

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Thompson, Vice Chair

MEETING DATE: Monday, October 5, 2015
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Detert, Chair; Senator Thompson, Vice Chair; Senators Bean, Hutson, Latvala, Richter, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 148 Ring	Consumer Protection; Citing this act as "Terry's Law"; requiring retail sales establishments that sell goods to the public to grant a refund within a specified time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements, etc. CM 10/05/2015 Fav/CS AGG FP	Fav/CS Yeas 7 Nays 0
2	SB 180 Richter (Similar CS/H 55, Compare CS/H 57, Linked S 182)	Trade Secrets; Including financial information in provisions prohibiting the theft, embezzlement, or unlawful copying of trade secrets; providing criminal penalties, etc. CM 10/05/2015 Fav/CS GO RC	Fav/CS Yeas 7 Nays 0
3	SB 182 Richter (Similar CS/H 57, Compare CS/H 55, Linked S 180)	Public Records and Meetings/Trade Secrets; Expanding public records exemptions for certain data processing software obtained by an agency, certain information held by a county tourism promotion agency, information related to trade secrets held by specified entities, and specified data, programs, or supporting documentation held by an agency; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CM 10/05/2015 Fav/CS GO RC	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Monday, October 5, 2015, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 186 Clemens	Social Media Privacy; Prohibiting an employer from requesting or requiring access to a social media account of an employee or prospective employee; prohibiting an employer from taking retaliatory personnel action against an employee as a result of the employee's refusal to allow access to his or her social media account; prohibiting an employer from failing or refusing to hire a prospective employee as a result of the prospective employee's refusal to allow access to his or her social media account, etc. CM 10/05/2015 Fav/CS JU RC	Fav/CS Yeas 5 Nays 1
5	SB 198 Hukill	Sales Tax Holiday; Providing an exemption from the sales and use tax for the retail sale of certain clothing, school supplies, and personal computers and personal computer-related accessories during a specified period, etc. CM 10/05/2015 Favorable FT AP	Favorable Yeas 6 Nays 0
6	Presentation by Jesse Panuccio, Executive Director of the Department of Economic Opportunity, on Reemployment Assistance.		Presented

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 148

INTRODUCER: Commerce and Tourism Committee and Senator Ring

SUBJECT: Consumer Protection

DATE: October 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			AGG	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 148 requires retail stores to allow certain consumers to return purchases of \$1,000 or more for a full refund within three business days of their purchase if the consumer:

- Has been adjudicated incapacitated;
- Is subject to a guardianship, and the guardian has the authority to determine the consumer's right to manage property; or
- Has a doctor's note that indicates that he has been diagnosed with a medical condition that causes him to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his person or property, and has a power of attorney in effect.

The bill requires the Department of Agriculture and Consumer Services to administer a fine of up to two times the value of the goods purchased if a person is found in violation of this provision.

II. Present Situation:

Consumer Protections

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is charged with protecting consumers from deceptive business practices. The Division of Consumer Services (division) serves as a clearinghouse for consumer complaints. Specifically, s. 501.142, F.S., tasks the

division with the oversight and regulation of a range of business practices related to refunds, returns, and exchanges at retail stores. The enforcement of s. 501.142, F.S., results from complaints made directly to the DACS by consumers. The DACS has issued only one administrative fine for a violation of s. 501.142, F.S. Retail stores generally comply with the law upon request by the DACS.¹

Currently, s. 501.142(1), F.S., requires retail stores to clearly post a “no refunds” sign at the point of sale in order to enforce this policy. If the retail store does not have a posted “no refunds” policy, then it must present a written version of its refund policy upon a consumer’s request or adhere to the default refund policy described in s. 501.142(1), F.S. This provision requires a full refund to any customer who presents to the retail store within 7 days of the original purchase their proof of purchase and the unused and originally-packaged item. A retail store’s refund policy may allow for a longer return period.²

The division may impose a \$100 administrative fine per violation of s. 501.142(1), F.S., or issue a directive to cease and desist from the violation. Additionally, a local government may apply penalties as outlined in s. 501.142(6), F.S.

These refund policy requirements do not apply to perishable or custom goods, items that are custom altered at the customer’s request, or goods that may not legally be resold by the retail store.³

Seniors vs Crime

Seniors vs Crime (SVC) is a Special Project of the Florida Office of the Attorney General with a mission to reduce the victimization of senior citizens.⁴ SVC utilizes volunteers across the state to monitor and report on scams against the elderly, such as fraud, high pressure sales techniques, false advertising, and unfair and deceptive trade practices. Some cases discovered by SVC are referred to state agencies for an investigation of an administrative violation, or to law enforcement for further investigation of a criminal violation. Some civil issues, however, are retained by SVC for mediation conducted by its members or by the consumer herself with assistance from SVC.⁵ In 2013, SVC assisted 5,145 Florida seniors.⁶

¹ Department of Agriculture and Consumer Services, *SB 148 Agency Analysis* (September 1, 2015) (on file with the Senate Committee on Commerce and Tourism).

² Section 501.142(1), F.S.

³ Section 501.142(2), F.S.

⁴ Seniors vs Crime, *The History of the Seniors vs Crime Project*, available at <http://www.seniorsvscrime.com/history> (last visited October 5, 2015).

⁵ See, e.g., *2013 Cases Resolved by Seniors vs Crime*, available at <http://www.seniorsvscrime.com/test-cases> (last visited October 5, 2015).

⁶ Press Release, Attorney General Pam Bondi, Attorney General Pam Bondi Recognizes the Silver Anniversary of Florida’s Seniors vs. Crime Program (April 9, 2014). Available at <http://www.myfloridalegal.com/newsrel.nsf/newsreleases/248AB317E66FDCFF85257CB5006B12E6> (last visited October 5, 2015.)

Exploitation of the Elderly

Elderly persons and disabled adults receive enhanced protection from financial exploitation under s. 825.103, F.S., “Exploitation of an Elderly Person or Disabled Adult,” which criminalizes, generally, the theft or unauthorized appropriation of their funds, assets, or property.

Section 825.101, F.S., defines the following terms:

- An “elderly person” as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability to provide adequately for his or her own care is impaired; and
- A “disabled adult” is a person 18 years or older who suffers from physical or mental incapacitation due to developmental disability, organic brain damage, or mental illness, or has at least one physical or mental limitation that restricts his or her ability to perform normal activities of daily living.

Criminal prosecutions under s. 825.103, F.S., must prove that a victim of alleged financial exploitation not only meets the age requirement provided for in s. 825.101, F.S., but also that the victim suffers from infirmities of aging, which results in an impaired ability to care for or protect herself.⁷

Incapacity

The 2010 Census recorded the greatest number and proportion of people aged 65 and over in the history of the U.S.—10,300,000, or 13 percent of the total population.⁸ In 2010, Florida had the highest proportion of people over the age of 65, making up 17 percent of the total state population.⁹

Older Americans are at a greater risk of victimization of financial crimes than the general population due to cognitive impairment or incapacity. It is estimated that older Americans lost at least \$2.9 billion to financial exploitation by a broad spectrum of perpetrators in 2010.¹⁰ Protections exist for individuals with cognitive impairment or incapacity and range from issue or authority-specific grants of power (powers of attorney), to a determination of partial- or total-incapacity by a court.¹¹

A power of attorney or a durable power of attorney¹² is a legally binding document that delegates specific authority to an agent to act on a person’s behalf. Powers of attorney are often used by

⁷ *Watson v. State*, 95 So. 3d 977, 981-982 (Fla. 1st DCA 2012).

