicine; osteopathic medicine; podiatric medicine; optometry; nursing; pharmacy; dentistry; speech-language pathology and audiology; nursing home administration; occupational therapy; athletic training; orthotists and prosthetists; massage therapy; opticianry; hearing aid specialists; physical therapy; psychology, including school psychologists; clinical social work; marriage and family therapy; mental health counseling; naturopathy; midwifery; nursing assistants; respiratory therapy; dietetics and nutrition practice; electrolysis; medical physicists; emergency medical technicians and paramedics; and radiology (*see* s. 20.43(3)(g) and 468.304, F.S.).

[30] Section 456.069, F.S., authorizes such routine inspections; the DOH's bill analysis states that DOH personnel are required to complete routine inspections (the DOH bill analysis, dated November 26, 2012, is on file with the Senate Governmental Oversight and Accountability Committee).

[31] Section 456.077, F.S.

[32] The complaint must also be signed by the complainant; however, the DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true (s. 456.073(1), F.S.).

occurred.[33] Such an investigation may result in an administrative case against the health care practitioner's license.[34]

The DOH not only conducts investigations of and prosecutes violations of regulatory laws and rules; it also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.[35]

Personal Identification and Location Information of DOH Employees

Currently, the personal identification and location information of current or former personnel of the Department of Health (DOH) whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the DOH, and that of such DOH personnel's spouses and children, is not exempt from public records requirements.

III. Effect of Proposed Changes:

The bill expands the current public records exemptions for identification and location information of certain public employees to include DOH personnel whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the DOH, and their spouses and children.[36] The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, and photographs of such DOH personnel.
- The names, home addresses, telephone numbers, and places of employment of the spouses and children of such DOH personnel.
- The names and locations of schools and day care facilities attended by the children of such DOH personnel.

The bill provides that the exemption may be maintained only if such DOH personnel have made reasonable efforts to protect such information from being accessible through other means available to the public.

The exemption is subject to an existing general requirement that if exempt information is held by an agency that is not the employer of the protected agency personnel, then the protected agency personnel must submit to that agency a written request to maintain the public records exemption.

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[33] Section 456.073(1), F.S. A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred (*id*.).

[34] *See* s. 456.073, F.S. Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board (s. 456.073(2), F.S.). If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee; if the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint (s. 456.073(4), F.S.).

[35] Section 456.066, F.S.

[36] According to the DOH bill analysis, the personal identifying information of approximately 240 current or former DOH personnel and that of their families would be exempt; such personnel includes investigators, inspectors, doctors, nurses, attorneys, and other employees whose duties include the investigation or prosecution of complaints against health care practitioners or the inspection of licensed practitioners or facilities (the DOH bill analysis, dated November 26, 2012, is on file with the Senate Governmental Oversight and Accountability Committee).

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2018, unless reviewed and reenacted by the Legislature.

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

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill creates a new public records exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to the new public records exemption and because agencies could incur additional administrative costs to

comply with the new public records exemption. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Incidents Involving DOH Inspectors and Investigators

DOH inspectors and investigators have reported incidents of threats and abuse.[37] According to the DOH, from November 2011 through mid-2012, a complainant who was displeased with psychiatric treatment provided to a relative subsequent to a Baker Act harassed and threatened telephone staff, investigators, and supervisors.[38]

In another case, a man made a threatening phone call to a DOH attorney who he felt was preventing him from receiving medications. During the phone call, the man told the DOH attorney that she would "pay for it" and that the DOH would find her "dead in a pool of blood."[39]

A DOH investigator who went to an investigation subject's house to serve an order to compel a mental and physical examination was invited into the house by the subject's husband. The investigator discovered upon entering the house that the husband had drawn his gun.[40]

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Health Policy on February 21, 2013:

The CS differs from the original bill in that it does not protect the personal identifying information of personnel whose duties *support* the investigation and prosecution of complaints filed against healthcare professionals or the inspection of practitioners and facilities regulated by the DOH.

B. Amendments:

None.

[37] A summary of the incidents was prepared by DOH staff (on file with the Senate Governmental Oversight and Accountability Committee).
[38] *See* the incident summary referenced in footnote 38.
[39] *Id*.
[40] *Id*.

By the Committee on Health Policy; and Senator Hays

588-01735-13 201360c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain identifying information of specific current and former personnel of the Department of Health and the spouses and children of such personnel, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families ~~Family Services~~ whose

588-01735-13 201360c1

duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.35; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

c. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1).

d. The home addresses, telephone numbers, social security

numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the

Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former

guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from being accessible through other means available to the public.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel,

and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

l. The home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the county tax collector has made reasonable

efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

m. The home addresses, telephone numbers, and photographs of current or former personnel of the Department of Health whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the Department of Health; the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the

exemption.

5.a. Sub-subparagraphs 2.a.-l. are ~~This paragraph is~~ subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

b. Sub-subparagraph 2.m. is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, and photographs of current or former personnel of the Department of Health whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the Department of Health; that the names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and that the names and locations of schools and day care facilities attended by the children of such personnel be made exempt from public record requirements. The Legislature finds that the release of such identifying and location information might place current or former personnel of the Department of Health whose duties include the investigation or prosecution of complaints filed against health care practitioners or the inspection of practitioners or facilities licensed by the Department of Health and their family members in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried

out by personnel of the Department of Health, or whose business or professional practices have come under the scrutiny of investigators and inspectors of the Department of Health. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

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)

3/14/2013
Meeting Date

Topic _____ Bill Number SB 60 *(if applicable)*

Name Jo Morris Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2585 Merchants Row Blvd. Phone 850-245-4006
Street

Tallahassee FL 32311 E-mail _____
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Department Of Health

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 1142
INTRODUCER:	Senator Gibson
SUBJECT:	Small Business Participation in State Contracting
DATE:	March 13, 2013 REVISED:

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

I. Summary:

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

This bill creates section 287.0577 of the Florida Statutes.

II. Present Situation:

Chapter 287, Florida Statutes

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

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

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

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

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

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

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

Existing Small Business Efforts

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

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

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

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

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

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

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

Performance Bond Requirements

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

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

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

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

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

III. Effect of Proposed Changes:

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

Definitions

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

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

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

Bundling

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

Set-asides

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

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

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

Bonding

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

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

Reporting

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

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

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

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

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

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

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

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

VIII. Additional Information:

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

None.

B. Amendments:

None.

LEGISLATIVE ACTION

Senate	.	House
Comm: PEND	.	
03/14/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

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

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

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

small businesses, into a single contract that is not appropriate for award to a small business as the prime contractor.

(b) "Small business" means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

1. Currently is, and for at least the previous 3 years has been, domiciled in the state.

2. Has a workforce of 25 or fewer employees, including independent contractors or other contractual personnel.

3. Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:

a. For a contractor licensed under chapter 489, $3 million per year.

b. For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, $500,000 per year.

c. For any other business entity, $1 million per year.

4. Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed $5 million. For a sole proprietorship, the net worth limit of $5 million includes both personal and business investments but does not include the proprietor's primary residence.

The term includes any such business entity organized as any form of corporation, partnership, limited liability company, sole proprietorship, joint venture, association, trust, cooperative, or other legal entity.

(2) An agency must accept as responsive a bid by a small

419636

business for a portion of a bundled contract.

Section 2. This act shall take effect July 1, 2013.

========== 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 small business participation in state contracting; creating s. 287.0577, F.S.; defining the terms "bundled contract" and "small business"; requiring state agencies to accept as responsive a bid by a small business for a portion of a bundled contract; providing an effective date.

By Senator Gibson

9-01035A-13 20131142__

A bill to be entitled

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

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

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

287.0577 Small business participation in state contracting; contract bundling; set-asides for small businesses; bonding and reporting requirements.—

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

(a) "Contract bundling" means the consolidation of contracts for the procurement of commodities or contractual services, at least part of which may be provided or performed by one or more small businesses, into a single contract that is not appropriate for award to a small business as the prime contractor.

(b) "Small business" means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

1. Currently is, and for at least the previous 3 years has been, domiciled in the state.

2. Has a workforce of 50 or fewer permanent full-time positions, whether employees, independent contractors, or other contractual personnel.

3. Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:

a. For a contractor licensed under chapter 489, $5 million per year.

b. For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, $500,000 per year.

c. For any other business entity, $1 million per year.

4. Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed $5 million. For a sole proprietorship, the net worth limit of $5 million includes both personal and business

investments but does not include the proprietor's primary residence.

The term includes any such business entity organized as any form of corporation, partnership, limited liability company, sole proprietorship, joint venture, association, trust, cooperative, or other legal entity.

