

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Siplin, Vice Chair

MEETING DATE: Thursday, April 14, 2011
TIME: 11:00 a.m.—12:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Siplin, Vice Chair; Senators Benacquisto, Bogdanoff, Dean, Fasano, Flores, Garcia, Latvala, Margolis, Montford, Norman, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SJR 1704 Hays (Compare HJR 7037)	Judicial Qualifications Commission; Proposes an amendment to the State Constitution to require that certain proceedings, records, and materials of the Judicial Qualifications Commission be open to the public and to require the commission to notify the Speaker of the House of Representatives of complaints received or initiated, investigations conducted, and complaints concluded.	JU 03/28/2011 Not Considered JU 04/04/2011 Favorable GO 04/14/2011 RC
2	CS/SB 1328 Criminal Justice / Hays (Similar CS/H 677)	Public Records/Office of Financial Regulation; Provides an exemption from public records requirements for information held by the Office of Financial Regulation which is received from another state or federal agency and which is otherwise confidential or exempt pursuant to the laws of that state or federal law. Provides an exemption from public records requirements for information held by the office which is received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal agency, etc.	BI 03/22/2011 Favorable CJ 04/04/2011 Fav/CS GO 04/14/2011
3	SJR 1438 Hays (Identical HJR 1103)	Sovereignty of the State; Proposes an amendment to the State Constitution to assert the sovereignty of the state and refuse to comply with unconstitutional federal mandates.	JU 04/04/2011 Favorable GO 04/14/2011 RC

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Thursday, April 14, 2011, 11:00 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1352 Hays (Similar H 923)	Public Works Projects; Prohibits the state and political subdivisions that contract for the construction, maintenance, repair, or improvement of public works from imposing certain conditions on certain contractors, subcontractors, or material suppliers or carriers. Provides an exception. Prohibits the state and political subdivisions from restricting qualified bidders from submitting bids, being awarded any bid or contract, or performing work on a public works project. Revises written protest filing requirements for protests to contract solicitations or awards, etc.	CA 04/04/2011 Favorable GO 04/14/2011 BC
5	SB 1192 Rich (Compare CS/H 579) (If Received)	Public Records/Regional Autism Centers; Provides an exemption from public records requirements for all records that relate to a client of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center or participates in center activities. Provides for release of specified confidential and exempt information by a center under certain circumstances. Provides for review and repeal of the exemption. Provides a statement of public necessity.	CF 03/14/2011 Favorable HR 04/12/2011 GO 04/14/2011 If received
6	CS/CS/SB 88 Judiciary / Community Affairs / Gaetz (Similar CS/H 43)	Public Employee Compensation; Revises provisions relating to the prohibition against the payment of extra compensation. Prohibits provisions in contracts that provide for severance pay. Allows for severance pay under specified circumstances. Deletes a provision that allows a municipality to pay extra compensation. Repeals provisions relating to a prohibition against severance pay for officers or employees of water management districts, etc.	CA 03/07/2011 Fav/CS JU 04/04/2011 Fav/CS GO 04/14/2011

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Thursday, April 14, 2011, 11:00 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/CS/SB 952 Higher Education / Commerce and Tourism / Richter (Similar CS/CS/H 599)	Uniform Prudent Management of Institutional Funds; Provides requirements for the management of funds held by an institution exclusively for charitable purposes. Provides standards of conduct in managing and investing institutional funds. Provides requirements for appropriation for expenditure or accumulation of an endowment fund by an institution. Authorizes an institution to delegate to an external agent the management and investment of an institutional fund, etc.	
		CM 03/22/2011 Fav/CS HE 04/04/2011 Fav/CS GO 04/14/2011 BC	
8	SB 1610 Detert (Compare CS/H 1425) (If Received)	State Minimum Wage; Provides for calculating the Florida minimum wage when the state minimum wage and the federal minimum wage for the prior year is lower than the adjusted real wage, etc.	
		CM 04/12/2011 GO 04/14/2011 If received BC	
9	CS/CS/SB 1346 Children, Families, and Elder Affairs / Commerce and Tourism / Commerce and Tourism (Compare CS/H 4041, H 7163, H 7165, H 7167, H 7169, H 7171, H 7173, H 7175, H 7177, H 7179, CS/H 7229, S 1362, S 1862, S 2156)	Obsolete References and Programs; Removes an obsolete reference to the Department of Commerce and the Department of Labor and Employment Security. Updates a reference to the Department of Commerce to refer instead to the Office of Tourism, Trade, and Economic Development. Repeals provisions relating to agreements of the Department of Labor and Employment Security with county tax collectors. Repeals provisions relating to child abuse prevention training in the district school system, etc.	
		CM 03/16/2011 Fav/CS CF 04/04/2011 Fav/CS GO 04/14/2011	

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Thursday, April 14, 2011, 11:00 a.m.—12:30 p.m.

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10	CS/SB 1434 Transportation / Latvala (Compare S 2160)	Office of Motor Carrier Compliance; Creates a motor carrier weight inspection area of program responsibility within the Department of Transportation, which replaces motor carrier compliance. Creates the Office of Motor Carrier Compliance within the Division of the Florida Highway Patrol within the Department of Highway Safety and Motor Vehicles. Creates the Law Enforcement Consolidation Task Force. Provides for membership. Requires the task force to make recommendations and submit a report to the Legislature by a certain date. Provides for future expiration, etc. TR 03/16/2011 TR 03/22/2011 Fav/CS GO 04/14/2011 CJ BC	
11	CS/SB 1574 Military Affairs, Space, and Domestic Security / Latvala (Compare H 1161)	Business Enterprise Opportunities/Wartime Veterans; Revises legislative intent. Renames and revises the Florida Service-Disabled Veteran Business Enterprise Opportunity Act to expand the vendor preference in state contracting to include certain businesses owned and operated by wartime veterans or veterans of a period of war. MS 04/05/2011 Fav/CS GO 04/14/2011 BC	
12	CS/SB 994 Commerce and Tourism / Latvala (Identical CS/H 913)	Public Records/Public Airports; Provides definitions. Provides an exemption from public records requirements for proprietary confidential business information and trade secrets held by a public airport and for any proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities. Provides for expiration of the exemptions. Provides for future legislative review and repeal of the exemptions under the Open Government Sunset Review Act. Provides a finding of public necessity. CA 03/14/2011 Fav/1 Amendment CM 04/05/2011 Fav/CS GO 04/14/2011	

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Thursday, April 14, 2011, 11:00 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 224 Dean (Similar CS/H 107)	Local Government Accountability; Amends provisions relating to the Legislative Auditing Committee to clarify when the Department of Community Affairs may institute procedures for declaring that a special district is inactive. Specifies the level of detail required for each fund in the sheriff's proposed budget. Revises the schedule for submitting a local governmental entity's audit and annual financial reports to the Department of Financial Services. Revises provisions relating to the guidelines for district school boards to maintain an ending fund balance for the general fund, etc.	CA 01/25/2011 Favorable GO 04/14/2011 BC
14	CS/SB 1962 Community Affairs / Garcia (Compare H 1269)	Revitalizing Municipalities; Provides for the transfer of certain sales tax revenues from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities. Provides for a distribution from the Revenue Sharing Trust Fund for Municipalities relating to an increase in sales tax collections over the preceding year to the governing body of an area that receives tax increment revenues pursuant to a designation as a sales tax TIF area. Revises provisions relating to the enterprise zone development agency, etc.	CA 04/04/2011 Fav/CS GO 04/14/2011 BC
15	CS/SB 1456 Children, Families, and Elder Affairs / Garcia (Similar CS/H 1473, Compare CS/H 1125, S 1922)	Public Records/Florida Health Choices; Provides exemptions from public records requirements for personal identifying information of an enrollee or participant in the Florida Health Choices Program, client and customer lists of buyers' representatives which are held by Florida Health Choices, Inc., and proprietary confidential business information of vendors which is held by Florida Health Choices, Inc. Provides for disclosure of such confidential and exempt information to certain persons and entities upon written request. Provides for future legislative review and repeal of the exemptions, etc.	HR 03/22/2011 Favorable CF 04/04/2011 Fav/CS GO 04/14/2011

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Thursday, April 14, 2011, 11:00 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	SM 1598 Siplin (Similar HM 1287)	Tax Increase Prevention and Reconciliation Act; Urges the Congress of the United States to support repeal of Section 511 of the Tax Increase Prevention and Reconciliation Act, which requires governments that annually spend more than \$100 million to withhold a 3 percent federal tax on payments made for certain goods and services.	
		GO 04/14/2011 CA	
<hr/> A proposed committee substitute for the following bill (SB 2090) is expected to be considered:			
17	SB 2090 Governmental Oversight and Accountability (Similar CS/H 7223)	OGSR/Submission of Competitive Solicitation; Amends provisions which provide an exemption from public records requirements for bids, proposals, or replies submitted to an agency in response to a competitive solicitation. Expands the public records exemption by extending the duration of the exemption. Amends provisions which provide an exemption from public meetings requirements for meetings at which a negotiation with a vendor is conducted and which provides an exemption from public records requirements for recordings of exempt meetings, etc.	
		GO 04/05/2011 Temporarily Postponed GO 04/14/2011 BC	
<hr/> A proposed committee substitute for the following bill (SB 2056) is expected to be considered:			
18	SB 2056 Rules Subcommittee on Ethics and Elections (Similar H 7159)	OGSR/Commission on Ethics; Amends provisions which provide exemptions from public records and public meeting requirements for records and meetings related to audits and investigations conducted by the Commission on Ethics of alleged violations of certain lobbyist registration and reporting requirements. Saves the exemptions from repeal under the Open Government Sunset Review Act. Removes the scheduled repeal of the exemptions.	
		EE 03/28/2011 Favorable GO 04/14/2011	

COMMITTEE MEETING EXPANDED AGENDA
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 Thursday, April 14, 2011, 11:00 a.m.—12:30 p.m.

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19	SB 2174 Governmental Oversight and Accountability (Similar H 7225)	OGSR/State Board of Administration; Transfers, renumbers, and amends provisions which provide exemptions from public records requirements for the State Board of Administration. Specifies information that does not constitute proprietary confidential business information held by the State Board of Administration. Requires the State Board of Administration to maintain a written list of records covered under a verified, written declaration. Conforms cross-references. Makes editorial changes. Removes the scheduled repeal of the exemptions.	
		GO	04/14/2011

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
	Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.		
	Investment Advisory Council		
20	Garcia, Martin L. Esquire (Tampa)	02/01/2015	
	Newman, Charles W. (Ponte Vedra Beach)	02/01/2015	

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 Governmental Oversight and Accountability Committee

BILL: SJR 1704

INTRODUCER: Senator Hays

SUBJECT: Judicial Qualifications Commission

DATE: April 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	Favorable
2.	Naf	Roberts	GO	Pre-meeting
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The joint resolution amends provisions of the Florida Constitution relating to the Judicial Qualifications Commission, to require that upon the finding of probable cause and the filing of formal charges, a determination that formal charges will not be filed, or the entry of a stipulation or other settlement agreement before the investigative panel determines whether to file formal charges, all further proceedings before the Judicial Qualifications Commission shall be open to the public, and all records and materials of the commission relating to the complaint against the justice or judge shall be open to the public for inspection or copying. However, information that is otherwise confidential or exempt shall retain its status. The records and materials shall be accessible to the public regardless of whether they were received or created while the proceedings were confidential or open to the public.

The joint resolution requires the Judicial Qualifications Commission to notify the Speaker of the Florida House of Representatives of all complaints received or initiated, all investigations conducted, and all complaints dismissed, settled, or otherwise concluded.

This joint resolution also includes a ballot summary, and three contingent summaries, which outline the provisions of the joint resolution.

This joint resolution proposes an amendment to section 12, Article V of the Florida Constitution.

II. Present Situation:

Judicial Qualifications Commission

The Judicial Qualifications Commission is created under Article V, section 12, of the Florida Constitution. The Judicial Qualifications Commission is vested with jurisdiction to investigate and recommend to the Florida Supreme Court the discipline, including the removal from office, or any justice or judge whose conduct demonstrates a present unfitness to hold office or warrants discipline.¹ “For purposes of this section, discipline is defined as any or all of the following: reprimand, fine, suspension with or without pay, or lawyer discipline.”² The commission shall have jurisdiction over justices and judges regarding allegations that misconduct occurred before or during service as a justice or judge if a complaint is made no later than one year following service as a justice or judge.³

The Judicial Qualifications Commission is comprised of:

- Two judges from the district courts of appeal (selected by judges of the district courts of appeal);
- Two judges from the circuit courts (selected by judges of the circuit courts);
- Two judges from the county courts (selected by judges of the county courts);
- Four electors who are Florida residents and members of the Florida Bar (selected by the governing body of the Florida Bar); and
- Five electors who are Florida residents who have never held judicial office or been members of the Florida Bar and who are selected by the Governor.⁴

The members of the Judicial Qualifications Commission serve staggered terms not to exceed six years as prescribed by general law.⁵ No member of the Judicial Qualifications Commission shall hold office in a political party or participate in any campaign for judicial office or hold public office; provided that a judge may campaign for judicial office and hold that office.⁶ The commission shall elect one of its members as its chairperson.⁷

The Judicial Qualifications Commission is divided into an investigative panel and a hearing panel as established by rule of the commission.⁸ The investigative panel has jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints, and upon a vote of a simple majority of the panel submit formal charges to the hearing panel.⁹ The hearing panel has the authority to receive and hear formal charges from the investigative panel and upon a two-thirds vote of the panel recommend to the Florida Supreme Court the removal of a justice or judge or the involuntary retirement of a justice or judge for any permanent disability that seriously interferes with the performance of judicial duties.¹⁰ Upon a simple majority vote of the

¹ FLA. CONST. art. V, s. 12(a)(1).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ FLA. CONST. art. V, s. 12(a)(2).

⁶ *Id.*

⁷ *Id.*

⁸ FLA. CONST. art. V, s. 12(b).

⁹ *Id.*

¹⁰ *Id.*

membership of the hearing panel, the panel may recommend to the Florida Supreme Court that the justice or judge be subject to appropriate discipline.¹¹

Confidentiality of Proceedings of the Judicial Qualifications Commission

Until formal charges against a justice or judge are filed by the investigative panel with the clerk of the Supreme Court of Florida, all proceedings by or before the commission shall be confidential; provided, however, upon a finding of probable cause and the filing by the investigative panel with the clerk of the formal charges against a justice or judge, the charges and all further proceedings before the commission shall be public.¹²

The constitutional provisions authorizing the Judicial Qualifications Commission do not address the extent to which records related to a disciplinary investigation by the commission are subject to disclosure. However, the rules of the commission provide that “[a]ll notices, papers and pleadings mailed to a judge prior to formal charges being instituted shall be enclosed in a cover marked “confidential.””¹³ The rules further provide that:

(a) Upon the filing of the Notice of Formal Charges against a judge with the Clerk of the Supreme Court of Florida, the Notice of Formal Charges and all subsequent proceedings before the Hearing Panel shall be public.

(b) The original of all pleadings *subsequent to* the Notice of Formal Charges shall be filed with the Clerk of the Supreme Court of Florida, which office is designated by the Commission for receiving, docketing, filing and making such records available for public inspection.¹⁴

The commission’s rules also specify that – on request of the Speaker of the House of Representatives or the Governor – the commission shall make available all information in possession of the commission for use in consideration of impeachment or suspension, respectively.¹⁵

The Florida Supreme Court articulated a rationale for confidentiality of complaints concerning the judiciary in the following statement:

The purpose is to process complaints concerning the judiciary from any and all sources, while requiring confidentiality as a means to protect both

¹¹ *Id.*

¹² FLA. CONST. art. V, s. 12(a)(4). *Accord* ss. 456.073(10) and 455.225(10), F.S. (Providing that the complaint and all information obtained pursuant to a disciplinary complaint filed against a professional licensed by the Department of Health or Department of Business and Professional Regulation are confidential until 10 days after probable cause is found to exist by the probable cause panel, but if confidentiality is not waived, or probable cause is not found, the complaint and all information are not available to the public). *But see* s 106.25(7), F.S., under which sworn complaints and investigative reports filed under ch. 106, F.S., with the Elections Commission are confidential with specified exceptions that include, upon a determination of probable cause or no probable cause by the Elections Commission.

¹³ Fla. Jud. Qual. Comm’n Rule 23.

¹⁴ Fla. Jud. Qual. Comm’n Rule 10.

¹⁵ Fla. Jud. Qual. Comm’n Rule 6(e).

the complainant from possible recriminations and the judicial officer from unsubstantiated charges. Confidentiality is also necessary for the Commission to carry out its responsibility to make suitable recommendations concerning judicial personnel problems that affect court efficiency. Eliminating the confidentiality of these proceedings would also eliminate many sources of information and complaints received by the Commission not only from lay citizens and litigants but also from lawyers and judges within the system.¹⁶

Constitutional Amendments

Section 1, Article XI, of the Florida Constitution, authorizes the Legislature to propose constitutional amendments by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office, or at a special election held for that purpose.¹⁷ Section 5(e), Article XI, of the Florida Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.¹⁸

III. Effect of Proposed Changes:

The joint resolution amends Art. V, s. 12(a)(4) of the Florida Constitution, relating to the Judicial Qualifications Commission, to require that upon the finding of probable cause and the filing of formal charges, a determination that formal charges will not be filed, or the entry of a stipulation or other settlement agreement before the investigative panel determines whether to file formal charges, all further proceedings before the Judicial Qualifications Commission shall be open to the public, and all records and materials of the commission relating to the complaint against the justice or judge shall be open to the public for inspection or copying. However, information that is otherwise confidential or exempt shall retain its status. The records and materials shall be accessible to the public regardless of whether they were received or created while the proceedings were confidential or open to the public.

The joint resolution also amends Art. V, s. 12(a)(5) of the Florida Constitution to require the Judicial Qualifications Commission to notify the Speaker of the Florida House of Representatives of all complaints received or initiated, all investigations conducted, and all complaints dismissed, settled, or otherwise concluded.

The joint resolution provides four different ballot summaries. The first ballot summary directs that it will be placed on the ballot, and each subsequent ballot summary provides that it will be placed on the ballot in the event that a court declares the preceding ballot summary defective and the decision of the court is not reversed. This feature appears to have the effect of allowing the proposed amendment to survive up to three successful challenges to the amendment for a defective ballot summary.

¹⁶ See *Forbes v. Earle*, 298 So. 2d 1, 4 (Fla. 1974).

¹⁷ FLA. CONST. art. XI, s. 5(a).

¹⁸ FLA. CONST. art. XI, s. 5(e).

Because the resolution does not specify an alternate date, if approved by the electors, the amendment will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.¹⁹

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:

The Department of State Division of Elections is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$106.14 according to the department. If the joint resolution passes and the proposed constitutional amendment is placed on the ballot, the department will incur costs to advertise the proposed amendment.²⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁹ FLA. CONST. art. XI, s. 5(e).

²⁰ See, e.g., Fiscal Note on SJR 2 prepared by the Florida Department of State (January 4, 2011).

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 1328

INTRODUCER: Criminal Justice Committee and Senator Hays

SUBJECT: Public Records/Office of Financial Regulation

DATE: April 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arzillo	Burgess	BI	Favorable
2.	Erickson	Cannon	CJ	Fav/CS
3.	Naf	Roberts	GO	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Current law provides public-records exemptions for the Office of Financial Regulation (OFR or office) for certain information obtained or created by OFR pursuant to its involvement in the charter, examination, or investigation of financial institutions. The exemptions vary among OFR’s regulatory programs. Currently, the office does not have a public-records exemption that would allow it to receive information from another state or federal government that is confidential or exempt pursuant to the laws of that state or pursuant to federal law.

This bill creates a public-records exemption for the following information held by OFR:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

The bill authorizes OFR to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation. The bill provides for retroactive application of the exemption.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

Because this bill creates a public-records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 119.0712, Florida Statutes.

II. Present Situation:

Florida's Public-Records Laws

Florida has a long history of providing public access to the records of governmental and other public entities. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.¹ Article I, s. 24(a), of the Florida Constitution, provides that:

Every person² has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

The Public Records Act³ specifies conditions under which access must be provided to agency⁴ records. Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials prepared in connection with official agency business which are intended to perpetuate, communicate, or

¹ FLA CONST. Art. I, Section 24.

² Section 1.01(3) F.S., defines “person” to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), 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.”

⁵ Section 119.011(12), F.S.

formalize knowledge.⁶ Such materials, regardless of whether they are in final form, are open for public inspection unless specifically exempted.⁷ Exemptions can only be created by the Legislature,⁸ and must be created in general law, state the public necessity justifying it, and may not be broader than necessary to meet that public necessity.⁹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁰ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹¹

Open Government Sunset Review Act

The Open Government Sunset Review Act¹² sets forth a legislative review process for newly created or substantially amended public-records or public-meetings exemptions. It requires an automatic repeal of the exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public-records or public-meetings 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.¹³

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

⁷ *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

⁸ Article I, s. 24(c) of the State Constitution.

⁹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567, 568-69 (Fla. 1999).

¹⁰ Attorney General Opinion 85-62.

¹¹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

¹² Section 119.15, F.S.

¹³ Section 119.15(6)(b), F.S.

Office of Financial Regulation

The Office of Financial Regulation (OFR or office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities and individuals. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight.

OFR's Current Public-Records Exemptions

Current law exempts certain information obtained or created by the office when it is involved in the charter, examination, or investigation of financial institutions.¹⁴ However, the exemptions vary among the office's regulatory programs. Nevertheless, there are three areas where confidentiality and exemptions are currently disallowed, but would assist the office in performing its investigatory and examination duties more diligently and efficiently.

The first instance in which the office is impeded from gathering information is when a federal or out-of-state regulatory agency maintains confidentiality requirements of certain information obtained through investigations or examinations. In this instance, the office is required to keep the information confidential, but cannot do so because there is no confidentiality provision for the information under current Florida law. Therefore, valuable information that could be obtained from other agencies is not accessible by the office.

Furthermore, the office is limited in its capacity to become involved in out-of-state or federal investigations due to limited confidentiality and exemptions. Currently, if the office is involved in a multi-agency examination or investigation, the office cannot accept information from other agencies if the information is confidential under the federal or out-of-state laws. The office is also inadvertently limited in the supply of information in multi-jurisdictional investigations. Several of the office's exemptions are only effective for the time of the investigation or examination. Specifically, information used in multi-jurisdictional investigations or examinations may become public record under current Florida law after the examination or investigation is complete. If the federal or out-of-state laws provide for a continuing confidentiality, then the office is limited in its ability to provide information in these instances.

Additionally, the office is limited in the gathering of information from out-of-state and federal agencies that treat certain information as confidential. In these cases, the office is required to sign confidentiality agreements with the appropriate regulatory agency. However, the office cannot sign these agreements if Florida law does not exempt the information from public records requirements. Therefore, the office is inhibited in its investigative capacity to gather information from other regulatory agencies.

¹⁴ See s. 560.129, F.S. (Money Services Businesses exemptions), s. 494.00125, F.S. (mortgage brokering and lending), s. 517.2015, F.S. (securities), s. 520.9965, F.S. (retail installment sales), s. 655.057, F.S. (financial institutions).

III. Effect of Proposed Changes:

This bill makes the following information held by OFR confidential and exempt from s. 119.07(1), F.S., and s. 24(1), Art. I of the State Constitution:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

The bill authorizes OFR to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation.

The bill provides for retroactive application of the exemption.¹⁵

The exemption is subject to the provisions of the Open Government Sunset Review Act and will repeal on October 2, 2016, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.¹⁶

The bill specifies an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the State Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public-records or public-meetings exemption. Therefore, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created or expanded public-records or public-meetings exemption. Therefore, this bill includes a public necessity statement.

C. Trust Funds Restrictions:

None.

¹⁵ The Supreme Court of Florida ruled that a public-records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

¹⁶ Section 24(c), Art. I of the State Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on April 4, 2011:

Provides that an exemption created for information received or developed by the office as a part of a joint or multiagency examination with another state or federal regulatory, administrative, or criminal justice agency does not apply to information obtained or developed by the office which would otherwise be available for public inspection if the office had conducted an independent examination or investigation under Florida law.

B. Amendments:

None.

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 Governmental Oversight and Accountability Committee

BILL: SJR 1438

INTRODUCER: Senator Hays

SUBJECT: Sovereignty of the State

DATE: April 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	Favorable
2.	Naf	Roberts	GO	Pre-meeting
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Senate joint resolution proposes an amendment to the Florida Constitution expressing the sovereignty of the state under the Tenth Amendment to the United States Constitution. More specifically, the joint resolution provides that all powers not otherwise enumerated and granted to the federal government by the U.S. Constitution are reserved to the state, and that Floridians are not required to comply with mandates from the federal government which are beyond the scope of its constitutionally delegated powers.

The joint resolution also provides that all compulsory federal legislation that directs states to comply under threat of losing federal funding should be repealed and are not recognized by the state.

This resolution proposes the creation of article I, section 28, of the Florida Constitution.

II. Present Situation:

Tenth Amendment and State Sovereignty

By the provisions of the United States Constitution, certain powers are entrusted solely to the federal government alone, while others are reserved to the states, and still others may be exercised concurrently by both the federal and state governments.¹ All attributes of government that have not been relinquished by the adoption of the United States Constitution and its

¹ 48A FLA. JUR 2D, *State of Florida* s. 13 (2010).

amendments have been reserved to the states.² The Tenth Amendment to the United States Constitution provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” As noted by one Supreme Court Justice:

[t]his amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities.³

Therefore, courts have consistently interpreted the Tenth Amendment to mean that “[t]he States unquestionably do retain a significant measure of sovereign authority. . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government.”⁴ Under the federalist system of government in the United States, states may enact more rigorous restraints on government intrusion than the federal charter imposes.⁵ However, a state may not adopt more restrictions on the fundamental rights of a citizen than the United States Constitution allows.⁶

The United States Supreme Court has recognized that the framers of the Constitution explicitly chose a constitution that affords to Congress the power to regulate individuals, not states.⁷ Therefore, the Court has consistently held that the Tenth Amendment does not afford Congress the power to require states to enact particular laws or require that states regulate in a particular manner.⁸ For example, in *New York v. United States*, the Court, in interpreting the Tenth Amendment, ruled that the Constitution does not confer upon Congress the power to compel states to provide for disposal of radioactive waste generated within their borders, though Congress has substantial power under the Constitution to encourage states to do so.⁹

State Sovereignty Movement

A state sovereignty movement has emerged in the United States over the past couple of years. The premise of this movement is the belief that the balance of power has tilted too far in favor of the federal government. Proponents of this movement urge legislators and citizens to support resolutions or state constitutional amendments declaring the sovereignty of the state over all matters not delegated by the limited enumeration of powers in the United States Constitution to the federal government. The resolutions often mandate that the state government will hold the federal government accountable to the United States Constitution to protect state residents from federal abuse.

² *Id.*

³ *New York v. United States*, 505 U.S. 144, 156 (1992) (quoting 3 J. Story, *Commentaries on the Constitution of the United States* 752 (1833)).

⁴ *Id.*

⁵ 48A FLA. JUR 2D, *State of Florida* s. 13 (2010).

⁶ *Id.* (quoting *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 549 (1985)).

⁷ *New York v. United States*, 505 U.S. at 156.

⁸ *Id.*; see also *Baggs v. City of South Pasadena*, 947 F. Supp. 1580 (M.D. Fla. 1996).

⁹ *New York v. United States*, 505 U.S. at 156.

An advocacy organization supporting state sovereignty reports that multiple states have introduced similar resolutions asserting state sovereignty.¹⁰ Nine legislatures have adopted some variation of the resolution¹¹ In late June 2009, the Tennessee governor became the first governor to sign such a resolution.¹²

In lieu of a resolution asserting state sovereignty, some state legislators have filed bills proposing binding legislation supporting state sovereignty. For example, a New Hampshire legislator filed a bill to create a “joint committee on the constitutionality of acts, orders, laws, statutes, regulations, and rules of the government of the United States of America in order to protect state sovereignty.”¹³ Some state legislators have filed legislation for a constitutional amendment asserting state sovereignty.¹⁴ To date, no state constitutional amendment has been adopted.

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.¹⁵ Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.¹⁶ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.¹⁷

III. Effect of Proposed Changes:

The Senate joint resolution proposes an amendment to the Florida Constitution expressing the sovereignty of the state under the Tenth Amendment to the United States Constitution.

The joint resolution recognizes Florida’s residual and inviolable sovereignty under the Tenth Amendment to the United States Constitution over all powers not otherwise enumerated and granted to the federal government. The joint resolution states that the people of this state refuse

¹⁰ Tenth Amendment Center, *10th Amendment Resolutions*, <http://www.tenthamendmentcenter.com/nullification/10th-amendment-resolutions/> (last visited April 1, 2011).

¹¹ Those states include: Arizona, Idaho, Kansas, Louisiana, Nebraska, North Dakota, Oklahoma, South Carolina, and South Dakota.

¹² Tennessee HJR 108 (2009).

¹³ New Hampshire HB 1343 (2010). A Missouri legislator filed a bill creating a “Tenth Amendment Commission.” The commission refers cases to the Attorney General when the federal government enacts laws requiring the state or a state officer to enact or enforce a provision of federal law believed to be unconstitutional. See Missouri SB 587 (2010).

¹⁴ *See, e.g.*, Oklahoma HJR 1063 (2010).

¹⁵ FLA. CONST., art. XI, s. 1.

¹⁶ FLA. CONST., art. XI, s. 5(a).

¹⁷ FLA. CONST., art. XI, s. 5(e).

to comply with federal government mandates from any branch which are beyond the scope of those constitutionally delegated powers.

The joint resolution also provides that the people of this state refuse to recognize or comply with compulsory federal legislation that directs the state to comply or requires the state to pass certain legislation in order to retain federal funding. The joint resolution further demands the repeal of these mandates.

The specific statement to be placed on the ballot is provided. This language summarizes the provisions in the proposed constitutional amendment.

The joint resolution is silent regarding an effective date for the constitutional amendment. Therefore, in accordance with section 5, article XI, of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by at least 60 percent of the electorate voting on the measure.

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:

Preemption

Depending upon the nature and scope of any federal mandates enacted after the effective date of the constitutional amendment, if it is adopted, the federal law could preempt the effect of this proposed constitutional amendment. The Supremacy Clause of the United States Constitution establishes federal law as the “supreme law of the land, and invalidates state laws that interfere with or are contrary to federal law.”¹⁸ However, the Tenth Amendment to the U.S. Constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Therefore, courts have consistently interpreted the Tenth Amendment to mean that “[t]he States unquestionably do retain a significant measure of sovereign authority. . . to the extent that the Constitution has not divested

¹⁸ *ABC Charters, Inc. v. Bronson*, 591 F.Supp.2d 1272 (S.D. Fla. 2008) (quoting *Lozano v. City of Hazleton*, 496 F.Supp.2d 477, 518 (M.D. Pa. 2007)); see also U.S. CONST., art. VI.

them of their original powers and transferred those powers to the Federal Government.”¹⁹

In conducting a preemption analysis in areas traditionally regulated by the states, there is a presumption against preemption.²⁰ There are three types of preemption:

- Express preemption;
- Field preemption; and
- Conflict preemption.

“Conflict preemption” occurs when “it is impossible to comply with both federal and state law, or when state law stands as an obstacle to the objectives of federal law.”²¹

“Field preemption” occurs when federal regulation in a legislative field is so pervasive that Congress left no room for the states to supplement it. “Express preemption” occurs when federal law explicitly expresses Congress’ intent to preempt a state law.²²

The Florida constitutional amendment could be subject to a constitutional challenge if the state, in reliance upon the proposed amendment, refuses to comply with a mandate from the federal government. The constitutionality of the Florida constitutional amendment may turn on whether the court determines that the federal legislation adopted is beyond the scope of the federal government’s constitutionally guaranteed powers.

Joint Resolutions

In order for the Legislature to submit the joint resolution to the voters for approval, the joint resolution must be agreed to by three-fifths of the membership of each house.²³ If SJR 1438 is agreed to by the Legislature, it will be submitted to the voters at the next general election held more than 90 days after the amendment is filed with the Department of State.²⁴ As such, SJR 1438 would be submitted to the voters at the 2012 General Election. In order for SJR 1438 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.²⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹⁹ *New York v. United States*, 505 U.S. 144, 156 (1992) (quoting 3 J. Story, *Commentaries on the Constitution of the United States* 752 (1833)).

²⁰ 48A FLA. JUR 2D *State of Florida* s. 13.

²¹ *Id.*

²² *Id.*

²³ FLA. CONST. art. XI, s. 1.

²⁴ FLA. CONST. art. XI, s. 5(a).

²⁵ FLA. CONST. art. XI, s. 5(e).

C. Government Sector Impact:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.²⁶ Costs for advertising vary depending upon the length of the amendment. According to the Department of State, the average cost per word of publishing a constitutional amendment is \$106.14.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

²⁶ FLA. CONST. art. XI, s. 5(d).



523154

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 51 - 85
and insert:

(2) (a) Except as provided in paragraph (b), or as required by federal or state law or funding requirements, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works shall not require that a contractor, subcontractor, material supplier, or carrier engaged in the construction, maintenance, repair, or improvement of public works:

1. Pay employees a predetermined amount of wages or wage



523154

13 rate;
14 2. Provide employees a specified type, amount, or rate of
15 employee benefits;
16 3. Control or limit staffing, except as directly related to
17 supervision of the public works project;
18 4. Recruit, train, or hire employees from a designated or
19 single entity that acts as a source of labor supply;
20 5. Designate any particular assignment of work for
21 employees; provided, however, that this does not prohibit
22 designation of key personnel for architectural, engineering,
23 design, or project management services;
24 6. Participate in proprietary training programs; or
25 7. Enter into any type of project labor agreement.
26 (b) Paragraph (a) does not apply if the payment of
27 prevailing or minimum wages to persons working on projects
28 funded in whole or in part by federal funds is required under
29 federal law.
30 (3) The state or any political subdivision that contracts
31 for the construction, maintenance, repair, or improvement of
32 public works shall not require that a contractor, subcontractor,
33 material supplier, or carrier engaged in the construction,
34 maintenance, repair, or improvement of public works execute or
35 otherwise become a party to any agreement with employees, their
36 representatives, or any labor organization as described in 29
37 U.S.C. s. 152(5) and 42 U.S.C. s. 2000e(d), including any
38 areawide, regional, or state building or construction trade or
39 crafts council, organization, association, or similar body, as a
40 condition of bidding, negotiating, being awarded any bid or
41 contract, or performing work on a public works project.



523154

42 (4) Except as required by federal or state law, the state
43 or any political subdivision that contracts

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 Governmental Oversight and Accountability Committee

BILL: SB 1352

INTRODUCER: Senator Hays

SUBJECT: Public Works Projects

DATE: April 12, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.	McKay	Roberts	GO	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill limits government entities' ability to require a contractor, subcontractor, supplier or carrier on a public works project to:

- Pay employees a predetermined amount of wages or wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control or limit staffing;
- Recruit, train, or hire employees from a designated or single source;
- Designate any particular assignment of work for employees;
- Participate in proprietary training programs; or
- Enter into any type of project labor agreement.

The bill prohibits government entities from requiring that a contractor, subcontractor, supplier or carrier on a public works project enter into an agreement with a labor organization.

The bill prohibits government entities from restricting qualified/licensed/certified bidders from doing any of the work described in the bid documents, from submitting bids, being awarded bids, or performing work on a public works contract.

The bill extends the length of time for an entity to submit a notice to protest a bid specification from 72 hours to 7 days.

The bill creates an undesignated section of law.

This bill substantially amends section 120.56 of the Florida Statutes.