⁸ Administration on Aging, National Center for Elder Abuse, *America’s Growing Elderly Population*, available at <http://www.ncea.aoa.gov/Library/Data/index.aspx> (citing U.S. Department of Commerce, U.S. Census Bureau, *The Older Population: 2010, 2011*, Publication C2010BR-09) (last visited October 5, 2015).

⁹ *Id.*

¹⁰ Consumer Financial Protection Bureau, *Protecting Residents from Financial Exploitation, A Manual for Assisted Living and Nursing Facilities*, p. 7-8 (May 2014), available at http://files.consumerfinance.gov/f/201406_cfpb_guide_protecting-residents-from-financial-exploitation.pdf (last visited October 5, 2015).

¹¹ Section 744.331(6)(a), F.S. The court shall make a finding of “the exact nature and scope of the person’s incapacities;...and the specific rights that the person is incapable of exercising.”

¹² See ch. 709, F.S.

elderly persons to designate someone to handle their financial matters in anticipation of becoming incapacitated. The authority granted by a power of attorney or durable power of attorney can be limited to specific acts, such as caring for a particular property, or may be broadly drawn to cover all legal acts that the principal could otherwise do.¹³ While a power of attorney terminates when a person becomes incapacitated, a durable power of attorney does not.¹⁴ A power of attorney is an efficient and low-cost alternative to guardianship.

Alternatively, a court may appoint a guardian, who “has the legal authority and duty to care for another’s person or property, especially because of the other’s infancy, incapacity, or disability.”¹⁵ Any adult may petition a court to initiate a petition to determine another’s incapacity.¹⁶ An “incapacitated person” is a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person.¹⁷ In cases where incapacity has been determined by a court, the court may appoint a guardian, but must pursue lesser restrictive means if possible.¹⁸ Guardians are governed exclusively by the Florida Statutes,¹⁹ and may exercise for their ward only the enumerated rights that the court removed from the incapacitated person.²⁰ A guardianship is more actively supervised by the court than a power of attorney, which results in more costs to the individual adjudicated incapacitated.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as “Terry’s Law.”

Section 2 amends s. 501.142, F.S., to require all retail stores to grant a full refund to a consumer who purchased goods valued at \$1,000 or more and complies, either personally or through his or her representative, with the provisions below:

- Within 3 business days of the purchase, presents to the store both proof of purchase and the purchased goods in their unused and original condition including the original carton, if any; and
- Provides documentation establishing that:
 - The consumer has been adjudicated incapacitated pursuant to ch. 744, F.S., or similar law;
 - The consumer is subject to a guardianship pursuant to ch. 744, F.S., or similar law, and the guardian has authority to determine the consumer’s right to manage property; or
 - The consumer has been diagnosed with a medical condition that causes him or her to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning his or her person or property, and has a power of attorney or durable power of attorney, pursuant to ch. 709, F.S., or similar law in effect.

¹³ The Florida Bar, *Florida Power of Attorney Pamphlet*, available at <http://www.floridabar.org/tfb/TFBConsum.nsf/840090c16eedaf0085256b61000928dc/ab36277c4562e98885256b2f006c5ad6> (last visited October 5, 2015).

¹⁴ Sections 709.2102(4), 709.2104, and 709.2109(1)(b) F.S.

¹⁵ BLACK’S LAW DICTIONARY (10th ed. 2014).

¹⁶ Section 744.3201(1), F.S.

¹⁷ Section 744.102(12), F.S.

¹⁸ Section 744.331(6)(b), F.S.

¹⁹ *Poling v. City Bank & Trust Co. of St. Petersburg*, 189 So. 2d 176, 182 (Fla. 2d DCA 1966).

²⁰ Section 744.361, F.S., provides the standard powers and duties of a guardian.

The bill also requires the DACS to impose an administrative fine of twice the value of the goods purchased if the DACS finds that a person is in violation of this provision.

Section 3 corrects cross-references in s. 501.95, F.S.

Section 4 provides an effective date of July 1, 2016.

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:

Private businesses will be subject to fines as penalties for violations of the bill.

C. Government Sector Impact:

The DACS estimates there will be an insignificant, indeterminate fiscal impact as enforcement is based on consumer complaints. Historically, the DACS has only issued one administrative fine for noncompliance with current consumer returns laws.²¹

VI. Technical Deficiencies:

None.

²¹ Department of Agriculture and Consumer Services, *SB 148 Agency Analysis* (September 1, 2015) (on file with the Senate Committee on Commerce and Tourism).

VII. Related Issues:

An individual may be adjudicated incapacitated, but retain his or her right to manage his or her property because this right must be specifically delegated to a guardian by a court.²² Therefore, proposed s. 501.142(2)(c)1., may be broader than necessary.

VIII. Statutes Affected:

This committee substitute substantially amends the following sections of the Florida Statutes: 501.142 and 501.95

IX. Additional Information:

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

CS by Commerce and Tourism on October 5, 2015:

The committee substitute removes the preamble from the title.

- B. **Amendments:**

None.

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

²² Section 744.3215, F.S.



965922

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/06/2015	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Ring) recommended the following:

1 **Senate Amendment**

2

3 In title, delete lines 15 - 27.

By Senator Ring

29-00060-16

2016148__

A bill to be entitled

An act relating to consumer protection; providing a short title; amending s. 501.142, F.S.; requiring retail sales establishments that sell goods to the public to grant a refund within a specified time for goods costing more than a specified amount if returned by a consumer who has been adjudicated incapacitated, is subject to a certain type of guardianship, or has a certain medical condition, if specified requirements are satisfied; providing penalties for a violation of the requirements; making technical changes; amending s. 501.95, F.S.; conforming a cross-reference; providing an effective date.

WHEREAS, the Legislature finds that persons who are incapacitated, are subject to certain types of guardianships, or have been diagnosed with a medical condition causing a lack of capacity to make reasonable decisions need additional protections in consumer transactions involving costly purchases, and

WHEREAS, it is in the public interest to protect the welfare of this state's most vulnerable residents and their family members, and

WHEREAS, it is the intent of the Legislature to safeguard such residents' financial interests by providing them with the ability to return certain goods within a reasonable time, NOW, THEREFORE,

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

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

29-00060-16

2016148__

Section 1. This act may be cited as "Terry's Law."

Section 2. Section 501.142, Florida Statutes, is amended to read:

501.142 Retail sales establishments; preemption; ~~notice of~~ refund policy requirements; exceptions; penalty.-

(1) The regulation of refunds is preempted to the Department of Agriculture and Consumer Services notwithstanding any other law or local ordinance to the contrary, provided that a local government may enforce this section as specified in subsection (8).