(2) CONTRACT BUNDLING; SOLICITATION.—

(a) An agency, to the maximum extent practicable, shall structure agency contracts to facilitate competition by and among small businesses in the state, taking all reasonable steps to eliminate obstacles to their participation and avoiding the unnecessary and unjustified contract bundling that may preclude small businesses' participation as prime contractors.

(b) Before issuing a solicitation for a bundled contract, an agency must conduct market research to determine whether contract bundling is necessary and justified. If the agency determines that contract bundling is necessary and justified, the agency must include in the solicitation a written summary of the agency's market research and a written analysis of the research that explains why contract bundling is necessary and justified.

(3) SET-ASIDES FOR SMALL BUSINESSES.—

(a) An agency shall annually award to small businesses, either directly or indirectly as subcontractors, at least 35 percent of the total dollar amount of contracts awarded.

(b) Each contract awarded under s. 287.057 must require the vendor to use small businesses in the state as subcontractors or subvendors. The percentage of funds, in terms of gross contract

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

(c) Each contract must include specific requirements for:

1. The timely payment of subcontractors by the prime contractor and specific terms and conditions applicable if a prime contractor does not pay a subcontractor within the time limits specified in the contract.

2. Payment from the owner and general contractor shall be paid to subcontractors within 15 calendar days after receipt of a subcontractor's invoice and pay application.

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

(5) REPORTING REQUIREMENTS.—The rules ombudsman in the Executive Office of the Governor shall:

(a) Establish a system to measure and report the use of small businesses in state contracting. This system shall maintain information and statistics on small business participation, awards, dollar volume of expenditures, and other appropriate types of information to analyze progress in small businesses access to state contracts and to monitor agency

compliance with this section. Such reporting must include, but is not limited to, the identification of all subcontracts in state contracting by dollar amount and by number of subcontracts and identification of the use of small businesses as prime contractors and subcontractors by dollar amounts of contracts and subcontracts, number of contracts and subcontracts, industry, and any conditions or circumstances that significantly affected the performance of subcontractors. An agency shall report its compliance with the reporting system at least annually and at the request of the rules ombudsman in the Executive Office of the Governor. All agencies shall cooperate with the rules ombudsman in the Executive Office of the Governor in establishing this reporting system.

(b) Report agency compliance with paragraph (a) for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, the Speaker of the House of Representatives, and the rules ombudsman in the Executive Office of the Governor on or before February 1 of each year. The report must contain, at a minimum, the following:

1. Total expenditures of each agency by industry.

2. The dollar amount and percentage of contracts awarded to small businesses by each state agency.

3. The dollar amount and percentage of contracts awarded indirectly to small businesses as subcontractors by each state agency.

4. The total dollar amount and percentage of contracts awarded to small businesses, whether directly or indirectly as subcontractors.

Section 2. This act shall take effect July 1, 2013.

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

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 1150
INTRODUCER:	Governmental Oversight and Accountability Committee, and Senators Benacquisto and Brandes
SUBJECT:	State Contracting
DATE:	March 15, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Fav/CS**
2.			BI	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1150 revises provisions relating to state agency contracting, and creates new duties for the Chief Financial Officer (CFO) in the state agency contracting process. The bill:

- Requires that specified accountability provisions be included in grant agreements;
- Requires certified grant mangers on grant agreements valued over $35,000;
- Permits the CFO to audit grant agreements before execution, and requires CFO audit of grant agreements after execution;
- Permits the CFO to audit certain agency contracts before execution, and requires CFO audit of certain agency contracts after execution;
- Requires that every contract of more than $35,000 must have a certified contract manager; and
- Specifies the types of information that agencies must make available on the contract tracking system.

This bill substantially amends sections 215.971, 215.985, 287.057, and 287.058 of the Florida Statutes, repeals s. 216.0111, and creates s. 287.136.

II. Present Situation:

State Procurement of and Contracts for Personal Property and Services

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency[1] procurement of personal property and services.[2] The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.[3] The Division of State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.[4]

Contracts for commodities or contractual services in excess of $35,000 must be procured utilizing a competitive solicitation process.[5] However, specified contractual services and commodities are not subject to competitive solicitation requirements.[6]

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or certain other agencies.[7]

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[1] As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[2] Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.
[3] *See* ss. 287.032 and 287.042, F.S.
[4] *See* ss. 287.012(6) and 287.057, F.S.
[5] Section 287.057(1), F.S., requires all projects that exceed the Category Two ($35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[6] *See* s. 287.057(3)(f), F.S.

Agreements Funded with Federal and State Assistance

Current law requires an agency agreement that provides state financial assistance to a recipient or subrecipient,[8] or that provides federal financial assistance to a subrecipient,[9] to include a provision specifying scope of work that clearly establishes the tasks the recipient or subrecipient is required to perform, and a provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the agency before payment. Each deliverable must be directly related to the scope of work and must specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.[10]

Reporting of State Agency Contract Information

Current law requires each state agency to report to the Department of Financial Services (DFS) the following information relating to certain contracted activities:

- The nature of the commodities or services provided;
- The term of the contract;
- The final obligation made by the agency;
- A summary of any time constraints that apply to the procurement;
- The justification for not using a competitive solicitation, including any statutory exemption or exception; and
- Other information regarding the contract or the procurement that the DFS requires.[11]

Qualifications for Contract Managers and Contract Negotiators

Current law requires certain contract managers to attend training conducted by the Chief Financial Officer (CFO).[12] It also requires certain contract negotiators to be certified based upon rules adopted by the DMS.[13]

Chief Financial Officer and Department of Financial Services

The CFO is an elected constitutional Cabinet member.[14] The CFO serves as the chief fiscal officer of the state and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[15] Such responsibilities include, but are not limited to,

[7] *See* s. 287.042(2)(c), F.S.
[8] As defined in s. 215.97, F.S.
[9] As defined by applicable United States Office of Management and Budget circulars.
[10] *See* s. 215.971, F.S.
[11] *See* s. 216.0111, F.S.
[12] *See* s. 287.057(14), F.S.
[13] *See* s. 287.057(16)(b), F.S.
[14] *See* art. 4, s. 4(a) and (c), Fla. Const.
[15] *See* art. 4, s. 4(c), Fla. Const., and s. 17.001, F.S.

auditing and adjusting accounts of officers and those indebted to the state,[16] paying state employee salaries,[17] and reporting all disbursements of funds administered by the CFO.[18]

The CFO also serves as the head of the DFS, which executes the duties of the CFO.[19] The DFS consists of the following divisions:

- The Division of Accounting and Auditing;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agents and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Office of Insurance Consumer Advocate;
- The Division of Funeral, Cemetery, and Consumer Services; and
- The Division of Public Assistance Fraud.[20]

The Financial Services Commission;[21] Board of Funeral, Cemetery, and Consumer Services;[22] and Strategic Markets Research and Assessment Unit[23] also are established within the DFS.

Transparency Florida Act

The Transparency Florida Act (act)[24] created financial reporting requirements for certain public entities for the purpose of making that information publicly available. Among other provisions, it required:

- The Executive Office of the Governor to establish a website making certain information relating to state financial expenditures available to the public;[25]

[16] *See* s. 17.04, F.S.
[17] *See* s. 17.09, F.S.
[18] *See* s. 17.11, F.S.
[19] *See* s. 20.121, F.S.
[20] Section 20.121(2), F.S.
[21] The Financial Services Commission is composed of the Governor and of the Cabinet members, and includes the Office of Insurance Regulation and the Office of Financial Regulation. The offices are responsible for activities of the commission relating to regulation and investigation of violations of laws relating to insurance and financial institutions. *See* s. 20.121(3)(a), F.S.
[22] The Board of Funeral, Cemetery, and Consumer Services is created within the Division of Funeral, Cemetery, and Consumer Services, and regulates licenses issued under ch. 497, F.S. (Funeral, Cemetery, and Consumer Services). *See* ss. 20.121(4) and 497.103, F.S.
[23] The Strategic Markets Research and Assessment Unit creates reports on issues, trends, and threats that broadly impact the condition of the financial services industries. *See* s. 20.121(6), F.S.
[24] Chapter 2009-74, s. 2, L.O.F. (codified at s. 215.985, F.S.).
[25] *See* s. 215.985(3), F.S.