II. Present Situation:

State and Federal Constitutional Issues

Florida is a “right to work” state. Article I, section 6 of the Florida Constitution reads:

The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

Employees have a fundamental right to organize for the purposes of collective bargaining, but have no federal constitutional right to mandatory collective bargaining.¹ Under the Florida Constitution, however, courts have held that the right to collectively bargain is a fundamental right which may be abridged only for a compelling state interest, and therefore a statute under review must serve that compelling state interest in the least intrusive means possible.²

Certain restrictions may be placed on a union’s ability to collect dues or fees. In Florida, nonunion employees cannot be forced to pay union fees and dues as a condition of employment.³ In states where employees can be required to pay dues, the exaction of fees beyond those necessary to finance collective bargaining activities has been found to violate the unions’ judicially created duty of fair representation and nonunion members’ First Amendment rights.⁴ The Supreme Court has held that a local government’s restrictions on union wage deductions would be upheld against an equal protection challenge if it was reasonably related to a legitimate government purpose.⁵ In a more recent case, the Supreme Court has upheld a state statute banning public-employee payroll deductions for political activities against a First Amendment challenge.⁶ The Court held that the state was under no obligation to aid unions in their political activities, and the state’s decision not to do so was not abridgement of unions’ free speech rights, since unions remained free to engage in such speech as they saw fit, but without enlisting the state’s support.⁷

Federal Labor Law

The Federal National Labor Relations Act (NLRA) of 1935⁸ and the Federal Labor Management Relations Act of 1947⁹ constitute a comprehensive scheme of regulations guaranteeing to

¹ See *Sikes v. Boone*, 562 F. Supp. 74 (N.D. Fla. 1983) *aff’d* 723 F.2d 918 (11th Cir. 1983).

² *Chiles v. State Employees Attorneys Guild*, 734 So. 2d 1030 (Fla. 1999); *Dade County School Admins Assn, Local 77, AFSA, AFL-CIO v. School Bd.*, 840 So. 2d 1103 (Fla. 1st DCA 2003).

³ *Schermerhorn v. Local 1625 of Retail Clerks Intern. Ass’n, AFL-CIO*, 141 So. 2d 269 (Fla. 1962), *judgment aff’d on other grounds*, 375 U.S. 96 (1963); *AFSCME Local 3032 v. Delaney*, 458 So. 2d 372 (Fla. 1st DCA 1984).

⁴ *Comm’n Workers of Am. v. Beck*, 487 U.S. 735 (1988).

⁵ *Charlotte v. Local 660, Int’l Assoc. of Firefighters*, 426 U.S. 283 (1976).

⁶ *Ysursa v. Pocatello Education Assoc.*, 129 S.Ct. 1093 (2009).

⁷ *Id.*

⁸ 29 U.S.C. §§ 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce. Other federal labor-relations statutes that can include the Labor-Management Reporting and Disclosure Act¹⁰ and the Railway Labor Act. A number of states have statutes requiring nongovernmental employers to pay prevailing wages to workers on public works projects.¹¹

Project Labor Agreements

There appears to be no unified definition of project labor agreement (PLA). A case¹² sometimes cited for a definition specifies a project legal agreement as:

an agreement between a construction project owner and a labor union that a contractor must sign in order to perform work on the project. The union is designated the collective bargaining representative for all employees on the project and agrees that no labor strikes or disputes will disrupt the project. The contractor must abide by certain union conditions, such as hiring through union hiring halls and complying with union wage rules.

New York law¹³ defines a PLA as a “pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on a public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work.”

In 2009, President Obama signed Executive Order 13502 allowing federal executive agencies to require contractors on large-scale government construction projects to enter into PLAs as a condition of being awarded a contract.

Federal Wage Regulation

Both federal¹⁴ and state laws provide protection to workers who are employed by private and governmental entities. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.¹⁵ Examples of federal laws include:

⁹ 29 U.S.C. §§ 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

¹⁰ 29 U.S.C. §§ 401 to 531.

¹¹ See generally, 7 A.L.R. 5th 444.

¹² *Associated Builders and Contractors, Inc. v. Southern Nevada Water Authority*, 115 Nev. 151, 979 P.2d 224 (Nev.,1999).

¹³ N.Y. LAB. LAW § 222 : NY Code - Section 222.

¹⁴ A list of examples of federal laws that protect employees is located at: United States Department of Labor, Employment Laws Assistance, <http://www.dol.gov/compliance/laws/main.htm> (last visited Mar. 24, 2011).

¹⁵ See United States Department of Labor, A Summary of Major DOL Laws, <http://www.dol.gov/opa/aboutdol/lawsprog.htm> (last visited Mar. 25, 2011).

- **The Davis-Bacon and Related Acts**¹⁶ - Applies to federal or District of Columbia construction contracts or federally assisted contracts in excess of \$2,000; requires all contractors and subcontractors performing work on covered contracts to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area.
- **The McNamara-O'Hara Service Contract Act**¹⁷ - Applies to federal or District of Columbia contracts in excess of \$2,500; requires contractors and subcontractors performing work on these contracts to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates (including prospective increases) contained in a predecessor contractor's collective bargaining agreement.
- **The Migrant and Seasonal Agricultural Workers Protection Act**¹⁸ - Covers migrant and seasonal agricultural workers who are not independent contractors; requires, among other things, disclosure of employment terms and timely payment of wages owed.
- **The Contract Work Hours and Safety Standards Act**¹⁹ - Applies to federal service contracts and federal and federally assisted construction contracts over \$100,000; requires contractors and subcontractors performing work on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.
- **The Copeland "Anti-Kickback" Act**²⁰ - Applies to federally funded or assisted contracts for construction or repair of public buildings; prohibits contractors or subcontractors performing work on covered contracts from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract.

The Fair Labor Standards Act (FLSA)²¹ establishes a federal minimum wage and requires employers to pay time and half to its employees for overtime hours worked. The FLSA establishes standards for minimum wages,²² overtime pay,²³ recordkeeping,²⁴ and child labor.²⁵ Over 130 million workers are covered under the act, as the FLSA applies to most classes of workers.²⁶ The Act entails two types of coverage:

- Enterprises engaged in interstate commerce, producing goods for interstate commerce, or handles, sells, or works on goods or materials that have been moved in or produced in interstate commerce and have an annual volume of sales or business of \$500,000, as well as hospitals, schools, and public agencies;

¹⁶ Pub. L. No. 107-217, 120 Stat. 1213 (codified as amended at 40 U.S.C. §§ 3141-48; the Davis-Bacon Act has also been extended to approximately 60 other acts).

¹⁷ Pub. L. No. 89-286, 79 Stat. 1034 (codified as amended at 41 U.S.C. §§ 351-58).

¹⁸ Pub. L. No. 97-470, 96 Stat. 2583 (codified as amended at 29 U.S.C. §§1801-72).

¹⁹ Pub. L. No. 87-581, 76 Stat. 357 (codified as amended at 40 U.S.C. §§ 3701-08).

²⁰ 18 U.S.C. § 874.

²¹ 29 U.S.C. Ch. 8.

²² 29 U.S.C. § 206.

²³ 29 U.S.C. § 207.

²⁴ 29 U.S.C. § 211.

²⁵ 29 U.S.C. § 212.

²⁶ United States Department of Labor, Employment Law Guide – Minimum Wage and Overtime Pay, <http://www.dol.gov/compliance/guide/minwage.htm> (last visited Mar. 24, 2011).

- Individuals engaged in interstate commerce, the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production.²⁷

The FLSA provides that:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.²⁸

Thus, if a covered employee works more than forty hours in a week, then the employer must pay at least time and half for those hours over forty. A failure to pay is a violation of the FLSA.²⁹ The FLSA also establishes a federal minimum wage in the United States.³⁰ The federal minimum wage is the lowest hourly wage that can be paid in the United States. A state may set the rate higher than the federal minimum, but not lower.³¹

The FLSA also provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;³²
- Criminal prosecutions by the United States Department of Justice;³³ or
- Private lawsuits by employees, or workers, which includes individual lawsuits and collective actions.³⁴

The FLSA provides that an employer who violates section 206 (minimum wage) or section 207 (maximum hours) is liable to the employee in the amount of the unpaid wages and liquidated damages equal to the amount of the unpaid wages.³⁵ The employer who fails to pay according to law is also responsible for the employee's attorney's fees and costs.³⁶

State Wage Regulation

Under the Florida Constitution, all working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on

²⁷ 29 U.S.C. § 203(r), (s); U.S. DEPT. OF LABOR, WH PUBLICATION 1282, HANDY REFERENCE GUIDE TO THE FAIR LABOR STANDARDS ACT 2-3 (2010); United States Department of Labor, *supra* note 26.

²⁸ 29 U.S.C. § 207(a)(1).

²⁹ There are several classes of exempt employees from the overtime requirement of the FLSA. For examples of exempt employees see <http://www.dol.gov/compliance/guide/minwage.htm> (last visited Mar. 25, 2011).

³⁰ 29 U.S.C. § 206.

³¹ 29 U.S.C. § 218(a).

³² 29 U.S.C. § 216(c).

³³ 29 U.S.C. § 216(a).

³⁴ 29 U.S.C. § 216(b).

³⁵ 29 U.S.C. § 216(b).

³⁶ 29 U.S.C. § 216(b).

taxpayer-funded public services in order to avoid economic hardship.³⁷ Article X, s. 24(c) of the Florida Constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida." The current state minimum wage is \$7.25 per hour, which is the federal rate.³⁸ Federal law requires the payment of the higher of the federal or state minimum wage.³⁹

Local Bids and Contracts for Public Construction Works

Section 255.20, F.S., describes the process for bids and contracts for public construction works undertaken by counties, municipalities, special districts and other political subdivisions of the state to award contracts for construction projects. Typically, any construction project with a cost in excess of \$300,000, and any electrical project costing more than \$75,000, must be competitively awarded. However, s. 255.20, F.S., lists 11 types of projects where a competitive award is not required, such as emergency repair of facilities damaged by hurricanes, riots, or other "sudden unexpected turn of events."

Preference to State Residents

Section 255.099, F.S., requires that all contracts for construction funded by the state contain a provision requiring the contractor to give preference to the employment of Florida residents in the performance of the work on the project if the residents have substantially equal qualifications to those of non-residents. Local construction contracts funded with local funds have the option to require such provisions. Contractors required to hire Floridians must contact the Agency for Workforce Innovation to post the jobs on the state's job bank system (www.employflorida.com). However, for work involving federal aid funds, the contract provision may not be enforceable to the extent it conflicts with federal law.

Administrative Protests of Contract Solicitations or Awards

Section 120.57(3), F.S., specifies the procedures to be followed in administrative protests of agency bid actions.⁴⁰ If an entity wishes to protest the specifications contained in a bid solicitation, or if an entity wishes to protest a bid decision by an agency, the entity must provide notice to the agency within 72 hours after the posting of the solicitation or decision.⁴¹ The entity then has 10 days after the date of the notice of protest to file a formal written protest.⁴²

³⁷ See FLA. CONST. art. X, s. 24 (adopted in 2004); s. 448.110, F.S.

³⁸ See Agency for Workforce Innovation Website for information regarding the current minimum wage in the State of Florida. <http://www.floridajobs.org/minimumwage/index.htm> (Last visited February 24, 2011).

³⁹ 29 U.S.C. § 218(a).

⁴⁰ Rule 28-110.001, F.A.C., lists those provisions governed by these bid protest regulations: Chapters 24, 255, 287, 334 through 349, and Sections 282.303 through 282.313, F.S.

⁴¹ Section 120.57(3)(b), F.S.; Rule 28-110.003, F.A.C.

⁴² Section 120.57(3)(b), F.S.; Rule 28-110.004, F.A.C.

III. Effect of Proposed Changes:

Section 1 of the bill creates the following definitions:

- Political subdivision means essentially any government entity authorized to expend public funds for “construction, maintenance, repair, or improvement of public works” (hereinafter simply referred to as “construction of public works”).
- Project labor agreement means an arrangement mentioned, detailed, or outlined within the project plans, specifications, or any bidding documents of a public works project that:
 - Imposes requirements, controls, or limitations on staffing, sources of employee referrals, assignments of work, sources of insurance or benefits, including health, life, and disability insurance and retirement pensions, training programs or standards, or wages; or
 - Requires a contractor to enter into any sort of agreement as a condition of submitting a bid that directly or indirectly limits or requires the contractor to recruit, train, or hire employees from a particular source to perform work on public works or a public works project.
- Public works or public works project means a building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned, in whole or in part by any political subdivision, and that is to be paid for in whole or in part with state funds.

Except as required by federal or state law, the state or any political subdivision that contracts for the construction of public works shall not require that a contractor, subcontractor, material supplier, or carrier (hereinafter referred to simply as “contractor”) engaged in the construction of public works:

- Pay employees a predetermined amount of wages or wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control or limit staffing;
- Recruit, train, or hire employees from a designated or single source;
- Designate any particular assignment of work for employees;
- Participate in proprietary training programs; or
- Enter into any type of project labor agreement.

These restrictions do not apply if the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds is required under federal law.

The state or any political subdivision cannot require that a contractor engaged in the construction of public works execute or otherwise become a party to any agreement with employees, their representatives, or any labor organization⁴³ including any areawide, regional, or state building or

⁴³ Citing 29 U.S.C. s. 152(5) (defining labor organization as any kind of organization, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work) and 42 U.S.C. s. 2000e(d) (defining a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of

construction trade or crafts council, organization, association, or similar body, as a condition of bidding, negotiating, being awarded any bid or contract, or performing work on a public works project.

The bill states that the state or any political subdivision that contracts for the construction of public works project shall not prohibit a contractor engaged in the construction of public works, who is qualified, licensed, or certified to do any of the work described in the bid documents, from submitting bids, being awarded any bid or contract, or performing work on a public works project. It is unclear when the state or a political subdivision *would* prohibit someone who was qualified from bidding or being awarded a contract.

Section 2 amends s. 120.57(3)(b), F.S., to increase the period for the notice of protest for bid specifications from 72 hours to 7 days. The bill also provides that Saturdays, Sundays, and state holidays are excluded from the computation of all time periods in the paragraph, not just 72 hour time periods.

The effect of these provisions together means that agencies may not know a competitive solicitation is being protested for up to ten days, and formal written protests could potentially be filed 14 days after the initial notice, instead of 10. Extending these deadlines may make it easier for affected vendors to assert their claims; it will also increase the uncertainty and time required to complete an agency competitive solicitation process.

Section 3 provides an effective date.

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:

Section 6, Article III of the State Constitution requires every law to “embrace but one subject and matter properly connected therewith.” The purpose of this requirement is to prevent logrolling, which combines multiple unrelated measures in one bill in order to secure passage of a measure that is unlikely to pass on its own merits.⁴⁴ The requirement does not unduly restrict the scope or operation of a law. The single subject may be as

employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization).

⁴⁴ *Santos v. State*, 380 So.2d 1284 (Fla. 1980).

broad as the Legislature chooses if the matters contained in the law have a natural or logical connection.⁴⁵ The requirement is violated if a law is written to accomplish separate and disassociated objects of legislative intent.⁴⁶ For this bill, a court would examine how reducing the government's ability to restrict the practices of its contractors, subcontractors, suppliers, and carriers for public works projects is related to the procedures applicable to protests to contract solicitation or award. A court would also examine how well each of these topics fell under the title "An act relating to public works projects."

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The changes to s. 120.57(3), F.S., would necessitate the Administration Commission to adopt rules.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

⁴⁵ *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693 (Fla. 1969).

⁴⁶ *State ex rel. Landis v. Thompson*, 163 So. 270 (Fla. 1935).

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 Governmental Oversight and Accountability Committee

BILL: SB 1192

INTRODUCER: Children, Families, and Elder Affairs Committee and Senators Rich and Flores

SUBJECT: Public Records/Regional Autism Centers

DATE: April 13, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	Favorable
2.	O'Callaghan	Stovall	HR	Fav/1 amendment
3.	Naf	Roberts	GO	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input checked="" type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill creates a public-records exemption for all records that relate to a client of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center or participates in center activities. The bill specifies circumstances under which the records may be released.

The bill provides that the public-records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2016, unless it is reviewed and reenacted by the Legislature.

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

Because this bill creates a new public-records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 1004.55, Florida Statutes.

II. Present Situation:

Florida Public-Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public-records law in 1892.¹ In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, section 24 of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Public-Records Act³ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency⁴ records are available for public inspection. Section 119.011(12), F.S., defines the term “public records” very broadly to include “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” The Florida Supreme Court has interpreted the definition of public records to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formulize knowledge.”⁵ Unless made exempt, all such materials are open for public inspection at the moment they become records.⁶

Only the Legislature is authorized to create exemptions to open-government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Records may be identified as either exempt from public inspection or exempt and confidential. If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from public inspection, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.⁹

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

³ Chapter 119, F.S.

⁴ An agency includes any state, county, or municipal officer, department, or other separate unit of government that is created or established by law, as well as any other public or private agency or person acting on behalf of any public agency. Section 119.011(2), F.S.

⁵ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁹ *Id.* at 54.

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁰ provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption's enactment. By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹¹ An identifiable public purpose is served if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be greatly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or combination of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.¹²

The act also requires the Legislature, as part of the review process, to consider the following six questions that go to the scope, public purpose, and necessity of the exemption:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect?
- 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?
- 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?¹³

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(6)(b), F.S.

¹² *Id.*

¹³ Section 119.15(6)(a), F.S.

Regional Autism Centers

Section 1004.55, F.S., designates seven regional autism centers throughout the state to provide nonresidential resource and training services for persons of all ages and all levels of intellectual functioning who have:

- Autism;
- A pervasive developmental disorder that is not otherwise specified;
- An autistic-like disability;
- A dual sensory impairment; or
- A sensory impairment with other handicapping conditions.

Each center must be operationally and fiscally independent, provide services within its geographical region of the state, and coordinate services within and between state and local agencies provided by those agencies or school districts. The seven centers are located at:

- The College of Medicine at Florida State University;
- The College of Medicine at the University of Florida;
- The University of Florida Health Science Center;
- The Louis de la Parte Florida Mental Health Institute at the University of South Florida;
- The Mailman Center for Child Development and the Department of Psychology at the University of Miami;
- The College of Health and Public Affairs at the University of Central Florida; and
- The Department of Exceptional Student Education at Florida Atlantic University.¹⁴

Each of these centers must provide:

- Expertise in autism, autistic-like behaviors, and sensory impairments;
- Individual and direct family assistance;
- Technical assistance and consultation services;
- Professional training programs;
- Public education programs;
- Coordination and dissemination of local and regional information regarding available resources; and
- Support to state agencies in the development of training for early child care providers and educators with respect to developmental disabilities.¹⁵

Health Insurance Portability and Accountability Act

The federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule establishes national standards, and requires appropriate safeguards, to protect individuals' medical records and other personal health information.¹⁶ The Privacy Rule applies only to "covered entities," which are health plans, health care clearinghouses, and those health care

¹⁴ Section 1004.55(1), F.S.

¹⁵ Section 1004.55(4), F.S.

¹⁶ U.S. Department of Health and Human Services, *Health Information Privacy: The Privacy Rule*, available at <http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/index.html> (Last visited on April 7, 2011).

providers that conduct certain health care transactions electronically.¹⁷ Many organizations, institutions, and researchers that use, collect, access, and disclose individually identifiable health information are not covered entities.¹⁸

The Privacy Rule also gives patients rights over their health information, including rights to examine and obtain a copy of their health records and to request corrections; it also sets limits and conditions on the uses and disclosures that may be made of such information without patient authorization.¹⁹

In 2009, the Institute of Medicine's Committee on Health Research and the Privacy of Health Information issued a report concluding that the HIPAA Privacy Rule does not adequately protect the privacy of people's personal health information and hinders important health research discoveries.²⁰

The HIPAA Privacy Rule does not protect against all forced disclosure since it permits disclosures required by law, for example. Various federal agencies may grant a Certificate of Confidentiality for studies that collect information that, if disclosed, could damage subjects' financial standing, employability, insurability, or reputation, or have other adverse consequences. By protecting research and institutions from forced disclosure of such information, Certificates of Confidentiality help achieve research objectives and promote participation in research studies.²¹

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA)²² is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.²³

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."²⁴

Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for

¹⁷ *Id.* See also U.S. Department of Health and Human Services, *HIPAA Privacy Rule: To Whom Does the Privacy Rule Apply and Whom Will It Affect?*, available at http://privacyruleandresearch.nih.gov/pr_06.asp (Last visited April 7, 2011).

¹⁸ U.S. Department of Health and Human Services, *HIPAA Privacy Rule: To Whom Does the Privacy Rule Apply and Whom Will It Affect?*, available at http://privacyruleandresearch.nih.gov/pr_06.asp (Last visited April 7, 2011).

¹⁹ *Supra* fn. 43.

²⁰ The Institute of Medicine, *Beyond the HIPAA Privacy Rule: Enhancing Privacy, Improving Health Through Research*. The National Academies' press release announcing the report is available at: <http://www.iom.edu/Reports/2009/Beyond-the-HIPAA-Privacy-Rule-Enhancing-Privacy-Improving-Health-Through-Research.aspx> (Last visited on April 7, 2011).

²¹ *Id.*

²² 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

²³ U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)*, available at: <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (Last visited on April 7, 2011).

²⁴ *Id.*

reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.²⁵

Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.²⁶

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and,
- State and local authorities, within a juvenile justice system, pursuant to specific State law.²⁷

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.²⁸

III. Effect of Proposed Changes:

This bill provides that all records that relate to a client of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center or participates in center activities are confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

²⁵ *Id.*

²⁶ *Id.*

²⁷ 34 CFR § 99.31.

²⁸ *Supra* fn. 23.

The bill provides that a client who receives the services of a center, if competent, or the client's parent or legal guardian if the child is incompetent, shall be provided with a copy of the client's individual records upon request. The bill also specifies that the regional autism center may release the confidential and exempt information or records as follows:

- To physicians, attorneys, and governmental entities having a need for the record to aid a client;
- In response to a subpoena or otherwise authorized by court order;
- To a qualified researcher, the State Board of Education, or the Florida Board of Governors when the director of the center deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs, as long as all personally identifiable information is first removed; or
- For statistical and research purposes by the director of the center, provided that any personally identifiable information is removed.

The exemption is subject to the provisions of the Open Government Sunset Review Act and will expire on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a public necessity statement as required by the State Constitution.²⁹ Specifically, the bill states that matters of personal health are traditionally private and confidential concerns and that an individual has an expectation of and right to privacy in all matters regarding his or her personal health. Furthermore, the bill provides that it is a public necessity to protect the records of clients of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center because release of such records could be defamatory to the client or could cause unwarranted damage to the name or reputation of that client or the client's family. By protecting these records it ensures an environment in which the discussion of the condition of autism or related disorders can be conducted in a free and open manner, which in turn will enable individuals with autism and their families to receive appropriate diagnostic and treatment information.

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption for all records that relate to a client of a regional autism center, the client's family, or a teacher or other professional who receives the services of a center or participates in center activities. This bill appears to comply with the requirements of article I, section 24 of the Florida Constitution that public-

²⁹ Section 24(c), Art. I of the State Constitution.

records exemptions state the public necessity justifying the exemption, be no broader than necessary to accomplish the stated purpose, and be addressed in legislation separate from substantive law changes.

Additionally, because this bill is creating a new public-records exemption, it is subject to a two-thirds vote of each house of the Legislature for enactment as required by article I, section 24 of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of article III, subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The seven regional autism centers in the state are located in conjunction with state universities, which, because universities are public entities, makes the records of clients accessible and subject to Florida's public-records law. According to the Board of Governors, the research centers do not fall under the protection of the Health Insurance Portability and Accountability Act (HIPAA) or the Family Educational Rights and Privacy Act (FERPA), so the passage of this bill will protect the identity and personal information of clients, clients' families, and teachers or other professionals receiving the services of the center.³⁰

C. Government Sector Impact:

According to the Board of Governors, "[t]here will be additional Autism Center staff effort involved in removing personal identification information from requests for data by outside customers in the absence of permission to release such information. However, the amount of time required should be minimal and should not create a material employee workload issue."³¹

VI. Technical Deficiencies:

On line 40 of the bill, it provides that a "qualified researcher" may have access to portions of the confidential and exempt information covered by the bill. The bill does not define this term and it is unclear who will be considered a "qualified researcher."

³⁰ Bd. of Governors, *2011 Legislative Bill Analysis, HB 579* (Feb. 10, 2011) (on file with the Senate Health Regulation Committee) (HB 579 is identical to this bill).

³¹ *Id.*

Additionally, the bill provides that the public-records exemption is necessary because the release of the records could be defamatory to the client or could cause unwarranted damage to the name or reputation of that client or the client's family (lines 71-73). Although the public-records exemption is for all records that relate to a client of a regional autism center, the client's family, *or a teacher or other professional* who receives the services of a center or participates in center activities, the public necessity portion of the bill does not mention that the release of the records could cause damage to the name or reputation of the teacher or other professional.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

Barcode 112706 by Health Regulation on April 12, 2011:

This amendment:

- Removes the public-records exemption provided for in the bill for records relating to teachers or other professionals who receive services of a regional autism center or participate in the center's activities.
- Authorizes release of confidential and exempt records to the State Board of Education or the Board of Governors, without requiring personal identifying information to be abstracted.
- Authorizes information contained in the confidential and exempt records to be released to a person engaged in bona fide research if the researcher signs a confidentiality agreement with the center, agrees to maintain confidentiality, and destroys any confidential information after the conclusion of the research.
- Makes personal identifying information of a financial donor or prospective financial donor to the regional autism center confidential and exempt.
- Provides a public necessity statement for the public-records exemption for the personal identifying information of a financial donor.

(WITH TITLE AMENDMENT)



112706

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/12/2011	.	
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	.	

The Committee on Health Regulation (Sobel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (6) is added to section 1004.55, Florida Statutes, to read:

1004.55 Regional autism centers; public-record exemptions.—
(6) (a) Client records.—

1. All records that relate to a client of a regional autism center who receives the services of a center or participates in center activities, and all records that relate to the client's



112706

13 family, are confidential and exempt from s. 119.07(1) and s.
14 24(a), Art. I of the State Constitution.

15 2. A client who receives the services of a center, if
16 competent, or the client's parent or legal guardian if the
17 client is incompetent, shall be provided with a copy of the
18 client's individual record upon request.

19 3. A regional autism center may release the confidential
20 and exempt records as follows:

21 a. To physicians, attorneys, or governmental entities
22 having need of the confidential and exempt information to aid a
23 client, as authorized by the client, if competent, or the
24 client's parent or legal guardian if the client is incompetent.

25 b. In response to a subpoena or to persons authorized by
26 order of court.

27 c. To the State Board of Education or the Board of
28 Governors of the State University System when the director of
29 the center deems it necessary for the treatment of the client,
30 maintenance of adequate records, compilation of treatment data,
31 or evaluation of programs.

32 4. If personal identifying information of a client or the
33 client's family has been removed, a regional autism center may
34 release information contained in the confidential and exempt
35 records as follows:

36 a. To a person engaged in bona fide research if that person
37 agrees to sign a confidentiality agreement with the regional
38 autism center, agrees to maintain the confidentiality of the
39 information received, and, to the extent permitted by law and
40 after the research has concluded, destroy any confidential
41 information obtained.



112706

42 b. For statistical and research purposes by the director of
43 the center or designee, if any confidential and exempt
44 information is removed in the reporting of such statistical or
45 research data.

46 (b) *Financial donor information.*—Personal identifying
47 information of a donor or prospective donor to a regional autism
48 center who desires to remain anonymous is confidential and
49 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
50 Constitution.

51 (c) *Review and repeal.*—This subsection is subject to the
52 Open Government Sunset Review Act in accordance with s. 119.15
53 and shall stand repealed on October 2, 2016, unless reviewed and
54 saved from repeal through reenactment by the Legislature.

55 Section 2. (1) The Legislature finds that it is a public
56 necessity that all records that relate to a client of a regional
57 autism center who receives the services of a center or
58 participates in center activities, and all records that relate
59 to the client's family, be made confidential and exempt from
60 public-records requirements. Matters of personal health are
61 traditionally private and confidential concerns between the
62 patient and the health care provider. The private and
63 confidential nature of personal health matters pervades both the
64 public and private health care sectors. For these reasons, the
65 individual's expectation of and right to privacy in all matters
66 regarding his or her personal health necessitates this
67 exemption. The Legislature further finds that it is a public
68 necessity to protect records regarding clients of a regional
69 autism center or the client's family, because the release of
70 such records could be defamatory to the client or could cause



112706

71 unwarranted damage to the name or reputation of that client or
72 the client's family. Information contained in records and
73 communications of a regional autism center relating to the
74 condition of autism or related disorders contain sensitive
75 personal information that, if released, could cause harm to a
76 client of the center or his or her family. Protecting such
77 records ensures an environment in which the discussion of the
78 condition of autism or related disorders can be conducted in a
79 free and open manner, thus enabling individuals with autism and
80 their families to receive appropriate diagnostic and treatment
81 information and cope more effectively with the enormous
82 challenges posed by neurodevelopmental disorders and sensory
83 impairments.

84 (2) The Legislature also finds that it is a public
85 necessity that personal identifying information of a donor or
86 prospective donor to a regional autism center be made
87 confidential and exempt from public-records requirements if such
88 donor or prospective donor desires to remain anonymous. If the
89 identity of a prospective or actual donor who desires to remain
90 anonymous is subject to disclosure, there is a chilling effect
91 on donations because donors are concerned about disclosure of
92 personal information leading to theft and, in particular,
93 identity theft, including personal safety and security.
94 Therefore, the Legislature finds that it is a public necessity
95 to make confidential and exempt from public-records requirements
96 information that would identify a donor or prospective donor to
97 a regional autism center if such donor or prospective donor
98 wishes to remain anonymous.

99 Section 3. This act shall take effect July 1, 2011.



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to public records; amending s.
1004.55, F.S.; providing an exemption from public-
records requirements for all records that relate to a
client of a regional autism center who receives the
services of a center or participates in center
activities and the client's family; providing for the
release of specified confidential and exempt
information by a center under certain circumstances;
providing an exemption from public-records
requirements for personal identifying information of a
donor or prospective donor to a regional autism center
if the donor or prospective donor wishes to remain
anonymous; providing for review and repeal of the
exemptions; providing a statement of public necessity;
providing an effective date.



808386

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 63 - 77
and insert:

(b) On or after July 1, 2011:

1. An officer, agent, employee, or contractor may receive
severance pay only if:

a. The severance pay is paid from wholly private funds, the
payment and receipt of which do not otherwise violate part III
of chapter 112;

b. The severance pay is administered under part II of
chapter 112 on behalf of an agency outside this state and would



808386

13 be permitted under that agency's personnel system;

14 c. The severance pay represents the settlement of an
15 employment dispute. Such settlement may not include provisions
16 that limit the ability of any party to the settlement to discuss
17 the dispute or settlement; or

18 d. Provision for the severance pay is expressly included in
19 a contract for employment which was entered into before July 1,
20 2011.

21 2. An officer, agent, employee, or contractor may receive
22 severance pay pursuant to this paragraph only if:

23 a. He or she has not been fired as a result of an
24 investigation, prosecution, or any criminal, civil, or
25 administrative proceeding by a federal, state, or local
26 governmental entity; a negative job-performance evaluation; or a
27 violation of a governmental policy or rule;

28 b. He or she has been fired without cause; and

29 c. The severance pay does not exceed his or her actual or
30 constructive compensation, including salary, benefits, or
31 perquisites, for employment services yet to be rendered for a
32 term greater than 4 weeks before or immediately following
33 termination of employment.



354496

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 86 - 90
and insert:

1. Earned and accrued annual, sick, compensatory, or
administrative leave;

2. Early retirement under provisions established in an
actuarially funded pension plan subject to part VII of chapter
112; or

3. A subsidy for the cost of a group insurance plan
available to an employee upon normal or disability retirement
which is available to all employees of the unit of government



354496

13 pursuant to the unit's health insurance plan. This subparagraph
14 does not limit the ability of a unit of government to reduce or
15 eliminate such subsidies.

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 Governmental Oversight and Accountability Committee

BILL: CS/CS/SB 88

INTRODUCER: Judiciary Committee, Community Affairs Committee, and Senators Gaetz and Storms

SUBJECT: Public Employees Compensation

DATE: April 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/CS
2.	Munroe	Maclure	JU	Fav/CS
3.	Naf	Roberts	GO	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute makes the following changes with respect to public employee compensation:

- prohibits the payment of severance pay with certain exceptions;
- restricts bonus schemes;
- deletes provisions of law inconsistent with these restrictions; and,
- prohibits confidentiality provisions in agreements executed on or after the effective date of the bill.

This bill amends the following sections of the Florida Statutes: 215.425, 166.021, and 112.061. This bill repeals ss. 125.01(1)(bb) and 373.0795, F.S.

II. Present Situation:

Section 215.425, F.S., provides that no extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made. The section specifies the following exceptions:

- extra compensation given to state employees who are included within the senior management group pursuant to rules adopted by the Department of Management Services;
- extra compensation given to county, municipal, or special district employees pursuant to policies adopted by county or municipal ordinances or resolutions of governing boards of special districts or to employees of the clerk of the circuit court pursuant to written policy of the clerk; or
- a clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49, F.S.

Numerous attorney general opinions have been issued interpreting s. 215.425, F.S.¹ According to the attorney general opinions, the following forms of remuneration would violate s. 215.425, F.S.:

- Severance pay or wages in lieu of notice of termination;²
- Bonuses to existing employees for services for which they have already performed and been compensated, in the absence of a preexisting employment contract making such bonuses a part of their salary;³ and,
- Lump-sum payments made as an incentive for an employee to end his or her employment.

The following were not deemed to violate s. 215.425, F.S.:

- Certain settlements;
- Lump-sum supplemental payments as an increased benefit to qualified current employees who elect early retirement;⁴ and,
- Accrued annual or sick leave.⁵

The key issue in these attorney general opinions seemed to be whether the benefits were benefits that were anticipated as part of the initial contract or hiring policy or whether they were additional payment for services over and above that fixed by contract or law when the services were rendered.⁶ Benefits that were anticipated as part of the hiring process were deemed to be included in the salary/payment for services. Whereas, additional benefits, not anticipated at the hiring date or available to all employees as part of a retirement plan, were deemed to be extra compensation prohibited by the statute.

Sections 125.01(1)(bb) and 166.021(7), F.S., allow cities and counties to “provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment

¹ See Op. Att’y Gen. Fla. 2009-03 (2009); Op. Att’y Gen. Fla. 2007-26 (2007); Op. Att’y Gen. Fla. 97-21 (1997); and Op. Att’y Gen. Fla. 91-51 (1991).

² Op. Att’y Gen. Fla. 2007-26 (2007); Op. Att’y Gen. Fla. 91-51 (1991).

³ Op. Att’y Gen. Fla. 91-51 (1991).

⁴ Op. Att’y Gen. Fla. 97-21 (1997).

⁵ Op. Att’y Gen. Fla. 2009-03 (2009).

⁶ Op. Att’y Gen. Fla. 2007-26 (2007).

may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years," notwithstanding the prohibition against extra compensation set forth in s. 215.425, F.S.

Section 110.1245(2), F.S., tasks the Department of Management Services (DMS) and other state agencies with paying bonuses when funds are specifically appropriated by the Legislature for bonuses. Statutory eligibility criteria are outlined as follows:

- The employee must have been employed prior to July 1 of that fiscal year and have been continuously employed through the date of distribution.
- The employee must not have been on leave without pay consecutively for more than 6 months during the fiscal year.
- The employee must have had no sustained disciplinary action during the period beginning July 1 through the date the bonus checks are distributed. Disciplinary actions include written reprimands, suspensions, dismissals, and involuntary or voluntary demotions that were associated with a disciplinary action.
- The employee must have demonstrated a commitment to the agency mission by reducing the burden on those served, continually improving the way business is conducted, producing results in the form of increased outputs, and working to improve processes.
- The employee must have demonstrated initiative in work and have exceeded normal job expectations.
- The employee must have modeled the way for others by displaying agency values of fairness, cooperation, respect, commitment, honesty, excellence, and teamwork.
- A periodic evaluation process of the employee's performance.
- A process for peer input that is fair, respectful of employees, and affects the outcome of the bonus distribution.
- A division of the agency by work unit for purposes of peer input and bonus distribution.
- A limitation on bonus distributions equal to 35 percent of the agency's total authorized positions. This requirement may be waived by the Office of Policy and Budget in the Executive Office of the Governor upon a showing of exceptional circumstances.⁷

Section 110.191(1)(c), F.S., authorizes bonuses in specified circumstances to leased employees authorized by the Legislature, an agency, or the judicial branch.