(2) Notwithstanding the Uniform Commercial Code, ~~each every~~ retail sales establishment offering goods for sale to the general public shall grant a cash refund or credit refund to a consumer for goods returned within 3 business days after the date of purchase if all of the following conditions are met:

(a) The purchase exceeds \$1,000, excluding tax.

(b) The goods are unused and in the original carton, if a carton was furnished.

(c) The consumer, or a representative of the consumer, provides the retailer with proof of purchase and documentation establishing that:

1. The consumer has been adjudicated incapacitated pursuant to chapter 744 or under similar law in another state;

2. The consumer is subject to a guardianship pursuant to chapter 744 or similar law in another state, and the guardian has the authority to determine the consumer's right to manage property; or

3. A power of attorney or a durable power of attorney

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29-00060-16

2016148__

59 pursuant to chapter 709 or similar law in another state is
 60 currently exercisable by the consumer's agent, and the consumer
 61 has been diagnosed with a medical condition that causes him or
 62 her to lack sufficient understanding or capacity to make or
 63 communicate reasonable decisions concerning his or her person or
 64 property, which is evidenced by a written statement signed by a
 65 physician licensed pursuant to chapter 458 or chapter 459 or
 66 licensed to practice medicine under the laws of another state.

67 (3) (a) Except as provided in subsection (2), a retail sales
 68 establishment offering goods for sale to the general public may
 69 refuse to offer a ~~that offers no~~ cash refund, credit refund, or
 70 exchange for the purchase if the retailer posts ~~of merchandise~~
 71 ~~must post~~ a sign at the point of sale ~~so~~ stating that refunds or
 72 exchanges are not allowed at the point of sale. Failure of a
 73 retail sales establishment to exhibit a "no refund or exchange"
 74 sign at the point of sale under such circumstances means at the
 75 ~~point of sale shall mean~~ that a refund or exchange policy
 76 exists, and the policy must ~~shall~~ be presented in writing to the
 77 consumer upon request.

78 (b) A ~~Any~~ retail sales establishment that violates this
 79 subsection ~~failing to comply with the provisions of this section~~
 80 shall grant to the consumer, upon request and proof of purchase,
 81 a refund for the purchase on the merchandise, within 7 business
 82 days ~~after~~ of the date of purchase ~~if, provided the goods are~~
 83 ~~merchandise is~~ unused and in the original carton, if one was
 84 furnished. This section does not ~~Nothing herein shall~~ prohibit a
 85 retail sales establishment from having a refund policy that
 86 ~~which exceeds 7 business the number of days and specified~~
 87 herein. However, this subsection does not prohibit a local

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

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2016148__

88 government from enforcing ~~the provisions established by this~~
 89 section.

90 ~~(4)(2) The provisions of This section does shall not apply~~
 91 ~~to the sale of food, perishable goods, goods that which are~~
 92 ~~custom made, goods that which are custom altered at the request~~
 93 ~~of the customer, or goods that which cannot be resold by the~~
 94 ~~merchant because of any law, rule, or regulation adopted by a~~
 95 ~~governmental body.~~

96 ~~(5)(3) If the department finds that a person has violated~~
 97 ~~or is operating in violation of:~~

98 (a) Subsection (2), the department shall enter an order
 99 that imposes an administrative fine in the amount of twice the
 100 value of the goods, excluding tax, which the person refused to
 101 refund.

102 (b) Subsection (3) or an order issued under this section,
 103 the department may enter an order that imposes ~~doing~~ one or more
 104 of the following if the department finds that a person has
 105 violated ~~or is operating in violation of any of the provisions~~
 106 ~~of this section or the orders issued under this section:~~

107 1.(a) Impose An administrative fine not to exceed \$100 for
 108 each violation.

109 2.(b) A directive to ~~Direct~~ the person to cease and desist
 110 specified activities.

111 ~~(6)(4) An The administrative proceeding proceedings that~~
 112 ~~may could result in the entry of an order imposing any of the~~
 113 ~~penalties specified in subsection (5) is (3) are governed by~~
 114 chapter 120.

115 ~~(7)(5) Any Moneys recovered by the department of~~
 116 ~~Agriculture and Consumer Services as a penalty under this~~

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

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2016148__

117 section shall be deposited in the General Inspection Trust Fund.

118 ~~(8)(6)~~ Upon the first violation of this section, a local
119 government may issue a written warning. Upon a second or ~~and any~~
120 subsequent violation, a local government may impose a fine of up
121 to \$50 per violation. ~~Any~~ Moneys recovered by the local
122 government as a penalty under this section shall be deposited in
123 the appropriate local account.

124 Section 3. Paragraph (c) of subsection (2) of section
125 501.95, Florida Statutes, is amended to read:

126 501.95 Gift certificates and credit memos.—

127 (2)

128 (c) Enforcement of this section shall be as provided in s.
129 501.142(5)(b), (6), and (7) ~~s. 501.142(3), (4), and (5)~~ for
130 violations of this section.

131 Section 4. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Finance and
Tax, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JEREMY RING

29th District

September 10, 2015

Honorable Senator Nancy Detert
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Detert,

I am writing to respectfully request your cooperation in placing Senate Bill 148, relating to Consumer Protection, on the Commerce and Tourism agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring
Senator District 29

cc: Todd McKay, Staff Director
Patty Backburn, Committee Administrative Assistant

REPLY TO:

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-5-2015

Meeting Date

148

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 180

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Trade Secrets

DATE: October 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 180 amends the definition of the term “trade secret,” as provided in s. 812.081, F.S., to expressly include financial information.

An individual who steals, copies without authorization, or misappropriates a trade secret is subject to a third degree felony under s. 812.081, F.S.

The committee substitute also reenacts relevant statutes.

II. Present Situation:

Trade Secret

Section 812.081, F.S., defines a “trade secret” as information¹ used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, and adopted by Florida courts,² requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret’s owner to have access thereto, and be:

- Secret;

¹ A trade secret may manifest as any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Section 812.081(1)(c), F.S.

² See, e.g., *Sepro Corp. v. Dep’t. of Env’t. Prot.*, 839 So. 2d 781 (Fla. 1st DCA 2003).

- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.³

Penalties

Florida law criminalizes the disclosure or theft of trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony⁴ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.⁵
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article that represents a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it unlawful for a designated employee, inspector, or collaborator of the Florida Department of Agriculture and Consumer Services' Division of Plant Industry or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets,⁶ but others provide procedural safeguards or civil remedies instead.⁷

Related Definitions and Law

The federal Freedom of Information Act exempts "trade secrets and commercial or financial information" from public disclosure.⁸ In order to withhold financial or commercial information from public review, it must be shown that the release of the information is likely to (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.⁹ "Substantial harm" may manifest as the disclosure of a company's assets, profits, losses, and market shares.¹⁰

³ Section 812.081(1)(c), F.S.

⁴ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. (ss. 775.082 and 775.083, F.S.)

⁵ The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

⁶ Sections 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(8)(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁷ Sections 721.071 and 812.035, F.S.