- Each water management district to make a monthly financial statement available on its website;[26] and
- The CFO to provide public access to a state contract management system providing information and documentation relating to government contracts. The act specifies data that must be collected in the system and provides that in the event of a major contract change or a new contract, the affected state governmental entity must update the system within 30 days.[27]

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.[28]

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[29] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

III. Effect of Proposed Changes:

Additional Requirements for Grant Agreements

Section 1 amends s. 215.971, F.S., to add additional requirements for agreements funded with federal or state assistance. Specifically, the bill requires that such agreements must include:

- A provision specifying the financial consequences that apply if the recipient or subrecipient fails to perform the minimum level of service required by the agreement. The provision can be excluded from the agreement only if financial consequences are prohibited by the federal agency awarding the grant. Funds refunded to a state agency from a recipient or subrecipient for failure to perform as required under the agreement may be expended only in direct support of the program from which the agreement originated.

[26] *See* s. 215.985(12), F.S.
[27] *See* s. 215.985(16), F.S.
[28] Article I, s. 24(c) of the Fla. Const.
[29] *See* s. 119.15, F.S.

- A provision specifying that a recipient or subrecipient of federal or state financial assistance may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.
- A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the state agency.
- A provision specifying that any funds paid in excess of the amount to which the recipient or subrecipient is entitled under the terms and conditions of the agreement must be refunded to the state agency.
- Any additional information required pursuant to the Florida Single Audit Act.

Chief Financial Officer Audit of Proposed Grant Agreements

The bill provides that the Chief Financial Officer (CFO) may audit agreements funded with state or federal assistance before the execution of the agreements in accordance with rules adopted by the Department of Financial Services (DFS). The audit must ensure that applicable laws have been met; that the agreement document contains a clear statement of work, quantifiable and measurable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state; and that the associated costs of the agreement are not unreasonable or inappropriate. The audit must ensure that all contracting laws have been met and that documentation is available to support the contract. A contract that does not comply with this section may be returned to the submitting agency for revision.

The CFO may establish dollar thresholds and other criteria for determining which agreements will be audited before execution. The CFO may revise such thresholds and other criteria for an agency or a unit of an agency as he or she deems appropriate. The CFO has up to 10 business days after receipt of the proposed grant agreement to make a final determination regarding deficiencies in the agreement. The CFO and the agency entering into the contract may agree to a longer review period. The CFO will provide the agency with information regarding any contract deficiencies. The agency will be responsible for addressing the deficiencies, and has the option of resubmitting the agreement for subsequent reviews. The CFO must perform a subsequent review to verify that all deficiencies have been addressed upon processing the first payment.

Grant Management

For each grant agreement, the state agency must designate an employee to function as a grant manager responsible for enforcing performance of the agreement's terms and conditions and who must serve as a liaison with the recipient or subrecipient. Each grant manager responsible for agreements in excess of $35,000 must complete the training and become a certified contract manager as provided under s. 287.057(14), F.S.

The CFO must establish and disseminate uniform procedures for grant management pursuant to s. 17.03(3), F.S., to ensure that services have been rendered in accordance with agreement terms before the agency processes an invoice for payment. The procedures must include, but need not be limited to, procedures for monitoring and documenting recipient or subrecipient performance, reviewing and documenting all deliverables for which payment is requested by the recipient or subrecipient, and providing written certification by the grant manager of the agency's receipt of

goods and services. The grant manager must reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report.

Chief Financial Officer Audit of Executed Grant Agreements

The CFO must perform audits of the executed state and federal grant agreement documents and grant manager's records. The CFO's designee must discuss the audit and potential findings with the official whose office is subject to audit. The final audit report must be submitted to the agency head. Within 30 days after the receipt of the final audit report, the agency head must submit to the CFO a written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.

State Contract Tracking System

Section 2 amends s. 215.985(16), F.S., to modify the CFO's duties with regards to the state contract tracking system. Within 30 calendar days after executing a contract, each state agency as defined in s. 216.011(1), F.S.,[30] must post on the contract tracking system the following contract information and documentation:

- The names of the contracting entities.
- The procurement method.
- The contract beginning and end dates.
- The nature or type of the commodities or services purchased.
- Applicable contract unit prices and deliverables.
- Total compensation to be paid or received under the contract.
- All payments made to the contractor to date.
- Applicable contract performance measures.
- The justification for not using competitive solicitation to procure the contract, including citation to any statutory exemption or exception from competitive solicitation.
- Electronic copies of the contract and procurement documents that have been redacted to conceal exempt or confidential information.
- Any other information required by the Chief Financial Officer.

Each governmental entity must redact exempt or confidential information from the procurement or contract documents before posting. If a state agency becomes aware that an electronic copy of a contract or procurement document that it posted has not been properly redacted, the state agency must immediately notify the CFO so that the contract or procurement document may be removed. Within 7 business days, the state agency must provide the CFO with a properly redacted copy for posting.

If a party to a contract discovers that a document has not been properly redacted, the party may request that the posting entity redact the information; upon receipt of such a request, the posting entity must redact the confidential or exempt information.

[30] Section 216.011(1)(qq), F.S., defines "state agency" or "agency" as any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

The bill provides a disclaimer from liability to the CFO and DFS for the failure of a posting entity to properly redact information. The bill allows the CFO to make information posted on the system available for viewing and downloading by the public. The CFO may prohibit the posting of records on the public website that could jeopardize the health, safety, or welfare of the public. Requests for copies of documents in the system, or subpoenas for documents, must be made to or served on the entity that maintains the original documents, not the CFO or DFS. The bill provides DFS authority to adopt rules to administer the subsection.

Section 3 repeals s. 216.0111, F.S., which specifies the agency contract information required to be submitted to DFS. That information is now included in s. 215.985, F.S.

Contract Managers

Section 4 amends s. 287.057(14), F.S., to require that every contract manager responsible for a contract of more than $35,000 must be certified as a contract manager.

Pre-execution Audit of Contracts by Chief Financial Officer

Section 5 amends s. 287.058, F.S., by giving the CFO the authority to review contracts before execution. The review must ensure that all contracting laws have been met; that the contract document contains a clear statement of work, quantifiable and measureable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state; that documentation is available to support the contract; and that the associated costs of the contract are not unreasonable or inappropriate. A contract that does not comply may be returned to the submitting agency for revision.

The CFO may establish dollar thresholds and other criteria for sampling the agreements that are to be reviewed prior to execution.

DFS has 10 business days to make a final determination regarding deficiencies in the contract. DFS and the agency entering into the contract may agree to a longer review period. The CFO will provide the agency with information regarding any contract deficiencies. The agency will be responsible for addressing the deficiencies, and has the option of resubmitting the agreement for subsequent reviews. The CFO must perform a subsequent review to verify that all deficiencies have been addressed upon processing the first payment.

Chief Financial Officer Audit of Executed Contract Documents

Section 6 creates s. 287.136, F.S., which requires the CFO to perform audits of the executed contract documents and contract manager's records to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services. At the conclusion of the audit, the CFO must discuss the audit and potential findings with the official whose office is subject to audit. The final audit report shall be submitted to the agency head. Within 30 days after the receipt of the final audit report, the agency head must submit to the CFO a written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.

Effective Date

Section 7 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The separation of powers provision in the Constitution of the State of Florida states:

> The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The separation of powers doctrine encompasses two fundamental prohibitions. The first is that no branch may encroach upon the powers of another. The second is that no branch may delegate to another branch its constitutionally assigned power. *Chiles v. Children A, B, C, D, E, & F,* 589 So.2d 260, 264 (Fla.1991). Under the nondelegation doctrine the legislature may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law. *Sims v. State,* 754 So.2d 657, 668 (2000). Further, the nondelegation doctrine precludes the legislature from delegating its powers absent ascertainable minimal standards and guidelines. *Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones,* 474 So.2d 359, 361 (Fla. 1st DCA 1985).

In this bill, the CFO is permitted to audit grant agreements and certain state agency contracts before they are executed, but the bill provides no legislative standards or thresholds specifying when the CFO may exercise this discretion. The bill specifies that the CFO may establish the dollar thresholds and other criteria for sampling the contracts to be audited before execution. Absent legislative direction on the standards and guidelines to be utilized by the CFO when determining which contracts are to audited, those provisions potentially violate the nondelegation portion of the separation of powers doctrine.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Information from the CFO suggests that increasing its capacity to do audits of contracts and grants would enable DFS to audit 6% of contracts and grants, and has requested $785,363 and 11 new FTE to do so, and $128,706 to reclassify 8 existing FTE.