Section 373.0795, F.S., prohibits severance pay for water management district employees. "Severance pay" is defined to mean the actual or constructive compensation, in salary, benefits, or perquisites, of an officer or employee of a water management district, or any subdivision or agency thereof, for employment services yet to be rendered for a term greater than 4 weeks before or immediately following termination of employment (excluding leave time and retirement).⁸

III. Effect of Proposed Changes:

Section 1 amends s. 215.425, F. S., to revise existing law that prohibits extra compensation made to a public employee after the service has been rendered or the contract made. The bill deletes

⁷ Section 110.1245(2), F.S.

⁸ Section 373.0795(1), F.S.

current provisions allowing counties, municipalities, or special districts to give bonuses as long as they have policies in place. The bill creates requirements for any policy, ordinance, rule, or resolution designed to implement a bonus scheme. The scheme must:

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and,
- Consider all employees for the bonus.

The bill prohibits units of government from contracting to give severance pay to an officer, agent, employee, or contractor.

An officer, agent, employee, or contractor may receive severance pay only if the severance pay is:

- Paid wholly from private funds and is not a violation of the employee code of ethics;⁹
- Part of an interstate interchange of employees;¹⁰
- Given as part of a settlement agreement if there is no prohibition against publicly discussing the settlement; or
- Expressly included in a contract for employment which was entered into before July 1, 2011.

The bill clarifies that it does not create an entitlement to severance pay in the absence of its authorization.

The bill defines “severance pay” as the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for:

- Earned and accrued annual, sick, compensatory, or administrative leave; or
- Early retirement under provisions established in an actuarially funded pension plan subject to part VII of chapter 112, F.S.

Under the bill, any agreement or contract executed on or after July 1, 2011, involving extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract.

Section 2 deletes subsection (7) of 166.021, F.S., allowing municipalities to provide extra compensation programs, including a lump sum bonus payment program to reward outstanding employees whose performance exceeds standards, under specified conditions.

Section 3 conforms cross references.

⁹ Under part III of chapter 112, F.S.

¹⁰ Under part II of chapter 112, F.S.

Section 4 repeals paragraph (bb) of s. 125.01(1), F.S., allowing counties to provide extra compensation programs. It also repeals s. 373.0795, F.S., which prohibits severance pay (under an inconsistent definition) for water management districts.

Section 5 provides an effective date of July 1, 2011.

Other Potential Implications:

Restrictions on severance pay will limit the ability of public employers to recruit employees by including severance pay clauses in their contracts. Alternatively, it will eliminate abuses associated with severance pay that may be occurring now.

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:

Cost savings may arise from the prohibition against severance pay. Under current law, employees could likely receive severance pay as a part of their initial contract, but not in an ad hoc manner subsequent to negotiating their terms of employment. Therefore, since ad hoc severance pay is already prohibited under s. 215.425, F.S., the bill will prohibit government employers from using severance pay as a recruitment tool.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by Judiciary on April 4, 2011:

The legislation's requirement that agreements or contracts involving extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that restrict the ability of any party to discuss the agreement or contract is limited to those executed on or after July 1, 2011, which is the effective date of the bill.

CS by Community Affairs on March 7, 2011:

Makes the following changes with respect to public employee compensation. It:

- prohibits the payment of severance pay with certain exceptions;
- restricts bonus schemes;
- deletes inconsistent provisions of law; and,
- prohibits confidentiality agreements.

- B. **Amendments:**

None.

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 Governmental Oversight and Accountability Committee

BILL: CS/CS/SB 952

INTRODUCER: Higher Education Committee, Commerce and Tourism Committee and Senators Richter and Gaetz

SUBJECT: Uniform Prudent Management of Institutional Funds

DATE: April 8, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McCarthy</u>	<u>Cooper</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Harkey</u>	<u>Matthews</u>	<u>HE</u>	<u>Fav/CS</u>
3.	<u>Roberts</u>	<u>Roberts</u>	<u>GO</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>BC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|--------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill adopts the 2006 Uniform Prudent Management of Institutional Funds Act (act), and repeals the current Uniform Management of Institutional Funds Act contained in s. 1010.10, F.S., for educational endowments.

The new act applies to all charitable endowment funds with the exception of funds administered by the State Board of Administration. Charitable purpose is defined under the new act as “the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.”

Similar to current law regarding educational endowments, the primary benefit of this act is to allow charitable institutions holding endowment funds the flexibility to make distributions from the endowment fund when the fund has fallen below the original amount placed into it, so long as the fund is prudently managed and the appropriation is not explicitly prohibited.

Currently, there is no clear statewide guidance for the operation of charitable endowments. This act would apply similar guidance currently provided to educational endowments to endowment funds held for a charitable purpose.

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) has been adopted in 47 states.¹

The bill creates s. 617.2014 of the Florida Statutes.

The bill repeals s. 1010.10, Florida Statutes.

II. Present Situation:

Currently s. 1010.10, F.S., the *Florida Uniform Management of Institutional Funds Act* provides guidance to educational institutions regarding the prudent management of endowment funds under their control. The law regulates the expenditure of endowment funds, establishes standards of conduct of those in charge of the endowment funds, provides guidance for the investment authority, allows for the delegation of investment management functions, sets standards for investment costs, and establishes the criteria for the release of restrictions on use or investment of endowment funds.² The current act relates to an incorporated or unincorporated organization organized and operated exclusively for the advancement of educational purposes, or a governmental entity to the extent that it holds funds exclusively for educational purposes.³ The current act does not apply to charitable organizations other than those holding funds for an educational purpose.

An endowment fund subject to the current act means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.⁴

A governing board means the body responsible for the management of an institution or of an institutional fund. With some limitation, a governing board currently may expend the principle of an endowment fund if they determine such action to be prudent for the uses and purposes for which the endowment fund is established, consistent with the goal of conserving the purchasing power of the endowment fund. In making its determination, the governing board must use reasonable care, skill, and caution in considering the following:

- The purposes of the institution;
- The intent of the donors of the endowment fund;
- The terms of the applicable instrument;
- The long-term and short-term needs of the institution in carrying out its purposes;
- The general economic conditions;
- The possible effect of inflation or deflation;
- The other resources of the institution; and

¹ See Prudent Management of Institutional Funds Act, readable at: [http://uniformlaws.org/LegislativeFactSheet.aspx?title=Prudent Management of Institutional Funds Act](http://uniformlaws.org/LegislativeFactSheet.aspx?title=Prudent%20Management%20of%20Institutional%20Funds%20Act).

² See s. 1010.10, F.S.

³ See s. 1010.10(2)(c), F.S.

⁴ See s. 1010.10((2)(a), F.S.

- Perpetuation of the endowment.

Such expenditures will be considered prudent if the amount expended is consistent with the goal of preserving the purchasing power of the endowment fund.⁵

III. Effect of Proposed Changes:

This bill creates s. 617.2104, F.S., to adopt the 2006 Uniform Prudent Management of Institutional Funds Act (UPMIF),⁶ as proposed by the National Conference of Commissioners on Uniform State Laws,⁷ and repeals the current Uniform Management of Institutional Funds Act contained in s. 1010.10, F.S., for educational endowments.

Consistent with current law and the model act, the bill:

- Applies standards of conduct in managing and investing institutional funds;
- Provides for the appropriation for expenditure or accumulation of endowment funds and rules of construction;
- Allows for the delegation of management and investment functions;
- Provides for the release or modification of restrictions on management, investment, or purpose; and
- Creates a standard for the reviewing for compliance.

Within each of the above standards, the bill provides specific guidance to institutions as to how they are to be applied.

The bill provides that the circuit court for the circuit in which an institution is located is the appropriate court to handle request for changes to restrictions. It also provides that a restriction on an institutional fund may be modified as to its management, investment and use.

The bill differs significantly from s. 1010.10, F.S., the Florida Uniform Management of Institutional Funds Act, in that it applies to all charitable endowment funds, not just educational funds. Charitable purpose is defined under the new act as:

the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

⁵ See s. 1010.10(3), F.S.

⁶ See <http://www.uniformlaws.org/Shared/Docs/UPMIFA/UPMIFA%20Program%20Related%20Assets%20Article.pdf> last visited March 19, 2011.

⁷ “The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.” readable at: <http://uniformlaws.org/Narrative.aspx?title=About%20the%20ULC>.

Similar to current law regarding educational endowments, the primary benefit of this provision is to allow charitable institutions holding endowment funds the flexibility to make distributions from the endowment fund when the fund has fallen below the original amount placed into it, so long as the fund is prudently managed and the appropriation is not explicitly prohibited. The bill excludes funds administered by the State Board of Administration from the definition of “institutional fund”.

The bill makes other significant changes to current law, in that it:

- Expands the types of assets which can be in a charitable organizations portfolio, to include any kind of property or type of investment consistent with the new law;
- Specifies that management and investment of institutional funds are to be accomplished with the care an ordinarily prudent person would exercise;
- Requires an institution to make a reasonable effort to verify relevant facts;
- Allows pooling of institutional funds for purposes of managing and investing;
- Makes reference to an overall investment strategy;
- Obliges a person with special relevant skills or expertise, to use those skills or that expertise in managing and investing institutional funds;
- Delineates factors to be considered prior to expenditure of funds;
- Sets an effective date for the application of this law to existing institutional funds; and
- Clarifies the application of federal Electronic Signatures in Global and National commerce Act.

The bill provides an effective date 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:

To the extent that charitable institutions holding endowment funds exercise the distribution flexibility authorized by this act, beneficiaries of the charity may continue to receive such distributions.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not include the proposed section of the UPMIF on the rebuttable presumption of imprudence set forth in the uniformed act. The omitted section deals with creating a presumption of imprudence for spending above a fixed percentage of the value of the fund. According to the notes from the drafters of the uniform act, some were in favor of this provision arguing that the presumption would curb the temptation that a charity might have to spend endowment assets too rapidly. Others opined that a fixed percentage in the statute might be perceived as a safe harbor that could lead institutions to spend more than prudent.

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 Higher Education on April 4, 2011:**

The committee substitute reorders paragraphs for clarity.

CS by Commerce and Tourism on March 22, 2011:

The bill creates s. 617.2014 F.S., cited as the “Uniform Prudent Management of Institutional Funds Act.”

- Expands the exceptions to definition of “institutional fund” to exclude funds administered by the State Board of Administration.
- Clarifies that the circuit court for the circuit in which an institution is located is the appropriate court to handle requests for changes to restrictions.
- Clarifies that the restriction on an institutional fund may be modified as to its “management, investment and use” rather than its “management, investment and purpose.”
- Removes the requirement that the Attorney General be provided an opportunity to respond to requests for modifications.
- Removes the requirement that the Attorney General approve requests to release or modify restrictions for funds with a value of \$100,000 to \$250,000.
- Changes the effective date from July 1, 2011, to July 1, 2012.
- Provides for a technical amendment to correct a reference to a Federal law.

B. Amendments:

None.

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

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 1610

INTRODUCER: Commerce and Tourism Committee and Senator Detert

SUBJECT: State Minimum Wage

DATE: April 13, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Fav/CS
2.	Roberts	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The Agency for Workforce Innovation is required to annually calculate and publish the state minimum wage. CS/SB 1610 (the bill) provides greater specificity to the Agency for Workforce Innovation to calculate the state minimum wage.

This bill amends ss. 448.109 and 448.110, F.S.

II. Present Situation:

A constitutional amendment to Florida’s Constitution took effect on May 2, 2005, which established the state minimum wage.¹ The Legislature enacted the Florida Minimum Wage Act in 2005 to implement the constitutional provisions.²

The Agency for Workforce Innovation (AWI) is required to annually calculate and publish the state minimum wage. Current law requires employers to pay employees a minimum wage at an hourly rate published by AWI for all hours worked in Florida. Only those individuals entitled to

¹ Section 24, Art. X, of the State Constitution.

² Chapter 2005-353, L.O.F.

receive the federal minimum wage under the federal Fair Labor Standards Act and its implementing regulations are eligible to receive the state minimum wage.

Minimum Wage Calculation

AWI must calculate an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, AWI must use the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region.³ Neither the statute nor the Constitution specifically addresses deflation in the computation of the minimum wage.

In interpreting the intent of the Legislature to calculate a state minimum wage, AWI computes the percentage change in the CPI for the 12 months prior to September 1 and multiplies it times the prior year's computed Adjusted Real Wage Rate. This provides the amount to be added to, or subtracted from, the previous year's computed Adjusted Real Wage Rate.

The higher of the previous year's state minimum wage, the Adjusted Real Wage Rate, or the Federal minimum wage rate⁴ becomes the state minimum wage for the year. The state minimum wage takes effect on the following January 1, unless a new Federal minimum wage rate is issued and that rate is higher. For example, on July 24, 2009, the new Federal minimum wage rate of \$7.25 became the new adjusted state minimum wage rate because it was higher than the state minimum wage rate at the time of \$7.21.

AWI's method for calculating the state minimum wage rate is currently the subject of a lawsuit. Florida Legal Services and the National Employment Law Project recently filed the lawsuit on behalf of four individual workers and three organizations that represent low-wage employees.⁵ The plaintiffs claim that AWI should not have accounted for the decrease in the CPI (deflation) in 2009 when calculating future years' minimum wages. The case is currently pending.

III. Effect of Proposed Changes:

This bill amends the state minimum wage statutes to provide greater specificity to AWI in its calculation of the state minimum wage. The bill clarifies that the state minimum wage cannot drop when there is deflation, but that AWI should account for deflation when computing future rates. Additionally, the bill clarifies the relationship between the Federal minimum wage and the state minimum wage.

Section 2 amends s. 448.110, F.S., to provide greater specificity to AWI as to how to calculate the state minimum wage. The bill specifies that the adjusted real wage rate is the only basis used to calculate the next year's adjusted real wage base. The adjusted real wage rate is calculated by first computing the rate of inflation by calculating the change in the CPI-W. Then this amount is multiplied against the previous year's adjusted real wage rate. The resulting amount is added or subtracted from the previous year's adjusted real wage rate to result in the current year's adjusted

³ Section 448.110(4)(a), F.S.

⁴ 29 U.S.C. 206. See 29 U.S.C. 218(a), which permits a state minimum wage higher than the federal wage.

⁵ Cadet, et. al. v. Florida Agency for Workforce Innovation, 37 2011 CA 000072 (2nd Cir. Fla., 2011).

real wage rate. This method allows for parity between the adjusted real wage rate and the cost of living.

The bill specifies that the higher of the adjusted real wage rate, the previous year's state minimum wage, and the Federal minimum wage is the new state minimum wage for the year.

The bill defines the terms "CPI-W," "adjusted real wage rate," and "Federal minimum wage rate" for purposes of the statute.

Section 1 amends s. 448.109, F.S., to include a cross-reference.

Section 3 provides an effective date of July 1, 2011.

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. This bill does not change the manner in which the state minimum wage is currently calculated.

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.)

Committee Substitute by Commerce and Tourism on April 12, 2011:

This committee substitute did not change the substance of the bill, but instead added specificity to the statute that describes the calculation of the minimum wage.

- B. **Amendments:**

None.

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 Governmental Oversight and Accountability Committee

BILL: CS/CS/SB 1346

INTRODUCER: Children, Families, and Elder Affairs Committee and Commerce and Tourism Committee

SUBJECT: Obsolete References and Programs

DATE: April 13, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Cooper	CM	Fav/CS
2.	Walsh	Walsh	CF	Fav/CS
3.	Mason	Roberts	GO	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 1346 (the bill) is the result of a review of obsolete references in Florida Statutes to the former Departments of Labor and Employment Security and Commerce. There are 35 references to the former Department of Labor and Employment Security, or one of its former programs, and there are ten references to the Florida Department of Commerce still remaining in Florida Statutes. Additionally, other statutes have been identified that relate to programs related to or within a department that were obsolete prior to department abolishment.

The bill repeals provisions related to the obsolete Florida-Caribbean Basin Trade Initiative; the obsolete microenterprise program; an obsolete public records exemption for Base Realignment and Closure (BRAC); and the inactive Inner City Redevelopment Review Panel. The bill also removes references to the inactive Florida Trade Data Center.

The bill repeals numerous sections of law relating to programs or functions of the Department of Children and Family Services (DCF), which are outdated, no longer effective, applicable, or being implemented.

This bill amends the following sections of the Florida Statutes: 14.2015, 20.18, 20.195, 39.00145, 39.0121, 39.301, 39.3031, 45.031, 49.011, 69.041, 112.044, 252.85, 252.87, 252.937, 287.09431, 287.09451, 287.0947, 288.012, 288.021, 288.035, 288.1168, 288.1229, 288.1169, 311.07, 331.369, 377.711, 377.712, 381.006, 381.0072, 390.01114, 402.305, 409.1685, 409.2576, 411.01013, 414.24, 414.40, 440.385, 440.49, 450.161, 464.203, 469.002, 489.1455, 489.5335, 553.62, 597.006, 753.03, 877.22, 944.012, and 944.708.

This bill repeals the following sections of the Florida Statutes: 39.0015, 39.305, 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, 39.318, 39.816, 39.817, 255.551-255.563, 288.038, 288.386, 288.9618, 288.982, 383.0115, 393.22, 393.503, 394.922, 402.3045, 402.50, 402.55, 409.1672, 409.1673, 409.1685, 409.801, 409.802, 409.803, 409.946, 446.60, and 469.003(2)(b).

II. Present Situation:

Senate Interim Report 2011-107

Senate Interim Report 2011-107, Identification, Review, and Recommendations Relating to Obsolete Statutory References to the former Florida Departments of Labor and Employment Security and Commerce:¹

- Reviewed the abolishment of the programs and divisions of the former departments;
- Identified current Florida Statutes that referenced these past programs, divisions, or departments;
- Reviewed the obsolete statutory references identified, researched the underlying legislative history of each reference, and worked with appropriate state agencies and other Senate committees to develop recommendations to resolve the obsolete references; and
- Recommended that the references either be retained in statute, deleted or repealed from the statute or provision, or updated to reference the appropriate agency or current practice.

Department of Labor and Employment Security

The Department of Labor and Employment Security (DLES) was created in 1978 when it was removed from the Florida Department of Commerce.² It consisted of one administrative support division, six program divisions, and administratively housed several independent entities.³

The process for the abolishment of DLES began in the 1999 Legislative Session,⁴ and subdivisions and programs of the department were transferred or repealed through several legislative bills until the department was formally abolished by the Legislature in 2002.

¹ Identification, Review, and Recommendations Relating to Obsolete Statutory References to the Former Florida Departments of Labor and Employment Security, and Commerce. The Florida Senate Committee on Commerce. Interim Report 2011-107 (October 2010). Available at <http://www.flsenate.gov/Committees/InterimReports/2011/2011-107cm.pdf> (last visited April 13, 2011).

² Chapter 78-201, L.O.F.

³ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 230, dated April 19, 1999. Available at <http://archive.flsenate.gov/data/session/1999/Senate/bills/analysis/pdf/SB0230.fp.pdf> (last visited April 13, 2011).

⁴ Chapter 99-240, L.O.F.

Senate Interim Report 2011-107 sets forth a detailed chart of the divisions and programs of the former DLES and whether they were transferred or repealed (including the chapter law numbers).⁵

Florida Department of Commerce

The Florida Department of Commerce (FDC) was created in 1969.⁶ It consisted of three divisions and administratively housed or staffed a number of independent entities. It was “the state agency with the primary responsibility for promoting and developing the general business, trade, and tourism components of the state economy.”⁷

FDC was abolished in 1996 in a reorganization of Florida’s economic development structure.⁸ The department’s functions were either repealed or transferred to various other agencies. In general, the reorganization transferred economic development functions to Enterprise Florida, Inc. (EFI); tourism development and marketing functions to the Florida Commission on Tourism, Inc.; and all other functions that were considered to be “governmental in nature and [could not] effectively be transferred to public private partnerships” to the Office of Tourism, Trade, and Economic Development (OTTED).⁹

Senate Interim Report 2011-107 sets forth a detailed chart of the divisions and programs of the former FDC and whether they were transferred or repealed (including the chapter law numbers).

Department of Children and Families¹⁰

The Department of Children and Family Services, formerly known as the Department of Health and Rehabilitative Services (HRS), has undergone major reorganizations and divestitures over the years. In 2002, the Governor’s Blue Ribbon Panel on Child Protection found that the Florida Legislature had mandated some form of reorganization for the department 22 times in the preceding 33 years.¹¹

In 1975, HRS was reorganized to transfer operational responsibilities to a local service district level under a single administrator in an effort to resolve the problems associated with providing and coordinating health and human services to a multi-problem client. Divisions were abolished

⁵ Identification, Review, and Recommendations Relating to Obsolete Statutory References to the Former Florida Departments of Labor and Employment Security, and Commerce. The Florida Senate Committee on Commerce. Interim Report 2011-107 (October 2010). Available at <http://www.flsenate.gov/Committees/InterimReports/2011/2011-107cm.pdf> (last visited April 13, 2011).

⁶ Section 17, ch. 69-106, L.O.F.

⁷ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996 (on file with the Senate Commerce and Tourism Committee).

⁸ Chapter 96-320, L.O.F.

⁹ See Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 958, dated March 18, 1996 (on file with the Senate Commerce and Tourism Committee).

¹⁰ This narrative is drawn from Issue Brief 2009-304, Agency Sunset Review of the Department of Children and Family Services, The Florida Senate, January 2009. Available at http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-304cf.pdf (last visited April 13, 2011).

¹¹ Governor’s Blue Ribbon Panel on Child Protection (May 27, 2002), available at <http://archives.cnn.com/2002/US/05/27/florida.child.report/index.html> (last visited April 13, 2011).

and program offices were created. Eleven service districts were established with a district administrator having line authority over all programs and services within that district.

Since 1975, other major organizational changes or program divestitures have occurred, including:

- **1991** - Programs relating to elderly services were transferred to the newly created Department of Elderly Affairs.
- **1992** - Health regulation functions were transferred to the newly created Agency for Health Care Administration.
- **1993** - The Medicaid program was transferred to the Agency for Health Care Administration.
- **1994** - The Child Support Enforcement program was transferred to the Department of Revenue.
- **1996** - All health-related programs and functions were transferred to the newly created Department of Health. The Department of Health and Rehabilitative Services was renamed the Department of Children and Family Services with responsibility for child welfare, child care, economic services, developmental services, mental health, substance abuse, disabled adults, and adult protective services. The outsourcing of child welfare services to private community-based care lead agencies was initiated.
- **1998** - Powers and duties relating to the child protection teams and the sexual abuse treatment program were transferred to the Department of Health.
- **2000** - There was significant reorganization, including the establishment of a prototype region and community alliances.
- **2004** - The Developmental Services program was moved to the newly created Agency for Persons with Disabilities (APD).
- **2006** - Community-Based Care and Contracted Services Providers: The transition to community-based care began in 1996, when the Florida Legislature mandated the outsourcing of child welfare services, in response to mounting problems and public dissatisfaction with the department's child protection program. By 2006, all of the districts in Florida had implemented the community-based care model, in which lead agencies are responsible for providing foster care and related services, while the department is responsible for program oversight, operating the abuse hotline, child protective investigations, and the provision of child welfare legal services.

III. Effect of Proposed Changes:

Senate Interim Report 2011-107

Senate Interim Report 2011-107 sets forth recommendations that some references are still necessary in statute, while others should be repealed or amended to reference the current agency or program.¹² These recommendations are implemented in this bill in the following manner:

Delete the Reference

Statutes where a reference to DLES or FDC is deleted are:

- s. 14.2015(8), F.S. (Section 1);
- s. 45.031(7)(a), F.S. (Section 3);

¹² A detailed analysis is on file with the Senate Commerce and Tourism Committee.

- s. 69.041(4)(a), F.S. (Section 4);
- s. 112.044(2)(d), F.S. (Section 5);
- s. 252.87(7), F.S. (Section 7);
- s. 252.937(2), F.S. (Section 8);
- s. 287.09451(4), F.S. (Section 10);
- s. 288.035(1), F.S. (Section 13);
- s. 288.1229(7), F.S. (Section 16);
- s. 409.2576(1) and (3)(b), F.S. (Section 21);
- s. 440.49(9)(b), F.S. (Section 25);
- s. 553.62, F.S. (Section 31); and
- s. 597.006(1), F.S. (Section 32).

Repeal the Statute or Provision

Statutes where a statute or provision is repealed are:

- s. 288.038, F.S. (Section 14);
- s. 446.60, F.S. (Section 26);
- s. 255.551, F.S. (Section 35);
- s. 255.552, F.S. (Section 35);
- s. 255.553, F.S. (Section 35);
- s. 255.5535, F.S. (Section 35);
- s. 255.555, F.S. (Section 35);
- s. 255.556, F.S. (Section 35);
- s. 255.557, F.S. (Section 35);
- s. 255.5576, F.S. (Section 35);
- s. 255.558, F.S. (Section 35);
- s. 255.559, F.S. (Section 35);
- s. 255.56, F.S. (Section 35);
- s. 255.561, F.S. (Section 35);
- s. 255.562, F.S. (Section 35);
- s. 255.563, F.S. (Section 35); and
- s. 469.003(2)(b), F.S. (Section 37).

Update to the Appropriate Agency or Current Practice

Statutes where a reference to DLES or FDC is updated to the current agency or practice are:

- s. 20.18(4)(b), F.S. (Section 2);
- s. 112.044(5), F.S. (Section 5);
- s. 252.85(1), F.S. (Section 6);
- s. 287.09431, F.S. (Section 9);
- s. 287.0947(1), F.S. (Section 11);
- s. 288.021(1), F.S. (Section 12);
- s. 288.1168, F.S. (Section 15);
- s. 288.1169, F.S. (Section 17);
- s. 331.369(2), (4), and (5), F.S. (Section 18);
- s. 377.711(5)(h), F.S. (Section 19);

- s. 377.712(3), F.S. (Section 20);
- s. 409.2576(8), F.S. (Section 21);
- s. 414.24, F.S. (Section 22);
- s. 414.40(2)(d), F.S. (Section 23);
- s. 440.385(5), F.S. (Section 24);
- s. 450.161, F.S. (Section 27);
- s. 464.203(1)(d), F.S. (Section 28);
- s. 489.1455(1)(b), F.S. (Section 29);
- s. 489.5335(1)(b), F.S. (Section 30);
- s. 944.012(5), F.S. (Section 33); and
- s. 944.708 (Section 34).

The bill also amends s. 414.40(1) and (2), F.S., to update this statute to reflect the transfer of the authority to investigate public assistance fraud from the Department of Law Enforcement to the Department of Financial Services.¹³

The bill amends s. 944.708, F.S., to remove a reference to the Agency for Workforce Innovation. Chapter 2010-117, L.O.F., amended this section to replace a reference to DLES to the agency.¹⁴ However, because the Agency for Workforce Innovation does not implement any of the provisions of ss. 944.701-944.707, F.S., the rulemaking authority for the agency is unnecessary.

Florida-Caribbean Basin Trade Initiative (Section 52)

Repeals s. 288.386, F.S., which relates to the obsolete Florida-Caribbean Basin Trade Initiative. This initiative was created in 2000 as part of the Seaport Employment Training Grant Program (STEP) to assist small and medium-sized businesses to become involved in international activities in the Caribbean Basin. STEP was required to administer the Initiative pursuant to a performance-based contract with OTTED. The Legislature allocated \$300,000 to be administered by STEP for establishing the initiative, but no additional funding has been appropriated since that time. In addition, Enterprise Florida staff state that the program has been inactive since it was created in 2000.

Microenterprise Program (Section 53)

Repeals s. 288.9618, F.S., which relates to the obsolete microenterprise program. In 1997, the Legislature authorized OTTED to contract with a nonprofit or governmental organization to foster microenterprise development in Florida. The program provided a number of competitive grants to community-based nonprofit organizations located throughout the state, which in turn provided technical assistance and loans to low and moderate income individuals to help them achieve self-sufficiency through self-employment. However, the program experienced a high number of failures, and the Legislature has not subsequently funded the program.

Base Realignment and Closure (BRAC) (Section 54)

Repeals s. 288.982, F.S., which relates to an obsolete public records exemption for the Base Realignment and Closure (BRAC) in 2005. In 2004, the Legislature exempted from public

¹³ Chapter 2010-144, L.O.F.

¹⁴ Section 41, ch. 2010-117, L.O.F.

disclosure certain records held by the Governor's BRAC Advisory Council or OTTED. The exemption was repealed on May 31, 2006, but has not been removed from statute.

Inner City Redevelopment Review Panel (Section 55)

Repeals s. 409.946, F.S., which relates to the inactive Inner City Redevelopment Review Panel. In 2000, the Legislature created the Inner City Redevelopment Assistance Grants Program to be administered by OTTED. The Legislature also created the Inner City Redevelopment Review Panel within OTTED to review grant proposals. OTTED reports that the review panel is inactive.

Florida Trade Data Center (Sections 56, 57)

Amends ss. 288.012 and 311.07, F.S., to remove references to the Florida Trade Data Center in these two sections that address state of Florida foreign offices and the Florida seaport transportation and economic development funding. The Legislature created the Florida Trade Data Center in 1992 as a comprehensive trade data resource and research center. The purpose of the Center was to create a trade information system that provided timely import and export information, trade opportunities, intermodal transportation information that measured cargo flow by transportation mode, commodity trends, trade activity between Florida and specific countries, and other relevant information. The Center has been inactive since 1999.

Department of Children and Families

The bill repeals the following sections of statute which either are outdated, no longer effective or no longer being implemented.

Child Abuse Prevention Training in the District School System (Section 38)

Repeals s. 39.0015, F.S., which created the "Child Abuse Prevention Training Act of 1985." This Act encouraged the Department of Education to implement abuse prevention training for all school teachers, guidance counselors, parents, and children in the district school system. No rules were created relating to this section and the program was never implemented by the Department of Education (DOE).

Intervention and Treatment in Sexual Abuse Cases; Model Plan (Section 38)

Repeals s. 39.305, F.S., which requires DCF to develop a model plan for community intervention and treatment of intra-family sexual abuse in conjunction with the Department of Law Enforcement, the Department of Health, Department of Education, the Attorney General, the statewide Guardian Ad Litem Program, the Department of Corrections, representatives of the judiciary, and professionals and advocates from the mental health and child welfare community. The model plan was never developed. However, other sections of law already provide collaborative efforts including but not limited to child protection teams,¹⁵ agreements with local law enforcement regarding investigations,¹⁶ and mandatory notification requirements regarding abuse.¹⁷

¹⁵ Section 39.303, F.S.

¹⁶ Section 39.306, F.S.

¹⁷ Section 39.301, F.S.

Family Builders Program (Section 38)

Repeals s. 39.311, F.S., which establishes the “Family Builders Program” (program). Repeals s. 39.312, F.S., which outlines goals for the program. Repeals s. 39.313, F.S., as it relates to contracting of services for the program. Repeals s. 39.314, F.S., establishing eligibility for the program. Repeals s. 39.315, F.S., regarding delivery of services for the program. Repeals s. 39.316, F.S., regarding qualifications of program workers. Repeals s. 39.317, F.S., relating to outcome evaluation of the program. Repeals s. 39.318, F.S., relating to funding of the program. The program was established in the department to provide family preservation services. The department no longer operates the program and recommended repeal of the program and relating sections of statute during the 2009 legislative session.

Authorization for Pilot and Demonstration Projects (Section 38)

Repeals s. 39.816, F.S., which was enacted in 1998 and requires DCF, contingent on a grant authorized under the federal Adoption and Safe Families Act, to establish one or more pilots for the purpose of furthering the goals of the Act. It also authorizes DCF to establish demonstration projects to identify barriers to adoption, to address parental substance abuse problems that endanger children, and to address kinship care. It is unknown whether the pilots were ever established. As such, the statutory language for these pilots is outdated.

Foster Care Privatization Demonstration Pilot Project (Section 38)

Repeals s. 39.817, F.S., which requires the establishment of a pilot project through The Ounce of Prevention Fund of Florida to contract with a private entity for a foster care privatization demonstration project. The statute is outdated as foster care and related services are currently privatized statewide through community-based care organizations.

The Commission on Marriage and Family Support Initiatives (Section 38)

Repeals s. 383.0115, F.S., creating the Commission on Marriage and Family Support Initiatives (Commission), which essentially replaced the Commission of Responsible Fatherhood created in 1996. The Commission is authorized to hire an executive director, a researcher, and an administrative assistant and to provide information related to marriage and family initiatives. The Commission is also required to develop a community awareness campaign related to marriage promotion. The Commission was funded following its inception in 2003, but has not been funded since 2008. As a result, the Commission is no longer operating.

Financial Commitment to Community Services Program (Section 38)

Repeals s. 393.22, F.S., which provides specific guidelines for transferring funds from the institution budget to the community budget when a developmental disabilities center discharges enough persons to close a residential unit. The section also provides that the funds to support at least 80 percent of the direct cost to serve people in the unit that closes must be shifted to community services. The language is no longer needed, as the use of funds which become available from the closing or downsizing of an institution are handled through the Legislative budgeting process. Legislative findings and intent already cover preference of community services instead of services in a developmental disabilities center.¹⁸ This section of law is no longer needed.

¹⁸ Section 393.062, F.S.

Respite and Family Care Subsidy Expenditures (Section 38)

Repeals s. 393.503, F.S., which requires the Agency for Persons with Disabilities (APD) to report to the Family Care Councils and others on the annual expenditures for respite care and family care subsidies for individuals living at home. The law also requires the Family Care Council to review the information and make recommendations to APD when new funds become available. This section of law is no longer effective since the Family Care Council no longer needs to submit recommendations to plan for funding of respite care and family care subsidies, and APD no longer needs to report the information to the Council each year. Under current law, clients of APD are served based on their assessed need within the funds available.¹⁹ The services are not provided to individuals based on the funding of specific programs such as respite or family care subsidies. Therefore, this section of law is no longer effective and is inconsistent with the current Legislative policy.

Constitutional Requirements for Involuntary Civil Commitment (Section 38)

Repeals s. 394.922, which requires the long-term control, care, and treatment of a sexually violent predator who is involuntarily civilly committed to conform to constitutional protections. The personal protections afforded to all citizens under the Florida Constitution and the U.S. Constitution are not impeded by involuntary civil commitment. Accordingly, this section is redundant, as the personal protections provided by both Constitutions remain in effect without restating such in statute.

Requirement for distinguishable definitions of child care (Section 38)

Repeals s. 402.3045, F.S., which requires DCF to adopt by rule a definition for child care. This is redundant language and not needed in statute; the exact same language is contained in s. 402.305(1)(c).

Prohibition on Employment of Public Officers (Section 58)

Amends s. 402.305, F.S., which prevents DCF from hiring employees that may be federal, state, county, or municipal officers and which prohibits DCF employees from seeking public office or serving as a local official. In 1969, the Legislature established the nine-member State Board of Social Services (Board), the predecessor agency to HRS and now DCF. The law contained a sentence that prohibited a federal, state, county or municipal officer from serving as a member of the Board. The exact reason those public officers were not allowed to serve is unknown. However, through the agency's many legislative reorganizations, the prohibition has remained in statute. The bill will eliminate that obsolete language and remove the bar on DCF's employment of federal, state, county, or municipal officers.

Administrative Infrastructure; legislative intent; establishment of standards (Section 38)

Repeals s. 402.50, which was enacted in 1991, requiring DCF to develop standards for administrative infrastructure funding and staffing to support the department and contract providers. DCF has undergone several reorganizations since this statute was enacted including a restructuring of administration. This section of statute is outdated and no longer necessary.