⁸ 5 USC §552(b)(4).

⁹ 110 Am. Jur, Trials 367, Pt. 3 (August 2015).

¹⁰ *Id.*

Florida law also defines “trade secret” in the Florida Uniform Trade Secrets Act¹¹ as a “formula, pattern, compilation, program, device, method, technique, or process” that derives actual or potential economic independent economic value 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 when it is the subject of reasonable efforts under the circumstances to maintain its secrecy.

III. Effect of Proposed Changes:

Section 1 adds financial information to protected information classified as a trade secret, which is exempt from public records disclosure requirements.¹²

Section 2 reenacts s. 581.199, F.S., which makes it unlawful for any authorized representative of the Department of Agriculture and Consumer Services, Division of Plant Industry, to use a trade secret obtained under the provisions of ch. 581, F.S., for personal gain.

Section 3 reenacts s. 721.071(1), F.S., which provides methods for developers to establish that materials filed with the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, are trade secrets.

Section 4 reenacts s. 812.035(1), (2), (5), (7), (8), (10), and (11), F.S., which relate to civil and criminal remedies available for violations of s. 812.081, F.S.

Section 5 reenacts s. 815.04, F.S., which establishes a criminal offense for the willful disclosure of a trade secret.

Section 6 provides an effective date of October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill expands the definition of trade secrets as found in s. 812.081, F.S. The companion, CS/SB 182, addresses the impact of this expansion on public records and open meetings.

C. Trust Funds Restrictions:

None.

¹¹ Section 688.002(4), F.S.

¹² Section 119.07 and s. 24(a), Art. I, Fla. Const.

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

None.

B. Private Sector Impact:

Businesses previously hesitant to enter into contracts with the state because of fear of release of their trade secrets may now feel more secure entering into such contracts.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met on this bill or any substantively similar bill this year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not define what type of documents constitute “financial information.”

VIII. Statutes Affected:

This bill substantially amends section 812.081, of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 812.081(4), Florida Statutes

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

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

CS by Commerce and Tourism on October 5, 2015:

The Committee Substitute reenacts the following sections that rely on s. 812.081, F.S., definition of “trade secret”: 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 812.081(4), Florida Statutes.

B. Amendments:

None.



201042

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/06/2015	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Richter) recommended the following:

Senate Amendment (with title amendment)

Between lines 62 and 63
insert:

Section 2. For the purpose of incorporating the amendment made by this act to section 812.081, Florida Statutes, in a reference thereto, section 581.199, Florida Statutes, is reenacted to read:

581.199 Confidential business information.—It is unlawful for any authorized representative who in an official capacity



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11 obtains under the provisions of this chapter any information
12 entitled to protection as a trade secret, as defined in s.
13 812.081, to use that information for personal gain or to reveal
14 it to any unauthorized person.

15 Section 3. For the purpose of incorporating the amendment
16 made by this act to section 812.081, Florida Statutes, in a
17 reference thereto, subsection (1) of section 721.071, Florida
18 Statutes, is reenacted to read:

19 721.071 Trade secrets.—

20 (1) If a developer or any other person filing material with
21 the division pursuant to this chapter expects the division to
22 keep the material confidential on grounds that the material
23 constitutes a trade secret, as that term is defined in s.
24 812.081, the developer or other person shall file the material
25 together with an affidavit of confidentiality. "Filed material"
26 for purposes of this section shall mean material that is filed
27 with the division with the expectation that the material will be
28 kept confidential and that is accompanied by an affidavit of
29 confidentiality. Filed material that is trade secret information
30 includes, but is not limited to, service contracts relating to
31 the operation of reservation systems and those items and matters
32 described in s. 815.04(3).

33 Section 4. For the purpose of incorporating the amendment
34 made by this act to section 812.081, Florida Statutes, in
35 references thereto, subsections (1), (2), (5), (7), (8), (10),
36 and (11) of section 812.035, Florida Statutes, are reenacted to
37 read:

38 812.035 Civil remedies; limitation on civil and criminal
39 actions.—



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40 (1) Any circuit court may, after making due provisions for
41 the rights of innocent persons, enjoin violations of the
42 provisions of ss. 812.012-812.037 or s. 812.081 by issuing
43 appropriate orders and judgments, including, but not limited to:

44 (a) Ordering any defendant to divest himself or herself of
45 any interest in any enterprise, including real estate.

46 (b) Imposing reasonable restrictions upon the future
47 activities or investments of any defendant, including, but not
48 limited to, prohibiting any defendant from engaging in the same
49 type of endeavor as the enterprise in which he or she was
50 engaged in violation of the provisions of ss. 812.012-812.037 or
51 s. 812.081.

52 (c) Ordering the dissolution or reorganization of any
53 enterprise.

54 (d) Ordering the suspension or revocation of any license,
55 permit, or prior approval granted to any enterprise by any
56 department or agency of the state.

57 (e) Ordering the forfeiture of the charter of a corporation
58 organized under the laws of the state or the revocation of a
59 certificate authorizing a foreign corporation to conduct
60 business within the state, upon finding that the board of
61 directors or a managerial agent acting on behalf of the
62 corporation, in conducting the affairs of the corporation, has
63 authorized or engaged in conduct in violation of ss. 812.012-
64 812.037 or s. 812.081 and that, for the prevention of future
65 criminal activity, the public interest requires the charter of
66 the corporation forfeited and the corporation dissolved or the
67 certificate revoked.

68 (2) All property, real or personal, including money, used



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69 in the course of, intended for use in the course of, derived
70 from, or realized through conduct in violation of a provision of
71 ss. 812.012-812.037 or s. 812.081 is subject to civil forfeiture
72 to the state. The state shall dispose of all forfeited property
73 as soon as commercially feasible. If property is not exercisable
74 or transferable for value by the state, it shall expire. All
75 forfeitures or dispositions under this section shall be made
76 with due provision for the rights of innocent persons.

77 (5) The Department of Legal Affairs, any state attorney, or
78 any state agency having jurisdiction over conduct in violation
79 of a provision of ss. 812.012-812.037 or s. 812.081 may
80 institute civil proceedings under this section. In any action
81 brought under this section, the circuit court shall proceed as
82 soon as practicable to the hearing and determination. Pending
83 final determination, the circuit court may at any time enter
84 such injunctions, prohibitions, or restraining orders, or take
85 such actions, including the acceptance of satisfactory
86 performance bonds, as the court may deem proper.

87 (7) The state, including any of its agencies,
88 instrumentalities, subdivisions, or municipalities, if it proves
89 by clear and convincing evidence that it has been injured in any
90 fashion by reason of any violation of the provisions of ss.
91 812.012-812.037 or s. 812.081, has a cause of action for
92 threefold the actual damages sustained and, in any such action,
93 is entitled to minimum damages in the amount of \$200 and shall
94 also recover court costs and reasonable attorney's fees in the
95 trial and appellate courts. In no event shall punitive damages
96 be awarded under this section. The defendant shall be entitled
97 to recover reasonable attorney's fees and court costs in the



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98 trial and appellate courts upon a finding that the claimant
99 raised a claim which was without substantial fact or legal
100 support.