Senate Bill 1764, which contains substantively the same provisions with regards to the state contract tracking system, provides a 2013-2014 fiscal year appropriation of $326,775 in recurring funds and $386,292 in nonrecurring funds from the General Revenue Fund, as well as four fulltime equivalent positions with associated salary rate of $231,409, to the DFS for implementation of the state contract tracking system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 5 of the bill provides that as part of the CFO's pre-execution audit of contracts, a contract that does not comply with the contract requirement provisions of s. 287.058, F.S., "may be returned to the submitting agency for revision." Requirements in paragraph (b) of that section make it clear the CFO must return the contract to the agency, so this line could be clarified to make the duty mandatory, or could be merged into subsection (b), or eliminated.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on March 14, 2013:
The CS removes provisions in the bill that gave the CFO "approval" authority before execution of contracts, and shortens the time the CFO has to report contract deficiencies back to the agency from 21 days to 10 business days. The CS also specifies that the CFO will provide information about the contract deficiencies to the agency, which is responsible for addressing the deficiencies.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 86 - 109
and insert:
(2) The Chief Financial Officer may audit an agreement funded with state or federal assistance before the execution of such agreement in accordance with rules adopted by the Department of Financial Services. The audit must ensure that applicable laws have been met; that the agreement document contains a clear statement of work, quantifiable and measurable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the

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interests of the state; and that the associated costs of the agreement are not unreasonable or inappropriate. The audit must ensure that all contracting laws have been met and that documentation is available to support the agreement. An agreement that does not comply with this section may be returned to the submitting agency for revision.

(a) The Chief Financial Officer may establish dollar thresholds and other criteria for determining which agreements will be audited before execution. The Chief Financial Officer may revise such thresholds and other criteria for an agency or unit of an agency as he or she deems appropriate.

(b) The Chief Financial Officer shall have up to 10 business days after receipt of the proposed grant agreement to make a final determination of any deficiencies in the agreement and shall provide the agency with information regarding any deficiencies at the conclusion of the review. The Chief Financial Officer and the agency entering into the agreement may agree to a longer review period. The agency is responsible for addressing the deficiencies and shall have the option to resubmit the agreement for subsequent review before execution. The Chief Financial Officer shall perform a subsequent review to verify that all deficiencies have been addressed upon processing the first payment.

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

And the title is amended as follows:

Delete line 6

and insert:

audit agreements before execution and providing

585786

requirements for such audits;

836104

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 332 - 356

and insert:

(7) The Chief Financial Officer may audit a contract subject to this chapter before the execution of such contract in accordance with rules adopted by the Department of Financial Services. The audit must ensure that applicable laws have been met; that the contract document contains a clear statement of work, quantifiable and measurable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state;

836104

and that the associated costs of the contract are not unreasonable or inappropriate. The audit must ensure that all contracting laws have been met and that documentation is available to support the contract. A contract that does not comply with this section may be returned to the submitting agency for revision.

(a) The Chief Financial Officer may establish dollar thresholds and other criteria for sampling the contracts that are to be audited before execution. The Chief Financial Officer may revise such thresholds and other criteria for an agency or unit of an agency as deemed appropriate.

(b) The Chief Financial Officer has up to 10 business days after receipt of the proposed contract to make a final determination of any deficiencies in the contract and shall include information regarding the deficiencies in the audit report provided to the agency entering into the contract. The Chief Financial Officer and the agency entering into the contract may agree to a longer review period. The agency is responsible for addressing the deficiencies and shall have the option to resubmit the contract for subsequent review before execution. The Chief Financial Officer shall perform a subsequent review to verify that all deficiencies have been addressed upon processing the first payment.

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

And the title is amended as follows:

Delete lines 34 - 35

and insert:

Financial Officer to audit contracts before execution

836104

and providing requirements for such audits; creating s. 287.136, F.S.;

By Senators Benacquisto and Brandes

30-00819A-13 20131150__

A bill to be entitled

An act relating to state contracting; amending s. 215.971, F.S.; requiring agreements funded with state or federal financial assistance to include additional provisions; authorizing the Chief Financial Officer to audit and approve agreements prior to execution; requiring state agencies to designate a grants manager for each agreement and providing requirements and procedures for managers; requiring the Chief Financial Officer to perform audits of executed agreements and to discuss such audits with agency officials; requiring the agency head to respond to the audit; reordering and amending s. 215.985, F.S.; revising provisions relating to the Chief Financial Officer's intergovernmental contract tracking system under the Transparency Florida Act; requiring state agencies to post certain information in the tracking system and to update that information; requiring that exempt and confidential information be redacted from contracts and procurement documents posted on the system; authorizing the Chief Financial Officer to make available to the public the information posted on the system through a secure website; authorizing the Department of Financial Services to adopt rules; repealing s. 216.0111, F.S., relating to a requirement that state agencies report certain contract information to the Department of Financial Services and transferring that requirement to s. 215.985, F.S.; amending s. 287.057, F.S.; requiring certain contract

30-00819A-13 20131150__

managers to be certified and directing the Department of Management Services to be responsible for establishing the requirements for certification; amending s. 287.058, F.S.; authorizing the Chief Financial Officer to audit and approve agreements prior to execution; creating s. 287.136, F.S.; requiring the Chief Financial Officer to perform audits of executed contract documents and to discuss such audits with the agency officials; requiring the agency head to respond to the audit; providing an effective date.

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

Section 1. Section 215.971, Florida Statutes, is amended to read:

215.971 Agreements funded with federal or ~~and~~ state assistance.—

(1) ~~For~~ An agency agreement that provides state financial assistance to a recipient or subrecipient, as those terms are defined in s. 215.97, or that provides federal financial assistance to a subrecipient, as defined by applicable United States Office of Management and Budget circulars, must ~~the agreement shall~~ include all of the following:

(a) ~~(1)~~ A provision specifying a scope of work that clearly establishes the tasks that the recipient or subrecipient is required to perform.~~; and~~

(b) ~~(2)~~ A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in

writing by the agency before payment. Each deliverable must be directly related to the scope of work and ~~must~~ specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

(c) A provision specifying the financial consequences that apply if the recipient or subrecipient fails to perform the minimum level of service required by the agreement. The provision can be excluded from the agreement only if financial consequences are prohibited by the federal agency awarding the grant. Funds refunded to a state agency from a recipient or subrecipient for failure to perform as required under the agreement may be expended only in direct support of the program from which the agreement originated.

(d) A provision specifying that a recipient or subrecipient of federal or state financial assistance may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

(e) A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the state agency.

(f) A provision specifying that any funds paid in excess of the amount to which the recipient or subrecipient is entitled under the terms and conditions of the agreement must be refunded to the state agency.

(g) Any additional information required pursuant to s. 215.97.

(2) The Chief Financial Officer may audit and approve agreements funded with state or federal assistance before the

execution of such agreements in accordance with rules adopted by the Department of Financial Services. The audit must ensure that applicable laws have been met; that the agreement document contains a clear statement of work, quantifiable and measurable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state; and that the associated costs of the agreement are not unreasonable or inappropriate. The audit must ensure that all contracting laws have been met and that documentation is available to support the contract. A contract that does not comply with this section may be rejected and returned to the submitting agency for revision.

(a) The Chief Financial Officer may establish dollar thresholds and other criteria for determining which agreements will be audited before execution. The Chief Financial Officer may revise such thresholds and other criteria for an agency or a unit of an agency as he or she deems appropriate.

(b) The Chief Financial Officer shall have up to 21 calendar days after receipt of the proposed grant agreement to make a final determination regarding approval of an agreement. The Chief Financial Officer and the agency entering into the contract may agree to a longer review period.

(3) For each agreement funded with federal or state financial assistance, the state agency shall designate an employee to function as a grant manager who shall be responsible for enforcing performance of the agreement's terms and conditions and who shall serve as a liaison with the recipient or subrecipient.

(a) Each grant manager who is responsible for agreements in

excess of the threshold amount for CATEGORY TWO under s. 287.017 must complete the training and become a certified contract manager as provided under s. 287.057(14).

(b) The Chief Financial Officer shall establish and disseminate uniform procedures for grant management pursuant to s. 17.03(3) to ensure that services have been rendered in accordance with agreement terms before the agency processes an invoice for payment. The procedures must include, but need not be limited to, procedures for monitoring and documenting recipient or subrecipient performance, reviewing and documenting all deliverables for which payment is requested by the recipient or subrecipient, and providing written certification by the grant manager of the agency's receipt of goods and services.

(c) The grant manager shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the recipient or subrecipient.

(4) The Chief Financial Officer shall perform audits of the executed state and federal grant agreement documents and grant manager's records in order to ensure that adequate internal controls are in place for complying with the terms and conditions of such agreements and for validation and receipt of goods and services.

(a) At the conclusion of the audit, the Chief Financial Officer's designee shall discuss the audit and potential findings with the official whose office is subject to audit. The final audit report shall be submitted to the agency head.

(b) Within 30 days after the receipt of the final audit

report, the agency head shall submit to the Chief Financial Officer or designee, his or her written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.