¹⁹ Section 393.0661, F.S.

Management Fellows Program (Section 38)

Repeals s. 402.55, F.S., which established the Management Fellows Program at DCF and the Department of Health (DOH). The program was enacted in 1991 to identify, train, designate, and promote employees with high levels of administrative and management potential to fill the needs of the departments. One Career Service employee is to be identified each year and placed in the training program for these purposes. A special pay increase is allowed upon completion of the program. The program is no longer being used by either department.

Incentives for Department Employees (Section 38)

Repeals s. 409.1672, F.S., which was enacted in 1994 to authorize DCF, within existing resources, to develop monetary performance incentives, such as bonuses, salary increases, and educational enhancements, for department employees engaged in positions or activities related to the child welfare system under Chapter 39, relating to dependent children, or Chapter 409, relating to social and economic assistance. It appears this section has never been used due to lack of funds.

Alternative Care Plans; Legislative Findings (Section 38)

Repeals s. 409.1673, F.S., which provides legislative findings related to out-of-home placements for children in the legal custody of the department. It also requires DCF, in collaboration with community service providers, to develop and administer plans for services for dependent children. This section of law was enacted at the early stages of the change to community-based care; it is now outdated as a result of subsequent changes in Chapter 39 and in s. 409.1671, F.S.

Annual Report to Legislature relating to Children in Foster Care (Section 38)

Repeals s. 409.1685, F.S., which requires DCF to submit a report each year to the Legislature concerning the status of children in foster care. The report with the specific content referenced in statute is unnecessary because the information in this report is available from other sources.

Family Policy Act (Section 38)

Repeals s. 409.801, F.S., which creates the "Family Policy Act." Repeals s. 409.802, F.S., which requires the Legislature to seek to provide families certain benefits. Repeals s. 409.803, F.S., which requires DCF to establish a two year pilot program in a rural and an urban county to provide funding and resources for shelters, foster homes, and the children in their care. Provisions regarding these services exist in Chapters 39 and 402 and other sections of chapter 409, which more accurately reflect the current philosophy and practice relating to foster children and their parents. This section of statute is outdated.

The bill also amends ss. 20.195, 39.00145, 39.0121, 39.301, 39.3031, 49.011, 381.006, 381.0072, 390.01114, 409.1685, 411.01013, 469.002(1)(e), 753.03, and 877.22, F.S., to conform references to changes made by the bill.

The bill provides an effective date of July 1, 2011.

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. The changes made by the bill are simply statutory cleanup. The agencies contacted indicated that the provisions which are repealed in the bill were either programs which had expired or provisions which were not currently implemented or necessary.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There may be other obsolete references in the Florida Statutes that could be included in the bill.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

Committee Substitute by Children, Families, and Elder Affairs on April 4, 2011:

The committee substitute makes the following changes:

- Repeals ss. 39.0015, 39.305, 39.311, 39.312, 39.313, 39.314, 39.315, 39.316, 39.317, 39.318, 39.816, 39.817, 383.0115, 393.22, 393.503, 394.922, 288.386, 288.9628, 288.982, 402.3045, 402.50, 402.55, 409.1672, 409.1673, 409.1685, 409.801, 409.802, 409.803, and 409.946, F.S.

- Amends ss. 20.195, 39.00145, 39.0121, 39.301, 39.3031, 49.011, 381.006, 381.0072, 390.01114, 409.1685, 411.01013, 469.002(1)(e), 753.03, and 877.22, F.S., to conform references.
- Amends ss. 288.012 and 311.07, F.S., to remove references to the Florida Trade Data Center.

Committee Substitute by Commerce and Tourism on March 16, 2011:

The committee substitute corrects a cross reference in s. 469.002, F.S., to an obsolete provision that the bill is repealing, related to asbestos related activities. Additionally, the committee substitute merely amends s. 288.1168, F.S., to update obsolete references to the Department of Commerce, instead of repealing ss. 288.1162 and 288.1168, F.S. The committee substitute also removes amendments made to s. 212.20, F.S., that were correcting cross-references due to the repeal of those two statutes.

B. Amendments:

None.

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 1434

INTRODUCER: Transportation Committee and Senator Latvala

SUBJECT: Office of Motor Carrier Compliance

DATE: April 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	Fav/CS
2.	McKay	Roberts	GO	Pre-meeting
3.			CJ	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill transfers the Office of Motor Carrier Compliance (OMCC) from the Department of Transportation (FDOT) to the Division of the Florida Highway Patrol (FHP) within the Department of Highway Safety & Motor Vehicles (DHSMV), effective July 1, 2011. The OMCC's sworn law enforcement officers and supporting administrative staff would be moved to DHSMV as part of the transfer. Non-sworn weight inspectors and supporting administrative staff currently within OMCC will remain with FDOT as part of the FDOT's Motor Carrier Weight Inspection area of program responsibility.

Effective July 1, 2011, the bill creates a Law Enforcement Consolidation Task Force, provides for its membership, administrative support, and duties; and requires the task force to submit a specified plan. The bill also makes conforming changes.

This bill substantially amends ss. 20.23, 20.24, 110.205, 311.115, 316.302, 316.3025, 316.3026, 316.516, 316.545, 316.640, 320.18, 321.05, and 334.044 of the Florida Statutes.

This bill creates an undesignated section of law.

II. Present Situation:

The Office of Motor Carrier Compliance (OMCC) was created in 1980 by merging weight and safety enforcement functions from the Florida Highway Patrol (FHP) and the Florida Public Service Commission. Staffed by both sworn law enforcement officers and regulatory weight inspectors, OMCC assists the Department of Transportation (FDOT) in fulfilling its mission of providing a safe transportation system by performing commercial vehicle safety and weight enforcement.

The primary purposes of the OMCC, currently housed within FDOT, are to protect the highway system's pavement and structures from excessive damage due to overweight and oversize vehicles, and to reduce the number and severity of crashes involving commercial vehicles.¹ The OMCC enforces state and federal laws and agency rules that regulate the weight and size of vehicles operating on the state's highways, and the safety of commercial motor vehicles and their drivers.

The program uses both non-sworn weight inspectors and sworn law enforcement officers to enforce vehicle weight, size, fuel tax, and registration requirements. These inspectors weigh trucks and check registration and fuel tax compliance at fixed-scale locations along major highways. The program's law enforcement officers patrol the state's highways and use portable scales to weigh trucks that do not pass fixed-scale stations.² There are currently 497 FTEs within the OMCC dedicated to weight enforcement, of which 267 are sworn law enforcement officers and 178 are civilian (non-sworn) weight inspectors, and an additional 52 administrative support staff.

As part of their patrol duties on state highways, the program's law enforcement officers also enforce commercial motor vehicle safety regulations by performing safety inspections and enforcing traffic laws. The program's safety enforcement responsibilities also include compliance reviews at carrier places of business, which are performed by specially-trained law enforcement staff.³

According to FDOT, in calendar year 2010, the OMCC weighed 21,786,099 trucks, resulting in 52,223 weight citations. OMCC personnel also completed 118,383 driver/vehicle inspection reports resulting in 23,317 vehicles and/or drivers placed out of service for serious vehicle safety defects and driver licensing or hours of service violations. A typical weight violation case requires approximately 30 minutes per case and a complete CMV inspection will require 45-90 minutes. Over 96 percent of all enforcement contacts made by OMCC personnel were directly related to interactions with CMVs, including inspections, weight enforcement, speed enforcement, etc.

In addition, OMCC officers:

- conduct compliance review audits on Florida-based carriers;

¹ Office of Program Policy Analysis and Government Accountability, *Report # 01-45*, October 2001.

² *Id.*

³ *Id.*

- conduct post-crash CMV inspections for vehicles involved in fatal and serious injury crashes at the request of the FHP and local law enforcement agencies; and
- conduct inspections of hazardous materials shipments on our roadways and deepwater ports.

The OMCC serves as Florida’s primary law enforcement agency for radiological and nuclear detection, in partnership with local, state and federal agencies.

OMCC Funding

According to FDOT, the operational cost of the OMCC reflects less than 1% of the FDOT annual budget. Annual funding is provided by the State Transportation Trust Fund (STTF) and by the USDOT Federal Motor Carrier Safety Administration (FMCSA) grant program(s). Of the total OMCC FY 2010-11 budget (\$39,589,127), \$8,389,889 was provided by the FMCSA grant(s)⁴ and \$647,359 was received from the Department of Homeland Security.⁵

III. Effect of Proposed Changes:

The bill provides for the transfer of specified components of the OMCC to the Division of FHP within the DHSMV, effective July 1, 2011. The OMCC’s sworn law enforcement officers and supporting administrative staff would be moved to DHSMV as part of the transfer. Non-sworn weight inspectors and supporting administrative staff currently within OMCC will remain with FDOT as part of the FDOT’s Motor Carrier Weight Inspection area of program responsibility.

The DHSMV's FHP and DOT’s OMCC both patrol Florida's highways and enforce the criminal and traffic laws. The type of consolidation being considered is to move OMCC’s sworn law enforcement officers and supporting administrative staff into FHP, creating a statewide troop dedicated to commercial motor carrier enforcement. OMCC, wherever it may be located, must remain focused on the enforcement of motor carrier compliance in order to maintain current federal funding levels.

The bill amends numerous sections of law to conform provisions relating to the transfer of OMCC to the division of FHP within the DHSMV.

The bill also creates the Law Enforcement Consolidation Task Force with the following members:

- the Executive Director of DHSMV;
- the Executive Director Department of Law Enforcement;
- a representative of the Office of Attorney General;
- a representative from the Department of Agriculture and Consumer Service;

⁴ 2010 Grants		
MCSAP/Incentive Grant -	\$8,196,889	(Core CMV Safety Grant funded since FY 95/96)
New Entrant	\$ 122,000	(Outreach and education for new intrastate carriers)
Pre-TACT	<u>\$ 71,000</u>	(New grant for the development of an enforcement program directed at aggressive drivers Targeting Aggressive Cars and Trucks)
Total	\$8,389,889	

⁵ Department of Transportation, *Agency Bill Analysis: SB 1434* (on file with the Senate Transportation Committee).

- the Colonel of the FHP;
- the Colonel of the Division of Law Enforcement in the Fish and Wildlife Commission;
- a representative from the Florida Sheriffs Association; and
- a representative from the Florida Police Chiefs Association.

DHSMV is directed to provide administrative assistance to the task force, not including travel expenses, which are to be paid by the agency the member represents.

The task force is directed to evaluate the duplication of law enforcement functions throughout state government and identify functions that are appropriate for possible consolidation, as well as administrative functions, including, without limitation, accreditation, training, legal representation, vehicle fleets, aircraft, civilian support staffing, information technology, geographic regions, and districts or troops currently in use. The task force is also required to submit recommendations and a plan to consolidate state law enforcement functions to the President of the Senate and the Speaker of the House of Representative by February 1, 2012. The plan must include recommendations on the methodology to be used in creating a consolidated state law enforcement entity by June 30, 2013. The task force is set to expire on June 30, 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:

The DHSMV estimates a net savings in year one of \$1,296,186, \$1,877,089 in year two and \$1,879,371 in year three resulting from the transfer of the OMCC.

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 Transportation on March 22, 2011:

- Eliminates the transfer of the OMCC by a type-two transfer⁶ to the Division of FHP; however, the OMCC, which will consist of sworn law enforcement and supporting administrative staff, is transferred to the Division of FHP within the DHSMV.
- Creates a Motor Carrier Weight Inspection area of program responsibility with FDOT, which replaces the motor carrier compliance area which is transferred to DHSMV.
- Conforms provisions relating to the transfer of OMCC to the division of FHP within the DHSMV.
- Adds a representative from the Florida Sheriffs Association and a representative from the Florida Police Chiefs Association to the membership of the Law Enforcement Consolidation Task Force.

B. Amendments:

None.

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

⁶ In accordance with s. 20.06(2)(a), F.S. “[A]ny agency or department or a program, activity, or function thereof transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided by law.”

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 1574

INTRODUCER: Military Affairs, Space, and Domestic Security Committee and Senator Latvala

SUBJECT: Business Enterprise Opportunities for Wartime Veterans

DATE: April 7, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming	Carter	MS	Fav/CS
2.	McKay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill amends s. 295.187, F.S., to expand the vendor preference in state contracting, which currently applies to qualified service-disabled veterans, to include certain businesses owned and operated by wartime veterans. This bill provides a definition of a “wartime veteran” to identify eligible veteran applicants, and requires applicants to provide documentation of wartime service from the United States Department of Veterans Affairs or the United States Department of Defense.

This bill substantially amends section 295.187 of the Florida Statutes.

II. Present Situation:

Minority and Service-Disabled Veteran Business Enterprise Certification Programs

The Office of Supplier Diversity (OSD) within the Department of Management Services (DMS) is dedicated to improving business and economic opportunities for Florida's minority, women,

and service-disabled veteran business enterprises.¹ Current law requires DMS, through OSD, to implement a minority business enterprise (MBE) certification program and a small service-disabled veteran business enterprise (SDVBE) certification program.² Minority-, women-, and service-disabled veteran-owned businesses that are certified through OSD are eligible for benefits such as: first tier referrals to state agencies for contract opportunities; business development guidance from established corporations; participation at regional workshops, seminars, and corporate roundtables; and inclusion in an exclusive listing of state-certified minority business enterprises in an online directory.³ During fiscal year 2009-10, the OSD certified 4,617 minority-, woman-, and service-disabled veteran-owned business enterprises statewide.⁴

The Service-Disabled Veteran Business Enterprises Opportunity Act

The intent of the Florida Service-Disabled Veteran Business Enterprise Opportunity Act⁵ is to “rectify the economic disadvantage of service-disabled veterans, who are statistically the least likely to be self-employed when compared to the veteran population as a whole and who have made extraordinary sacrifices on behalf of the nation, the state, and the public, by providing opportunities for service-disabled veteran business enterprises as set forth in this section.”

Section 295.187, F.S., creates the certification process within DMS for SDVBEs. This section also creates a “tiebreaker” preference for SDVBEs by requiring a state agency, when considering two or more bids, proposals, or replies for the procurement of commodities or contractual services, at least one of which is from a certified SDVBE, that are equal with respect to all relevant considerations including price, quality, and service, to award such procurement or contract to the certified SDVBE. However, if a certified SDVBE and one or more SDVBE or businesses eligible for another statutory vendor preference, such as an MBE, submit bids or proposals that are equal with respect to all relevant considerations including price, quality, and service, the state agency must award the contract or proposal to the business having the smallest net worth. In order to become certified as a SDVBE, the owners and the business must satisfy statutory eligibility requirements. In order to be considered a “service-disabled veteran” eligible for certification, the veteran must be a permanent resident of Florida who has a service-connected disability of 10% or greater as determined by the U.S. Department of Veterans Affairs or who was terminated from military service by reason of disability by the U.S. Department of Defense.

In order to be certified as a SDVBE, a business enterprise must be an independently owned and operated business that:

- Employs 200 or fewer permanent full-time employees;

¹DMS Office of Supplier Diversity website. Available at:
http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd

² Sections 287.0943 and 295.187, F.S., require the DMS to implement the MBE and the SDVBE certification programs, respectively.

³ OSD Annual Report for Fiscal Year 2009-10. Available at:
http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/publications/annual_reports.

⁴ Id.

⁵ Section 295.187, F.S.

- Together with its affiliates has a net worth of \$5 million or less or, if a sole proprietorship, has a net worth of \$5 million or less including both personal and business investments;
- Is organized to engage in commercial transactions;
- Is domiciled in this state;
- Is at least 51 percent owned by one or more service-disabled veterans; and,
- Is managed and controlled by one or more service-disabled veterans or, for a service-disabled veteran with a permanent and total disability, by the spouse or permanent caregiver of the veteran.

Section 295.187, F.S., establishes a certification process administered by DMS, in coordination with the Florida Department of Veterans' Affairs (DVA). The certification process requires applicants to submit documentation demonstrating that the business meets the above-listed requirements. Certification is renewed biennially and may be revoked for one year if the SDVBE fails to inform DMS within 30 days of a change in circumstances that renders the business ineligible for certification.

Section 295.187, F.S., provides rule-making authority to DVA, and requires DVA to:

- Assist DMS in establishing a certification procedure, which must be reviewed biennially and updated as necessary;
- Identify eligible service-disabled veteran business enterprises by any electronic means, including electronic mail, Internet website or by any other reasonable means;
- Encourage and assist eligible service-disabled veteran business enterprises to apply for certification under this section; and,
- Provide information regarding services that are available from the Office of Veterans' Business Outreach of the Florida Small Business Development Center to service-disabled veteran business enterprises.

This section also provides rule-making authority to DMS, and requires DMS to:

- Establish a certification procedure, which must be reviewed biennially and updated as necessary;
- Grant, deny, or revoke the certification of a SDVBE; and,
- Maintain an electronic directory of certified service-disabled veteran business enterprises for use by the state, political subdivisions of the state, and the public.

In addition, this section encourages political subdivisions of the state to offer a similar consideration to certified SDVBEs.

According to DMS, there are currently 1,297 service-disabled veterans registered in the state procurement system, MyFloridaMarketPlace (MFMP), of which 170 are certified by OSD.⁶

III. Effect of Proposed Changes:

This bill amends s. 295.187, F.S., to expand the "Florida Service-Disabled Veteran Business Enterprise Opportunity Act" (Act), to include certain businesses owned and operated by wartime veterans.

⁶ Correspondence with DMS staff by Military Affairs, Space, and Domestic Security professional staff. April 1, 2011.

To support the expanded eligibility of the Act, this bill:

- Renames the Act as “Florida Veteran Business Enterprise Opportunity Act;”
- Expands the intent of the Act to include recognizing wartime veterans and veterans of a period of war for their sacrifices;
- Requires wartime veteran applicants to provide documentation of wartime service from the United States Department of Veterans Affairs or the United States Department of Defense; and,
- Requires DVA to assist DMS in the expansion of the certification program.

In addition, this bill defines the term “wartime veteran.” A veteran is considered a “wartime veteran” if he or she meets the definition of a “wartime veteran” as used in s. 1.01(14), F.S.,⁷ or the definition of a “veteran of a period of war” as used in 38 U.S.C. s. 1521.⁸

This bill provides an effective date of July 1, 2011.

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:

This bill may assist wartime veterans in competing for state contracts and procurements by expanding the SDVBE certification program to include wartime veterans.

⁷ Section 1.01(14), F.S., defines the term “wartime veteran” as a veteran who has served in a campaign or expedition for which a campaign badge has been authorized or a veteran who has served during one of the following periods of wartime service: Spanish-American War; Mexican Border period; World War I; World War II; Korean Conflict; Vietnam Era; Persian Gulf War; Operation Enduring Freedom; Operation Iraqi Freedom.

⁸ 38 U.S.C. s. 1521 defines “a veteran of a period of war” as a veteran who served in the active military, naval, or air service: for 90 days or more during a period of war; during a period of war and was discharged or released from such service for a service-connected disability; for a period of 90 consecutive days or more and such period began or ended during a period of war; or for an aggregate of 90 days or more in two or more separate periods of service during more than one period of war.

C. Government Sector Impact:

According to DMS, this bill would increase the workload for OSD in processing applications and educating constituents. In addition, DMS would need to update the MFMP to create an identifier in the system for wartime veterans. However, DMS claims that no extra appropriation would be necessary to accommodate the change to MFMP. In the past, similar changes to the system have cost around \$10,000.⁹

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 Military Affairs, Space, and Domestic Security on April 5, 2011:

The CS redefines the term “wartime veteran.”

B. Amendments:

None.

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

⁹ Correspondence with DMS staff by Military Affairs, Space, and Domestic Security professional staff. April 1, 2011.

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 994

INTRODUCER: Commerce and Tourism Committee and Senator Latvala

SUBJECT: Public Records/Airports

DATE: April 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Fav/1 Amendment
2.	Pugh	Cooper	CM	Fav/CS
3.	Naf	Roberts	GO	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Current law provides multiple public records exemptions for proprietary confidential business information and trade secrets, as well as at least one public records exemption for proposals and counterproposals between a public entity and nongovernmental entity. However, it does not provide public records exemptions for that information as it relates to public airports.

This bill creates public records exemptions for:

- Proprietary confidential business information held by a public airport. The exemption expires when the confidential and exempt information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.
- Trade secrets held by a public airport.
- A proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities. The public records exemption expires upon approval by the governing body of a public airport. If a proposal or counterproposal is not submitted to the governing body for approval, then the public records exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

The bill creates definitions for terms used in the exemptions.

The bill provides for repeal of the exemptions pursuant to the Open Government Sunset Review Act unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

Because this bill creates new public-records exemptions, it requires a two-thirds vote of each house of the Legislature for passage.

This bill creates s. 332.16, F.S., and an unnumbered section of chapter law for the statement of public necessity.

II. Present Situation:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

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.

Section 119.011(12), F.S., defines the term "public records" to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."¹

The Legislature, however, may provide by general law an exemption of public 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 (the so-called "public necessity statement") and must be no broader than necessary to accomplish its purpose.² A bill enacting an exemption³ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁴

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is

¹ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

² Section 24(c), Art. I of the State Constitution.

³ Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁴ Section 24(c), Art. I of the State Constitution.

made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁵ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁶

The Open Government Sunset Review Act⁷ provides that a public records or public meetings 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.

Current Public Records Exemptions

Proprietary Confidential Business Information

Current law provides multiple public records exemptions for proprietary confidential business information, such as that held by economic development agencies and public utilities.⁸

Trade Secrets

Current law also provides multiple public records exemptions for trade secrets.⁹

⁵ Op. Att'y Gen. Fla. 85-62 (1985).

⁶ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).

⁷ Section 119.15, F.S.

⁸ Public records exemptions for proprietary confidential business information are provided as it relates to the following: electric utility interlocal agreements (s. 163.01, F.S.); communications services tax (s. 202.195, F.S.); alternative investments for state funds (s. 215.44, F.S.); economic development agencies (s. 288.075, F.S.); Institute for Commercialization of Public Research and the Opportunity Fund (s. 288.9626, F.S.); telephone companies (s. 364.183, F.S.); emergency communications number E911 system (s. 365.174, F.S.); public utilities (s. 366.093, F.S.); natural gas transmission companies (s. 368.108, F.S.); Sunshine State One-Call of Florida, Inc. (s. 556.113, F.S.); tobacco companies (s. 569.215, F.S.); prison work program corporation records (s. 946.517, F.S.); and H. Lee Moffitt Cancer Center and Research Institute (s. 1004.43, F.S.).

⁹ Public records exemptions for trade secrets are provided as they relate to the following: antitrust no-action letters (s. 408.185, F.S.); citrus fruit coloring information (s. 601.76, F.S.); the federal Clean Air Act (s. 252.94, F.S.); computer systems (s. 815.04(3)(a), F.S.); correctional work programs (s. 946.517, F.S.); county tourism promotion agencies (s. 125.0104(9)(d)2., F.S.); the Department of Agriculture and Consumer Services (ss. 502.222, 526.311(2), 573.123(2), and 601.76, F.S.); the Department of Citrus (s. 601.10(8) et seq., F.S.); the Department of Environmental Protection (s. 403.73, F.S.); the Department of Financial Services (ss. 626.884(2) and 626.921(8), F.S.); the Department of Lottery (s. 23.105(12)(a), F.S.); the Department of Transportation (s. 334.049(4), F.S.); the Division of Consumer Services (s. 570.544(7), F.S.); the Division of Condominiums, Timeshares and Mobile Homes (s. 721.071, F.S.); the Division of Fruit and Vegetable Inspection (s. 570.48(3), F.S.); the Enterprise Florida Innovation Partnership (s. 288.9520, F.S.); the Florida Commission on Tourism (s. 288.1224(7), F.S.); the Florida Development Finance Corporation (s. 288.9607(5), F.S.); the Florida Export Finance Corporation (s. 288.9607(5), F.S.); the Florida Export Finance Corporation (s. 288.776(3)(d), F.S.); hazardous chemicals and materials (s. 252.88(1) et seq., F.S.); the plant industry (s. 581.199, F.S.); the Quick-Response Training Program (s. 288.047(7), F.S.); recovered materials dealers (ss. 403.7046(2) and 403.7046(3)(b), F.S.); small health insurance carriers (s. 627.6699(8)(c), F.S.); the Spaceport Florida Authority (s. 331.326, F.S.); the Tourism Marketing Corporation (s. 288.1226(6), F.S.); and the Uniform Trade Secrets Act (s. 688.006, F.S.).

At least two subsections in different chapters of the Florida Statutes define the term “trade secret.” The first definition is part of the Uniform Trade Secrets Act¹⁰ and is found in s. 688.002(4), F.S. That section defines “trade secret” to mean:

- . . . information, including a formula, pattern, compilation, program, device, method, technique, or process that:
- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
 - (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The second definition for “trade secrets” is found in s. 812.081(1)(c), F.S., which is part of a chapter of law that deals with theft, robbery and related crimes. Section 812.081(1)(c), F.S., defines “trade secret” to mean:

- . . . the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. “Trade secret” includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
1. Secret;
 2. Of value;
 3. For use or in use by the business; and
 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Business entities often provide agencies with information meeting the definition of “trade secrets” under one of the foregoing sections. For example, a corporation which is negotiating with an economic development agency to relocate to Florida may provide that agency with trade secret information as part of the negotiation process.¹¹ Another example is the receipt of trade secret information by the State Board of Administration during its consideration of an alternative investment under s. 215.44, F.S. In both of these examples, trade secret information is protected by exemptions that are either specific to the agency or to a program.

¹⁰ Section 688.001, F.S.

¹¹ Section 288.075, F.S.

Proposals and Counterproposals

Current law provides that any proposal or counterproposal exchanged between a deepwater port listed in s. 311.09(1), F.S., and any nongovernmental entity, relating to the sale, use, or lease of land or of port facilities, are confidential and exempt from public-records requirements until 30 days before such proposal or counterproposal is considered for approval by the governing body of the deepwater port.¹² If no proposal or counterproposal is submitted to the governing body, the proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations.¹³

Public Airports in Florida

Section 330.27(6), F.S., defines “public airport” as either a publicly or privately owned airport that is open for use by the public. Florida has 21 commercial airports¹⁴ (meaning they offer commercial passenger airline service) and 107 general aviation airports,¹⁵ which include municipal airports and private air fields that offer flights other than military and scheduled airline and regular cargo flights.

Based on a 2010 report¹⁶ prepared by the Florida Department of Transportation’s Office of Aviation, airport operations account for at least 1 million jobs and annual payroll of nearly \$31 billion, and generate an estimated \$97 billion in economic activity. For example, air cargo operations generate an estimated \$6.6 billion on economic impact, and accounts for about one-third Florida’s international trade.

III. Effect of Proposed Changes:

This bill creates three public records exemptions related to public airports.

Section 1 provides that proprietary confidential business information submitted to or held by a public airport is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption expires when the confidential and exempt information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.

The bill defines “proprietary confidential business information” to mean information that is owned or controlled by the proprietor requesting confidentiality; that is intended to be and is treated by the proprietor as private in that the disclosure of the information would cause harm to the business operations of the proprietor; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

- Business plans.

¹² Section 315.18, F.S.

¹³ *Id.*

¹⁴ A map showing the location of these 21 airports is available at: <http://www.dot.state.fl.us/aviation/pdfs/Welcome%20to%20Fl%20Aviation112010.pdf> on page 10.

¹⁵ *Ibid*, pages 8-9.

¹⁶ *Ibid*, page 6.

- Internal auditing controls and reports of internal auditors.
- Reports of external auditors for privately held companies.
- Client and customer lists.
- Potentially patentable material.
- Business transactions; however, business transactions do not include those transactions between a proprietor and a public airport.
- Financial information of the proprietor.

The bill also provides that trade secrets¹⁷ held by a public airport are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

Finally, the bill provides that any proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption expires when the proposal or counterproposal is approved by the governing body of the public airport. If no proposal or counterproposal is submitted to the governing body for approval, then the exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

The bill provides for repeal of the exemptions on October 2, 2016, pursuant to the Open Government Sunset Review Act, unless they are reviewed and saved from repeal by the Legislature.

Section 2 provides a statement of public necessity for the public records exemptions, as required by the State Constitution.

Section 3 specifies an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. Because this bill creates new public records exemptions, it requires a two-thirds vote in each chamber for final passage.

Public Necessity Statement

¹⁷ “Trade secrets” has the same meaning as provided in the Uniform Trade Secrets Act.

Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill creates new public records exemptions, it contains a public necessity statement.

Breadth of Exemption

Section 24(c), Art. I of the State Constitution, requires that a public records or public meetings exemption be drafted as narrowly as possible.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Commerce and Tourism Committee on April 5, 2011:

The committee adopted a substitute strike-everything amendment to a traveling amendment that made the following modifications to the original bill:

- Narrowed the term “business transactions” to exclude as proprietary confidential business information business transactions between the private proprietor and the public airport’s governing board;
- Removed from the list of proprietary confidential business information “projections of financial results for the proprietor or the airport facilities project for which the information is provided;”

- Replaced the provision in the original bill that kept a proposal or counterproposal for airport land or facilities exempt until 10 days after an airport governing board had made its decision, with language removing the exemption when the airport board has voted to approve the proposal or counterproposal; and.
- Added language to the statement of public necessity to specify why proposals and counterproposals should be exempt until after approval by an airport board.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate

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. .

House

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

Senate Amendment

Delete lines 791 - 797
and insert:

(a) Appropriations for expenditures within a fund may be decreased or increased by motion recorded in the minutes if the total appropriations of the fund do not increase.

(b) The governing body may establish procedures by which the designated budget officer may authorize certain amendments if the total appropriations of the fund do not increase.

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 Governmental Oversight and Accountability Committee

BILL: SB 224

INTRODUCER: Senator Dean

SUBJECT: Local Government Accountability

DATE: April 7, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Favorable
2.	McKay	Roberts	GO	Pre-meeting
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill provides minimum budgeting standards for counties, county officers, municipalities, and special districts. The bill requires the budget of each county, municipality, special district, water management district, school district, and certain county officers to be posted on the government entity’s website. The bill requires counties, municipalities, and special districts to file their annual financial report and annual financial audit report with the Department of Financial Services (DFS) and the annual financial audit report with the Office of the Auditor General (OAG) within nine months of the end of the fiscal year. This bill also amends the reporting process used by the Legislative Auditing Committee (“LAC” or “Committee”) and the Department of Community Affairs (DCA), to compel special districts to file certain required financial reports.

This bill substantially amends the following sections of the Florida Statutes: 11.40, 30.49, 112.63, 129.01, 129.02, 129.021, 129.03, 129.06, 129.07, 129.201, 166.241, 189.4044, 189.412, 189.418, 189.419, 189.421, 195.087, 218.32, 218.35, 218.39, 218.503, 373.536, 1011.03, 1011.051 and 1011.64.

II. Present Situation:

Local Government Budgets

The Florida Constitution specifically provides for four types of local governments: counties, municipalities, school districts, and special districts. Florida’s 67 counties are subdivisions of the state that operate to provide a variety of core services through constitutional officers (county commissioners, sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the

court) pursuant to authority granted in the constitution, consistent with general law.¹ A municipality is a local government entity located within a county that is created to perform additional functions and services for the particular benefit of the population within the municipality. There are more than 400 municipalities in Florida, which exist pursuant to individual charters established by law and approved by the electorate in a referendum.

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.² Counties operating under a county charter have all powers of self-government not inconsistent with general law, or special law approved by the vote of the electors.³ Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform its functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.⁴

Local government entities have the authority to raise revenues and spend funds, subject to certain restrictions on the ability to tax, borrow, and spend as provided in both the Florida Constitution and Florida Statutes.⁵ The Florida Constitution limits the millage rate that local governments can levy in ad valorem taxes⁶ and allows public access to public meetings and records.⁷ Section 166.241, F.S., specifies how local governments and local government officials may develop and maintain their budget each fiscal year.⁸ The fiscal year for counties and municipalities begins on October 1 of each year and ends on September 30 of the following year.⁹

Florida Statutes also contain provisions designed to promote accountability and transparency in the budgetary process. Local governments are subject to financial reporting guidelines that are reviewed by the Legislature and by state agencies such as the DFS and DMS (DMS).¹⁰ Section 200.065(2)(d), F.S., currently requires local government entities that have taxing authority to provide notice of their adopted tentative budget in a newspaper of general circulation in the respective county.¹¹

Currently, there are no statutory provisions requiring local government entities to publish budget information on their local government website. With the exception of Calhoun, Lafayette, and Union Counties, each county within the state of Florida has an official website. Those that do not have official websites do have websites for the county clerk, which can be used to publish county information.

¹ FLA. CONST. art. VIII, s. 1.

² FLA. CONST. art. VIII, s. 1(f).

³ FLA. CONST. art. VIII, s. 1(g).

⁴ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021, F.S.

⁵ *See* Art. VII, Fla. Const.

⁶ FLA. CONST. art. VII, s. 9.

⁷ FLA. CONST. art. I, s. 24.

⁸ *See* s. 166.241, F.S.

⁹ Section 129.04, F.S.

¹⁰ Part III, Chapter 218; s. 112.63, F.S.

¹¹ Section 200.065(2)(d) and (3), F.S.

Municipal Budget Requirements

Section 166.241(2), F.S., provides that each municipality must annually adopt a budget by ordinance or resolution unless the municipality has a charter that specifies another method for adoption. The funds available from taxation and other sources must equal the total appropriations for expenditures and reserves.¹² Officers of a municipal government may not expend funds except according to the budgeted appropriations. A municipality may amend its budget up to 60 days following the end of the fiscal year under certain conditions.¹³

County Budget Requirements

Chapter 129, F.S., establishes a budget system that controls the finances of the boards of county commissioners of Florida counties. Pursuant to s. 129.01, F.S., each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year for such funds as may be required by law or by sound financial practices and generally accepted accounting principles, which controls the levy of taxes and the expenditure of money for all county purposes during the ensuing fiscal year.¹⁴ The budget is prepared by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.¹⁵ The receipts portion of the budget must include 95 percent of all receipts reasonably anticipated from all sources, including taxes to be levied, and must include all balances estimated to be brought forward at the beginning of the fiscal year.¹⁶

Section 129.01, F.S., also specifies the budget requirements relating to reserves for contingencies and cash balances to be carried over for future costs, stating that any surplus to be carried over can be placed in any other county fund and budgeted as a receipt to such other fund.¹⁷ However, a fund for debt services cannot be transferred to another fund, and a capital outlay reserve fund may not be transferred until the funded projects have been finished and paid for. In addition to these requirements, ch. 129, F.S., also contains other detailed provisions as to:

- Budget requirements for various funds;¹⁸
- Requirement that county officers submit budgets in sufficient detail and containing sufficient information;¹⁹ and
- Requirements for the preparation, adoption;²⁰ and amendment of such budgets.²¹

Each board of county commissioners may designate a county budget officer to carry out the duties prescribed by statute as to county budgets. If such board fails to designate a different officer, the clerk of the circuit court or the county comptroller, if applicable, will be the budget

¹² Section 166.241(2), F.S.

¹³ Section 166.241(3), F.S.

¹⁴ Section 129.01(1), F.S.

¹⁵ Section 129.01(2), F.S.

¹⁶ Section 129.01, F.S.

¹⁷ Sections 129.01 and 129.02(6), F.S.

¹⁸ Sections 129.01 and 129.02, F.S.

¹⁹ Sections 129.01 and 129.021, F.S.

²⁰ Section 129.03, F.S.