101 (8) A final judgment or decree rendered in favor of the
102 state in any criminal proceeding under ss. 812.012-812.037 or s.
103 812.081 shall estop the defendant in any subsequent civil action
104 or proceeding as to all matters as to which such judgment or
105 decree would be an estoppel as between the parties.

106 (10) Notwithstanding any other provision of law, a criminal
107 or civil action or proceeding under ss. 812.012-812.037 or s.
108 812.081 may be commenced at any time within 5 years after the
109 cause of action accrues; however, in a criminal proceeding under
110 ss. 812.012-812.037 or s. 812.081, the period of limitation does
111 not run during any time when the defendant is continuously
112 absent from the state or is without a reasonably ascertainable
113 place of abode or work within the state, but in no case shall
114 this extend the period of limitation otherwise applicable by
115 more than 1 year. If a criminal prosecution or civil action or
116 other proceeding is brought, or intervened in, to punish,
117 prevent, or restrain any violation of the provisions of ss.
118 812.012-812.037 or s. 812.081, the running of the period of
119 limitations prescribed by this section with respect to any cause
120 of action arising under subsection (6) or subsection (7) which
121 is based in whole or in part upon any matter complained of in
122 any such prosecution, action, or proceeding shall be suspended
123 during the pendency of such prosecution, action, or proceeding
124 and for 2 years following its termination.

125 (11) The application of one civil remedy under any
126 provision of ss. 812.012-812.037 or s. 812.081 shall not



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127 preclude the application of any other remedy, civil or criminal,
128 under ss. 812.012-812.037 or s. 812.081 or any other section of
129 the Florida Statutes.

130 Section 5. For the purpose of incorporating the amendment
131 made by this act to section 812.081, Florida Statutes, in a
132 reference thereto, subsection (4) of section 815.04, Florida
133 Statutes, is reenacted to read:

134 815.04 Offenses against intellectual property; public
135 records exemption.—

136 (4) A person who willfully, knowingly, and without
137 authorization discloses or takes data, programs, or supporting
138 documentation that is a trade secret as defined in s. 812.081 or
139 is confidential as provided by law residing or existing internal
140 or external to a computer, computer system, computer network, or
141 electronic device commits an offense against intellectual
142 property.

143

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

145 And the title is amended as follows:

146 Delete line 6

147 and insert:

148 penalties; reenacting ss. 581.199, 721.071(1),
149 812.035(1), (2), (5), (7), (8), (10), and (11), and
150 815.04(4), F.S., relating to confidential business
151 information, trade secret information filed with the
152 Division of Florida Condominiums, Timeshares, and
153 Mobile Homes within the Department of Business and
154 Professional Regulation, civil remedies, and offenses
155 against intellectual property, respectively, to



156 incorporate changes made by this act to the definition
157 of the term "trade secret" in s. 812.081, F.S., in
158 references thereto; providing an effective date.

By Senator Richter

23-00286-16

2016180__

1 A bill to be entitled
 2 An act relating to trade secrets; amending s. 812.081,
 3 F.S.; including financial information in provisions
 4 prohibiting the theft, embezzlement, or unlawful
 5 copying of trade secrets; providing criminal
 6 penalties; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Section 812.081, Florida Statutes, is amended to
 11 read:
 12 812.081 Trade secrets; theft, embezzlement; unlawful
 13 copying; definitions; penalty.—
 14 (1) As used in this section, the term:
 15 (a) "Article" means any object, device, machine, material,
 16 substance, or composition of matter, or any mixture or copy
 17 thereof, whether in whole or in part, including any complete or
 18 partial writing, record, recording, drawing, sample, specimen,
 19 prototype model, photograph, microorganism, blueprint, map, or
 20 copy thereof.
 21 (b) "Representing" means completely or partially
 22 describing, depicting, embodying, containing, constituting,
 23 reflecting, or recording.
 24 (c) "Trade secret" means the whole or any portion or phase
 25 of any formula, pattern, device, combination of devices, or
 26 compilation of information which is for use, or is used, in the
 27 operation of a business and which provides the business an
 28 advantage, or an opportunity to obtain an advantage, over those
 29 who do not know or use it. The term "~~Trade secret~~" includes any

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

23-00286-16

2016180__

30 scientific, technical, or commercial information, including
 31 financial information, and includes any design, process,
 32 procedure, list of suppliers, list of customers, business code,
 33 or improvement thereof. Irrespective of novelty, invention,
 34 patentability, the state of the prior art, and the level of
 35 skill in the business, art, or field to which the subject matter
 36 pertains, a trade secret is considered to be:
 37 1. Secret;
 38 2. Of value;
 39 3. For use or in use by the business; and
 40 4. Of advantage to the business, or providing an
 41 opportunity to obtain an advantage, over those who do not know
 42 or use it
 43
 44 when the owner thereof takes measures to prevent it from
 45 becoming available to persons other than those selected by the
 46 owner to have access thereto for limited purposes.
 47 (d) "Copy" means any facsimile, replica, photograph, or
 48 other reproduction in whole or in part of an article and any
 49 note, drawing, or sketch made of or from an article or part or
 50 portion thereof.
 51 (2) Any person who, with intent to deprive or withhold from
 52 the owner thereof the control of a trade secret, or with an
 53 intent to appropriate a trade secret to his or her own use or to
 54 the use of another, steals or embezzles an article representing
 55 a trade secret or without authority makes or causes to be made a
 56 copy of an article representing a trade secret ~~commits is guilty~~
 57 ~~of~~ a felony of the third degree, punishable as provided in s.
 58 775.082 or s. 775.083.

Page 2 of 3

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

23-00286-16

2016180

59 (3) In a prosecution for a violation of ~~the provisions of~~
60 this section, the fact it is no defense that the person so
61 charged returned or intended to return the article so stolen,
62 embezzled, or copied is not a defense.

63 Section 2. This act shall take effect October 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: September 17, 2015

I respectfully request that **Senate Bill #180**, relating to Trade Secrets, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Senator Garrett Richter
Florida Senate, District 23

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-5-2015
Meeting Date

180
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 8119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/5/15
Meeting Date

180
Bill Number (if applicable)

Topic TRADE SECRETS

Amendment Barcode (if applicable)

Name MARTY BOWEN

Job Title _____

Address 108 E JEFFERSON

Phone 850 228-3904

TALLAHASSEE FL 32308
City State Zip

Email mbbusa@1791.com

Speaking: For Against Information

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

Representing LGBS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/8/2015
Meeting Date

180
Bill Number (if applicable)

Topic Trade Secrets

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title

Address 108 E Jefferson Street

Phone 850 559 0855

Tall FL 32308
City State Zip

Email cyhenderson

Speaking: For Against Information

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

Representing ~~Bob~~ Livebauger

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 182

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Public Records and Meetings/Trade Secrets

DATE: October 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 182 reenacts several public records exemptions of trade secret information to conform to the definition of trade secret proposed in CS/SB 180, which expressly includes financial information in the definition of “trade secret” in s. 812.081, F.S. This exemption allows state agencies to refuse to disclose financial information as a trade secret if there is a public records request.