Section 2. Subsection (2) of section 215.985, Florida Statutes, is reordered and amended and subsection (16) of that section is amended, to read:

215.985 Transparency in government spending.—

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

(c) ~~(a)~~ "Governmental entity" means any state, regional, county, municipal, special district, or other political subdivision whether executive, judicial, or legislative, including, but not limited to, any department, division, bureau, commission, authority, district, or agency thereof, or any public school, Florida College System institution, state university, or associated board.

(d) ~~(b)~~ "Website" means a site on the Internet which is easily accessible to the public at no cost and does not require the user to provide any information.

(a) ~~(c)~~ "Committee" means the Legislative Auditing Committee created in s. 11.40.

(b) "Contract" means any written agreement or purchase order issued for the purchase of goods or services and any written agreements for the receipt of federal or state financial assistance.

(16) The Chief Financial Officer shall establish and maintain a secure, shared state contract tracking ~~provide public access to a state contract management~~ system.

(a) Within 30 calendar days after executing a contract, each state agency as defined in s. 216.011(1) shall post all of the following ~~that provides~~ information and documentation relating to that contract on the contract tracking system, as required by rule: ~~contracts procured by governmental entities.~~

1. The names of the contracting entities.

2. The procurement method.

3. The contract beginning and end dates.

4. The nature or type of the commodities or services purchased.

5. Applicable contract unit prices and deliverables.

6. Total compensation to be paid or received under the contract.

7. All payments made to the contractor to date.

8. Applicable contract performance measures.

9. The justification for not using competitive solicitation to procure the contract, including citation to any statutory exemption or exception from competitive solicitation, if applicable.

10. Electronic copies of the contract and procurement documents that have been redacted to conceal exempt or confidential information.

11. Any other information required by the Chief Financial Officer.

~~(a) The data collected in the system must include, but need not be limited to, the contracting agency; the procurement method; the contract beginning and ending dates; the type of commodity or service; the purpose of the commodity or service; the compensation to be paid; compliance information, such as~~

~~performance metrics for the service or commodity; contract violations; the number of extensions or renewals; and the statutory authority for providing the service.~~

(b) The affected state governmental agency shall update the information described in paragraph (a) in the contract tracking system within 30 calendar days after a major modification or amendment ~~change~~ to an existing contract ~~or the execution of a new contract, agency procurement staff of the affected state governmental entity shall update the necessary information in the state contract management system~~. A major modification or amendment ~~change to a contract~~ includes, but is not limited to, a renewal, termination, or extension of the contract, or an amendment to the contract as determined by the Chief Financial Officer.

(c) Each state agency identified in paragraph (a) shall redact, as defined in s. 119.011, exempt or confidential information from the contract or procurement documents before posting an electronic copy on the contract tracking system.

1. If a state agency becomes aware that an electronic copy of a contract or procurement document that it posted has not been properly redacted, the state agency must immediately notify the Chief Financial Officer so that the contract or procurement document may be removed. Within 7 business days, the state agency shall provide the Chief Financial Officer with a properly redacted copy for posting.

2. If a party to a contract, or authorized representative, discovers that an electronic copy of a contract or procurement document on the system has not been properly redacted, the party or representative may request the state agency that posted the

document to redact the exempt or confidential information. Upon receipt of a request in compliance with this subparagraph, the state agency that posted the document shall redact the exempt or confidential information.

a. Such request must be in writing and delivered by mail, facsimile, or electronic transmission or in person to the state agency that posted the information. The request must identify the specific document, the page numbers that include the exempt or confidential information, the information that is exempt or confidential, and the relevant statutory exemption. A fee may not be charged for a redaction made pursuant to such request.

b. If necessary, a party to the contract may petition the circuit court for an order directing compliance with this paragraph.

3. The Chief Financial Officer, the Department of Financial Services, or any officer, employee, or contractor thereof, is not responsible for redacting exempt or confidential information from an electronic copy of a contract or procurement document posted by another state agency on the system and is not liable for the failure of the state agency to redact the exempt or confidential information. The Chief Financial Officer may notify the posting state agency if a document posted on the tracking system contains exempt or confidential information.

(d) Pursuant to ss. 119.01 and 119.07, the Chief Financial Officer may make information posted on the contract tracking system available for viewing and download by the public through a secure website. Unless otherwise provided by law, information retrieved electronically pursuant to this paragraph is not admissible in court as an authenticated document.

1. The Chief Financial Officer may regulate and prohibit the posting of records that could facilitate identity theft or fraud, such as signatures; compromise or reveal an agency investigation; reveal the identity of undercover personnel; reveal proprietary confidential business information or trade secrets; reveal an individual's medical information; or reveal any other record or information that the Chief Financial Officer believes may jeopardize the health, safety, or welfare of the public. However, such prohibition does not supersede the duty of a state agency to provide a copy of a public record upon request. The Chief Financial Officer shall use appropriate Internet security measures to ensure that no person has the ability to alter or modify records available on the website.

2. Records made available on the website, including electronic copies of contracts or procurement documents, may not reveal information made exempt or confidential by law. Notice of the right of an affected party to request redaction of exempt or confidential information pursuant to paragraph (c) must be displayed on the website.

(e) The posting of information on the contract tracking system or the provision of contract information on a website for public viewing and downloading does not supersede the duty of a state agency to respond to a public record request for such information or to a subpoena for such information.

1. A request for a copy of a contract or procurement document or a certified copy of a contract or procurement document must be made to the state agency that is party to the contract. Such request may not be made to the Chief Financial Officer or the Department of Financial Services or any officer,

employee, or contractor thereof unless the Chief Financial Officer or department is a party to the contract.

2. A subpoena for a copy of a contract or procurement document or certified copy of a contract or procurement document must be served on the state agency that is a party to the contract and that maintains the original documents. The Chief Financial Officer or the Department of Financial Services or any officer, employee, or contractor thereof may not be served a subpoena for those records unless the Chief Financial Officer or the department is a party to the contract.

(f) The Chief Financial Officer may adopt rules to administer this subsection.

Section 3. Section 216.0111, Florida Statutes, is repealed.

Section 4. Subsection (14) of section 287.057, Florida Statutes, is amended to read:

287.057 Procurement of commodities or contractual services.—

(14) For each contractual services contract, the agency shall designate an employee to function as contract manager who is ~~shall be~~ responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. Each contract manager who is responsible for contracts in excess of the threshold amount for CATEGORY TWO established under s. 287.017 must be a certified contract manager. The Department of Management Services is responsible for establishing and disseminating the requirements for certification, which include completing the ~~attend~~ training conducted by the Chief Financial Officer for accountability in contracts and grant management. The Chief Financial Officer

shall establish and disseminate uniform procedures pursuant to s. 17.03(3) to ensure that contractual services have been rendered in accordance with the contract terms before the agency processes the invoice for payment. The procedures must ~~shall~~ include, but need not be limited to, procedures for monitoring and documenting contractor performance, reviewing and documenting all deliverables for which payment is requested by vendors, and providing written certification by contract managers of the agency's receipt of goods and services.

Section 5. Subsection (7) is added to section 287.058, Florida Statutes, to read:

287.058 Contract document.—

(7) The Chief Financial Officer may audit contracts subject to this chapter before the execution of such contracts in accordance with rules adopted by the Department of Financial Services. The audit must ensure that applicable laws have been met; that the contract document contains a clear statement of work, quantifiable and measurable deliverables, performance measures, financial consequences for nonperformance, and clear terms and conditions that protect the interests of the state; and that the associated costs of the contract are not unreasonable or inappropriate. The audit must ensure that all contracting laws have been met and that documentation is available to support the contract. A contract that does not comply with this section may be rejected and returned to the submitting agency for revision.

(a) The Chief Financial Officer may establish dollar thresholds and other criteria for sampling the contracts that are to be audited before execution. The Chief Financial Officer

may revise such thresholds and other criteria for an agency or the unit of an agency as deemed appropriate.

(b) The Chief Financial Officer has up to 21 calendar days after receipt of the proposed contract to make a final determination regarding approval of the contract and shall provide the audit report to the agency entering into the contract. The Chief Financial Officer and the agency entering into the contract may agree to a longer review period.

Section 6. Section 287.136, Florida Statutes, is created to read:

287.136 Audit of executed contract documents.—The Chief Financial Officer shall perform audits of the executed contract documents and contract manager's records to ensure that adequate internal controls are in place for complying with the terms and conditions of the contract and for the validation and receipt of goods and services.

(1) At the conclusion of the audit, the Chief Financial Officer's designee shall discuss the audit and potential findings with the official whose office is subject to audit. The final audit report shall be submitted to the agency head.