²¹ Section 129.06, F.S.

officer.²² County fee officers are also subject to reporting requirements.²³ County fee officers are defined in Florida Statutes as “those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local governing body, even though said budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved.”²⁴ For example, each sheriff, clerk of the circuit court, property appraiser and tax collector has budget reporting requirements of their own in addition to the budget reporting requirements of the county.²⁵

It is unlawful for the board of county commissioners to expend more than the amount budgeted for a fund absent a budget amendment. Any indebtedness contracted in excess of the amount budgeted is void and no suit for its collection may be maintained. A commissioner approving contracts for such amounts, and their surety company, may be liable for these debts.²⁶

Sheriff Budget Requirements

Section 30.49, F.S., requires each sheriff to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30. The proposed budget must show the estimated amounts of all proposed expenditures for operating and equipping the sheriff’s office and jail, excluding the cost of construction, repair, or capital improvement of county buildings during the fiscal year. The sheriff must itemize expenditures in accordance with the uniform chart of accounts prescribed by DFS, as: personal services, operating expenses, capital outlay, debt service, and non-operating disbursements and contingency reserves.

The Supreme Court of Florida has stated that “the internal operation of the sheriff’s office and the allocation of appropriated monies within the six items of the budget is a function which belongs uniquely to the sheriff as the chief law enforcement officer of the county.”²⁷ Therefore, although a county can increase or reduce by lump sums the items, a county cannot dictate how the money allocated to an individual item should be used.²⁸

Supervisor of Elections Budget Requirements

Section 129.201, F.S., requires each supervisor of elections to certify to the board of county commissioners a proposed budget of expenditures for the ensuing fiscal year, commencing on October 1 and ending on the following September 30. The supervisor of elections must itemize expenditures such as: personnel compensation, operating expenses, capital outlay, contingencies, and transfers.

²² Section 129.025, F.S.

²³ See s. 218.35, F.S.

²⁴ Section 218.31(8), F.S.

²⁵ See ss. 30.49 (sheriffs’ budgets), 218.35(2) (clerks of the court reporting requirements), 195.087 (property appraisers and tax collectors budget reporting requirements), F.S.

²⁶ Section 129.07, F.S. See also, *Edwards v. City of Ocala*, 58 Fla. 217, 50 So. 421 (1909) and *White v. Crandon*, 116 Fla. 162, 156 So. 303 (1934) (discussing county commissioner liability for misappropriation of funds).

²⁷ *Weitzenfeld v. Dierks*, 312 So.2d 194 (Fla. 1975); Fla. Atty. Gen. Op. 93-92 (December 17, 1993).

²⁸ *Id.*

The proposed budget must be submitted to the board of county commissioners or county budget commission to be included in the general county budget.²⁹

Special Districts

Special Districts are governed by the Uniform Special District Accountability Act of 1989 in Chapter 189, F.S.³⁰ Section 189.403(1), F.S., defines a “special district” as a confined local government unit established for a special purpose.³¹ A special district can be created by general law, special act, local ordinance, or by Governor or Cabinet rule.³² A special district does not include:

- A school district;
- A community college district;
- A special improvement district (Seminole and Miccosukee Tribes under s. 285.17, F.S.);
- A municipal service taxing or benefit unit (MSTU/MSBU); or
- A political subdivision board of a municipality providing electrical service.³³

Special districts have the same governing powers and restrictions as counties and municipalities.³⁴ Like other forms of local government, special districts operate through a governing board and can “enter contracts, employ workers . . . issue debt, impose taxes, levy assessments and . . . charge fees for their services”.³⁵ Special districts are held accountable to the public, and are therefore subject to public sunshine laws and financial reporting requirements.³⁶

There are two types of special districts in Florida: dependent special districts and independent special districts. With some exceptions, dependent special districts are districts created by individual counties and municipalities that meet at least one of the following characteristics:

- The membership of its governing body is identical to the governing body of a single county or municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district’s governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.³⁷

²⁹ Section 129.201(7), F.S.

³⁰ Ch. 189, F.S., *see* s. 189.401, F.S.

³¹ Section 189.403(1), F.S.

³² *Id.*

³³ *Id.*

³⁴ Mizany, Kimia and April Manatt, WHAT’S SO SPECIAL ABOUT SPECIAL DISTRICTS? CITIZENS GUIDE TO SPECIAL DISTRICTS IN CALIFORNIA, 3rd ed., 2 (Feb. 2002).

³⁵ *Id.* (alteration to original) (citation omitted).

³⁶ Presentation by Jack Gaskins Jr., from the Department of Community Affairs, Special District Information Program, SPECIAL DISTRICT BASICS PRESENTATION (May 2010) (on file with the Senate Committee on Community Affairs). *See also* ss. 189.417 and 189.418, F.S.

³⁷ Section 189.403 (2) (a)-(d), F.S.

Section 189.403(3), F.S., defines an independent special district as a district that does not meet the statutory classifications of a dependent special district.³⁸ Independent special districts may encompass more than one county.³⁹ The public policy behind special districts is to provide an alternative governing method to “manage, own, operate, construct and finance basic capital infrastructure, facilities and services”.⁴⁰

As of January 2011, there were approximately 1,625 special districts in the state of Florida: 618 dependent districts and 1,007 independent districts.⁴¹ Examples of special districts in Florida include but are not limited to water management districts, community development districts, housing authority districts, fire control and rescue districts, mosquito control districts, and transportation districts.⁴²

A. Special District Information Program

The Special District Information Program (SDIP), administered by the DCA is designed to collect, update, and share detailed information on Florida’s special districts with more than 685 state and local agencies.⁴³ The SDIP is also charged with assisting special districts to comply with Florida's local government financial reporting system. Specifically, the program:

- Provides technical assistance as it relates to the general requirements of Florida's special districts;
- Acts as a "one-stop shop" source of information about special districts; and,
- Promotes special district accountability by:
 - Monitoring important financial report filings;
 - Assisting state agencies and local governments in collecting delinquent reports;
 - Helping non-complying special districts come into compliance through technical assistance letters and telephone calls; and
 - When necessary, initiating legal enforcement.⁴⁴

There are ten basic reporting requirements that each special district must follow under the Uniform Special District Accountability Act. All special districts must report it’s:

- Creating document and boundary map;
- Registered agent and office;
- Annual fee and update;
- Regular public meeting schedule;
- Annual budget;
- Annual financial audit report;
- Annual financial report;
- Three retirement system reports;

³⁸ Section 189.403(3), F.S.

³⁹ *Id.*

⁴⁰ Section 189.402(3)-(4), F.S.

⁴¹ Gaskins, *supra* note 36. Note: This number is subject to change daily.

⁴² Florida Department of Community Affairs, OFFICIAL LIST OF SPECIAL DISTRICTS ONLINE, available online at <http://www.floridaspecialdistricts.org/OfficialList/index.cfm> (last visited on Jan. 10, 2010).

⁴³ Florida Department of Community Affairs, SPECIAL DISTRICTS INFORMATION PROGRAM, available online at <http://www.floridaspecialdistricts.org> (last visited on Sept. 21, 2010).

⁴⁴ *See* s. 189.412, F.S.

- Two bond reports; and
- Three public facilities reports.⁴⁵

B. Special District Budget Requirements

The governing body of each special district is directed by statute to adopt a budget by resolution each fiscal year. The total funds available must equal the total of appropriated expenditures and reserves.⁴⁶ It is unlawful for any officer of a special district to spend district money in any fiscal year except pursuant to a budgeted appropriation. The proposed budget of a dependent special district shall be presented in accordance with generally accepted accounting principles, contained within the general budget of the local governing authority and be clearly stated as the budget of the dependent district. However, with the concurrence of the local governing authority, a dependent district may be budgeted separately.⁴⁷ The governing body of each special district at any time within a fiscal year, or within up to 60 days following the end of the fiscal year, may amend a budget for that year. The budget amendment must be adopted by resolution.⁴⁸

All reports or information required to be filed with a local governing authority are filed with:

- The clerk of the board of county commissioners when the local governing authority is a county;
- The clerk of the county commission in each county when the district is a multicounty district; or
- At the place designated by the municipal governing body when the local governing authority is a municipality.⁴⁹

Local Government Annual Financial Reports

Section 218.32 (1), F.S., requires local governments to submit an Annual Financial Report to the DFS covering their operations for the preceding fiscal year. DFS provides an electronic filing system for local governments to use that accumulates the financial information reported on the annual financial reports into a database.⁵⁰ This information is available to the public in an electronic format.

In order to improve government accountability by making financial information reported by Florida's local governments more comparable, and thereby enabling local taxpayers and local policy makers to better understand and evaluate local government service delivery and operations, all local governmental reports are required to follow accounting principles when preparing their Annual Financial Report.⁵¹

⁴⁵ Gaskins, *supra* note 36.

⁴⁶ Section 189.418(3), F.S.

⁴⁷ Section 189.418(4), F.S.

⁴⁸ Section 189.418(5), F.S.

⁴⁹ Section 189.418(7), F.S.

⁵⁰ Information obtained from the Florida Department of Financial Services website, Local Government Annual Reports, available online at <http://www.myfloridacfo.com/sitePages/services/flow.aspx?ut=Local+Governments> (last visited on Jan. 10, 2010).

⁵¹ Section 218.33(2), F.S.

The submission deadline for the local government's annual financial report depends on whether or not the entity is required to have an annual audit.⁵² If no audit is required then the entity's annual report deadline is April 30 of each year.⁵³ The deadline for entities that are required to provide an audit is no later than 12 months after the end of the fiscal year.⁵⁴ If DFS does not receive a completed annual financial report from a local government entity within the required period, the department must notify the LAC, which must then schedule a hearing.⁵⁵

If the LAC determines that an entity should be subject to further state action, s. 11.40, F.S., provides that the committee must:

- In the case of a local government entity or a district school board, direct the Department of Revenue and the DFS to withhold any funds not pledged for bond debt service satisfaction until the local government entity or the district school board is in compliance. The committee must specify the date that action will begin and both departments must receive notification 30 days before the date the withheld funds would normally be distributed.
- In the case of a special district, the committee must notify the DCA and the department must offer assistance to the special district. If the district still fails to comply, the department must petition the circuit court in Leon County for a writ of certiorari and the court must award attorney costs and court fees to the prevailing party.⁵⁶
- In the case of a charter school or charter technical career center, the committee must notify the appropriate sponsoring entity that may terminate the charter.⁵⁷

Local Government Annual Financial Audit Reports

Section 218.39, F.S., provides that if a local government entity, district school board, charter school, or charter technical career center has been notified by the first day in any fiscal year that it will not be audited by the Auditor General, then each of the following entities must provide for an annual financial audit to be completed within 12 months after the end of the fiscal year. The audit must be conducted by an independent certified public accountant retained by the entity and paid for from public funds. The entities referenced in statute include:

- Each county, district school board, charter school, or charter technical center⁵⁸;
- Any municipality with revenues or expenditures and expenses of more than \$250,000;
- Any special district with revenues or expenditures and expenses of more than \$100,000;
- Each municipality with revenues or expenditures and expenses between \$100,000 and \$250,000 that has not been audited within the 2 preceding fiscal years; and
- Each special district with revenues or expenditures and expenses between \$50,000 and \$100,000 that has not been audited within the 2 preceding fiscal years.

⁵² Information obtained from the Florida Department of Financial Services, *see supra* note 50.

⁵³ Section 218.32(e), F.S.

⁵⁴ Section 218.32(d), F.S.

⁵⁵ Section 218.32(f), F.S.

⁵⁶ *See also* s. 189.421(3), F.S., providing that “[v]enue for all actions pursuant to this subsection shall be in Leon County.”

⁵⁷ *See* s. 11.40(5)(a)–(c), F.S.

⁵⁸ Referring to charter schools established under s. 1002.33, F.S., and each charter technical center established under s. 1002.34, F.S.

Actuarial Reports

The “Florida Protection of Public Employee Retirement Benefits Act” located in part VII, of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans.⁵⁹ The legislative intent of this Act is to “prohibit 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 tax payers.”⁶⁰ The Division of Retirement (Division) within the Florida Department of Management Services (DMS) is primarily responsible for administering this Act and helping ensure that local governments maintain the necessary level of funding for public employee retirement systems and plans. In order to meet this requirement, each retirement system or plan is required to submit regularly scheduled actuarial reports to the Division for its review and approval.

If DMS determines that a local government entity’s actuarial valuation of its retirement system or plan is incomplete, inaccurate, or not based on reasonable assumptions, the department can request additional information.⁶¹ If, after a reasonable period of time, a satisfactory adjustment has not been made, the DMS may notify the Department of Revenue and the DFS of the noncompliance and those agencies may withhold any funds not pledged for satisfaction of bonds until such adjustment is made to the report. The affected governmental entity may petition for a hearing. If the entity failing to make the adjustment is a special district, DMS also notifies the DCA, which must proceed under the procedures prescribed in s. 189.421, F.S., which may result in a writ of certiorari with the circuit court.

III. Effect of Proposed Changes:

Section 1 amends s. 11.40, F.S., to clarify that the DCA can declare a special district inactive for failure to disclose financial reports.

Section 2 amends s. 30.49, F.S., to provide that each sheriff shall annually prepare and submit a proposed budget to the board of county commissioners. This section clarifies that “personnel services,” “grants and aids” and “other uses” need to be itemized by the sheriff’s office. It further specifies that within each subobject code expenditures need to be itemized at the sub-code level in accordance with the uniform chart of accounts prescribed by the DFS.⁶² The board or commission is precluded from changing any expenditure at the sub-code level.

Section 3 amends s. 112.63, F.S., to provide that the failure of a special district to provide sufficient information to fulfill its actuarial reporting requirements despite requests from the DMS is considered a final agency action by the district. The DMS, Division of Retirement, can request that the DCA seek a writ of certiorari in accordance with the provisions set forth in s. 189.421(4), F.S.

⁵⁹ Section 112.61, F.S.

⁶⁰ *Id.*

⁶¹ Section 112.63(4), F.S.

⁶² The Department of Financial Services website has additional information on expenditure object codes at <http://www.myfloridacfo.com/aadir/eocodespdf.htm>.

Section 4 amends s. 129.01, F.S., to require boards of county commissioners to provide, at a minimum, that their budget show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. The bill also deletes redundant language.

Section 5 amends s. 129.02, F.S., to require financial reports for dependent special districts included in the county budget to show budgeted expenditures and revenues in detail consistent with the annual financial report required under s. 218.32(1), F.S. The amount of money available must equal the total appropriations for expenditures and reserves.

Section 6 amends s. 129.021, F.S., to correct a cross reference.

Section 7 amends s. 129.03, F.S., to require a county's tentative budget to be posted on the county's official website at least 2 days before the public hearing to consider such budget, and to require the county's final budget be posted on the website within 30 days after adoption.

Section 8 amends s. 129.06, F.S., to clarify the budget amendment authority of counties and to require that budget amendments authorized by resolution or ordinance, rather than statute, be posted on the county's website within 5 days after adoption.

Section 9 amends s. 129.07, F.S., to clarify language explaining that a board of county commissioners may not exceed budgeted appropriations, except as provided in s. 129.06, F.S.

Section 10 amends s. 129.201, F.S., to require each supervisor of elections to itemize expenditures according to the uniform chart of accounts prescribed by the DFS into the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses. The supervisor of elections must also furnish expenditures to the board at the subobject code level in accordance to the account system prescribed by the DFS. The board or commission may not amend, modify, increase, or reduce any expenditure at the sub-object code level.

Section 11 amends s. 166.241, F.S., to require municipalities to provide, at a minimum, that their budget show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. The bill requires the tentative and adopted budgets be published on the municipality's official website at least 2 days before the public hearing to consider the budget. If the municipality does not have an official website, the budget must be posted on the website of the county or counties in which the municipality is located. The final adopted budget must be posted on the municipality's official website within 30 days of adoption, or must be transmitted to the county for posting within a reasonable time established by the county. Certain budget amendments of the municipality must be posted within 5 days after adoption or must be transmitted to the county for posting within a reasonable time established by the county.

Section 12 amends s. 189.4044, F.S., to allow the DCA to declare any special district inactive if the district has not had a registered office and agent on file with the department for one or more years.

Section 13 amends s. 189.412(1), F.S., to require the DCA Special District Information Program to collect and maintain a special district noncompliance status report prepared by the LAC.

Section 14 amends s. 189.418, F.S., to require special districts to provide, at a minimum, that their budgets show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit in detail consistent with the annual financial report required under s. 218.32(1), F.S. It also requires tentative budgets to be posted on the special district's official website at least 2 days before the budget hearings and final adopted budgets within 30 days. If the special district does not have an official website, the budget must be posted on the website of the county or counties in which the special district is located. These new requirements do not apply to water management districts. Certain budget amendments of the special district must be posted on the special district's official website within 5 days after adoption, or transmitted as determined reasonable by the county or counties in which the special district is located. The bill specifies how a special district may amend its budget. The bill requires certain special districts to provide any budget information requested by the local governing authority.

Section 15 amends s. 189.419, F.S., to clarify what happens when an independent special district fails to file reports and information the district is required to file by statute. If the failure is not justified, the local general purpose government within which the independent district is located must notify the DCA which must proceed according to the procedures specified in s. 189.421, F.S., (see discussion of section 16 below). If a dependent special district fails to file required reports with the local governing authority, that authority must take whatever steps it deems necessary to enforce accountability including: withholding funds, removing governing board members at will, vetoing the special district's budget, conducting an oversight review process as specified in s. 189.428, F.S., or amend, merge, or dissolve the special district.

If a special district fails to file a required report with a state agency, the agency must notify the DCA, which shall send a certified technical assistance letter to the special district summarizing the requirements and encouraging the special district to take steps to prevent the noncompliance from reoccurring. If a special district fails to file actuarial reports or information under s. 112.63, F.S., then the appropriate state agency must notify the DCA which shall proceed according to s. 189.421(1), F.S.. If a special district fails to file the annual financial report or annual financial audit report under ss. 218.32 and 218.39, F.S., respectively, then the state agency shall and the LAC may, notify the DCA, which shall proceed according to s. 189.421, F.S.

Section 16 amends s. 189.421, F.S., to provide that when a special district fails to file a report or information required under Chapter 189, or is unable to comply with the 60-day reporting deadline granted by the DCA, it must provide a written notice to the DCA stating: (1) the reason it is unable to comply with the deadline; (2) the steps it is taking to prevent the noncompliance from recurring; and (3) the estimated date that it will file the report with the appropriate agency.

If the written response refers to the annual financial report or annual financial audit report under ss. 218.32 and 218.39, F.S., then the DCA must forward the written response to the LAC, which, under s. 11.40(5)(b), F.S., will determine whether state action is needed and notify the DCA as to whether they should proceed according to s. 189.421, F.S. If the written response refers to special district reports listed in s. 189.419 (1), F.S., then the DCA must forward the response to

the local general-purpose government for its consideration in determining what actions to take. When the special district does not comply with its actuarial reporting requirements under s. 112.63, F.S., the DCA must forward the response to the DMS for its consideration in determining whether the special district should be subject to further action.

The additional 30-day extension provided in current law is deleted. The bill amends the law to specify that the failure of a special district to comply with actuarial reporting requirements, as well as specified financial reporting requirements, is deemed final action of the special district. The remedy for noncompliance is writ of certiorari. If the LAC or the DMS notifies the DCA that specific special districts have failed to file required reports the DCA must initiate a writ of certiorari in the circuit court within 60 days after receiving such notice (current law gives the DCA only 30 days).

Section 17 amends s. 195.087, F.S., to require each tax collector and property appraiser to post their final approved budget on the county's official website within 30 days after adoption of the county's budget. The bill also requires each county's official website to have a link to the tax collector or property appraiser's website where the final approved budget is posted. If the property appraiser or tax collector does not have an official website, the bill states that the final approved budget must be posted on the county's official website.

Section 18 amends s. 218.32, F.S., to require local governmental entities to file their audit with the DFS within 9 months after the end of the fiscal year, (instead of 12 months). Local governments not required to file audits must file annual financial reports no later than 9 months after the end of the fiscal year (instead of April 30 of each year). The bill also requires the DFS to file its report on local government entities that are not in compliance with s. 218.32, F.S., with the DCA Special District Information Program. The bill requires each local governmental entity's website to provide a link to the DFS website to view the entity's annual financial report submitted to the DFS. If the local government does not have an official website, then the county government's website must provide this required link.

Section 19 amends s. 218.35, F.S., to revise provisions specifying how a county fee officer is to prepare and submit a budget. In preparing the budget related to the clerk's duties for the commission, pursuant to s. 129.03, F.S., the bill requires that expenditures be itemized in accordance with the uniform accounting system prescribed by the DFS using the following categories: personnel services, operating expenses, capital outlay, debt service, grants and aids, and other uses. The bill also requires the clerk of court to provide the board with all relevant and pertinent information as the board deems necessary, including expenditures at the subobject code level in accordance with the uniform accounting system prescribed by the DFS.

The bill requires fee officers to post the clerk of court's final approved budget on the county's official website within 30 days of adoption. The final approved budget of the clerk of the circuit court may be included in the county's budget.

Section 20 amends s. 218.39, F.S., to require certain counties, certain municipalities, certain special districts, district school boards, charter schools, and charter technical career centers, to file their annual financial audit report within 9 months after the end of the fiscal year (instead of 12 months). The bill specifies that the entity's revenues or total expenditures and expenses are as

reported on the fund financial statements. The bill requires auditors to prepare auditing reports in accordance with the rules of the Auditor General. These reports must be filed with the Auditor General within 45 days after the delivery of the report to the audited entity but no later than 9 months after the end of the fiscal year.

The bill also requires the Auditor General to notify the LAC of any audit report that indicates an audited entity has failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports. It provides the LAC with the authority to direct a local governmental entity to provide a written statement concerning the lack of corrective action or describing corrective action that will be taken in the future. If the Committee determines that the written statement is not sufficient, it may require the entity to appear before the Committee.

The bill further authorizes the Committee to take certain actions prescribed in s. 11.40(5), F.S., against an audited entity that has failed to take full corrective action and for which there is no justifiable reason for the entity's inaction, or if the entity has failed to comply with the Committee's requests.

Section 21 amends s. 218.503, F.S., to clarify that a deficit in the fund financial statements of entities required to report under governmental financial reporting standards or on nonprofit financial statements shall constitute a financial distress indicator that shall subject the entity to review and oversight for financial emergency. The bill replaces the term "fixed or capital assets" with "property, plant, and essential equipment" as types of property that if necessary will not be considered resources available to cover the deficit.

Section 22 amends s. 373.536, F.S., to require water management districts to post their tentative budgets on their official website at least 2 days before budget hearings. The final adopted budget must be posted on the website within 30 days after adoption.

Section 23 amends s. 1011.03, F.S., to require district school boards to post a summary of their tentative budgets on the district's official website within 2 days before the budget hearing. The bill also states that the district school board's final adopted budget must be posted on the district's official website within 30 days after adoption, and any budget amendments must be posted on their official websites within 5 days after adoption.

Section 24 amends s. 1011.051, F.S., to amend accounting terminology.

Section 25 amends s. 1011.64, F.S., to amend accounting terminology.

Section 26 provides that this act shall take effect on October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(a), Article VII, of the State Constitution, prohibits any general law that would require cities and counties to spend funds or take action requiring the expenditure of

funds unless the legislature determines that the law fulfills an important state interest and one of the following exceptions apply:

- Estimated funds are appropriated to cover the mandate;
- The legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate sufficient funds, by a simple majority vote of the governing body of each county or municipality;
- It is approved by a two-thirds vote of the membership in each house of the legislature;
- Similarly situated persons are all required to comply; or
- The law is required to comply with a federal requirement or for a federal entitlement.⁶³

Subsection (d) of section 18 of Article VII, of the State Constitution, provides an exemption if the law is determined to have an insignificant fiscal impact.⁶⁴ An insignificant fiscal impact means an amount not greater than the average statewide population for the applicable fiscal year times ten cents (FY 2011-2012 \$1.9 million).⁶⁵

Although there will be some costs to local government entities associated with posting budget information on their website, the costs probably do not rise to the level of a constitutional mandate. If it is determined that this bill has more than an insignificant fiscal impact (i.e. the costs exceed \$1.9 million), the bill would require a finding of an important state interest and a two-thirds vote of the membership of each house of the Legislature to effectively bind cities and counties.

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:

This bill will provide easier access to local government annual financial reporting information for individuals, due to amendments to the reporting process and by providing such information through the government entity's official website.

⁶³ FLA. CONST. art. VII, s. 18(a).

⁶⁴ FLA. CONST. art. VII, s. 18(d).

⁶⁵ Florida Economic Estimating Conference, Short-Run Tables, on file with the Senate Committee on Community Affairs.

C. Government Sector Impact:

This bill requires certain government entities to post annual financial reporting information on the entity's official website. The fiscal impact on local governments as a result of this requirement is unknown at this time.

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.

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 1962

INTRODUCER: Community Affairs Committee and Senator Garcia

SUBJECT: Revitalizing Municipalities

DATE: April 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/CS
2.	McKay	Roberts	GO	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This Committee Substitute (CS) creates the Municipal Revitalization Act, which allows municipalities with a specified population that are located within an enterprise zone to designate a sales tax TIF (tax increment financing) area to support the development of a retail development project by resolution. It also allows the governing bodies of the enterprise zone where the sales tax TIF area is located to share with the state any annual increase in sales tax collections.

The CS states that the governing body of the designated sales tax TIF area shall be eligible for a percentage distribution from the Revenue Sharing Trust Fund for Municipalities of the increased collections of the state tax on sales, use, and other transactions realized during any month by the municipality over the same monthly period in the prior year.

The CS directs the Department of Revenue (“Department” or “DOR”) to determine monthly the specific amount payable to each eligible governing body and the aggregate amount of sales tax revenue that is required for distribution. The CS further directs the Department to transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities.

The CS also provides for a retail development project agreement for developers that desire to use tax increment revenues to underwrite retail development costs. The CS outlines the additional powers of the governing board and provides for the use of the distribution of sales tax proceeds under this section, including the issuance of bonds to finance the retail redevelopment costs of a retail development project.

This CS substantially amends the following sections of the Florida Statutes: 212.096, 212.20, 218.23, 220.181, 288.1175, 290.004, 290.0056, 290.0057, and 290.007.

This CS creates the following sections of the Florida Statutes: 290.01351, 290.0136, 290.0137, 290.0138, 290.0139, and 290.01391.

II. Present Situation:

Municipal Revenue Sharing Program¹

The Revenue Sharing Act of 1972, located in Part II of ch. 218, F.S., was enacted to ensure a minimum level of revenue parity across units of local government. This Act also created the Revenue Sharing Trust Fund for Municipalities. Currently the trust fund receives:

- 1.3409 percent of sales and use tax collections = 70.98 percent of total Program funding.²
- The net collections from the one-cent municipal fuel tax on motor fuel = 29.01 percent of total Program funding.³
- 12.5 percent of the state alternative fuel user decal fee collections = 0.01 percent of total Program funding.⁴

An allocation formula serves as the basis for the distribution of these revenues to each municipality that meets strict eligibility requirements. Municipalities must use the funds derived from the one-cent municipal fuel tax for transportation-related expenditures. Additionally, there are statutory limitations on the use of the funds as a pledge for bonded indebtedness.

Program Administration

The Municipal Revenue Sharing Program (Program) is administered by the Department. Monthly distributions must be made under this program to eligible municipal governments as prescribed in ss. 218.215 and 218.23, F.S. The Program is comprised of state sales taxes, municipal fuel taxes, and state alternative fuel user decal fees that are collected and transferred to the Revenue Sharing Trust Fund (Trust Fund).

Once each fiscal year, the DOR must compute apportionment factors for use during the fiscal year.⁵ The computation must be made prior to July 25 of each fiscal year and must be based upon

¹ The information in the Present Situation Section of this bill analysis was obtained from the 2010 Local Government Financial Information Handbook. See Florida Legislature, Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, at 85-91 (Oct. 2010) (on file with the Senate Committee on Community Affairs). Available online at <http://edr.state.fl.us/Content/local-government/reports/lgfih10.pdf> (last visited March 28, 2011).

² *Id.* citing s. 212.20(6)(d)5., F.S.

³ *Id.* citing s. 206.605(1), F.S.

⁴ *Id.* citing s. 206.879(1), F.S.

⁵ *Id.* citing s. 218.26, F.S.

information submitted and certified to the DOR prior to June 1 of each year. Except in the case of error, the apportionment factors must remain in effect for the fiscal year. It is the duty of the local government to submit the certified information required for the program's administration to the DOR in a timely manner.

A local government's failure to provide timely information authorizes the DOR to utilize the best information available or, if no such information is available, to take any necessary action, including partial or entire disqualification. Additionally, the local government waives its right to challenge the DOR's determination as to the jurisdiction's share of program revenues.

Eligibility to Participate in Revenue Sharing Program

In order to be eligible to participate in revenue sharing beyond the minimum entitlement in any fiscal year, a municipal government must have satisfied a number of statutory requirements outlined in subsection (1) of s. 218.23, F.S.⁶ As it relates to municipal revenue sharing, s. 218.21(7), F.S., defines "minimum entitlement" as:

the amount of revenue, as certified by the municipal government and determined by the Department of Revenue (DOR), which must be shared with the municipality so that the municipality will receive the amount of revenue necessary to meet its obligations as the result of pledges, assignments, or trusts entered into which obligated funds received from revenue sources or proceeds distributed out of the Trust Fund.

Distribution of Proceeds

Subsection (3) of s. 218.23, F.S., provides a distribution formula for determining the amount of distribution to a unit of local government. The distribution formula is as follows:

- First - A municipal government's entitlement shall be computed on the basis of the "apportionment factor" provided in s. 218.245, F.S., which shall apply to all Trust Fund receipts available for distribution.
- Second - The revenue to be shared via the formula in any fiscal year is adjusted so that no municipality receives less than its guaranteed entitlement, which is equal to the aggregate amount received from the state in fiscal year 1971-72 under then-existing statutory provisions.⁷
- Third - The revenue to be shared via the formula in any fiscal year is adjusted so that no county receives less than its guaranteed entitlement plus the second guaranteed entitlement for counties (this step is not applicable to municipalities).
- Fourth - The revenue to be shared via the formula in any fiscal year is adjusted so that no unit of local government receives less than its minimum entitlement, which means the amount of revenue necessary for a municipality to meet its obligations as the result of pledges, assignments, or trusts entered into that obligated Trust Fund monies.⁸
- Fifth - Any remaining Trust Fund monies shall be distributed to eligible units of local government that qualify to receive additional monies beyond the guaranteed entitlement in proportion to the total remainder.

⁶ *Id.* citing s. 218.23(1)(a)-(f), F.S.

⁷ *See* definition for "guaranteed entitlement" in s. 218.21(6), F.S.

⁸ *See* definition for "minimum entitlement" in s. 218.21(7), F.S.

A.) *Distributions under s. 212.20(6)(d)5. F.S.*⁹ — Section 212.20(6), F.S., provides for the distribution of sales and use tax proceeds and communication services tax proceeds. Under Florida law, funds are first distributed under the requirements of s. 212.20(6)(a)-(d)4., F.S., then 1.3409% of the remaining proceeds are transferred to the Revenue Sharing Trust Fund for Municipalities under subparagraph 212.20(6)(d)5., F.S.,¹⁰ which provides that:

If the total revenue to be distributed is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

B.) *Distributions under s. 218.245(3).F.S.*— Chapter 2003-402, Laws of Florida reduced the proportion of state sales and use tax transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and Revenue Sharing Trust Fund for counties and increased the proportion of state sales and use taxes transferred to the Revenue Sharing Trust Fund for Municipalities to offset the losses from the Local Government Half-cent Sales Tax Reduction. One year later, through ch. 2004-265, Laws of Florida, the Legislature created subsection (3) in s. 218.245, F.S., to provide that increases to individual municipalities resulting from the increased share of state sales and use taxes transferred to the Revenue Sharing Trust Fund for Municipalities shall be distributed in proportion to their respective loss from the Local Government Half-cent Sales Tax Program.

Each eligible local government's allocation shall be based on the amount it received from the Local Government Half-cent Sales Tax Program under s. 218.61, F.S., in the prior state fiscal year divided by the total receipts under the same authority in the prior state fiscal year for all eligible local governments provided. However, for the purpose of calculating this distribution, the amount received in the prior state fiscal year by a consolidated unit of local government (e.g., City of Jacksonville/Duval County) shall be reduced by 50 percent for such local government and for the total receipts. For eligible municipalities that began participating in this allocation in the previous state fiscal year, their annual receipts shall be calculated by dividing their actual receipts by the number of months they participated, and the results multiplied by 12.

⁹ Ch.2000-355, Laws of Fla. “. . . restructured the Municipal Revenue Sharing Program by transferring the portions of cigarette tax that previously funded the former Municipal Financial Assistance Trust Fund and Revenue Sharing Trust Fund for Municipalities to the state's General Revenue Fund and provided for a separate distribution from state and sales taxes to the Revenue Sharing Trust Fund for Municipalities.” See Florida Legislature, Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK *supra*, note 1, at 88.

¹⁰ Department of Revenue, *SB 1962 Agency Analysis*, at 2 (March 25, 2011) (on file with the Senate Committee on Community Affairs).

Apportionment Factor

An “apportionment factor” is calculated for each eligible municipality using a formula consisting of the following equally weighted factors: adjusted municipal population, the derived municipal sales tax collections, and the municipality’s ability to raise revenue.¹¹

A.) *Adjusted Municipal Population.*— The adjusted municipal population factor is calculated by multiplying a given municipality’s population by the appropriate adjustment factor and dividing that product by the total adjusted statewide municipal population. Depending on the municipality’s population, one of the following adjustment factors is used:

Population Class	Adjustment Factor
0- 2,000	1.0
2,001 - 5,000	1.135
5,001 - 20,000	1.425
20,001 - 50,000	1.709
Over 50,000	1.791

Inmates and residents residing in institutions operated by the federal government as well as the Florida Departments of Corrections, Health, and Children and Family Services are not considered to be residents of the county in which the institutions are located for the purpose of calculating the distribution proportions.¹²

B.) *Derived Municipal Sales Tax Collections.*— In order to calculate the municipal sales tax collection factor, it is first necessary to allocate a share of the sales tax collected within a county to each of its respective municipalities. This allocation is derived on the basis of population. First, the municipality’s population is divided by the total countywide population. Second, the resulting quotient is multiplied by the countywide sales tax collections to determine the sales tax collected within a given municipality. The municipal sales tax collection factor is then calculated by dividing the sales tax collected within a given municipality by the total sales tax collected within all eligible municipalities in the state.

C.) *Municipality’s Relative Ability to Raise Revenue.*— The municipality’s relative ability to raise revenue is determined by a three-step process involving a series of calculations. First, the per capita taxable real and personal property valuation of all eligible municipalities in the state is divided by the per capita taxable real and personal property valuation of a given municipality. Second, a given municipality’s quotient, as calculated in the first step, is multiplied by the municipality’s population. For discussion purposes, this product is referred to as the recalculated population. Third, a given municipality’s recalculated population is divided by the total recalculated population of all eligible municipalities in the state. This quotient represents the municipality’s relative ability to raise revenue factor.

D.) *Adjustment for a Metropolitan or Consolidated Government.*— For a metropolitan or consolidated government, as provided in Article VIII, sections 3, and 6(e) or (f) of the

¹¹ Section 218.245(2), F.S.

¹² Section 186.901, F.S.

Florida Constitution (e.g., Miami-Dade County and City of Jacksonville-Duval County), the factors are further adjusted by multiplying the adjusted or recalculated population or sales tax collections, as the case may be, by a percentage that is derived by dividing the total amount of ad valorem taxes levied by the county government on real and personal property in the area of the county outside of municipal limits or urban service district limits by the total amount of ad valorem taxes levied on real and personal property by the county and municipal governments.¹³

Authorized Use of Funds

Several statutory restrictions exist regarding the authorized use of municipal revenue sharing proceeds. Funds derived from the municipal fuel tax on motor fuel shall be used only for the purchase of transportation facilities and road and street rights-of-way; construction, reconstruction, and maintenance of roads, streets, bicycle paths, and pedestrian pathways; adjustment of city-owned utilities as required by road and street construction; and construction, reconstruction, transportation related public safety activities, maintenance, and operation of transportation facilities. Municipalities are authorized to expend these funds in conjunction with other municipalities, counties, state government, or the federal government in joint projects.