The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

Because this bill expands public records and meetings exemptions, it will require a two-thirds vote of each house in order to pass.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access governmental meetings and to inspect or copy government records. The public may inspect or copy any records made or received in connection with the official business of any public body, officer, or employee of the

state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government, counties, municipalities, school districts, or special districts at which public business is transacted or discussed.² The Legislature's meetings must be open and noticed to the public, unless there is an exception provided by the constitution.³

The Florida Statutes specify conditions under which public access must be provided to government records and meetings. Chapter 119, Florida Statutes, the "Public Records Act," constitutes the main body of public records laws, and states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁵ The Florida Supreme Court interprets "public records" as "any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type."⁶ A violation of the Public Records Act may result in civil or criminal liability.⁷

Section 286.011, Florida Statutes, the "Sunshine Law,"⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁹

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.

⁴ Section 119.01(1), F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.

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

⁷ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are penalties for violations of those laws.

⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

⁹ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, s. 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

The Legislature may, by two-thirds votes of the House and the Senate¹⁰, create an exemption to public records or open meetings requirements.¹¹ An exemption must explicitly state the public necessity of the exemption¹² and must be tailored to accomplish the stated purpose of the law.¹³ A statutory exemption which does not meet these two criteria may be found unconstitutional, and efforts may not be made by the court to preserve the exemption.¹⁴

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of public records and public meeting exemptions, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR Act).

The OGSR Act prescribes a legislative review process for newly created or substantially amended public records and open meetings exemptions.¹⁵ The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repeal of the sunset date rather than reenactment of the exemption.

Under the OGSR Act, the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following specific questions in such a review:¹⁷

- 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?

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹² FLA. CONST., art. I, s. 24(c).

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional.

¹⁵ Sections 286.0111 and 119.15, F.S. Section 286.0111, F.S. provides that the OGSR Act's provisions found in s. 119.15, F.S., apply to s. 286.011, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered substantially amended if it is expanded to include more information or to include meetings. The OGSR Act does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. While the OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

- 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?

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁸ An exemption serves an identifiable purpose if it meets one of the following criteria:

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

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.²²

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

Trade Secrets

A "trade secret" in accordance with s. 812.081(1)(c), F.S., is "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."

Section 812.081, F.S., further defines a "trade secret" as information used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² Section 119.15(6)(b), F.S.

²³ FLA. CONST., art. I, s. 24(c).

²⁴ Section 119.15(7), F.S.

- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.²⁵

Courts similarly use this factor test to determine whether a document is trade secret subject to protection from public records laws. In *Sepro v. Department of Environmental Protection*,²⁶ the court held that a document was subject to disclosure because the business failed the first prong of the test (that the document be secret) because it had not actively protected or held out the document as a trade secret.

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt from public records requirements. The following sections of the Florida Statutes exempt from public disclosure trade secrets as defined by s. 812.081, F.S.:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida);
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt;²⁷
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Department of Management Services confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 499.012(8)(g) and (m), F.S., makes trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application confidential and exempt;
- Section 499.0121(7), F.S., makes trade secret information reported to DBPR in a list of prescription drug wholesalers confidential and exempt;
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt;
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.

²⁵ Section 812.081(1)(c), F.S.

²⁶ 839 So. 2d 781 (Fla. 1st DCA 2003).

²⁷ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records 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). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt;
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons confidential and exempt;
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt;
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt;
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- Section 815.04(3), F.S., makes trade secret information that is held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

III. Effect of Proposed Changes:

The bill conforms and reenacts provisions that make trade secrets confidential and exempt to the new definition of trade secret proposed by CS/SB 180, which adds “financial information” into the current definition.

By adding “financial information” to the definition of trade secrets, all the public records exemptions which cite to s. 812.081, F.S., are also affected. Some trade secret exemptions were enacted before the Florida Constitution was amended in 2002. The constitutional amendment made the records of all three branches of state government public record but still preserved any public records exemption which existed before the constitutional amendment was enacted.²⁸ This bill amends the older statutes to make them exempt from the public records requirements of the Florida Constitution.

This bill expands public records exemption for Space Florida meetings in which the trade secrets are discussed and closed to the public.²⁹

Any expansion of an exemption makes the exemptions subject to review and repeal on October 2, 2021, unless the Legislature continues the exemptions, pursuant to the OGSR Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ FLA. CONST. art. 1 s. 24.

²⁹ Section 286.011, F.S. and FLA. CONST. art. 1 s. 24(b).

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

Section 24(c) of Article I of the Florida 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) of Article I of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records or public-meetings exemption. The Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement for this bill provides that financial information be made confidential and exempt from s. 119.07(1), F.S. and Article I, section 24(a) of the Florida Constitution. This bill also includes an exemption for public meetings discussing trade secrets, and makes those meeting exempt from the requirements of s. 286.011, F.S, and Article I, section 24(b) of the Florida Constitution. This public necessity statement provides that disclosure of financial information would be detrimental to businesses.

Breadth of Exemption

Section 24(c) of Article I of the Florida Constitution requires a public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands public record exemptions to include financial information. Generally, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Businesses previously hesitant to enter into contracts with the state because of fear of release of their financial trade secrets may now attempt to enter that marketplace.

C. Government Sector Impact:

Government entities will have to train their staff to exclude trade secret financial information from public disclosure.

In response to public records requests, state agencies will be required to interpret what constitutes a financial information trade secret. In turn, agencies may incur costs related to litigation regarding its determination to protect a document as trade secret or provide it as a public record.

VI. Technical Deficiencies:

None.

VII. Related Issues:

State agencies must balance this exemption against the general policy that “all state, county, and municipal records shall be open for personal inspection by any person.”³⁰ This may prove difficult because what constitutes “financial information” under the bill may entail a highly fact-specific determination based on, e.g., the business’ treatment of the information as secret and the value of the information to the business. This may result in the same type of information being classified as trade secret for one business, but not another.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071, 125.0104, 288.1226, 331.326, 365.174, 381.83, 403.7046, 403.73, 499.012, 499.0121, 499.051, 499.931, 502.222, 570.48, 573.123, 601.10, 601.15, 601.152, 601.76, and 815.04.

IX. Additional Information:

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

CS by Commerce and Tourism on October 5, 2015:

The committee substitute:

- Subjects the entirety of s. 365.174, F.S., to the Open Government Sunset Review Act;
- Clarifies that trade secret information contained in the complaint and obtained by the department pursuant to its investigation constitutes a trade secret; and
- Removed the republication of a criminal prohibition.

- B. **Amendments:**

None.

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

³⁰ Section 119.01(1), F.S.



347760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/06/2015	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 142 - 158

and insert:

Section 5. Section 365.174, Florida Statutes, is amended to read:

365.174 Proprietary confidential business information.—

(1) (a) All proprietary confidential business information submitted by a provider to the board or the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I



347760

11 of the State Constitution.