(2) Within 30 days after the receipt of the final audit report, the agency head shall submit to the Chief Financial Officer or designee, his or her written statement of explanation or rebuttal concerning findings requiring corrective action, including corrective action to be taken to preclude a recurrence.

Section 7. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/13
Meeting Date

Topic SB1150 - State Contracting
Bill Number SB1150 *(if applicable)*

Name LAURA LENHART
Amendment Barcode _____ *(if applicable)*

Job Title _____

Address _____ *Street*
Phone _____

_____ *City* *State* *Zip*
E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No
Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.14.13
Meeting Date

Topic State Contracts
Bill Number 1150 *(if applicable)*

Name Ashley Mayer
Amendment Barcode _____ *(if applicable)*

Job Title Dir. Leg & Cabinet Affairs

Address Capitol, PL-11 *Street*
Phone 413-2863

Tallahassee FL *City* *State* *Zip*
E-mail ashley.mayer@myflorida.com

Speaking: ☒ For ☐ Against ☐ Information

Representing CFO Atwater

Appearing at request of Chair: ☐ Yes ☑ No
Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Education
Health Policy

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR JEFF BRANDES
22nd District

March 13, 2013

Senator Jeremy Ring, Chairman
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Ring:

I respectfully request that my legislative assistant Caitlin Murray be permitted to present my bill, SB 1150, regarding state contracting, before the Governmental Oversight and Accountability Committee on Thursday, March 14th at 11:00 in my absence.

I appreciate your consideration of this request; please contact me should you have any questions or concerns.

Sincerely,

Jeff Brandes

CC: Joe McVaney

REPLY TO:
❒ 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745
❒ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 134
INTRODUCER:	Education Committee and Senator Ring
SUBJECT:	Meetings of District School Boards
DATE:	March 11, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McLaughlin	Klebacha	ED	**Fav/CS**
2.	Naf	McVaney	GO	**Pre-meeting**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 134 requires each district school board to convene at least one regular meeting each quarter within a school year during the evening hours. It further requires each district school board to create written criteria for deciding when to convene such meetings.

Current law provides certain requirements for district school board meetings but does not require that they be held at a specific time of day.

This bill amends section 1001.372 of the Florida Statutes.

II. Present Situation:

General Public Meetings Requirements

Florida Constitution

The Florida Constitution requires all meetings of any collegial public body of the executive branch of state government or of any collegial body of a county, municipality, school district, or

special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.[1]

Sunshine Law

The Sunshine Law requires all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken, to be open to the public at all times.[2] For each such public meeting, a board or commission must:

- Provide reasonable notice of the meeting;[3] and
- Promptly record minutes of the meeting.[4]

District School Boards

Generally

The Florida Constitution requires that each county form a school district, and that each school district be governed by a school board composed of five or more members.[5] Each school board is responsible for the operation, control, and supervision of all free public schools within the school district.[6]

Meeting Requirements

In addition to general access and notice requirements, meetings of district school boards are subject to more specific provisions, including frequency requirements. Each district school board must:

- Hold at least one regular meeting each month for the transaction of business according to a schedule arranged by the district school board.
- Convene in special sessions when called by the district school superintendent or by the district school superintendent on request of the chair of the district school board, or on request of a majority of the members of the school board. If the district school superintendent fails to call a special meeting when requested to do so, such a meeting may be called by the chair of the district school board or by a majority of the members of the district school board by giving 2 days' written notice of the time and purpose of the meeting to all members and to the district school superintendent.

Times of day for district school board meetings, however, are not currently specified in law.

III. Effect of Proposed Changes:

The bill requires each district school board to convene at least one regular meeting each quarter within a school year during the evening hours. The bill does not define "each quarter within a school year" or "evening hours;" rather, it requires each district school board to create written criteria for deciding when to convene a quarterly meeting during the evening hours.

[1] FLA. CONST., art. I, s. 24(b).
[2] Section 286.011(1), F.S.
[3] *Id*.
[4] Section 286.011(2), F.S.
[5] FLA. CONST., art. IX, s. 4(a).
[6] FLA. CONST., art. IX, s. 4(b).

The bill also makes clarifying, non-substantive drafting changes to the provisions governing the convening of special sessions.

The bill's effective date is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

District school boards that do not already hold at least one evening meeting a quarter may incur indeterminate costs as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Education on February 19, 2013:
The CS differs from the original bill in that it:

- Provides that the district school board must "convene" the meeting instead of "conduct" it to clarify the time period during which the meeting must begin.
- Does not allow such meeting to be convened either "after school hours" or "during the evening hours;" instead, the meeting may only be convened "during the evening hours."

B. Amendments:

None.

848934

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/14/2013	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 22
and insert:
evening hours. A district school board is deemed to be in compliance with this paragraph if it maintains, and operates in accordance with, a policy that requires the portion of a regular meeting that is open to public comment to begin no earlier than 4:30 p.m.

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

848934

Delete line 7

and insert:

meeting; providing that a district school board is deemed to be in compliance under certain circumstances; providing an effective date.

858128

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/14/2013	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 48 and 49
insert:

Section 2. Subsection (8) is added to section 1001.41, Florida Statutes, to read:

1001.41 General powers of district school board.—The district school board, after considering recommendations submitted by the district school superintendent, shall exercise the following general powers:

(8) Make requests at a regular or special meeting of the district school board or to the superintendent or his or her

858128

designee to research issues pertaining to the efficient operation and general improvement of the district school system.

Section 3. Subsection (15) of section 1001.51, Florida Statutes, is amended to read:

1001.51 Duties and responsibilities of district school superintendent.—The district school superintendent shall exercise all powers and perform all duties listed below and elsewhere in the law, provided that, in so doing, he or she shall advise and counsel with the district school board. The district school superintendent shall perform all tasks necessary to make sound recommendations, nominations, proposals, and reports required by law to be acted upon by the district school board. All such recommendations, nominations, proposals, and reports by the district school superintendent shall be either recorded in the minutes or shall be made in writing, noted in the minutes, and filed in the public records of the district school board. It shall be presumed that, in the absence of the record required in this section, the recommendations, nominations, and proposals required of the district school superintendent were not contrary to the action taken by the district school board in such matters.

(15) COOPERATE WITH DISTRICT SCHOOL BOARD.—Cooperate with the district school board in every manner practicable to the end that the district school system may continuously be improved. The superintendent or his or her designee shall accept a school board member's request to research issues pertaining to the efficient operation and general improvement of the district school system.

858128

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

And the title is amended as follows:

Delete lines 2 - 7

and insert:

An act relating to district school boards; amending s. 1001.372, F.S.; requiring district school boards to convene at least one regular meeting each quarter during a school year during the evening hours and to create written criteria for convening such a meeting; amending s. 1001.41, F.S.; revising the general powers of a district school board; amending s. 1001.51, F.S.; revising the duties and responsibilities of a superintendent; providing an effective date.

By the Committee on Education; and Senator Ring

581-01706-13 2013134c1

A bill to be entitled

An act relating to meetings of district school boards; amending s. 1001.372, F.S.; requiring district school boards to convene at least one regular meeting each quarter during a school year during the evening hours and to create written criteria for convening such a meeting; providing an effective date.

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

Section 1. Subsection (1) of section 1001.372, Florida Statutes, is amended to read:

1001.372 District school board meetings.—

(1) REGULAR AND SPECIAL MEETINGS.—

(a) The district school board shall hold not less than one regular meeting each month for the transaction of business according to a schedule arranged by the district school board. The district school board shall convene at least one regular meeting each quarter within a school year during the evening hours. The district school board shall create written criteria for deciding when to convene a quarterly meeting during the evening hours.

(b) The district school board ~~and~~ shall convene in a special meeting ~~sessions~~ when called by the district school superintendent or by the district school superintendent on request of the chair of the district school board, or on request of a majority of the members of the district school board. If the district school superintendent does not call a special meeting when requested to do so, as prescribed in this

581-01706-13 2013134c1

paragraph, such a meeting may be called by the chair of the district school board or by a majority of the members of the district school board by giving 2 days' written notice of the time and purpose of the meeting to all members and to the district school superintendent. An action~~; provided that actions~~ taken at a special meeting has ~~meetings shall have~~ the same force and effect as if taken at a regular meeting, and~~;~~ ~~and provided further that in the event the district school superintendent should fail to call a special meeting when requested to do so, as prescribed herein, such a meeting may be called by the chair of the district school board or by a majority of the members of the district school board by giving 2 days' written notice of the time and purpose of the meeting to all members and to the district school superintendent, in which event~~ the minutes of the meeting must ~~shall~~ set forth the facts regarding the procedure in calling the meeting and the reason the meeting was called. The minutes must ~~therefor and shall~~ be signed ~~either~~ by the chair or by a majority of the members of the district school board.

Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/13
Meeting Date

Topic COOPERATE WITH DISTRICT SCHOOL BOARD (SECTION 3) Bill Number SB 134 *(if applicable)*

Name MARGARET A. SMITH Amendment Barcode *(if applicable)*

Job Title SUPERINTENDENT

Address 200 N. CLARA AVE *Street* Phone 386-734-7190 EXT. 20210

DELAND FL *City State Zip* E-mail MASmith10@volusia.k12.fl.us

Speaking: ☐ For ☒ Against ☐ Information

Representing FLORIDA ASSOC. OF SCHOOL ADMINISTRATORS

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

The Florida Senate

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 230
INTRODUCER:	Senator Ring
SUBJECT:	Flag Etiquette
DATE:	March 13, 2013
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Favorable**
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

SB 230 requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

This bill creates section 256.015 of the Florida Statutes.

II. Present Situation:

The Governor's Office has a written flag protocol.[1]

National Flag Policy

According to the Governor's protocol, by order of the President of the United States, the National flag must be flown at half-staff upon the death of specified principal figures of the United States or State Government as a mark of respect to their memory, pursuant to 4 U.S.C. Section (7)(m). The State Flag must be flown at half-staff whenever the national Flag is flown at

[1] Executive Office of the Governor Flag Protocol, Revised 9/26/2012, available at http://www.flgov.com/wp-content/uploads/2012/09/EOG-Flag-Protocol-FINAL1.pdf .

half-staff at the State Capitol, all state-owned buildings, and, in most cases, all courthouses and city halls throughout Florida for specified periods for the following persons:

- President or former President of the United States.
- Vice President, Chief Justice of the U.S. Supreme Court, former Chief Justice, or Speaker of the U.S. House of Representatives.
- Associate Justice of the U.S. Supreme Court, Secretary of an executive or military department, or former Vice President of the United States.
- Member of Congress from Florida.

State Flag Policy

In the event of the death of a present or former official of the Florida State government or the death of a member of the Armed Forces from Florida who dies while serving on active duty, the Governor may proclaim that the National and State Flags shall be flown at half-staff, in accordance with 4 U.S.C. Section 7. Rules for particular State Government officials and Armed Forces members are as follows:

- Present or former Governor of Florida: The National and State Flags shall be flown at half-staff from the day of death until the day of interment over the State Capitol, at State facilities throughout Florida, and at all county courthouses and city halls throughout Florida.
- Member of the Armed Forces from Florida who dies while serving on active duty: The National and State Flags shall be flown at half-staff on the day of interment (or day of family's preference) over the State Capitol and at the county courthouse and city hall in decedent's (or the family's) hometown.
- Prominent present or former State of Florida officials: The National and State Flags shall be flown at half-staff on the day of interment over the State Capitol and at the county courthouse and city hall in the decedent's hometown.
- Florida law enforcement officers and firefighters killed in the line of duty, and selected other State and local officials: The National and State Flags shall be flown at half-staff on the day of interment at the local agency where the decedent was employed and at the county courthouse and city hall in decedent's hometown.

The Governor's Flag Information website[2] contains a form[3] for requesting the state flag to be flown at half-staff in honor of law enforcement, firefighter, or elected officials. The form states that "[t]he flag will be lowered for law enforcement and firefighters only if they have passed while in the line of duty." Included in the Governor's protocol is a document entitled "Frequently Asked Questions." Information provided in response to one of the questions indicates that a constituent may request flags be flown at-half-staff for any reason not addressed in the protocol. The Governor has the discretion whether to grant or deny the request.

[2] http://www.flgov.com/flag-information/
[3] http://www.flgov.com/wp-content/uploads/2012/07/Flag-at-Haff-Staff-Request-Form-for-web.pdf

Statutes/Flag Display

While there are currently a number of statutes requiring display of the National flag, the State flag, and the POW-MIA flag,[4] there do not appear to be any statutes requiring that a flag be flown at half-staff for particular persons or in particular circumstances.

There does not appear to be any statute specific to flag display involving a law enforcement officer who dies in the line of duty. However, s. 256.15, F.S., provides that the official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.

III. Effect of Proposed Changes:

The bill requires the Governor to adopt a protocol on flag display that provides guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

The bill also provides that the Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

The effective date of the act is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[4] *See* ss. 256.01, 256.02, 256.011, 256.032, 256.11, 256.12, 256.13, 256.14, 256.15, and 1000.06, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill should not have any impact on the Governor's office since the Governor currently has a protocol on the display of the state flag.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senator Ring

29-00186-13 2013230__

A bill to be entitled

An act relating to flag etiquette; creating s. 256.015, F.S.; requiring that the Governor adopt a protocol on flag display; requiring the protocol to have guidelines for proper flag display and for lowering the state flag to half-staff on certain occasions; authorizing the Governor to adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag; providing an effective date.

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

Section 1. Section 256.015, Florida Statutes, is created to read:

256.015 Display of flag.—

(1) The Governor shall adopt a protocol on flag display. The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.

(2) The Governor may adopt, repeal, or modify any rule or custom as the Governor deems appropriate which pertains to the display of the state flag.

Section 2. This act shall take effect July 1, 2013.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 298
INTRODUCER:	Committee on Governmental Oversight and Accountability and Senator Brandes
SUBJECT:	Department of Citrus
DATE:	March 14, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Halley	AG	**Favorable**
2.	McVaney	McVaney	GO	**Fav/CS**
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 298 corrects minor errors and/or unintended changes to chapter 601, F.S., which occurred in HB 1237 during the 2012 Legislative Session when substantial revisions were made to update the Florida Citrus Code.

This bill amends the following sections of the Florida Statutes: 601.152, 601.9918, and 601.992.

II. Present Situation:

In 1935, the Legislature created the Florida Citrus Code and the Florida Citrus Commission. The Legislature also established the Florida Department of Citrus as an agency of the state to provide marketing, research, and regulatory support to the entire citrus industry.

The Department of Citrus carries out commission policy and acts as the commission's staff by conducting a wide variety of programs, including: regulation; scientific, market, and economic research; advertising; merchandising; public and industry relations; and consumer promotion. Section 601.10, F.S., provides the department with its various powers.

The Florida Citrus Code is comprehensive legislation that establishes administrative authority to protect, advance, monitor, and regulate the state's citrus industry. To carry out this broad mandate, the code empowers administering agencies to collect excise taxes from citrus handlers and inspection fees for certification of citrus fruit or processed citrus products. Penalties for violations of the code include fines, criminal prosecution, loss of any required license, and injunction. These penalties enable the Department of Citrus and the Department of Agriculture and Consumer Services to effectively implement the code's provisions.

Over the years, sections of chapter 601, F.S., have been revised and others have been added, resulting in inconsistencies throughout the chapter. The Florida Citrus Code was substantially rewritten in the 2012 Legislative Session to correct inconsistencies, remove obsolete and out-of-date language, and make other substantive changes. In this effort, minor errors were made, so this bill corrects the unintended changes that were later identified by the Florida Department of Citrus. The Department of Agriculture and Consumer Services is in agreement with the proposed changes.

III. Effect of Proposed Changes:

Section 1 amends s. 601.152, F.S., pertaining to Special Marketing Orders, to delete a reference to the former location of the Florida Department of Citrus. The department was located in Lakeland, Florida when it was created in 1935 and was relocated in 2010 to Bartow, Florida.

Section 2 amends s. 601.9918, F.S., to revert a reference from the Department of Agriculture and Consumer Services to the Department of Citrus. Chapter 2012-182, Laws of Florida, changed the rulemaking authority for trademark symbols from the Department of Citrus to the Department of Agriculture and Consumer Services.

Section 3 amends s. 601.992, F.S., to revert references from the Department of Agriculture and Consumer Services to the Department of Citrus. Chapter 2012-182, Laws of Florida, granted the Department of Agriculture and Consumer Services the right to collect dues on behalf of non-profit corporations engaged in market news and education for citrus growers.

Section 4 provides that specified rules adopted by the Department of Citrus continue in effect. In addition, any rules adopted by the Department of Agriculture and Consumer Services implementing ss. 601.9918 and 601.992, F.S., shall be repealed. It also provides for the amendments in this bill to apply retroactively to July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Governmental Oversight and Accountability on March 14, 2013:
The Committee adopted one amendment to clarify that certain rules of the Department of Citrus remain in effect. In addition, any rules adopted by the Department of Agriculture and Consumer Services implementing ss. 601.9918 and 601.992, F.S., shall be repealed.