According to the DOR, municipalities may assume that 29.01 percent of their estimated 2011 fiscal year distribution is derived from the municipal fuel tax. Therefore, at least that proportion of each municipality's revenue sharing distribution must be expended on those transportation-related purposes specifically mentioned in the preceding paragraph.

Municipalities are restricted as to the amount of program funds that can be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness, and there shall be no other use restriction on these shared revenues.¹⁴ Municipalities may assign, pledge, or set aside as trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness an amount up to 50 percent of the funds received in the prior year.¹⁵ Consequently, it is possible that some portion of a municipality's growth monies will become available as a pledge for bonded indebtedness.

¹³ Section 218.245(2)(d), F.S.

¹⁴ Section 218.25(1), F.S.

¹⁵ Section 218.25(4), F.S.

According to the Florida Department of Revenue, the following is the estimated statewide distributions to municipal governments under the Municipal Revenue Sharing Program for the 2011 Fiscal Year:¹⁶

	Guaranteed	Distributions s. 212.20(6)(d)5., F.S.	Growth Money	Distributions s. 218.245(3), F.S.	Yearly Total
Statewide Totals	\$124,683,365	\$122,178,265	\$18,588,385	\$44,200,000	\$309,650,014

Florida Enterprise Zone Act

The Florida Legislature created the Florida Enterprise Zone Program in 1982 to encourage economic development in economically depressed areas of the state by providing incentives to induce private investments in such areas. Located in ss. 290.001-290.016, F.S., the Florida Enterprise Zone Act, seeks to revitalize and redevelop severely distressed areas throughout the state by providing “investments, tax incentives and local government regulatory relief to encourage businesses to invest and locate in designated zones and residents to improve their property.”¹⁷ The Legislature requires enterprise zones to meet several criteria before being created. As of January 2011, there were 59 enterprise zones through the state: 29 urban and 30 rural.

III. Effect of Proposed Changes:

Section 1 amends paragraph 212.096(2)(b), F.S., to correct a cross-reference in order to conform to the changes made in this CS.

Section 2 amends subparagraph 212.20(6)(d)5., F.S., to state that the amounts required under s. 290.0138(2), F.S., as created in this CS, shall also be distributed monthly to the Revenue Sharing Trust Fund for Municipalities.

Section 3 creates paragraph 218.23(3)(e), F.S., relating to the distribution formula, to require distributions to municipalities that have a sales tax TIF area under ss. 290.0137 and 290.0138, F.S., prior to the final adjustment. The distributions shall be made to the appropriate governing body eligible for distribution under ss. 290.0137 and 290.0138, F.S.

Section 4 amends paragraph 220.181(1)(a), F.S., to correct a cross-reference in order to conform to the changes made in this CS.

¹⁶ Florida Legislature, Office of Economic and Demographic Research, 2010 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, at 98 (Oct. 2010) (on file with the Senate Committee on Community Affairs). Available online at <http://edr.state.fl.us/Content/local-government/reports/lgfih10.pdf> (last visited March 28, 2011).

¹⁷ Office of Program Policy Analysis and Gov’t Accountability (OPPAGA), Florida Legislature, *Few Businesses Take Advantage of Enterprise Zone Benefits; the Legislature Could Consider Several Options to Modify the Program*, at 1, Report No. 11-01 (Jan. 2011), available online at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1101rpt.pdf> (last visited on April 1, 2011).

Section 5 amends subsection 288.1175(5), F.S., to correct a cross-reference in order to conform to the changes made in this CS.

Section 6 amends s. 290.004, F.S., to provide definitions for the following terms: “bond,” “retail development costs,” “retail development project,” “retail development project developer,” “sales tax TIF area,” “tax increment revenues,” and “TIF.”

Section 7 creates subsection 290.0056(11), F.S., to authorize a governing body, upon its designation of a sales tax TIF area, to exercise certain additional powers in order to provide local financing for public and private improvements that will foster job growth and enhance the base of retailers within an enterprise zone. Unless otherwise prohibited by ordinance, the governing bodies shall have the power to:

- Enter into cooperative contracts and agreements with a county, municipality, governmental agency, or private entity for services and assistance.
- Acquire, own, convey, construct, maintain, improve, and manage property and facilities, and grant and acquire licenses, easements, and options with respect to such property.
- Expend incremental sales tax revenues to promote and advertise the commercial advantages of the district in order to attract new businesses and encourage the expansion of existing businesses.
- Expend incremental sales tax revenues to promote and advertise the district to the public and engage in cooperative advertising programs with businesses located in the district.

Section 8 amends s. 290.0057, F.S., to change references to the governing body/bodies of a county or municipality to the governing board.

Section 9 amends s. 290.007, F.S., which addresses state incentives that are available in enterprise zones to encourage revitalization, to include the designation of a sales tax TIF area.

The Municipal Revitalization Act

Section 10 creates s. 290.01351, F.S., to establish the Municipal Revitalization Act, which shall include ss. 290.0136-290.01391, F.S., as created in this CS.

Legislative Intent

Section 11 creates s. 290.0136, F.S., to provide that the Legislative intent of this Act is to improve the economic conditions within the enterprise zone, particularly within the economically distressed area of a municipality that designates a sales tax TIF area. The Legislature intends to provide local financing for public and private improvements that will foster job growth for the residents of economically distressed areas and enhance the commercial base of local merchants.

Designation of Sales Tax TIF Area

Section 12 creates s. 290.0137, F.S., to authorize the creation, by resolution, of a sales tax TIF area to support the development of a retail development project within municipalities that have a population of at least 250,000 and that are located within a designated enterprise zone, or at least 750,000 in the case of a county and one or more municipalities having been designated an enterprise zone.

The resolution creating a sales tax TIF area must meet certain minimum requirements and must be transmitted to the Office of Tourism, Trade, and Economic Development which shall consult with Enterprise Florida, Inc., to determine whether the designation of the sales tax TIF area complies with the requirements of ch. 290, F.S. Upon determination that the governing body's designation of the sales tax TIF area complies with such requirements, the establishing resolution shall be transmitted to the Department of Revenue.

Distribution Percentage & Department of Revenue Duties

Section 13 creates s. 290.0138, F.S., to address the calculation of tax increment revenue contributions to eligible governing bodies. The governing body is eligible for distribution from the Revenue Sharing Trust Fund for Municipalities in the amount of the increased state sales tax collections realized during any month by the municipality over the same monthly period in the prior year as follows:

- 85% of the increased collections of \$85,000 or less.
- 75% of the increased collections greater than \$85,000 but \$425,000 or less.
- 50% of the increased collections greater than \$425,000 but \$675,000 or less.
- 25% of the increased collections greater than 675,000 but \$1 million or less.
- 0% of the increased collections of more than \$1 million.

The CS requires the Department of Revenue to determine monthly, the specific amount payable to each eligible governing body and the aggregate amount of sales tax revenue that is required for distribution, and to transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities, in accordance with s. 212.20(6)(d)5., F.S., created in this CS. All amounts transferred must be distributed as provided in s. 218.23(3)(e), F.S., created in this CS.

The total distribution provided to an eligible governing body shall not exceed the total tax increment revenue contribution set forth in the retail development project agreement, as specified in s. 290.0139, F.S.

The CS directs each governing body receiving percentage distributions to establish a separate tax increment revenue account within its general fund for the deposit of the sales tax increment for each sales tax TIF area.

Retail Development Project Agreement

Section 14 creates s. 290.0139, F.S., to require a retail development project developer to enter into a retail development project agreement with the governing body of the county or municipality designating a sales tax TIF area prior to using tax increment revenues to underwrite retail development costs. The CS specifies certain provisions that must be included in the agreement and requires the agreement to be approved by resolution of the governing body following a public hearing.

The CS provides that tax increment revenues or bond proceeds may not be advanced to pay retail development costs until the retail development project is open to the general public.

Issuance of Bonds

Section 15 creates s. 290.01391, F.S., to authorize the governing body, if authorized or approved by resolution, to use tax increment revenues to support the issuance of revenue bonds to finance retail redevelopment costs of a retail development project, including the payment of principal and interest upon any advances for surveys and plans or preliminary loans. Such bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and are not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. The bonds are declared to be issued for an essential public and governmental purpose, and the interest and income from the bonds are exempt from all taxes, except the corporate income tax in ch. 220, F.S.

Bonds issued under this paragraph may:

- Be issued in one or more series and may bear such date or dates;
- Be payable upon demand or mature at such time or times;
- Bear interest at such rate or rates;
- Be in such denomination or denominations,
- Be in such form either with or without coupon or registered;
- Carry such conversion or registration privileges;
- Have such rank or priority;
- Be executed in such manner;
- Be payable in such medium of payment at such place or places;
- Be subject to such terms of redemption (with or without premium);
- Be secured in such manner; and
- Have such other characteristics as may be provided by the resolution or ordinance authorizing their issuance.

These bonds may be sold either at a public or private sale and for such price as the designated redevelopment agency may determine will effectuate the purposes of this section.

In any suit, action, or proceeding involving the validity or enforceability of these bonds, any bond that recites in substance that it has been issued by the governing body in connection with the sales tax increment redevelopment district for a purpose authorized under this section is conclusively presumed to have been issued for that purpose. Further, any project financed by the bond is also conclusively presumed to have been planned and carried out in accordance with the intended purposes of this section.

Section 16 provides that this act shall take effect on July 1, 2011.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Any annual increases in sales tax collections in a designated sales tax TIF area that are shared with the state shall be transferred from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities for distribution to eligible designated redevelopment agencies as provided in the CS.

Each governing body receiving distributions under this Act is required to establish a separate tax increment revenue account within its general fund for the deposit of the sales tax increment for each sales tax TIF area.

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

Any increase in sales tax collections shared by a governing body will be transferred from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities and distributed to eligible designated redevelopment agencies in an amount determined by the Department.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Certain local entities with a specified population that are located within a designated enterprise zone will be authorized to designate a sales tax TIF area by resolution. The governing body designating a sales tax TIF area is granted certain additional powers, including the power to issue bonds to finance the retail redevelopment costs of a retail development project.

The Department will be required to determine monthly, the specific amount payable to each designated redevelopment agency and the aggregate amount of sales tax revenue that is required for distribution, and transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities. (*See Related Issues section below.*)

VI. Technical Deficiencies:

The following technical deficiencies will need to be addressed:

- The term “sales tax increment redevelopment district” on lines 477-478 and lines 629-630 of the CS should be changed to “sales tax TIF area,” in order to reflect the changes made by the CS.

- The word “the” should be added before “enterprise zone” on line 489.
- The term “office” on line 506 of the CS should be capitalized, to clarify its reference to the Office of Tourism, Trade, and Economic Development, as defined in s. 290.004, F.S.
- The term “retail project development agreement” on line 547 of the CS should read “retail development project agreement” to be consistent with section 14 of the CS.

The provisions applying to counties, specifically on lines 471-473 and line 559 of the CS, are unclear. If the intent of this CS is to allow the provisions herein to apply to municipalities and counties, then amendments may be needed to address possible distributions into the Revenue Sharing Trust Fund for Counties. Should this be the case, both the title of the CS and the Act created in section 10 of the CS will need to be amended.

VII. Related Issues:

The Department of Revenue has articulated that it “does not collect tax information at a boundary level lower than a county (within a city or within an enterprise zone).” The Department further emphasizes that “based on the current sales tax reporting system, the Department does not collect the tax information necessary to calculate the ‘increased sales tax collections’ within a municipality as proposed in the bill and is unable to make the proposed distribution to the sales tax increment redevelopment zone agency.”¹⁸ The Department provides that this issue cannot be resolved through rulemaking and can only be resolved by amending the bill.¹⁹

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 Community Affairs on April 4, 2011:

This CS makes conforming and clarifying changes and:

- Creates the Municipal Revitalization Act to allow certain eligible governing bodies to designate a sales tax TIF area to support the development of a retail development project by resolution;
- Changes the population criteria to be eligible to create a sales tax TIF area;
- Requires the Office of Tourism, Trade and Economic Development to consult with Enterprise Florida, Inc., to certify that a governing body’s designation of a sales tax TIF area complies with the requirements of this Act and ch. 290, F.S.;
- Provides definitions;
- Limits the life of the sales tax TIF area to 15 years;
- Changes the calculation of the tax increment revenue contributions;
- Requires governing bodies receiving tax increment distributions to establish a separate tax increment revenue account within its general revenue fund for each sales tax TIF area;
- Provides for a retail development project agreement;

¹⁸ Department of Revenue, *SB 1962 Agency Analysis*, at 4 (March 25, 2011) (on file with the Senate Committee on Community Affairs).

¹⁹ *Id.*

- Prohibits the total distribution provided to an eligible governing body from exceeding the total tax increment revenue contribution set forth in the retail development project agreement; and
- Prohibits the use of tax increment revenues or bond proceeds from being advanced to pay retail development costs until the retail development project is open to the public.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete lines 54 - 56
and insert:

2. Client and customer lists of a buyer's representative
which are held by the corporation are confidential and exempt
from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution.

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 1456

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Garcia

SUBJECT: Public Records/Florida Health Choices Program

DATE: April 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Stovall	HR	Favorable
2.	Daniell	Walsh	CF	Fav/CS
3.	Naf	Roberts	GO	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill creates public-records exemptions for:

- Any personal, identifying information of an enrollee or participant in the Florida Health Choices program (FHC);
- Client and customer lists of a buyer’s representative; and
- Proprietary confidential business information of a vendor.

The bill provides definitions and exceptions under which the information may be disclosed. The bill applies retroactively to any of the exempt information held by Florida Health Choices, Inc. The bill provides for repeal of the public-records exemptions on October 2, 2016, unless they are saved from repeal by the Open Government Sunset Review process and reenacted by the Legislature. The bill also provides a statement of public necessity for the public-records exemptions, as required by the State Constitution.

This bill substantially amends section 408.910, Florida Statutes.

II. Present Situation:

Florida's Public Records Laws

Florida has a long history of providing public access to government records. The Legislature enacted the first public-records law in 1892.¹ In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, section 24 of the Florida Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Public-Records Act³ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency⁴ records are available for public inspection. Section 119.011(12), F.S., defines the term “public records” very broadly to include “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” The Florida Supreme Court has interpreted the definition of public records to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formulize knowledge.”⁵ Unless made exempt, all such materials are open for public inspection at the moment they become records.⁶

Only the Legislature is authorized to create exemptions to open-government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Records may be identified as either exempt from public inspection or exempt and confidential. If the Legislature makes a record exempt and confidential, the information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from public inspection, the exemption does not prohibit the showing of such information at the discretion of the agency holding it.⁹

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

³ Chapter 119, F.S.

⁴ An agency includes any state, county, or municipal officer, department, or other separate unit of government that is created or established by law, as well as any other public or private agency or person acting on behalf of any public agency. Section 119.011(2), F.S.

⁵ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁷ FLA. CONST. art. I, s. 24(c).

⁸ *WFTV, Inc. v. School Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004).

⁹ *Id.* at 54.

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁰ provides for the systematic review of exemptions from the Public-Records Act in the fifth year after the exemption's enactment. By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹¹ An identifiable public purpose is served if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be greatly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or combination of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.¹²

The act also requires the Legislature, as part of the review process, to consider the following six questions that go to the scope, public purpose, and necessity of the exemption:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect?
- 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?
- 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?¹³

If an exemption is expanded during reenactment (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.¹⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(6)(b), F.S.

¹² *Id.*

¹³ Section 119.15(6)(a), F.S.

¹⁴ FLA. CONST. art. I, s. 24(c).

exemption is narrowed, or if an exception to the exemption is created,¹⁵ then a public necessity statement and a two-thirds vote for passage are not required.¹⁶

The Florida Health Choices Program

In 2008, the Legislature created the Florida Health Choices (FHC) program in s. 408.910, F.S., as a single, centralized “marketplace” for the sale and purchase of various products that enable individuals to pay for health care coverage. The Florida Health Choices Corporation (Corporation) was created to administer the program.¹⁷

The FHC program defines “marketplace” as follows: “Florida’s Insurance Marketplace is a web-based shopping experience that allows easy access and side-by-side comparison of health care options for individuals, families, and businesses.”¹⁸

The following types of employers are eligible to use FHC for choosing their employer-sponsored health plan:

- Employers with 1-50 employees;
- Fiscally constrained counties;
- Municipalities with populations less than 50,000; and,
- School districts in fiscally constrained counties.¹⁹

The Corporation is charged with establishing procedures for employer participation, including compliance with Section 125 of the Internal Revenue Code regarding cafeteria plans and enabling the employers’ contributions and the employees’ contributions to be made using pre-tax dollars.²⁰ Employers must also designate the Corporation as the third-party administrator for the employer’s health plan, establish payroll deduction, and arrange for employer contribution payments.

The following types of individuals are eligible to purchase FHC health care products and coverage:

- Employees of employers choosing FHC as the employer-sponsored health plan;
- State government employees not eligible for state employee health benefits;
- State government retirees;
- Medicaid Reform participants who select the opt-out provision of Reform,²¹ and,

¹⁵ An example of an exception to a public records exemption would be allowing another agency access to confidential or exempt records.

¹⁶ *Cf.*, *State v. Knight*, 661 So. 2d 344 (Fla. 4th DCA 1995).

¹⁷ See s. 4, ch. 2008-32, Laws of Fla.

¹⁸ Florida Health Choices, *How Does the Marketplace Work?*, <http://myfloridachoice.org/faq/> (last visited Mar. 30, 2011).

¹⁹ Section 408.910(4)(a), F.S.

²⁰ Section 125 allows employers to offer employees a choice between cash salary and a variety of nontaxable (qualified) benefits. A qualified benefit is one that does not defer compensation and is excludable from an employee’s gross income under a specific provision of the IRS Code, without being subject to the principles of constructive receipt. Qualified benefits include health care, vision and dental care, group-term life insurance, disability, adoption assistance and certain other benefits.

²¹ The “Medicaid Reform” pilot program authorized under s. 409.91211, F.S., allows Medicaid recipients to “opt-out” of the state-run Medicaid program and use a Medicaid-funded subsidy to pay their share of the premium for employer-sponsored health coverage, if available.

- Employees of statutory rural hospitals.²²

The FHC program establishes portability of products by allowing individuals to voluntarily continue participation in the program regardless of changes in job status. The program establishes procedures for portable participation by individuals, who must make arrangement for payment (such as changing payroll deduction with a change in employer, or arranging for the contribution formerly made by an employer to be made by the individual).

The FHC model encourages diversity of price and benefit packages and allows for many types of products provided by many types of vendors, such as:

- Licensed insurers may sell health insurance policies, limited benefit policies, other risk-bearing coverage, and other products or services.
- Licensed health maintenance organizations (HMOs) may sell health coverage policies, limited benefit policies, other risk-bearing products, and other products or services.
- Licensed prepaid clinic service providers may sell prepaid service contracts and other arrangements for a specified amount and type of health services or treatments.
- Out-of-state insurers may sell health insurance policies, limited benefit policies, other risk-bearing products, and other products or services.
- Health care providers, including hospitals and other licensed health facilities, health care clinics, licensed health professionals, pharmacies, and other licensed health care providers, may sell non-risk-bearing service contracts and other arrangements for a specified amount and type of health services or treatments.
- Provider organizations including provider service networks, group practices, professional associations, and other incorporated organizations of providers, may sell non-risk-bearing service contracts and arrangements for a specified amount and type of health services or treatments.
- Corporate entities providing specific health services in accordance with applicable state laws may sell service contracts and arrangements for a specified amount and type of health services or treatments.²³

These products within the FHC program are not subject to the licensing requirements or mandated coverage or offering requirements of ch. 641 or part VI of ch. 627. However, only licensed vendors may offer risk-bearing products.

The program provides for the exclusion of vendors for deceptive or predatory practices, financial insolvency, and failure to comply with program standards set by the Corporation.²⁴ The program establishes procedures for participation by vendors, which must submit complete descriptions of the products offered, including information on the provider network, set product prices based on the basic risk-adjustment factors of age, gender, and location of the individual participant, participate in ongoing reporting as required by the Corporation, and establish grievance procedures.²⁵ In addition, vendors must agree to make all the products they offer available to all individual participants in the program.

²² Section 408.910(4)b), F.S.

²³ Section 408.910(4)(d), F.S.

²⁴ *Id.*

²⁵ Section 408.910(4)(f), F.S.

The program provides that licensed health insurance agents may voluntarily participate as buyers' representatives to act on behalf of individual purchasers and provide information about the products and services sold.²⁶ Such agents would receive compensation from the Corporation for performing this function. The program requires such agents to receive training and disclose relationships with vendors.

As additional tools for helping consumers make informed decisions, the program is required to enable purchasing through an interactive website and make information about the products and services available on the website and through other means.²⁷ The program requires that consumers are made aware of any benefit limitations and can make informed choices.

The Corporation is charged with establishing the marketplace and performing several functions to administer it. The Corporation is required to establish procedures to determine the eligibility of employers, vendors, individuals and agents, and develop criteria for the exclusion of vendors. The Corporation must collect individual and employer contributions and pay them out to vendors. The Corporation must establish procedures for application, enrollment, risk assessment, risk adjustment, plan administration, performance monitoring, and consumer education. The Corporation has authority to establish qualifying criteria and certification procedures for vendors, including requiring performance bonds, monitoring vendor performance, and enforcing the terms of agreements with vendors.²⁸

To avoid selection bias in the distribution of consumers among available products, the Corporation must employ a variety of risk-pooling techniques. Most notably, these measures include the ability to re-allocate a portion of the premium paid for risk-bearing products through a post-enrollment risk adjustment. This adjustment process will be applied monthly based on data reported by the vendors about their enrollees.²⁹

The Corporation is charged with coordinating with the Department of Revenue to develop a plan to establish tax credits or refunds for employers that participate in the program.³⁰

Launching Florida Health Choices³¹

The FHC program has scheduled a phased-in launch of the marketplace for 2011 and 2012. Phase One, known as "Quick Start," will support the application and enrollment of eligible employers, employees, and insurance agents in the summer of 2011. The initial web-based portal will support up to nine medical coverage plans and permit side-by-side comparison of benefits and costs.

²⁶ Section 408.910(4)(g), F.S.

²⁷ Section 408.910(8), F.S.

²⁸ See s. 408.910(11)(i), F.S.

²⁹ Section 408.910(9), F.S.

³⁰ Section 408.910(11)(i)10., F.S.

³¹ Information contained in this portion of the Present Situation of this bill analysis is from Florida Health Choices, *Florida Health Choices 2010 Annual Report*, 3 (Feb. 1, 2011), available at http://myfloridachchoices.org/wp-content/uploads/2011/02/FHC-AnnualReport_v2a.pdf (last visited Mar. 30, 2011).

An online calculator will display member premium costs after taking into account any employer contributions. A statewide customer contact center will open in St. Petersburg, Florida, and the ability to accept payroll deducted premiums will also be included.

The Mid-Term phase is designed to expand the portal functionality for both employers and insurance agents. Supporting up to 20 vendors, the Mid-Term portal offerings can include dental, vision, and prepaid plans.

With the Long-Term phase expected in 2012, the marketplace is expected to offer life insurance and other non-medical products to enrolled participants and employers.

Information Collected and Utilized in the Florida Health Choices Program

In the administration of the program and the execution of the functions described above, the FHC program may collect and utilize various pieces of personal, identifying information about applicants, enrollees, and participants. When applying for the program, insurance agents, employers, and eligible employees will provide a variety of personal and financial information. Information could include a participating insurance agent's client list, an employer's business and accounting records, human resource records, or other proprietary business or personal identification information.³²

III. Effect of Proposed Changes:

This bill creates public-records exemptions, making the following information confidential and exempt from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution:

- Any personal, identifying information of an enrollee or participant in the Florida Health Choices program (FHC);
- Client and customer lists of a buyer's representative held by Florida Health Choices, Inc. (corporation); and
- Proprietary confidential business information of a vendor held by the corporation.

The bill defines the following terms:

- "Buyer's representative" means a participating health insurance agent as described in s. 408.910(4), F.S.
- "Enrollee" means an employer who is eligible to enroll in the FHC program.
- "Participant" means an individual who is eligible to participate in the FHC program.
- "Proprietary confidential business information" means information, regardless of its form or characteristics, which relates to business plans, internal auditing controls, reports of internal auditors, reports of external auditors of privately held companies, potentially patentable material, or trade secrets, and such information:
 - Is owned or controlled by a vendor requesting confidentiality;
 - Is intended to be and is treated by the vendor as private in that the disclosure of the information would cause harm to the business operations of the vendor; and

³² E-mail from Florida Health Choices to professional staff of the Florida Senate Committee on Health Regulation, Mar. 18, 2011, 1:40 pm EDT (on file with the Senate Committee on Health Regulation).

- Has not been disclosed except pursuant to a statutory provision, court or administrative order, or private agreement.
- “Vendor” means a participating insurer or other provider or services.

The bill creates the following exceptions by requiring that such information be disclosed to:

- Another governmental entity in the performance of its official duties and responsibilities;
- Any person who has the written consent of the program’s applicant; and,
- The Florida KidCare program for the purpose of administering the program.³³

The public-records exemption does not prohibit a participant’s legal guardian from obtaining confirmation of coverage, dates of coverage, the name of the enrollee’s health plan, and the amount of premium being paid.

The bill provides that the exemption applies to any information held by the corporation before, on, or after October 1, 2011, and any person who knowingly and willfully violates the exemption commits a misdemeanor of the second degree.³⁴

The public-records exemption is subject to the Open Government Sunset Review Act and will expire on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides justification for the public necessity of the exemption. Specifically, the bill states that the information identifying an enrollee or participant in the FHC program must be confidential and exempt because the harm in releasing such personal and sensitive information outweighs any public benefit in releasing it. Additionally, the bill provides that if such information was made available to the public, the administration of the program would be significantly impaired because businesses and individuals would be less inclined to apply, participate, or enroll in the program. The bill also provides that a vendor’s proprietary business information and customer and client lists must be confidential and exempt because disclosure of such information could cause injury in the marketplace by providing competitors with detailed insights into confidential business information, strategies, methodologies, plans, or client lists which would diminish the advantage that the vendor or buyer’s representative maintains. The bill provides that without the public-records exemption, private-sector vendors or buyer’s representatives, whose business records generally are not required to be open to the public, may refrain from participating in the FHC program.

The bill provides an effective date of October 1, 2011.

³³ Under certain circumstances in federal law, health insurance exchanges similar to the marketplace created under the FHC program could be required to exchange information with the state Medicaid program. In Florida, the state Medicaid program also exchanges data with the Florida KidCare program. The bill provides these exceptions to the FHC program’s public records exemption to allow FHC data to be exchanged with those programs as necessary.

³⁴ A misdemeanor of the second degree is punishable by up to 60 days imprisonment and a fine up to \$500 may be imposed. See ss. 775.082 and 775.083, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill creates new public-records exemptions for all personal, identifying information of an enrollee or participant in the Florida Health Choices program, client and customer lists of a buyer's representatives, and proprietary confidential business information of a vendor. This bill appears to comply with the requirements of article I, section 24 of the Florida Constitution that public-records exemptions state the public necessity justifying the exemption, be no broader than necessary to accomplish the stated purpose, and be addressed in legislation separate from substantive law changes.

Additionally, because this bill is creating a new public-records exemption, it is subject to a two-thirds vote of each house of the Legislature for enactment as required by article I, section 24 of the Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

D. Other Constitutional Issues:

This bill provides that the public-records exemption created applies to any information identifying an applicant, enrollee, or participant in the Florida Health Choices Program *before*, on, or after the effective date of the bill.

Retroactive operation is disfavored by courts and generally "statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the

enactment is so clear it will admit of no other construction.”³⁵ The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

- Is the statute procedural or substantive?
- Was there an unambiguous legislative intent for retroactive application?
- Was [a person’s] right vested or inchoate?
- Is the application of [the statute] to these facts unconstitutionally retroactive?³⁶

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.³⁷

Additionally, the bill makes it clear that it is the Legislature’s intent to apply the law retroactively. “Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision retroactively.”³⁸ A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.³⁹ This bill does not appear to do any of these things.

VI. Technical Deficiencies:

The bill creates subsection (14), titled Exemptions, in s. 408.910, F.S.; however, s. 408.910(10), F.S., is also titled Exemptions. In order to avoid confusion, the Legislature may wish to change the title of subsection (14) to Exemptions from Public-Records Requirements.

Lines 54-55 of the bill provides that client and customer lists of a buyer’s representative which *is* held by the corporation is confidential and exempt. The Legislature may wish to replace “is” with “are.”

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 Children, Families, and Elder Affairs on April 4, 2011:
The committee substitute:

³⁵ Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

³⁶ *Weingrad v. Miles*, 2010 WL 711801, *2 (Fla. 3d DCA 2010) (internal citations omitted).

³⁷ See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).

³⁸ *Weingrad*, 2010 WL 711801 at *3.

³⁹ *Id.* at *4.

- Creates a public-records exemption for client and customer lists of a buyer's representative and for proprietary confidential business information of a vendor;
- Provides definitions for the terms "buyer's representative," "enrollee," "participant," "proprietary confidential business information," and "vendor";
- Removes the term "applicants" from persons whose personal, identifying information is confidential and exempt from disclosure (information received during the application process is still considered exempt); and
- Provides justification for the necessity of the public-records exemptions for client and customer lists and proprietary confidential business information.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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. .
. .

House

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

Senate Amendment

Delete lines 28 - 29
and insert:
U.S.C. 342(t) and support the repeal of this requirement in S.R.
89 and S.R. 164.

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 Governmental Oversight and Accountability Committee

BILL: SM 1598

INTRODUCER: Senator Siplin

SUBJECT: Tax Increase Prevention and Reconciliation Act

DATE: April 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	Pre-meeting
2.			CA	
3.				
4.				
5.				
6.				

I. Summary:

This Senate Memorial urges the U.S. Congress to repeal Section 511 of the Tax Increase Prevention and Reconciliation Act, which requires governments that have annual budgets in excess of \$100 million to withhold a 3 percent federal tax on payments made for most goods and services.

II. Present Situation:

The Tax Increase Prevention and Reconciliation Act of 2005¹ was enacted on May 17, 2006. This act prevented several tax provisions from sunseting. It also required all government entities to withhold a federal income tax of 3 percent on payments made after December 31, 2010, for most government payments for products and services made by the federal, state, and local governments with total expenditures of \$100 million or more annually. There is no minimum transaction amount, and each qualifying governmental entity would have to issue a 1099 or similar documentation at the end of every year to each vendor.

The implementation date of this provision was delayed one year to January 1, 2012, by the American Recovery and Reinvestment Act.²

¹ Pub. Law 109-222, 120 Stat. 345.

² Pub. Law 111-5, 123 Stat. 115, was signed into law on February 17, 2009.

III. Effect of Proposed Changes:

This Senate Memorial urges the U.S. Congress to repeal Section 511 of the Tax Increase Prevention and Reconciliation Act and to support the repeal of this requirement in H.R. 275 and S.R. 292.

This memorial also provides for copies of the memorial to be submitted to the President of the United States, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and each member of the Florida delegation to the United States Congress.

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:

Section 511 of the Tax Increase Prevention and Reconciliation Act imposes a significant cost burden on vendors, which may result in increased prices for products and services for the qualifying government. Because the requirement applies only to public sector transactions, it also creates a disincentive for many vendors to do businesses with cities, counties, school boards, and the state.

C. Government Sector Impact:

See discussion in "Private Sector Impact" above.

VI. Technical Deficiencies:

The memorial urges support of H.R. 275 and S.R. 292; however, those bills were filed in last year's session, and therefore no action can now be taken on them. The Legislature may wish to consider either deleting the reference to bills or replacing the reference with current bill numbers.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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



160310

585-04193-11

Proposed Committee Substitute by the Committee on Governmental
Oversight and Accountability

A bill to be entitled

An act relating to a review under the Open Government
Sunset Review Act; amending s. 119.071, F.S., which
provides an exemption from public-records requirements
for bids, proposals, or replies submitted to an agency
in response to a competitive solicitation; expanding
the public-records exemption by extending the duration
of the exemption; providing a definition; reorganizing
provisions; providing for future repeal and
legislative review of the exemption under the Open
Government Sunset Review Act; amending s. 286.0113,
F.S., which provides an exemption from public-meetings
requirements for meetings at which a negotiation with
a vendor is conducted and which provides an exemption
from public-records requirements for recordings of
exempt meetings; providing definitions; expanding the
exemption to include meetings at which a negotiation
with a vendor is conducted pursuant to a competitive
solicitation, at which a vendor makes an oral
presentation as part of a competitive solicitation, at
which a vendor answers questions as part of a
competitive solicitation, and at which team members
discuss negotiation strategies; expanding the public-
records exemption to include any records presented at
an exempt meeting; reorganizing provisions; providing
for future repeal and legislative review under the
Open Government Sunset Review Act; providing a



160310

585-04193-11

28 statement of public necessity; providing an effective
29 date.

30

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

32

33 Section 1. Paragraph (b) of subsection (1) of section
34 119.071, Florida Statutes, is amended to read:

35 119.071 General exemptions from inspection or copying of
36 public records.—

37 (1) AGENCY ADMINISTRATION.—

38 (b)1. For purposes of this paragraph, the term "competitive
39 solicitation" means the process of requesting and receiving
40 sealed bids, proposals, or replies in accordance with the terms
41 of a competitive process, regardless of the method of
42 procurement.

43 2.a. Sealed bids, ~~or~~ proposals, or replies received by an
44 agency pursuant to a competitive solicitation ~~invitations to bid~~
45 ~~or requests for proposals~~ are exempt from s. 119.07(1) and s.
46 24(a), Art. I of the State Constitution until such time as the
47 agency provides notice of an ~~a decision or~~ intended decision
48 ~~pursuant to s. 120.57(3)(a) or~~ until 30 ~~within 10~~ days after
49 opening the bids, proposals, or final replies ~~bid or proposal~~
50 ~~opening~~, whichever is earlier.

51 3.b. If an agency rejects all bids, ~~or~~ proposals, or
52 replies submitted in response to a competitive solicitation ~~an~~
53 ~~invitation to bid or request for proposals~~ and the agency
54 concurrently provides notice of its intent to reissue the
55 competitive solicitation ~~invitation to bid or request for~~
56 ~~proposals~~, the rejected bids, ~~or~~ proposals, or replies remain



160310

585-04193-11

57 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
58 Constitution until such time as the agency provides notice of an
59 ~~a decision or intended decision pursuant to s. 120.57(3)(a)~~
60 concerning the reissued competitive solicitation invitation to
61 ~~bid or request for proposals~~ or until the agency withdraws the
62 reissued competitive solicitation invitation to bid or request
63 ~~for proposals~~. A bid, proposal, or reply is not exempt for
64 longer than 12 months after the initial agency notice rejecting
65 all bids, proposals, or replies. ~~This sub-subparagraph is~~
66 ~~subject to the Open Government Sunset Review Act in accordance~~
67 ~~with s. 119.15 and shall stand repealed on October 2, 2011,~~
68 ~~unless reviewed and saved from repeal through reenactment by the~~
69 ~~Legislature.~~

70 2.a. ~~A competitive sealed reply in response to an~~
71 ~~invitation to negotiate, as defined in s. 287.012, is exempt~~
72 ~~from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~
73 ~~until such time as the agency provides notice of a decision or~~
74 ~~intended decision pursuant to s. 120.57(3)(a) or until 20 days~~
75 ~~after the final competitive sealed replies are all opened,~~
76 ~~whichever occurs earlier.~~

77 b. ~~If an agency rejects all competitive sealed replies in~~
78 ~~response to an invitation to negotiate and concurrently provides~~
79 ~~notice of its intent to reissue the invitation to negotiate and~~
80 ~~reissues the invitation to negotiate within 90 days after the~~
81 ~~notice of intent to reissue the invitation to negotiate, the~~
82 ~~rejected replies remain exempt from s. 119.07(1) and s. 24(a),~~
83 ~~Art. I of the State Constitution until such time as the agency~~
84 ~~provides notice of a decision or intended decision pursuant to~~
85 ~~s. 120.57(3)(a) concerning the reissued invitation to negotiate~~



160310

585-04193-11

86 ~~or until the agency withdraws the reissued invitation to~~
87 ~~negotiate. A competitive sealed reply is not exempt for longer~~
88 ~~than 12 months after the initial agency notice rejecting all~~
89 ~~replies.~~

90 ~~4.e.~~ This paragraph ~~subparagraph~~ is subject to the Open
91 Government Sunset Review Act in accordance with s. 119.15 and
92 shall stand repealed on October 2, 2016 ~~2011~~, unless reviewed
93 and saved from repeal through reenactment by the Legislature.