12 (b) Statistical abstracts of information collected by the
13 board or the office may be released or published, but only in a
14 manner that does not identify or allow identification of
15 subscribers or their service numbers or of revenues attributable
16 to any provider.

17 (2) (a) All proprietary confidential business information
18 submitted by a provider to the Department of Revenue, as an
19 agent of the board, is confidential and exempt from s. 119.07(1)
20 and s. 24(a), Art. I of the State Constitution.

21 (b) The Department of Revenue may provide information
22 relative to s. 365.172(9) to the Secretary of Management
23 Services, or his or her authorized agent, or to the E911 Board
24 established in s. 365.172(5) for use in the conduct of the
25 official business of the Department of Management Services or
26 the E911 Board.

27 ~~(c) This subsection is subject to the Open Government~~
28 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
29 ~~repealed on October 2, 2019, unless reviewed and saved from~~
30 ~~repeal through reenactment by the Legislature.~~

31 (3) As used in this section, the term "proprietary
32 confidential business information" means customer lists,
33 customer numbers, individual or aggregate customer data by
34 location, usage and capacity data, network facilities used to
35 serve subscribers, technology descriptions, technical
36 information, or trade secrets, including trade secrets as
37 defined in s. 812.081, and the actual or developmental costs of
38 E911 systems that are developed, produced, or received
39 internally by a provider or by a provider's employees,



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40 directors, officers, or agents.

41 (4) This subsection is subject to the Open Government
42 Sunset Review Act in accordance with s. 119.15 and shall stand
43 repealed on October 2, 2021, unless reviewed and saved from
44 repeal through reenactment by the Legislature.

45
46 ===== T I T L E A M E N D M E N T =====

47 And the title is amended as follows:

48 Delete line 14

49 and insert:

50 E911 Board, the Technology Program within the
51 Department of Management Services, and the Department
52 of Revenue, trade secret information held



824334

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/06/2015	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 404 - 410

and insert:

(b) Information that constitutes a ~~However,~~ trade secret,
as defined in s. 812.081, contained in the complaint and
obtained by the department pursuant to the investigation must
~~information contained therein as defined by s. 812.081(1)(c)~~
~~shall~~ remain confidential and exempt from ~~the provisions of~~ s.
119.07(1) and s. 24(a), Art. I of the State Constitution, as



824334

11 long as the information is held by ~~retained~~ by the department.
12 This

13
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 Delete lines 18 - 20

17 and insert:

18 held by the Department of Business and Professional
19 Regulation through the complaint and investigation of
20 a permitholder under the Florida Drug and Cosmetic
21 Act, trade secret information of a



893662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/06/2015	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Richter) recommended the following:

Senate Amendment

Delete lines 607 - 628

and insert:

Section 20. Subsections (3) and (6) of section 815.04, Florida Statutes, are amended to read:

815.04 Offenses against intellectual property; public records exemption.—

(3) Data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, that is held by an agency



893662

11 as defined in chapter 119, and that resides or exists internal
12 or external to a computer, computer system, computer network, or
13 electronic device is confidential and exempt from the provisions
14 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
15 This subsection is subject to the Open Government Sunset Review
16 Act in accordance with s. 119.15 and shall stand repealed on
17 October 2, 2021, unless reviewed and saved from repeal through
18 reenactment by the Legislature.

19 ~~(6) Subsections (3) and (4) are subject to the Open~~
20 ~~Government Sunset Review Act in accordance with s. 119.15, and~~
21 ~~shall stand repealed on October 2, 2019, unless reviewed and~~
22 ~~saved from repeal through reenactment by the Legislature.~~

By Senator Richter

23-00287-16

2016182__

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 amending ss. 119.071, 125.0104, 288.1226, 331.326,
 4 365.174, 381.83, 403.7046, 403.73, 499.012, 499.0121,
 5 499.051, 499.931, 502.222, 570.48, 573.123, 601.10,
 6 601.15, 601.152, 601.76, and 815.04, F.S.; expanding
 7 public records exemptions for certain data processing
 8 software obtained by an agency, certain information
 9 held by a county tourism promotion agency, information
 10 related to trade secrets held by the Florida Tourism
 11 Industry Marketing Corporation, information related to
 12 trade secrets held by Space Florida, proprietary
 13 confidential business information submitted to the
 14 Department of Revenue, trade secret information held
 15 by the Department of Health, trade secret information
 16 reported or submitted to the Department of
 17 Environmental Protection, trade secret information
 18 contained in a complaint and any investigatory
 19 documents held by the Department of Business and
 20 Professional Regulation, trade secret information of a
 21 dairy industry business held by the Department of
 22 Agriculture and Consumer Services, trade secret
 23 information held by the Division of Fruits and
 24 Vegetables of the Department of Agriculture and
 25 Consumer Services, trade secret information of a
 26 person subject to a marketing order held by the
 27 Department of Agriculture and Consumer Services, trade
 28 secret information provided to the Department of
 29 Citrus, trade secret information of noncommodity

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30 advertising and promotional program participants held
 31 by the Department of Citrus, trade secret information
 32 of a person subject to a marketing order held by the
 33 Department of Citrus, a manufacturer's formula filed
 34 with the Department of Agriculture and Consumer
 35 Services, and specified data, programs, or supporting
 36 documentation held by an agency, respectively, to
 37 incorporate changes made to the definition of the term
 38 "trade secret" in s. 812.081, F.S., by SB ___;
 39 expanding a public meeting exemption for any meeting
 40 or portion of a meeting of Space Florida's board at
 41 which trade secrets are discussed to incorporate
 42 changes made to the definition of the term "trade
 43 secret" in s. 812.081, F.S., by SB ___; providing for
 44 future legislative review and repeal of the
 45 exemptions; providing a statement of public necessity;
 46 providing a contingent effective date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Paragraph (f) of subsection (1) of section
 51 119.071, Florida Statutes, is amended to read:
 52 119.071 General exemptions from inspection or copying of
 53 public records.—
 54 (1) AGENCY ADMINISTRATION.—
 55 (f) Data processing software obtained by an agency under a
 56 licensing agreement that prohibits its disclosure and which
 57 software is a trade secret, as defined in s. 812.081, and
 58 agency-produced data processing software that is sensitive are

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59 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 60 Constitution. The designation of agency-produced software as
 61 sensitive ~~does shall~~ not prohibit an agency head from sharing or
 62 exchanging such software with another public agency. This
 63 paragraph is subject to the Open Government Sunset Review Act in
 64 accordance with s. 119.15 and shall stand repealed on October 2,
 65 2021, unless reviewed and saved from repeal through reenactment
 66 by the Legislature.

67 Section 2. Paragraph (d) of subsection (9) of section
 68 125.0104, Florida Statutes, is amended to read:

69 125.0104 Tourist development tax; procedure for levying;
 70 authorized uses; referendum; enforcement.—

71 (9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any
 72 other powers and duties provided for agencies created for the
 73 purpose of tourism promotion by a county levying the tourist
 74 development tax, such agencies are authorized and empowered to:

75 (d) Undertake marketing research and advertising research
 76 studies and provide reservations services and convention and
 77 meetings booking services consistent with the authorized uses of
 78 revenue as set forth in subsection (5).