B. Amendments:

None.

807688

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2013	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 81 - 96

and insert:

and apply retroactively to July 1, 2012.

(2)(a) Rules 20-109.005 and 20-112.003, Florida Administrative Code, adopted by the Department of Citrus to implement s. 601.9918, Florida Statutes, and rules 20-7.001, 20-7.002, 20-7.003, 20-7.004, and 20-7.005, Florida Administrative Code, adopted by the Department of Citrus to implement s. 601.992, Florida Statutes, all of which were in effect on July 1, 2012, continue in effect as rules until modified pursuant to

807688

s. 120.54, Florida Statutes. This paragraph applies retroactively to July 1, 2012.

(b) Rules adopted by the Department of Agriculture and Consumer Services to implement ss. 601.9918 or 601.992, Florida Statutes, between July 1, 2012, and the effective date of this act shall be repealed.

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

And the title is amended as follows:

Delete lines 9 - 12

and insert:

application; requiring the repeal of certain rules adopted by the Department of Agriculture and Consumer Services; providing an

By Senator Brandes

22-00581A-13 2013298__

A bill to be entitled

An act relating to the Department of Citrus; amending s. 601.152, F.S.; deleting an obsolete reference; amending ss. 601.9918 and 601.992, F.S.; reverting certain references to the Department of Citrus that were changed to references to the Department of Agriculture and Consumer Services by chapter 2012-182, Laws of Florida; providing for retroactive application; providing for the transfer of certain rules of the Department of Agriculture and Consumer Services to the Department of Citrus; providing for retroactive application of such rules; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 601.152, Florida Statutes, is amended to read:

601.152 Special marketing orders.—

(1)

(d) Copies of the proposed marketing order shall be made available to the public at the offices of the department ~~at Lakeland~~ at least 5 days before such hearing and shall be in sufficient detail to apprise all persons having an interest therein of the approximate amount of moneys proposed to be expended; the assessments to be levied thereunder; and the general details of the proposed marketing order for a special marketing campaign of advertising or sales promotion or market or product research and development. Among the details so

22-00581A-13 2013298__

specified shall be the period of time during which the assessment imposed pursuant to subsection (8) will be levied upon the privilege so assessed, which period may not be greater than 2 years. The order may, however, provide that the expenditure of the funds received from the imposition of such assessments shall not be so confined but may be expended during such time or times as shall be specified in the proposed marketing order, which may be either during the shipping season immediately preceding the shipping seasons during which such assessments are imposed or during, or at any time subsequent to, the shipping seasons during which such assessments are imposed. This section does not prevent the imposition of a subsequent marketing order before, during, or after the expenditure of funds collected under a previously imposed marketing order, provided the aggregate of the assessments imposed may not exceed the maximum permitted under subsection (8).

Section 2. Section 601.9918, Florida Statutes, is amended to read:

601.9918 Rules related to issuance and use of symbols.—In rules related to the issuance and voluntary use of symbols, certification marks, service marks, or trademarks, the commission may make general references to national or state requirements that the license applicant would be compelled to meet regardless of the department's ~~Department of Agriculture's~~ issuance of the license applied for.

Section 3. Section 601.992, Florida Statutes, is amended to read:

601.992 Collection of dues and other payments on behalf of certain nonprofit corporations engaged in market news and grower

education.—The Department of Citrus or the Department of Agriculture or their successors may collect or compel the entities regulated by the Department of Citrus ~~Agriculture~~ to collect dues, contributions, or any other financial payment upon request by, and on behalf of, any not-for-profit corporation and its related not-for-profit corporations located in this state that receive payments or dues from their members. Such not-for-profit corporation must be engaged, to the exclusion of agricultural commodities other than citrus, in market news and grower education solely for citrus growers, and must have at least 5,000 members who are engaged in growing citrus in this state for commercial sale. The Department of Citrus ~~Agriculture~~ may adopt rules to administer this section. The rules may establish indemnity requirements for the requesting corporation and for fees to be charged to the corporation that are sufficient but do not exceed the amount necessary to ensure that any direct costs incurred by the Department of Citrus ~~Agriculture~~ in implementing this section are borne by the requesting corporation and not by the Department of Citrus ~~Agriculture~~.

Section 4. (1) The amendments made by this act to ss. 601.9918 and 601.992, Florida Statutes, are remedial in nature and apply retroactively to the effective date of ss. 74 and 75 of chapter 2012-182, Laws of Florida.

(2) Rules adopted by the Department of Citrus to implement s. 601.992, Florida Statutes, which were in effect upon the effective date of s. 75 of chapter 2012-182, Laws of Florida, if transferred to the Department of Agriculture and Consumer Services are transferred by a type two transfer, as defined in

s. 20.06(2), Florida Statutes, to the Department of Citrus and shall apply retroactively to the effective date of s. 75 of chapter 2012-182, Laws of Florida.

(3) Rules adopted by the Department of Agriculture and Consumer Services on or after the effective date of s. 75 of chapter 2012-182, Laws of Florida, to implement s. 601.992, Florida Statutes, if any, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, to the Department of Citrus.

Section 5. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Education
Health Policy

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

SENATOR JEFF BRANDES
22nd District

March 13, 2013

Senator Jeremy Ring, Chairman
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Ring:

I respectfully request that my legislative assistant Caitlin Murray be permitted to present my bill, SB 298, regarding the Department of Citrus, before the Governmental Oversight and Accountability Committee on Thursday, March 14th at 11:00 in my absence.

I appreciate your consideration of this request; please contact me should you have any questions or concerns.

Sincerely,

Jeff Brandes

CC: Joe McVaney

REPLY TO:
❒ 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745
❒ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DOROTHY L. HUKILL
8th District

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 14, 2013

Chairman Jeremy Ring
Committee on Governmental Oversight & Accountability
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully ask to be excused from the Committee on Governmental Oversight & Accountability being held on Thursday, March 14, 2013 at 10:30am. Due to a death in the family I will not be able to attend.

Thank you in advance for your consideration.

Sincerely,

Dorothy L. Hukill

cc: Joe McVaney, Staff Director
Courtney Hicks, Committee Administrative Assistant

REPLY TO:
❒ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
❒ Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Governmental Oversight and Accountability Committee **Judge:**

Started: 3/14/2013 11:03:37 AM
Ends: 3/14/2013 12:27:26 PM Length: 01:23:50

11:03:39 AM Meeting to Order - Roll Call
11:04:57 AM Tab 1 SB 1392 Simpson
11:08:28 AM Amendment 446806 by Benacquisto
11:09:39 AM Amend 886870
11:09:59 AM Amend 596540
11:10:12 AM Amend 114816
11:10:56 AM David Murrell, Florida Police Benevolent Assn.
11:11:56 AM Leticia Adams, Florida Chamber of Commerce
11:12:43 AM Gary Rainey, Florida Professional Fire Fighters
11:14:15 AM Rowan Taylor, Miami-Dade Fire Fighters
11:15:03 AM Robert Suarez, Florida Professional Fire Fighters
11:16:06 AM Senator Montford speaks
11:21:37 AM Roll Call
11:22:45 AM SB 1150
11:24:16 AM Amend 585786
11:24:46 AM Amend 836104
11:25:23 AM Ashley Mayer, Director of Leg. and Cabinet Affairs, CFO Atwater's Office
11:26:10 AM Roll Call
11:27:00 AM
11:27:34 AM Tab 4 CS/SB 84 Diaz de la Portilla
11:28:46 AM Amend 210420
11:31:01 AM Roll Call
11:32:01 AM Tab 2 SB 452 Health Policy
11:32:15 AM Roll Call
11:32:42 AM Tab 5 CS/SB 60 Health Policy/Hays
11:33:23 AM Roll Call
11:34:03 AM Tab 10 SB298 Brandes
11:34:52 AM Roll Call
11:35:44 AM Tab 8 CS/SB 134 Education/Ring
11:36:40 AM Amend 848934
11:36:54 AM Amend 858128
11:50:40 AM Dr. Margaret Smith, Superintendent, Florida Assoc of School Admin
12:04:37 PM Motion to TP SB 134
12:05:07 PM Tab 6 SB 1142 Gibson
12:05:53 PM Late-filed Amend 419636
12:17:45 PM Motion to TP SB 1142
12:18:18 PM Tab 9 SB 230 Ring
12:19:03 PM Roll Call
12:19:14 PM Tab 3 SB 304 Criminal Justice
12:22:07 PM
12:22:08 PM Greg Pound, Self
12:26:52 PM Roll Call
12:27:02 PM Meeting Adjourned