94 Section 2. Subsection (2) of section 286.0113, Florida
95 Statutes, is amended to read:

96 286.0113 General exemptions from public meetings.-

97 (2) (a) For purposes of this subsection, the term:

98 1. "Competitive solicitation" means the process of
99 requesting and receiving sealed bids, proposals, or replies in
100 accordance with the terms of a competitive process, regardless
101 of the method of procurement.

102 2. "Team" means a group of members established by an agency
103 for the purpose of conducting negotiations as part of a
104 competitive solicitation.

105 (b)1. Any portion of a meeting at which a negotiation with
106 a vendor is conducted pursuant to a competitive solicitation, at
107 which a vendor makes an oral presentation as part of a
108 competitive solicitation, or at which a vendor answers questions
109 as part of a competitive solicitation ~~s. 287.057(1)~~ is exempt
110 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

111 2. Any portion of a team meeting at which negotiation
112 strategies are discussed is exempt from s. 286.011 and s. 24(b),
113 Art. I of the State Constitution.

114 ~~(c)(b)~~1. A complete recording shall be made of any portion



160310

585-04193-11

115 of an exempt meeting ~~made exempt in paragraph (a)~~. No portion of
116 the exempt meeting may be held off the record.

117 2. The recording of and any records presented at the exempt
118 meeting are ~~required under subparagraph 1.~~ is exempt from s.
119 119.07(1) and s. 24(a), Art. I of the State Constitution until
120 such time as the agency provides notice of an a decision or
121 intended decision pursuant to s. 120.57(3)(a) or until 30 20
122 days after opening the bids, proposals, or final replies ~~the~~
123 ~~final competitive sealed replies are all opened~~, whichever
124 occurs earlier.

125 3. If the agency rejects all bids, proposals, or sealed
126 replies and concurrently provides notice of its intent to
127 reissue a competitive solicitation, the recording and any
128 records presented at the exempt meeting remain ~~remains~~ exempt
129 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
130 until such time as the agency provides notice of an a decision
131 ~~or~~ intended decision pursuant to s. 120.57(3)(a) concerning the
132 reissued competitive solicitation invitation to negotiate or
133 until the agency withdraws the reissued competitive solicitation
134 ~~invitation to negotiate~~. A recording and any records presented
135 at an exempt meeting are ~~is~~ not exempt for longer than 12 months
136 after the initial agency notice rejecting all bids, proposals,
137 or replies.

138 (d)(e) This subsection is subject to the Open Government
139 Sunset Review Act in accordance with s. 119.15 and shall stand
140 repealed on October 2, 2016 2011, unless reviewed and saved from
141 repeal through reenactment by the Legislature.

142 Section 3. (1) The Legislature finds that it is a public
143 necessity that bids, proposals, or replies submitted to an



160310

585-04193-11

144 agency in response to a competitive solicitation be made
145 temporarily exempt from public-records requirements. Such
146 records shall be made available when the agency provides notice
147 of an intended decision, or when the agency rejects all bids,
148 proposals, or replies and ultimately withdraws a reissued
149 competitive solicitation. Temporarily protecting such
150 information ensures that the process of responding to a
151 competitive solicitation remains fair and economical for
152 vendors, while still preserving oversight after a competitive
153 solicitation decision is made or withdrawn.

154 (2) The Legislature also finds that it is a public
155 necessity that a meeting at which a negotiation with a vendor is
156 conducted pursuant to a competitive solicitation, at which a
157 vendor makes an oral presentation as part of a competitive
158 solicitation, or at which a vendor answers questions as part of
159 a competitive solicitation, be made exempt from public-meetings
160 requirements. In addition, it is a public necessity that any
161 records presented at such meetings be made temporarily exempt
162 from public-records requirements. The recording of the meeting
163 and any such records shall be made available when the agency
164 provides notice of an intended decision, or when the agency
165 rejects all bids, proposals, or replies and ultimately withdraws
166 a reissued competitive solicitation. Protecting such meetings
167 and temporarily protecting the recording and any records
168 presented by a vendor at such meetings ensures that the process
169 of responding to a competitive solicitation remains fair and
170 economical for vendors, while still preserving oversight after a
171 competitive solicitation decision is made or withdrawn. It is
172 unfair and inequitable to compel vendors to disclose to



160310

585-04193-11

173 competitors the nature and details of their proposals during
174 such meetings or through the minutes or records presented at
175 such meetings. Such disclosure impedes full and frank discussion
176 of the strengths, weaknesses, and value of a bid, proposal, or
177 response, thereby limiting the ability of the agency to obtain
178 the best value for the public. The public and private harm
179 stemming from these practices outweighs the temporary delay in
180 access to records related to the competitive solicitation.

181 (3) The Legislature further finds that it is a public
182 necessity that any portion of a team meeting at which
183 negotiation strategies are discussed be made exempt from public-
184 meetings requirements. In addition, it is a public necessity
185 that the recording of such meeting be made temporarily exempt
186 from public-records requirements. The recording of the meeting
187 shall be made available when the agency provides notice of an
188 intended decision, or when the agency rejects all bids,
189 proposals, or replies and ultimately withdraws a reissued
190 competitive solicitation. Team members often meet to strategize
191 about competitive solicitations and the approach to take as part
192 of the evaluation process. Without the public-meetings exemption
193 and the limited public-records exemption, the effective and
194 efficient administration of the competitive solicitation process
195 would be hindered.

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

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 Governmental Oversight and Accountability Committee

BILL: SB 2090

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Open Government Sunset Review/Submission of Competitive Solicitations

DATE: April 1, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts		Pre-Meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill is the result of Open Government Sunset Reviews by the Governmental Oversight and Accountability Committee of public-records and -meetings exemptions pertaining to competitive procurement solicitations.

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law: invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN).

Current law provides general public-records and –meetings exemptions associated with competitive solicitations. Sealed bids, proposals, or replies in response to an ITB, RFP, or ITN are exempt from public-records requirements until a time certain. In addition, a meeting at which a negotiation with a vendor is conducted pursuant to an ITN is exempt from public-meetings requirements. A complete recording must be made of the exempt meeting. The recording is exempt from public-records requirements until a time certain.

This bill reenacts the exemptions, which will repeal on October 2, 2011, if this bill does not become law.

This bill expands the public-records exemption by extending the exemption for sealed bids and proposals from 10 days to 30 days. This change also makes the timeframes consistent.

The bill expands the public-meetings exemption to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive

solicitation. It is further expanded to include any portion of a team meeting at which negotiation strategies are discussed.

The bill expands the public-records exemption for recordings of exempt meetings to comport with the public-records exemption for sealed bids, proposals, or replies. It extends the public-records exemption from 20 days to 30 days. It also expands the public-records exemption by including those records presented by a vendor at a closed meeting.

The bill extends the repeal date for the exemptions to October 2, 2016, and provides a public necessity statement as required by the State Constitution.

Because this bill expands existing exemptions, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends the following sections of the Florida Statutes: 119.071(1)(b)1.b.; 119.071(1)(b)2.; and 286.0113(2).

II. Present Situation:

Public Records and Meetings

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One-hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24, of the State Constitution, provides that:

(a) Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

¹ Section 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public-records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Article I, section 24(b) of the Florida Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting 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. No

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., 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." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.

⁵ Section 119.011(12), F.S.

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

⁷ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁸ Florida Attorney General Opinion 85-62.

⁹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.¹⁰

Article I, section 24 of the Florida Constitution, chapter 119, F.S., and chapter 286, F.S., all provide different definitions as to who is subject to the open meeting and public records laws. Under article I, Section 24(a) of the Florida Constitution, “any public body, officer, or employee of the state, or persons acting on their behalf” is subject to the public records law. Under article I, Section 24(b), all meetings of any collegial public body of the executive branch of state government or of any collegial public 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, is subject to the open meetings law. Under chapter 119, F.S., any agency¹¹ is subject to the public records laws. Under s. 286.011, F.S., 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 are subject to the open meeting laws.

Only the Legislature is authorized to create exemptions to open government requirements.¹² Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹³ A bill enacting an exemption¹⁴ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁶ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁷ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

¹⁰ Section 286.011, F.S.

¹¹ “Agency” is defined as “any state, county, district, authority, or municipal officer, department, division, 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.” Section 119.011(2), F.S.

¹² *Supra* fn. 1.

¹³ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹⁴ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁵ *Supra* fn. 1.

¹⁶ Section 119.15, F.S.

¹⁷ Section 119.15(6)(b), F.S.

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁸

The Act also requires the Legislature to consider the following:

- 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?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁹ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

¹⁸ *Id.*

¹⁹ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

Agency Procurement

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law:²⁰

1. Invitation to bid (ITB): An agency must use an ITB when it is capable of specifically defining the scope of work for which a contractual service is required or capable of establishing the precise specifications defining the commodities sought.²¹ The contract must be awarded to the responsible²² and responsive vendor²³ that submits the lowest responsive bid.^{24 25}
2. Request for proposals (RFP): An agency may use a RFP when it determines in writing that it is not practicable for it to specifically define the scope of work for which the commodity or contractual service is required and when it is requesting that the vendor propose commodities or contractual services to meet the RFP's specifications.²⁶ Unlike the ITB process, the contract need not be awarded to the lowest priced vendor; rather, the award shall be given to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state after consideration of the price and other criteria set forth in the RFP.²⁷
3. Invitation to negotiate (ITN): An agency may use an ITN when it determines in writing that negotiation is necessary for the state to achieve the best value.^{28 29} After ranking the replies received in response to the ITN, the agency must select, based on the rankings, one or more vendors with which to commence negotiations. The contract must be awarded to the responsible and responsive vendor that the agency determines will provide the best value to the state.³⁰

Legislative intent expressed in Chapter 287, Florida Statutes, establishes several findings related to the competitive procurement process, including:³¹

- Fair and open competition is a basic tenet of public procurement.
- Open competition reduces the appearance and opportunity for favoritism.

²⁰ Section 287.057, F.S.

²¹ Section 287.012(16), F.S.

²² The term "responsible vendor" means, ". . . a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S.

²³ "Responsive vendor" means, ". . . a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.

²⁴ Section 287.057(1), F.S.

²⁵ "Responsive bid," "responsive proposal," or "responsive reply" means, ". . . a bid, proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation." Section 287.012(25), F.S.

²⁶ Sections 287.012(22) and 287.057(2), F.S.

²⁷ Section 287.057(2), F.S.

²⁸ Sections 287.012(17) and 287.057(3), F.S.

²⁹ "Best value" means, ". . . the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship." Section 287.012(4), F.S.

³⁰ Section 287.057(3), F.S.

³¹ Section 287.001, F.S.

- It is essential that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained.

Exemptions Under Review

Current law provides a general public-records exemption for sealed bids or proposals received by an agency pursuant to an ITB or RFP. The sealed bids or proposals are exempt from public-records requirements until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.³²

In 2006, the Legislature expanded the public-records exemption to provide that, if an agency rejects all bids or proposals submitted in response to an ITB or RFP, and concurrently provides notice of its intent to reissue the ITB or RFP, then the rejected bids or proposals remain exempt from public-records requirements until the agency:

- Provides notice of a decision of intended decision concerning the reissued ITB or RFP; or
- Withdraws the reissued ITB or RFP.³³

The Legislature further expanded the public-records exemption to provide that a competitive sealed reply in response to an ITN is exempt from public-records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier.³⁴ The rejected sealed replies remain exempt from public-records requirements if the agency:

- Rejects all competitive sealed replies;
- Concurrently provides notice of its intent to reissue the ITN; and,
- Reissues the ITN within 90 days after the notice of intent to reissue.

The exemption expires when the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.³⁵

Pursuant to the Open Government Sunset Review Act, the public-records exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.³⁶

Current law also provides a general public-meetings exemption for those meetings at which a negotiation with a vendor is conducted pursuant to an ITN.³⁷ A complete recording must be made of the exempt meeting. In addition, the recording is exempt from public-records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier. If the agency rejects all sealed replies, the recording remains exempt until the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A

³² Section 119.071(1)(b)1.a., F.S.

³³ Chapter 2006-284, L.O.F., codified as s. 119.071(1)(b)1.b., F.S.

³⁴ Chapter 2006-284, L.O.F., codified as s. 119.071(1)(b)2.a., F.S.

³⁵ Section 119.071(1)(b)2.b., F.S.

³⁶ Sections 119.071(1)(b)1.b. and 2.c., F.S.

³⁷ Chapter 2006-284, L.O.F., codified as s. 286.0113(2)(a), F.S.

recording is not exempt from public-records requirements for longer than 12 months after the initial agency notice rejecting all replies.³⁸

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.³⁹

Governmental Oversight and Accountability Committee's Open Government Sunset Reviews

As part of the Open Government Sunset Review process, the professional staff of the Governmental Oversight and Accountability Committee held meetings with affected persons tasked with applying the public-records and public-meetings exemption.

Based upon its review of these public-records and –meetings exemptions under the Open Government Sunset Review Act, the professional staff of the Governmental Oversight and Accountability Committee recommend that the Legislature retain the exemptions established in ss. 119.071(1)(b)1.b., 119.071(1)(b)2., and 286.0113(2), F.S., that relate to competitive solicitations. Senate professional staff conclude that the exemptions are necessary to protect the confidential business information of proprietors responding to competitive solicitations from governmental entities.

III. Effect of Proposed Changes:

The bill reenacts, expands, and reorganizes the public-records exemptions for competitive solicitations.

First, the bill removes references to ITBs, RFPs, and ITNs, by creating a definition for “competitive solicitation.” “Competitive solicitation” is defined to mean “the process of requesting and receiving sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.” By creating a definition for “competitive solicitation” and removing references to chapter 287, F.S., local governments are able to use the public-records exemption associated with ITNs.

Current law protects sealed bids or proposals until a decision or intended decision is made or within 10 days after bid- or proposal-opening. In addition, sealed replies are protected until a decision or intended decision is made or until 20 days after the final competitive sealed reply is opened. Based upon discussions with impacted parties, the bill creates consistency by providing that all sealed bids, proposals, or replies are exempt until notice of an intended decision or until 30 days after opening the bids, proposals, or replies. Also, the bill provides that all bids, proposals, or replies may not remain exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Current law only applies to responses to an ITN.

The bill also reenacts, expands, and reorganizes the public-meetings exemption for competitive solicitations.

³⁸ Section 286.0113(2)(b), F.S.

³⁹ Section 286.0113(2)(c), F.S.

The bill creates a definition for “competitive solicitation” identical to the one provided for the public-records exemptions. Creating a definition of “competitive solicitation” and removing references to chapter 287, F.S., allows local governments to use the public-meetings exemption associated with ITNs.

The public-meetings exemption is expanded to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive solicitation. It is further expanded to include any portion of a team⁴⁰ meeting at which negotiation strategies are discussed.

The bill expands the public-records exemption for recordings of exempt meetings to comport with the public-records exemption for sealed bids, proposals, or replies. It extends the public-records exemption from 20 days to 30 days. It also expands the public-records exemption by including those records presented by a vendor at a closed meeting.

Because the bill expands the current public-records and –meetings exemptions, it extends the repeal date for those exemptions to October 2, 2016. It also provides a public necessity statement as required by the State Constitution.⁴¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill retains and expands existing public-records and –meetings exemptions. This bill complies with the requirement of s. 24(c), Art. I of the State Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

Because the bill expands exemptions, it contains statement of public necessity for the expansion and is subject to a two-thirds vote of each house of the Legislature for enactment as required by 24(c), Art. I of the State Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁰ The bill defines “team” to mean a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

⁴¹ Section 24(c), Art. I of the State Constitution.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The exemptions could improve the ability of state and local governments to obtain the best pricing, which could increase state and local government revenues. The bill likely could create an insignificant fiscal impact on state and local governments due to costs associated with the requirement to make a complete recording of an exempt meeting.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Interested persons have expressed concern that use of the term “agency” in the public-meetings exemption could exclude local governments from using the public-meetings exemption. However, s. 286.011, F.S., which provides public-meetings requirements, uses the term agency as follows:

... any state agency or authority or ... any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution ...

As such, it appears that use of the term “agency” as part of the public-meetings exemption would indicate application to state and local entities.

Interested persons have also expressed concern that failure to make expiration of the public-records exemption contingent upon opening of all *final* bids, proposals, or replies will result in release of records while the competitive solicitation is still ongoing. Therefore, the Legislature may wish to amend the bill to specify that expiration of the public-records exemption is contingent upon opening of all final bids, final proposals, or final replies.

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.

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 Governmental Oversight and Accountability Committee

BILL: PCS/SB 2090 (160310)

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Competitive Procurement Solicitations

DATE: April 12, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill is the result of Open Government Sunset Reviews by the Governmental Oversight and Accountability Committee of public-records and -meetings exemptions pertaining to competitive procurement solicitations.

Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law: invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN).

Current law provides general public-records and –meetings exemptions associated with competitive solicitations. Sealed bids, proposals, or replies in response to an ITB, RFP, or ITN are exempt from public-records requirements until a time certain. In addition, a meeting at which a negotiation with a vendor is conducted pursuant to an ITN is exempt from public-meetings requirements. A complete recording must be made of the exempt meeting. The recording is exempt from public-records requirements until a time certain.

This bill reenacts the exemptions, which will repeal on October 2, 2011, if this bill does not become law.

This bill expands the public-records exemption by extending the exemption for sealed bids and proposals from 10 days to 30 days. This change also makes the timeframes consistent.

The bill expands the public-meetings exemption to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive solicitation. It is further expanded to include any portion of a team meeting at which negotiation strategies are discussed.

The bill expands the public-records exemption for recordings of exempt meetings to comport with the public-records exemption for sealed bids, proposals, or replies. It extends the public-records exemption from 20 days to 30 days. It also expands the public-records exemption by including those records presented by a vendor at a closed meeting.

The bill extends the repeal date for the exemptions to October 2, 2016, and provides a public necessity statement as required by the State Constitution.

Because this bill expands existing exemptions, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends the following sections of the Florida Statutes: 119.071(1)(b)1.b.; 119.071(1)(b)2.; and 286.0113(2).

II. Present Situation:

Public Records and Meetings

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One-hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24, of the State Constitution, provides that:

(a) Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

¹ Section 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public-records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Article I, section 24(b) of the Florida Constitution and s. 286.011, F.S., the Sunshine Law, specify the requirements for open meetings. Open meetings are defined as any meeting 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. No

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., 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." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution. *See supra* fn. 3.

⁵ Section 119.011(12), F.S.

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

⁷ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁸ Florida Attorney General Opinion 85-62.

⁹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

resolution, rule, or formal action shall be considered binding unless it is taken or made at an open meeting.¹⁰

Article I, section 24 of the Florida Constitution, chapter 119, F.S., and chapter 286, F.S., all provide different definitions as to who is subject to the open meeting and public records laws. Under article I, Section 24(a) of the Florida Constitution, “any public body, officer, or employee of the state, or persons acting on their behalf” is subject to the public records law. Under article I, Section 24(b), all meetings of any collegial public body of the executive branch of state government or of any collegial public 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, is subject to the open meetings law. Under chapter 119, F.S., any agency¹¹ is subject to the public records laws. Under s. 286.011, F.S., 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 are subject to the open meeting laws.

Only the Legislature is authorized to create exemptions to open government requirements.¹² Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹³ A bill enacting an exemption¹⁴ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁶ provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁷ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

¹⁰ Section 286.011, F.S.

¹¹ “Agency” is defined as “any state, county, district, authority, or municipal officer, department, division, 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.” Section 119.011(2), F.S.

¹² *Supra* fn. 1.

¹³ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

¹⁴ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁵ *Supra* fn. 1.

¹⁶ Section 119.15, F.S.

¹⁷ Section 119.15(6)(b), F.S.

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁸

The Act also requires the Legislature to consider the following:

- 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?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁹ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

¹⁸ *Id.*

¹⁹ *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

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Agency procurements of commodities or contractual services exceeding \$30,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law:²⁰

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2. Request for proposals (RFP): An agency may use a RFP when it determines in writing that it is not practicable for it to specifically define the scope of work for which the commodity or contractual service is required and when it is requesting that the vendor propose commodities or contractual services to meet the RFP's specifications.²⁶ Unlike the ITB process, the contract need not be awarded to the lowest priced vendor; rather, the award shall be given to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state after consideration of the price and other criteria set forth in the RFP.²⁷
3. Invitation to negotiate (ITN): An agency may use an ITN when it determines in writing that negotiation is necessary for the state to achieve the best value.^{28 29} After ranking the replies received in response to the ITN, the agency must select, based on the rankings, one or more vendors with which to commence negotiations. The contract must be awarded to the responsible and responsive vendor that the agency determines will provide the best value to the state.³⁰

Legislative intent expressed in Chapter 287, Florida Statutes, establishes several findings related to the competitive procurement process, including:³¹

- Fair and open competition is a basic tenet of public procurement.
- Open competition reduces the appearance and opportunity for favoritism.

²⁰ Section 287.057, F.S.

²¹ Section 287.012(16), F.S.

²² The term "responsible vendor" means, ". . . a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance." Section 287.012(24), F.S.

²³ "Responsive vendor" means, ". . . a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation." Section 287.012(26), F.S.

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²⁵ "Responsive bid," "responsive proposal," or "responsive reply" means, ". . . a bid, proposal, or reply submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation." Section 287.012(25), F.S.

²⁶ Sections 287.012(22) and 287.057(2), F.S.

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²⁹ "Best value" means, ". . . the highest overall value to the state based on objective factors that include, but are not limited to, price, quality, design, and workmanship." Section 287.012(4), F.S.

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³¹ Section 287.001, F.S.

- It is essential that detailed justification of agency decisions in the procurement of commodities and contractual services be maintained.

Exemptions Under Review

Current law provides a general public-records exemption for sealed bids or proposals received by an agency pursuant to an ITB or RFP. The sealed bids or proposals are exempt from public-records requirements until the agency provides notice of a decision or intended decision or within 10 days after bid or proposal opening, whichever is earlier.³²

In 2006, the Legislature expanded the public-records exemption to provide that, if an agency rejects all bids or proposals submitted in response to an ITB or RFP, and concurrently provides notice of its intent to reissue the ITB or RFP, then the rejected bids or proposals remain exempt from public-records requirements until the agency:

- Provides notice of a decision of intended decision concerning the reissued ITB or RFP; or
- Withdraws the reissued ITB or RFP.³³

The Legislature further expanded the public-records exemption to provide that a competitive sealed reply in response to an ITN is exempt from public-records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier.³⁴ The rejected sealed replies remain exempt from public-records requirements if the agency:

- Rejects all competitive sealed replies;
- Concurrently provides notice of its intent to reissue the ITN; and,
- Reissues the ITN within 90 days after the notice of intent to reissue.

The exemption expires when the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A competitive sealed reply is not exempt for longer than 12 months after the initial agency notice rejecting all replies.³⁵

Pursuant to the Open Government Sunset Review Act, the public-records exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.³⁶

Current law also provides a general public-meetings exemption for those meetings at which a negotiation with a vendor is conducted pursuant to an ITN.³⁷ A complete recording must be made of the exempt meeting. In addition, the recording is exempt from public-records requirements until the agency provides notice of a decision or intended decision or until 20 days after the final competitive sealed reply is opened, whichever occurs earlier. If the agency rejects all sealed replies, the recording remains exempt until the agency provides notice of a decision or intended decision concerning the reissued ITN or until the agency withdraws the reissued ITN. A

³² Section 119.071(1)(b)1.a., F.S.

³³ Chapter 2006-284, L.O.F., codified as s. 119.071(1)(b)1.b., F.S.

³⁴ Chapter 2006-284, L.O.F., codified as s. 119.071(1)(b)2.a., F.S.

³⁵ Section 119.071(1)(b)2.b., F.S.

³⁶ Sections 119.071(1)(b)1.b. and 2.c., F.S.

³⁷ Chapter 2006-284, L.O.F., codified as s. 286.0113(2)(a), F.S.

recording is not exempt from public-records requirements for longer than 12 months after the initial agency notice rejecting all replies.³⁸

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.³⁹

Governmental Oversight and Accountability Committee's Open Government Sunset Reviews

As part of the Open Government Sunset Review process, the professional staff of the Governmental Oversight and Accountability Committee held meetings with affected persons tasked with applying the public-records and public-meetings exemption.

Based upon its review of these public-records and –meetings exemptions under the Open Government Sunset Review Act, the professional staff of the Governmental Oversight and Accountability Committee recommend that the Legislature retain the exemptions established in ss. 119.071(1)(b)1.b., 119.071(1)(b)2., and 286.0113(2), F.S., that relate to competitive solicitations. Senate professional staff conclude that the exemptions are necessary to protect the confidential business information of proprietors responding to competitive solicitations from governmental entities.

III. Effect of Proposed Changes:

The bill reenacts, expands, and reorganizes the public-records exemptions for competitive solicitations.

First, the bill removes references to ITBs, RFPs, and ITNs, by creating a definition for “competitive solicitation.” “Competitive solicitation” is defined to mean “the process of requesting and receiving sealed bids, proposals, or replies submitted in accordance with the terms of a competitive process, regardless of the method of procurement.” By creating a definition for “competitive solicitation” and removing references to chapter 287, F.S., local governments are able to use the public-records exemption associated with ITNs.

Current law protects sealed bids or proposals until a decision or intended decision is made or within 10 days after bid- or proposal-opening. In addition, sealed replies are protected until a decision or intended decision is made or until 20 days after the final competitive sealed reply is opened. Based upon discussions with impacted parties, the bill creates consistency by providing that all sealed bids, proposals, or replies are exempt until notice of an intended decision or until 30 days after opening the bids, proposals, or final replies. Also, the bill provides that all bids, proposals, or replies may not remain exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies. Current law only applies to responses to an ITN.

The bill also reenacts, expands, and reorganizes the public-meetings exemption for competitive solicitations.

³⁸ Section 286.0113(2)(b), F.S.

³⁹ Section 286.0113(2)(c), F.S.

The bill creates a definition for “competitive solicitation” identical to the one provided for the public-records exemptions. Creating a definition of “competitive solicitation” and removing references to chapter 287, F.S., allows local governments to use the public-meetings exemption associated with ITNs.

The public-meetings exemption is expanded to include any portion of a meeting at which a vendor makes an oral presentation or a vendor answers questions as part of a competitive solicitation. It is further expanded to include any portion of a team⁴⁰ meeting at which negotiation strategies are discussed.

The bill expands the public-records exemption for recordings of exempt meetings to comport with the public-records exemption for sealed bids, proposals, or replies. It extends the public-records exemption from 20 days to 30 days. It also expands the public-records exemption by including those records presented by a vendor at a closed meeting.

Because the bill expands the current public-records and public-meetings exemptions, it extends the repeal date for those exemptions to October 2, 2016. It also provides a public necessity statement as required by the State Constitution.⁴¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill retains and expands existing public-records and –meetings exemptions. This bill complies with the requirement of s. 24(c), Art. I of the State Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

Because the bill expands exemptions, it contains statement of public necessity for the expansion and is subject to a two-thirds vote of each house of the Legislature for enactment as required by 24(c), Art. I of the State Constitution.

C. Trust Funds Restrictions:

None.

⁴⁰ The bill defines “team” to mean a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

⁴¹ Section 24(c), Art. I of the State Constitution.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The exemptions could improve the ability of state and local governments to obtain the best pricing, which could increase state and local government revenues. The bill likely could create an insignificant fiscal impact on state and local governments due to costs associated with the requirement to make a complete recording of an exempt meeting.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Interested persons have expressed concern that use of the term “agency” in the public-meetings exemption could exclude local governments from using the public-meetings exemption. However, s. 286.011, F.S., which provides public-meetings requirements, uses the term agency as follows:

... any state agency or authority or ... any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution ...

As such, it appears that use of the term “agency” as part of the public-meetings exemption would indicate application to state and local entities.

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

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

PCS (160310) by Governmental Oversight and Accountability on April 14, 2011:

The proposed committee substitute differs from the original bill in that it:

- Removes the phrase “by responsive vendors” from the definitions of “competitive solicitation.”
- Removes the phrase “to make a contract award” throughout the bill.
- Specifies that expiration of the public-records exemptions is contingent upon opening the bids, proposals, or *final* replies.

B. Amendments:

None.

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



566252

585-04181-11

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. 112.3215, F.S., which
provides an exemption from public-records and public-
meetings requirements for certain audits and
investigations conducted by the Commission on Ethics;
reorganizing the exemptions; making editorial changes;
removing the scheduled repeal of the exemptions;
providing an effective date.

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

Section 1. Paragraph (d) of subsection (8) of section
112.3215, Florida Statutes, is amended to read:

112.3215 Lobbying before the executive branch or the
Constitution Revision Commission; registration and reporting;
investigation by commission.—

(8)

(d)1. Records relating to an audit conducted pursuant to
this section or an investigation conducted pursuant to this
section or s. 112.32155 are confidential and exempt from s.
119.07(1) and s. 24(a), Art. I of the State Constitution.~~7~~—~~and~~

2. Any portion of a meeting wherein ~~meetings held pursuant~~
~~to~~ such ~~an~~ investigation or ~~at which such an~~ audit is discussed
is ~~are~~ exempt from s. 286.011 and s. 24(b), Art. I of the State
Constitution.

3. The exemptions no longer apply if ~~either until~~ the



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585-04181-11

28 lobbying firm requests in writing that such investigation and
29 associated records and meetings be made public or ~~until~~ the
30 commission determines there is probable cause that the audit
31 reflects a violation of the reporting laws. ~~This paragraph is~~
32 ~~subject to the Open Government Sunset Review Act in accordance~~
33 ~~with s. 119.15 and shall stand repealed on October 2, 2011,~~
34 ~~unless reviewed and saved from repeal through reenactment by the~~
35 ~~Legislature.~~

36 Section 2. This act shall take effect October 1, 2011.

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 Governmental Oversight and Accountability Committee

BILL: SB 2056

INTRODUCER: Rules Subcommittee on Ethics and Elections

SUBJECT: OGSR/Commission on Ethics

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Favorable
2.	Carlton	Phelps	RC	Favorable
3.	Naf	Roberts	GO	Pre-meeting
4.				
5.				
6.				

I. Summary:

This bill is the result of an Open Government Sunset Review of the public-records and public-meetings exemptions for records and meetings relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission. Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt from public-records requirements. Meetings of the Commission on Ethics that are held pursuant to such investigation or at which such audit is discussed are exempt from public-meetings requirements.

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public, or if the commission determines there is probable cause that an audit reflects a violation of the reporting laws.

This bill reenacts the public-records and public-meetings exemptions, which will repeal on October 2, 2011, if this bill does not become law.

This bill does not expand the scope of the exemptions; therefore, a two-thirds vote of each house of the Legislature is not required for passage.

This bill substantially amends section 112.3215(8)(d), Florida Statutes.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892.¹ In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.² Article I, s. 24(a), of the Florida Constitution, provides that:

Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act³ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁴ records are available for public inspection.⁴ The term “public record” is broadly defined 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.⁵

¹ §§ 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, § 24.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., 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.”

⁵ § 119.011(12), F.S.

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

Only the Legislature is authorized to create exemptions to open government requirements.⁷ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption⁹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁰

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹¹ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹²

Public Meetings

Article I, s. 24(b), of the Florida Constitution, provides that:

All meetings of any collegial public body of the executive branch of state government or of any collegial public 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, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Florida's Sunshine Law, s. 286.011, F.S., states that:

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, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

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

⁷ FLA. CONST. art. I, § 24(c).

⁸ *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567, 569-570 (Fla. 1999).

⁹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁰ FLA. CONST. art. I, § 24(c).

¹¹ Attorney General Opinion 85-62.

¹² *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

“The purpose of the Sunshine Law is ‘to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance.’”¹³ Having been “enacted in the public interest to protect the public from ‘closed door’ politics,” the Sunshine Law is construed liberally by the courts in favor of open government so as to frustrate all evasive devices.¹⁴ The law has been held to apply only to a meeting of two or more public officials at which decision making of significance, as opposed to fact finding or information gathering, will occur.¹⁵ Two or more public officials subject to the Sunshine Law may interview others privately concerning the subject matter of the entity's business, or discuss among themselves in private those matters necessary to carry out the investigative aspects of the entity's responsibility; but at the point where the public officials make decisions, such discussion must be conducted at a public meeting, following notice.¹⁶

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁷ sets forth a legislative review process for newly created or substantially amended public-records or public-meetings exemptions. It requires an automatic repeal of the exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The act 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.¹⁸

The act also requires consideration of the following:

- 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?

¹³ *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1998) (quoting *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974)); See also *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 860 (Fla. 3d DCA 1994).

¹⁴ *Wood v. Marston*, 442 So. 2d 934, 938, 940 (Fla. 1983).

¹⁵ *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354 (Fla. 4th DCA 1989); See also *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978); *Bennett v. Warden*, 333 So. 2d 97, 99-100 (Fla. 2d DCA 1976); and *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222, 224-225 (Fla. 5th DCA 1985).

¹⁶ *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978).

¹⁷ § 119.15, F.S.

¹⁸ § 119.15(6)(b), F.S.

- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?¹⁹

Commission on Ethics

Article II, s. (8)(f) of the State Constitution provides for “an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission. As such, the Commission on Ethics (commission) was created to serve as guardian of the standards of conduct for officers and employees of the state, county, city, or other political subdivision of the state.”²⁰

The commission is composed of nine members; no more than five members may be from the same political party at any one time, and no member may hold any public employment or qualify as a lobbyist. A member of the commission may not lobby any state or local governmental entity.²¹

Lobbying Before the Executive Branch or the Constitution Revision Commission

A person may not lobby an agency until he or she has registered as a lobbyist with the commission. Registration is due upon initially being retained to lobby and is renewable on a calendar year basis thereafter.²² A lobbyist must promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist’s representation.²³

Each lobbying firm must file a compensation report with the commission for each calendar quarter during which one or more of the firm’s lobbyists were registered to represent a principal.²⁴ The reporting statements must be electronically filed no later than 45 days after the end of each reporting period.²⁵

The commission must investigate:

- Every sworn complaint filed with it that alleges a person has failed to register, has failed to submit a compensation report, or has knowingly submitted false information in any required report or registration.²⁶
- Any lobbying firm, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.²⁷

¹⁹ § 119.15(6)(a), F.S.

²⁰ Section 112.320, F.S.

²¹ Section 112.321(1), F.S.

²² Section 112.3215(3), F.S.

²³ Section 112.3215(7), F.S.

²⁴ Section 112.3215(5)(a)1., F.S.

²⁵ The reporting periods are as follows: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Section 112.3215(5)(c), F.S.

²⁶ Section 112.3215(8)(a), F.S.

²⁷ Section 112.3215(8)(c), F.S.

Public-Records and Public-Meetings Exemptions Under Review

In 2005, the Legislature created a public-records exemption for records relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission.²⁸

Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. In addition, commission meetings held pursuant to such investigation or at which such audit is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.²⁹

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public, or if the commission determines there is probably cause that an audit reflects a violation of the reporting laws.³⁰

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.

Open Government Sunset Review of the Exemptions

Professional staff of the Rules Subcommittee on Ethics and Elections reviewed the exemptions and recommended that they may be maintained, as the public necessity that warranted the original 2005 legislation continues to exist. Requiring the disclosure of compensation audit reports of lobbyists through public-records requests or public meetings could irreparably injure lobbying firms by providing competitors with detailed information about a firm's financial status. As a result, disclosure would create an economic disadvantage for such firms and possibly hinder a firm's reputation if no violations were found. Additionally, public disclosure of records and meetings could jeopardize the commission's ability to conduct investigations. No other exemption protects records or meetings of this nature; and there is no other existing exemption where it would be appropriate to merge with the exemptions found in this bill. Due to the still-existing public necessity, the benefits of maintaining the exemption outweigh any public benefit that may be received by requiring disclosure.

III. Effect of Proposed Changes:

The bill removes the repeal date, thereby reenacting the public-records and public-meetings exemptions for records and meetings relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission.

The bill specifies an effective date of October 1, 2011.

²⁸ Chapter 2005-361, L.O.F., codified as s. 112.3215(8)(d), F.S.

²⁹ *Id.*

³⁰ Section 112.3215(8)(d), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill does not expand the scope of the exemptions; therefore, a two-thirds vote of each house of the Legislature is not required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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 Governmental Oversight and Accountability Committee

BILL: PCS/SB 2056 (566252)

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Commission on Ethics

DATE: April 13, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Favorable
2.	Carlton	Phelps	RC	Favorable
3.	Naf	Roberts	GO	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill is the result of an Open Government Sunset Review of the public-records and public-meetings exemptions for records and meetings relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission. Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt from public-records requirements. Meetings of the Commission on Ethics that are held pursuant to such investigation or at which such audit is discussed are exempt from public-meetings requirements.

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public, or if the commission determines there is probable cause that an audit reflects a violation of the reporting laws.

This bill reenacts the public-records and public-meetings exemptions, which will repeal on October 2, 2011, if this bill does not become law. It also reorganizes the exemptions and makes editorial changes.

This bill does not expand the scope of the exemptions; therefore, a two-thirds vote of each house of the Legislature is not required for passage.

This bill substantially amends section 112.3215(8)(d), Florida Statutes.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892.¹ In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.² Article I, s. 24(a), of the Florida Constitution, provides that:

Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act³ specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁴ records are available for public inspection. The term “public record” is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless

¹ §§ 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, § 24.

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., 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.”

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.⁵

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

Only the Legislature is authorized to create exemptions to open government requirements.⁷ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption⁹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁰

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹¹ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹²

Public Meetings

Article I, s. 24(b), of the Florida Constitution, provides that:

All meetings of any collegial public body of the executive branch of state government or of any collegial public 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, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Florida's Sunshine Law, s. 286.011, F.S., states that:

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, except as otherwise provided in the Constitution, at

⁵ § 119.011(12), F.S.

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

⁷ FLA. CONST. art. I, § 24(c).

⁸ *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567, 569-570 (Fla. 1999).

⁹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁰ FLA. CONST. art. I, § 24(c).

¹¹ Attorney General Opinion 85-62.

¹² *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

“The purpose of the Sunshine Law is ‘to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance.’”¹³ Having been “enacted in the public interest to protect the public from ‘closed door’ politics,” the Sunshine Law is construed liberally by the courts in favor of open government so as to frustrate all evasive devices.¹⁴ The law has been held to apply only to a meeting of two or more public officials at which decision making of significance, as opposed to fact finding or information gathering, will occur.¹⁵ Two or more public officials subject to the Sunshine Law may interview others privately concerning the subject matter of the entity's business, or discuss among themselves in private those matters necessary to carry out the investigative aspects of the entity's responsibility; but at the point where the public officials make decisions, such discussion must be conducted at a public meeting, following notice.¹⁶

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁷ sets forth a legislative review process for newly created or substantially amended public-records or public-meetings exemptions. It requires an automatic repeal of the exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The act 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.¹⁸

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?

¹³ *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1998) (quoting *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974)); See also *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 860 (Fla. 3d DCA 1994).

¹⁴ *Wood v. Marston*, 442 So. 2d 934, 938, 940 (Fla. 1983).

¹⁵ *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354 (Fla. 4th DCA 1989); See also *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978); *Bennett v. Warden*, 333 So. 2d 97, 99-100 (Fla. 2d DCA 1976); and *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222, 224-225 (Fla. 5th DCA 1985).

¹⁶ *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978).

¹⁷ § 119.15, F.S.

¹⁸ § 119.15(6)(b), F.S.

- 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?¹⁹

Commission on Ethics

Article II, s. (8)(f) of the State Constitution provides for “an independent commission to conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission. As such, the Commission on Ethics (commission) was created to serve as guardian of the standards of conduct for officers and employees of the state, county, city, or other political subdivision of the state.²⁰

The commission is composed of nine members; no more than five members may be from the same political party at any one time, and no member may hold any public employment or qualify as a lobbyist. A member of the commission may not lobby any state or local governmental entity.²¹

Lobbying Before the Executive Branch or the Constitution Revision Commission

A person may not lobby an agency until he or she has registered as a lobbyist with the commission. Registration is due upon initially being retained to lobby and is renewable on a calendar year basis thereafter.²² A lobbyist must promptly send a written statement to the commission canceling the registration for a principal upon termination of the lobbyist’s representation.²³

Each lobbying firm must file a compensation report with the commission for each calendar quarter during which one or more of the firm’s lobbyists were registered to represent a principal.²⁴ The reporting statements must be electronically filed no later than 45 days after the end of each reporting period.²⁵

The commission must investigate:

- Every sworn complaint filed with it that alleges a person has failed to register, has failed to submit a compensation report, or has knowingly submitted false information in any required report or registration.²⁶

¹⁹ § 119.15(6)(a), F.S.

²⁰ Section 112.320, F.S.

²¹ Section 112.321(1), F.S.

²² Section 112.3215(3), F.S.

²³ Section 112.3215(7), F.S.

²⁴ Section 112.3215(5)(a)1., F.S.

²⁵ The reporting periods are as follows: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Section 112.3215(5)(c), F.S.

²⁶ Section 112.3215(8)(a), F.S.

- Any lobbying firm, agency, officer, or employee upon receipt of information from a sworn complaint or from a random audit of lobbying reports indicating a possible violation other than a late-filed report.²⁷

Public-Records and Public-Meetings Exemptions Under Review

In 2005, the Legislature created a public-records exemption for records relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission.²⁸

Records relating to an audit of the lobbying firm or relating to an investigation of violations of the lobbying compensation reporting laws are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. In addition, commission meetings held pursuant to such investigation or at which such audit is discussed are exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.²⁹

The exemptions expire if the lobbying firm provides a written request for such investigation and associated records and meetings to be made public, or if the commission determines there is probably cause that an audit reflects a violation of the reporting laws.³⁰

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2011, unless reenacted by the Legislature.

Open Government Sunset Review of the Exemptions

Professional staff of the Rules Subcommittee on Ethics and Elections reviewed the exemptions and recommended that they may be maintained, as the public necessity that warranted the original 2005 legislation continues to exist. Requiring the disclosure of compensation audit reports of lobbyists through public-records requests or public meetings could irreparably injure lobbying firms by providing competitors with detailed information about a firm's financial status. As a result, disclosure would create an economic disadvantage for such firms and possibly hinder a firm's reputation if no violations were found. Additionally, public disclosure of records and meetings could jeopardize the commission's ability to conduct investigations. No other exemption protects records or meetings of this nature; and there is no other existing exemption where it would be appropriate to merge with the exemptions found in this bill. Due to the still-existing public necessity, the benefits of maintaining the exemption outweigh any public benefit that may be received by requiring disclosure.

²⁷ Section 112.3215(8)(c), F.S.

²⁸ Chapter 2005-361, L.O.F., codified as s. 112.3215(8)(d), F.S.

²⁹ *Id.*

³⁰ Section 112.3215(8)(d), F.S.

III. Effect of Proposed Changes:

The bill removes the repeal date, thereby reenacting the public-records and public-meetings exemptions for records and meetings relating to an audit or investigation of a lobbying firm lobbying the executive branch or the Constitution Revision Commission.

The bill also reorganizes the exemptions and makes editorial changes.

The bill specifies an effective date of October 1, 2011.

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

None.

B. Public Records/Open Meetings Issues:

This bill does not expand the scope of the exemptions; therefore, a two-thirds vote of 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. **Proposed Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Proposed Committee Substitute and the prior version of the bill.)

PCS (566252) by Governmental Oversight and Accountability on April 14, 2011:

The proposed committee substitute reorganizes the exemptions and makes editorial changes. It does not make substantive changes to the exemptions.

- B. **Amendments:**

None.

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 Governmental Oversight and Accountability Committee

BILL: SB 2174

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/State Board of Administration/Alternative Investments

DATE: April 12, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Roberts	GO	Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill is the result of an Open Government Sunset Review of the public-records exemption for proprietary confidential business information held by the State Board of Administration (SBA) regarding alternative investments. The exemption expires 10 years after the termination of the alternative investment.

This bill reenacts the exemption, which will repeal on October 2, 2011, if this bill does not become law.

The bill revises the definition of what does not constitute proprietary confidential business information. The bill also requires the SBA to maintain a list and a description of the records covered by any verified, written declaration made by a proprietor.

This bill does not expand the scope of the public-records exemption; therefore, it does not require a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends s. 215.44, F.S.

II. Present Situation:

Florida's Public-Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In

1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, of the State Constitution, provide that:

Every person has 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 persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record¹ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency² records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public records” to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”³ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁸

¹ Section 119.011(12), F.S.

² Section 119.011(2), F.S., defines “agency” as “...any state, county, district, authority, or municipal officer, department, division, 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.”

³ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

⁵ Article I, s. 24(c) of the State Constitution.

⁶ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act¹¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.¹² 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 to the exemption is created¹³ then a public necessity statement and a two-thirds vote for passage are not required.

State Board of Administration

The State Board of Administration (SBA or board) is established by Article IV, s. 4(e) of the State Constitution, and is composed of the Governor as Chair, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary. The board members are commonly referred to

⁷ Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Section 24(c), Art. I of the State Constitution.

⁹ Op. Att'y Gen. Fla. 85-62 (1985).

¹⁰ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA), review denied, 589 So. 2d 289 (Fla. 1991).

¹¹ Section 119.15, F.S.

¹² Section 24(c), Art. I of the State Constitution.

¹³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

as “Trustees.” While the Florida Retirement System Pension Trust Fund represents about 80 percent of the assets under SBA management, the board also manages 37 different funds, including the Florida Hurricane Catastrophe Fund, the Lawton Chiles Endowment Fund and the Local Government Surplus Funds Trust Fund.¹⁴

Current law sets forth the powers and duties of the SBA in relation to the investment of trust funds.¹⁵ Among the powers granted to the SBA is the authority to make purchases, sales, exchanges, and reinvestments for trust funds.¹⁶ The SBA is charged to ensure that the investments are handled in the best interests of the state, but also to have an appropriately diversified portfolio that maximizes financial returns consistent with the risks incumbent in each investment.

Alternative Investments and Alternative Investment Vehicles

The SBA’s ability to invest moneys available for investments is subject to limitations imposed by a “legal list” of the types of investments and the amount that may be invested in each investment type.¹⁷ Under current law, the board is authorized to invest no more than 10 percent, in the aggregate, of any fund in alternative investments through participation in alternative investment vehicles.¹⁸ An alternative investment is an investment by the SBA in a private equity fund, venture fund, hedge fund, or distress fund or a direct investment in a portfolio company¹⁹ through an investment manager.²⁰ An alternative investment vehicle is the limited partnership, limited liability company, or similar legal structure or investment manager through which the board invests in a portfolio company.²¹

¹⁴ State Board of Administration Investment Overview, January 12, 2011, at 3.

¹⁵ Section 215.44, F.S.

¹⁶ Section 215.44(2)(a), F.S.

¹⁷ Section 215.47, F.S., provides the “legal list” of types of investments summarized as follows:

- No more than 80 percent of assets can be invested in domestic common stocks.
- No more than 75 percent of assets can be invested in internally managed common stocks.
- No more than 3 percent of equity assets can be invested in the equity securities of any one corporation, except when the securities of that corporation are included in any broad equity index or with approval of the Board; and in such case, no more than 10 percent of equity assets can be invested in the equity securities of any one corporation.
- No more than 80 percent of assets should be placed in corporate fixed income securities.
- No more than 25 percent of assets should be invested in notes secured by FHA- insured or VA-guaranteed first mortgages on Florida real property, or foreign government general obligations with a 25-year default free history.
- No more than 20 percent of assets should be invested in foreign corporate or commercial securities or obligations.
- No more than 5 percent of any fund should be invested in private equity through participation in limited partnerships and limited liability companies.
- No more than 25 percent of assets can be invested in foreign securities.

¹⁸ Section 215.47(15), F.S.

¹⁹ Section 215.44(8)(c)1.c., F.S., defines “portfolio company” to mean corporation or other issuer, any of whose securities are owned by an alternative investment vehicle or the State Board of Administration and any subsidiary of such corporation or other issuer.

²⁰ Section 215.44(8)(c)1.a., F.S.

²¹ Section 215.44(8)(c)1.b., F.S.

Public-Records Exemption under Review

In 2006, the Legislature created a public record exemption for proprietary confidential business information held by the State Board of Administration.²² Proprietary confidential business information regarding alternative investments is confidential and exempt²³ from public records requirements for 10 years after the termination of the alternative investment.²⁴ The exemption applies to proprietary confidential business information held by the SBA before, on, or after October 1, 2006.

Operation of the Exemption

Current law provides that a request to inspect or copy a record that contains proprietary confidential business information must be granted if the proprietor of the information fails, within a reasonable period of time after the request is received by the SBA, to verify the following information through a written declaration:²⁵

- That the requested record contains proprietary confidential business information and the specific location of such information within the record;
- If the proprietary confidential business information is a trade secret, a verification that it is a trade secret as defined in the Uniform Trade Secrets Act;
- That the proprietary confidential business information is intended to be and is treated by the proprietor as private, is the subject of efforts of the proprietor to maintain its privacy, and is not readily ascertainable or publicly available from any other source; and,
- That the disclosure of the proprietary confidential business information to the public would harm the business operations of the proprietor.²⁶

Petition for Public Release

Any person may petition a court of competent jurisdiction in Leon County, Florida, for an order for the public release of those portions of any record made confidential and exempt under this public record exemption. The petition must be served, along with any other initial pleadings, on the SBA and on the proprietor of the information sought to be released, if the proprietor can be determined through diligent inquiry. The court must make three findings in any order for the release of the record:

- That the record or portion thereof is not a trade secret as defined in the Uniform Trade Secrets Act;
- That a compelling public interest is served by the release of the record or portions thereof which exceed the public necessity for maintaining the confidentiality of such record; and,

²² Chapter 2006-163, L.O.F.; codified as s. 215.44(8)(c), F.S.

²³ 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 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).

²⁴ Section 215.44(8)(c)2., F.S.

²⁵ See s. 92.525, F.S., for requirements specific to a verified written declaration.

²⁶ Section 215.44(8)(c)3., F.S.

- That the release of the record will not cause damage to or adversely affect the interests of the proprietor of the released information, other private persons or business entities, the SBA, or any trust fund, the assets of which are invested by the board.²⁷

Definitions

“Proprietary confidential business information” means information that has been designated by the proprietor²⁸ when provided to the SBA as information that is owned or controlled by a proprietor; that is intended to be and is treated by the proprietor as private, the disclosure of which would harm the business operations of the proprietor and has not been intentionally disclosed by the proprietor unless pursuant to a private agreement that provides that the information will not be released to the public except as required by law or legal process, or pursuant to law or an order of a court or administrative body; and that concerns:

- Trade secrets as defined in the Uniform Trade Secrets Act.²⁹
- Information provided to the board regarding a prospective investment in a private equity fund, venture fund, hedge fund, distress fund, or portfolio company which is proprietary to the provider of the information.
- Financial statements and auditor reports of an alternative investment vehicle.
- Meeting materials of an alternative investment vehicle relating to financial, operating, or marketing information of the alternative investment vehicle.
- Information regarding the portfolio positions in which the alternative investment vehicles invest.
- Capital call and distribution notices to investors of an alternative investment vehicle.
- Alternative investment agreements and related records.
- Information concerning investors, other than the SBA, in an alternative investment vehicle.³⁰

“Proprietary confidential business information” does not include the:

- Name, address, and vintage year of an alternative investment vehicle and the identity of the principals involved in the management of the alternative investment vehicle.
- Dollar amount of the commitment made by the SBA to each alternative investment vehicle since inception.
- Dollar amount and date of cash contributions made by the SBA to each alternative investment vehicle since inception.
- Dollar amount, on a fiscal-year-end basis, of cash distributions received by the SBA from each alternative investment vehicle.
- Dollar amount, on a fiscal-year-end basis, of cash distributions received by the SBA plus the remaining value of alternative-vehicle assets that are attributable to the board’s investment in each alternative investment vehicle.
- Net internal rate of return of each alternative investment vehicle since inception.
- Investment multiple of each alternative investment vehicle since inception.

²⁷ Section 215.44(8)(c)4., F.S.

²⁸ Section 215.44(8)(c)1.e., F.S., defines “proprietor” to mean an alternative investment vehicle, a portfolio company in which the alternative investment vehicle is invested, or an outside consultant, including the respective authorized officers, employees, agents, or successors in interest, which controls or owns information provided to the SBA.

²⁹ Chapter 688, F.S.

³⁰ Section 215.44(8)(c)1.f., F.S.

- Dollar amount of the total management fees and costs paid on an annual fiscal-year-end basis by the SBA to each alternative investment vehicle.
- The dollar amount of cash profit received by the SBA from each alternative investment vehicle on a fiscal-year-end basis.³¹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.³²

III. Effect of Proposed Changes:

The bill removes the repeal date, thereby reenacting the public-records exemption for proprietary confidential business information held by the SBA regarding alternative investments. The bill revises the definition of what does *not* constitute proprietary confidential business information to include:

A description of any compensation, fees, or expenses, including the amount or value, paid or agreed to be paid by a proprietor to any person to solicit the board to make an alternative investment through an alternative investment vehicle. This does not apply to an executive officer, general partner, managing member, or other employee of the proprietor, who is paid by the proprietor to solicit the SBA to make such investments.

In addition, the bill requires the SBA to maintain a list and a description of the records covered by any verified, written declaration made by a proprietor.

Finally, the bill transfers the public-records exemptions for the SBA from s. 215.44(8), F.S., to a newly created s. 215.440, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill does not expand the scope of the public-records exemption under review; therefore, it does not require a public necessity statement or a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

³¹ Section 215.44(8)(c)1.g., F.S.

³² Section 215.44(8)(c)5., F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

April 13, 2011

The Honorable Jeremy Ring, Chair
Senate Committee on Governmental Oversight and Accountability
404 S. Monroe Street
525 Knott Building
Tallahassee, FL 32399-1100

Dear Mr. Chair:

I understand that today you will be hearing SB 2174, relating to public records exemptions for certain documents held by the State Board of Administration (SBA). Specifically, this bill would exempt "descriptions of compensation, fees, or expenses, including the amount or value, paid or agreed to be paid by a proprietor to any person to solicit the board to make an alternative investment or investment through an alternative investment vehicle." The bill responsibly precludes executive officers, general partners, managing members, and other employees of the proprietor who are paid to solicit the board to make such investments from the exemption. Lastly, this bill removes the sunset provision, which will become effective October 2nd without your favorable action on this bill. The sunset of the current exemption will be detrimental to the SBA's ability to keep confidential proprietary information.

As an SBA Trustee, I wanted to provide you some context of the imperative nature of this exemption. Alternative investments are an important component of the fund's diversity and return rate. Such investments comprise approximately 7% of the \$128 billion portfolio, and are generally regarded as high performing. As the industry norm, these types of investments come with confidentiality clauses that the fund must abide by to protect it from contractual breaches and legal violations.

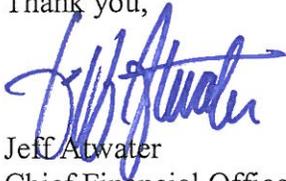
Performance of the fund and various asset classes should certainly be fully disclosed and publically accessible, to promote the SBA's obligation to be as transparent as possible. However, the state's interest in openness must be balanced with our fiduciary duty to Floridians in ensuring that the fund has every opportunity to excel.

SBA trustees and appropriate staff do have access to exempt information and current law provides citizens with a mechanism for petitioning a court of competent jurisdiction if one believes information withheld by a proprietor should be disclosed. I hope these safeguards reassure you that sufficient protections are in place so that our shared goal of open government cannot be compromised.

Senator Ring
Page Two
April 13, 2011

Your bill helps achieve equilibrium between two good goals: transparency and prudent investing. Such symmetry is critical, and ensures that SBA trustees can fulfill our fiduciary duties to the utmost degree.

Thank you,

A handwritten signature in blue ink, appearing to read "Jeff Atwater". The signature is stylized and cursive.

Jeff Atwater
Chief Financial Officer

AM/m

Amended

A black and white copy of this document is not official

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

I, Kurt S. Browning, Secretary of State,
do hereby certify that

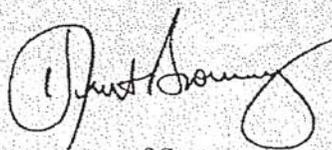
Martin L. Garcia

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the
Twenty-Second day of February, A.D., 2011
until the First day of February, A.D., 2015
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Eleventh day of April, A.D., 2011.



Secretary of State



"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.

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

Amended



STATE BOARD OF ADMINISTRATION
OF FLORIDA

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

POST OFFICE BOX 13300
32317-3300

RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER
AS TREASURER
PAM BONDI
ATTORNEY GENERAL
AS SECRETARY
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

April 11, 2011

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

RE: Investment Advisory Council Appointments – Martin Garcia and Charles Newman

Dear Ms. Williams:

This letter is to confirm the term dates as February 22, 2011, through February 1, 2015, for Mr. Martin Garcia appointed by Attorney General Pam Bondi and Mr. Charles Newman appointed by CFO Jeff Atwater to serve on the Investment Advisory Council for the State Board of Administration. Their appointment letters, copies of Questionnaires for Senate Confirmation, and the February 22, 2011, Cabinet transcripts reflecting approval of their appointments were previously sent to you.

Mr. Newman's educational background has been requested from FIU and should be sent within the next few days.

Please let me know if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Diane Bruce".

Diane Bruce
Executive Assistant

cc: Ash Williams
Ron Poppell
Lidga Tisdale



STATE BOARD OF ADMINISTRATION
OF FLORIDA

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

POST OFFICE BOX 13300
32317-3300

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2011 MAR 22 PM 3:39
DIVISION OF ELECTIONS
RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER
AS TREASURER
PAM BONDI
ATTORNEY GENERAL
AS SECRETARY
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

March 22, 2011

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

RE: Investment Advisory Council Appointment – Martin Garcia

Dear Ms. Williams:

Mr. Martin Garcia has been appointed by Attorney General Pam Bondi to serve on the Investment Advisory Council for the State Board of Administration. Attached please find the appointment letter, original Questionnaire for Senate Confirmation, along with Oath of Office and Acceptance Form, and the February 22, 2011, Cabinet transcript reflecting approval of his appointment.

Please let me know if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Diane Bruce".

Diane Bruce
Executive Assistant

Attachments

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

HAND DELIVERED



RECEIVED
2011 MAR 22 PM 3:56
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

STATE OF FLORIDA

PAM BONDI
ATTORNEY GENERAL

February 7, 2011

Mr. Ash Williams
Executive Director
State Board of Administration
1801 Hermitage Boulevard
Tallahassee, FL 32308

Dear Ash,

This letter is to inform you of my request that Mr. Martin L. Garcia be considered for appointment as one of our designees to serve on the State Board of Administration Investment Advisory Council. If appointed, it is my understanding he will serve a four year term effective February 22, 2011.

Sincerely,


Pam Bondi

Cc: Martin L. Garcia
Governor Rick Scott
Chief Financial Officer Jeff Atwater
Rob Johnson, Director, Cabinet Affairs

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

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

10. Since what year have you been a continuous resident of Florida? 1981

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

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

12. Education

A. High School: Pittsford-Mendon, Pittsford, N.Y. Year Graduated: 1974

(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

<u>NAME & LOCATION</u>	<u>DATES ATTENDED</u>	<u>CERTIFICATES/DEGREES RECEIVED</u>
University of Tampa	1974-1975	
University of South Florida	1975-1978	B.S in Accounting
Wake Forest University School of Law	1978-1981	J.D.

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

A. Dates of service: _____

B. Branch or component: _____

C. Date & type of discharge: _____

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

<u>DATE</u>	<u>PLACE</u>	<u>NATURE</u>	<u>DISPOSITION</u>
<u>No</u>			

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

<u>EMPLOYER'S NAME & ADDRESS</u>	<u>TYPE OF BUSINESS</u>	<u>OCCUPATION/JOB TITLE</u>	<u>PERIOD OF EMPLOYMENT</u>
<u>Pinehill Capital Partners, Inc.</u>	<u>Investment Firm</u>	<u>Managing Director</u>	<u>2000 to present</u>

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

<u>POSITION</u>	<u>EMPLOYING AGENCY</u>	<u>PERIOD OF EMPLOYMENT</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.
 I practiced law for 15 years. I have served on the board of three NYSE companies and the board of a NASDAQ company (served as chairman of Audit Committee, chairman of Governance Committee and chairman of long-term Compensation Committee). As a university trustee , I served on the Investment Policy Committee for Wake Forest University. I founded, operated and sold my own real estate investment firm form 1988 until 1998. I currently own and operate my own investment firm that invests in both private companies and public Securities.

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

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

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

Member of the Florida Bar.

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

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

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
Florida Judicial Qualifications Commission	2000	6 Years	Judicial
Florida Supreme Court Judicial Nomination Commission	2008	4 Years	Judicial

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

(1) How frequently were meetings scheduled: JQC 6- 10 time a year; JNC 1 to 5 times a year

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

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE
All	None	

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

DATE	NATURE OF VIOLATION	DISPOSITION

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

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

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

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

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

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

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

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE
0330371	1981	Florida Bar Ass.	None

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

NAME OF BUSINESS YOUR RELATIONSHIP TO BUSINESS BUSINESS' RELATIONSHIP TO AGENCY
I assume this does not include ownership in public securities of public companies in which I have invested.
In the abundance of caution, I hereby disclose that I own stock in Raymond James Financial, Inc.
and BlackRock, Inc. I don't know if these companies have a contractual relationship with Florida.

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

<u>NAME OF BUSINESS</u>	<u>FAMILY MEMBER'S RELATIONSHIP TO YOU</u>	<u>FAMILY MEMBER'S RELATIONSHIP TO BUSINESS</u>	<u>BUSINESS' RELATIONSHIP TO AGENCY</u>
-------------------------	--	---	---

Same response as 25 A.

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

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

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

<u>AGENCY LOBBIED</u>	<u>PRINCIPAL REPRESENTED</u>
-----------------------	------------------------------

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

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>ZIP CODE</u>	<u>AREA CODE/PHONE NUMBER</u>
Kathleen Shanahan			
James Burt			
Howard Coker			

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

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>OFFICE(S) HELD & TERM</u>	<u>DATE(S) OF MEMBERSHIP</u>
Florida Bar	651 East Jefferson St., 32399	Member	1981- present
ABOTA	2001 Bryan St., Suite 3000 75201	Member	1985- present

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

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

CERTIFICATION

STATE OF FLORIDA, COUNTY OF HILLSBOROUGH

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

[Handwritten Signature]
Signature of Applicant-Affiant

Sworn to and subscribed before me
this 4th day of FEBRUARY 2011.

[Handwritten Signature]
Signature of Notary Public-State of Florida



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

My commission expires: 7/27/14

Personally Known OR Produced Identification
Type of Identification Produced _____

(seal)

RECORDED
2011 MAR 22 PM 3:56
FLORIDA STATE
DIVISION OF ELECTIONS

MEMORANDUM

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

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

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

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

OATH OF OFFICE

STATE OF FLORIDA

2011 MAR 22 PM 3:57

County of Leon

DEPARTMENT OF STATE
DIVISION OF ELECTIONS

I, DO SOLEMNLY SWEAR (OR AFFIRM) that I will support, protect and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council

(Office)

on which I am now about to enter, so help me God.

Martin L. Garcia

Signature

Sworn to and subscribed before me this 21st day of February, 2011.

Diane C. Bruce

Signature of Diane C. Bruce or of Notary Public - State of Florida)



Print, Type or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office of Investment Advisory Council, State Board of Administration

_____. The above is the Oath of Office taken by me.

In addition to the above office I also hold the office of None.

Mailing Address: Home Office

Signature:

1700 S. MacDill Ave., Suite 240
Street or Post Office Box

Martin L. Garcia
Print name as you desire commission issued

Tampa, Florida 33629
City, State, Zip Code

Martin L. Garcia
Signature

Amended

A black and white copy of this document is not official

STATE OF FLORIDA
DEPARTMENT OF STATE

Division of Elections

I, Kurt S. Browning, Secretary of State,
do hereby certify that

Charles W. Newman

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the
Twenty-Second day of February, A.D. 2011
until the First day of February, A.D. 2015
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

State of Florida appears in small letters across the face of this 8 1/2 x 11" document.



Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Eleventh day of April, A.D., 2011.

Handwritten signature of Kurt S. Browning.

Secretary of State

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

Amended



STATE BOARD OF ADMINISTRATION
OF FLORIDA

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

POST OFFICE BOX 13300
32317-3300

RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER
AS TREASURER
PAM BONDI
ATTORNEY GENERAL
AS SECRETARY
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

April 11, 2011

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

RE: Investment Advisory Council Appointments – Martin Garcia and Charles Newman

Dear Ms. Williams:

This letter is to confirm the term dates as February 22, 2011, through February 1, 2015, for Mr. Martin Garcia appointed by Attorney General Pam Bondi and Mr. Charles Newman appointed by CFO Jeff Atwater to serve on the Investment Advisory Council for the State Board of Administration. Their appointment letters, copies of Questionnaires for Senate Confirmation, and the February 22, 2011, Cabinet transcripts reflecting approval of their appointments were previously sent to you.

Mr. Newman's educational background has been requested from FIU and should be sent within the next few days.

Please let me know if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Diane Bruce".

Diane Bruce
Executive Assistant

cc: Ash Williams
Ron Poppell
Lidga Tisdale



STATE BOARD OF ADMINISTRATION
OF FLORIDA

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

POST OFFICE BOX 13300
32317-3300

RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER
AS TREASURER
PAM BONDI
ATTORNEY GENERAL
AS SECRETARY
ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

March 22, 2011

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

RECEIVED
11 MAR 22 PM 4:37
DIVISION OF ELECTIONS
SECRETARY OF STATE

RE: Investment Advisory Council Appointment – Charles Newman

Dear Ms. Williams:

Mr. Charles Newman has been appointed by CFO Jeff Atwater to serve on the Investment Advisory Council for the State Board of Administration. Attached please find the appointment letter, copy of Questionnaire for Senate Confirmation, and the February 22, 2011 Cabinet transcript reflecting approval of his appointment.

Please let me know if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Diane Bruce".

Diane Bruce
Executive Assistant

Attachments

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



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

2011 MAR 22

DEPARTMENT
DIVISION OF E

February 1, 2011

Mr. Charles Newman, President
KGI Capital
240 Ponte Vedra Park Drive
Ponte Vedra Beach, FL 32082-6601

Dear Mr. Newman:

Pursuant to 215.444, Florida Statutes, it is my pleasure to appoint you to the State Board of Administration Investment Advisory Council (IAC). Your appointment is effective immediately and expires on February 1, 2015.

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Atwater".

Jeff Atwater
Chief Financial Officer

/sm

QUESTIONNAIRE FOR SENATE CONFIRMATION

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

Please type or print in blue or black ink.

3/29/11

Date Completed

1. Name: Mr. NEWMAN CHARLES William
MR /MRS /MS LAST FIRST MIDDLE/MAIDEN

2. Business Address: 2 South Roscoe Blvd. Ponte Vedra Bch.
STREET OFFICE # CITY
Florida 32082 904-280-3888
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 24769 Harbour View Dr. Ponte Vedra Beach St. Johns
STREET CITY COUNTY
Fla. 32082 904-285-2950
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business Residence Fax # 904-280-0607 (home)
904-280-3886 (office) (optional)

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

ADDRESS	CITY & STATE	FROM	TO
<u>24769 Harbour View Dr.</u>	<u>Ponte Vedra Beach Fla.</u>	<u>2003</u>	<u>Present</u>

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

ADDRESS	CITY & STATE	FROM	TO
<u>None</u>			

5. Date of Birth: 11/19/49 Place of Birth: Coral Gables Florida

6. Social Security Number: _____

7. Driver License Number: _____ Issuing State: Florida

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

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

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

10. Since what year have you been a continuous resident of Florida? 1949 (Only left while in military)

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

A. County of Registration: St. Johns B. Current Party Affiliation: Republican

12. Education

A. High School: North-east H.S. Ft. Lauderdale, Fla. Year Graduated: 1967
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
<u>Miami Dade Jr. Coll.</u>	<u>1972-73</u>	<u>Associates Degree</u>
<u>Florida International Univ.</u>	<u>1973-74</u>	<u>Bachelors - Accounting</u>
<u>University of South Fla.</u>	<u>1978</u>	<u>N/A</u>
<u>University of Miami</u>	<u>1982</u>	<u>N/A</u>

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

A. Dates of Service: 1967-1971

B. Branch or Component: U.S. Coast Guard

C. Date & type of discharge: Honorable Discharge 1971

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

DATE	PLACE	NATURE	DISPOSITION

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

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
<u>KGI CAPITAL</u>	<u>Private Investment</u>	<u>President</u>	<u>10 years</u>

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

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT

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

Served as CFO for Barnett Banks Inc. 1991-1997
My duties included serving on Barnett's Pension
Advisory Committee with assets over \$400 million. Experience
also includes serving as controller, auditor and CPA.
Recent service includes serving on for profit and not for profit
boards and a private equity fund board.

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

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

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

N/A

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

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

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

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

(1) How frequently were meetings scheduled: N/A

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

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE
<u>N/A</u>		

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

DATE	NATURE OF VIOLATION	DISPOSITION

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

A. Title of office: _____ C. Reason for suspension: _____
 B. Date of suspension: _____ D. Result: Reinstated Removed Resigned

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

A. Title of Office: _____
 B. Term of Appointment: _____
 C. Confirmation results: _____

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

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

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE
<u>Florida CPA</u>	<u>1975</u>	<u>STATE OF Fla.</u>	<u>None</u>

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

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

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

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

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

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

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

AGENCY LOBBIED	PRINCIPAL REPRESENTED
N/A	

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

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
Rolf Engmann			
Lee Hanna			
Richard Maguire			

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

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
N/A			

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

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

CERTIFICATION

STATE OF FLORIDA, COUNTY OF

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

Charles W. Newman
Signature of Applicant-Affiant

Sworn to and subscribed before me
this 29th day of March, 2011

Mary C. Parsons
Signature of Notary Public-State of Florida

Mary C. Parsons
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: Nov. 29, 2013

Personally Known OR Produced Identification

Type of Identification Produced _____



(seal)

MEMORANDUM

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

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

Because: (please provide cite.) _____

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

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

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2011 MAR 30 PM 4:31

DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of St. Johns

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

INVESTMENT Advisory Council Member
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Charles W. Newman
Signature

Sworn to and subscribed before me this 29th day of March, 2011.

Mary C Parsons
Signature of Officer Administering Oath or of Notary Public



Mary C Parsons
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

24769 Harbour View Dr.
Street or Post Office Box

Ponte Vedra Beach, FL 32082
City, State, Zip Code

Charles W. Newman
Print name as you desire commission issued

Charles W. Newman
Signature