79 1. Information given to a county tourism promotion agency
 80 which, if released, would reveal the identity of persons or
 81 entities who provide data or other information as a response to
 82 a sales promotion effort, an advertisement, or a research
 83 project or whose names, addresses, meeting or convention plan
 84 information or accommodations or other visitation needs become
 85 booking or reservation list data, is exempt from s. 119.07(1)
 86 and ~~from~~ s. 24(a), Art. I of the State Constitution.

87 2. The following information, when held by a county tourism

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88 promotion agency, is exempt from s. 119.07(1) and ~~from~~ s. 24(a),
 89 Art. I of the State Constitution:

90 ~~a. A trade secret, as defined in s. 812.081.~~

91 ~~a.b.~~ Booking business records, as defined in s. 255.047.

92 ~~b.c.~~ Trade secrets and commercial or financial information
 93 gathered from a person and privileged or confidential, as
 94 defined and interpreted under 5 U.S.C. s. 552(b)(4), or any
 95 amendments thereto.

96 3. A trade secret, as defined in s. 812.081, held by a
 97 county tourism promotion agency is exempt from s. 119.07(1) and
 98 s. 24(a), Art. I of the State Constitution. This subparagraph is
 99 subject to the Open Government Sunset Review Act in accordance
 100 with s. 119.15 and shall stand repealed on October 2, 2021,
 101 unless reviewed and saved from repeal through reenactment by the
 102 Legislature.

103 Section 3. Subsection (8) of section 288.1226, Florida
 104 Statutes, is amended to read:

105 288.1226 Florida Tourism Industry Marketing Corporation;
 106 use of property; board of directors; duties; audit.—

107 (8) PUBLIC RECORDS EXEMPTION.—The identity of any person
 108 who responds to a marketing project or advertising research
 109 project conducted by the corporation in the performance of its
 110 duties on behalf of Enterprise Florida, Inc., or trade secrets
 111 as defined by s. 812.081 obtained pursuant to such activities,
 112 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 113 Constitution. This subsection is subject to the Open Government
 114 Sunset Review Act in accordance with s. 119.15 and shall stand
 115 repealed on October 2, 2021, unless reviewed and saved from
 116 repeal through reenactment by the Legislature.

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117 Section 4. Section 331.326, Florida Statutes, is amended to
118 read:

119 331.326 Information relating to trade secrets
120 confidential.—The records of Space Florida regarding matters
121 encompassed by this act are public records subject to ~~the~~
122 ~~provisions of~~ chapter 119. Any information held by Space Florida
123 which is a trade secret, as defined in s. 812.081, including
124 trade secrets of Space Florida, any spaceport user, or the space
125 industry business, is confidential and exempt from ~~the~~
126 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
127 Constitution and may not be disclosed. If Space Florida
128 determines that any information requested by the public will
129 reveal a trade secret, it shall, in writing, inform the person
130 making the request of that determination. The determination is a
131 final order as defined in s. 120.52. Any meeting or portion of a
132 meeting of Space Florida's board is exempt from ~~the provisions~~
133 ~~of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution
134 when the board is discussing trade secrets. Any public record
135 generated during the closed portions of the meetings, such as
136 minutes, tape recordings, and notes, is confidential and exempt
137 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the
138 State Constitution. This section is subject to the Open
139 Government Sunset Review Act in accordance with s. 119.15 and
140 shall stand repealed on October 2, 2021, unless reviewed and
141 saved from repeal through reenactment by the Legislature.

142 Section 5. Subsection (2) of section 365.174, Florida
143 Statutes, is amended to read:

144 365.174 Proprietary confidential business information.—
145 (2) (a) All proprietary confidential business information

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146 submitted by a provider to the Department of Revenue, as an
147 agent of the board, is confidential and exempt from s. 119.07(1)
148 and s. 24(a), Art. I of the State Constitution.

149 (b) The Department of Revenue may provide information
150 relative to s. 365.172(9) to the Secretary of Management
151 Services, or his or her authorized agent, or to the E911 Board
152 established in s. 365.172(5) for use in the conduct of the
153 official business of the Department of Management Services or
154 the E911 Board.

155 (c) This subsection is subject to the Open Government
156 Sunset Review Act in accordance with s. 119.15 and shall stand
157 repealed on October 2, 2021 ~~2019~~, unless reviewed and saved from
158 repeal through reenactment by the Legislature.

159 Section 6. Section 381.83, Florida Statutes, is amended to
160 read:

161 381.83 Trade secrets; confidentiality.—

162 (1) Records, reports, or information obtained from any
163 person under this chapter, unless otherwise provided by law,
164 must shall be available to the public, except upon a showing
165 satisfactory to the department by the person from whom the
166 records, reports, or information is obtained that such records,
167 reports, or information, or a particular part thereof, contains
168 trade secrets as defined in s. 812.081 ~~812.081(1)~~ (e). Such trade
169 secrets are shall be confidential and are exempt from ~~the~~
170 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
171 Constitution. The person submitting such trade secret
172 information to the department must request that it be kept
173 confidential and must inform the department of the basis for the
174 claim of trade secret. The department shall, subject to notice

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175 and opportunity for hearing, determine whether the information,
 176 or portions thereof, claimed to be a trade secret is or is not a
 177 trade secret. Such trade secrets may be disclosed, however, to
 178 authorized representatives of the department or, pursuant to
 179 request, to other governmental entities in order for them to
 180 properly perform their duties, or when relevant in any
 181 proceeding under this chapter. Authorized representatives and
 182 other governmental entities receiving such trade secret
 183 information shall retain its confidentiality. Those involved in
 184 any proceeding under this chapter, including a hearing officer
 185 or judge or justice, shall retain the confidentiality of any
 186 trade secret information revealed at such proceeding.

187 (2) This section is subject to the Open Government Sunset
 188 Review Act in accordance with s. 119.15 and shall stand repealed
 189 on October 2, 2021, unless reviewed and saved from repeal
 190 through reenactment by the Legislature.

191 Section 7. Subsection (2) and paragraph (b) of subsection
 192 (3) of section 403.7046, Florida Statutes, are amended to read:

193 403.7046 Regulation of recovered materials.-

194 (2) Information reported pursuant to ~~the requirements of~~
 195 this section or any rule adopted pursuant to this section which,
 196 if disclosed, would reveal a trade secret, as defined in s.
 197 ~~812.081 812.081(1)(c)~~, is confidential and exempt from ~~the~~
 198 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 199 Constitution. For reporting or information purposes, however,
 200 the department may provide this information in such form that
 201 the names of the persons reporting such information and the
 202 specific information reported are not revealed. This subsection
 203 is subject to the Open Government Sunset Review Act in

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204 accordance with s. 119.15 and shall stand repealed on October 2,
 205 2021, unless reviewed and saved from repeal through reenactment
 206 by the Legislature.

207 (3) Except as otherwise provided in this section or
 208 pursuant to a special act in effect on or before January 1,
 209 1993, a local government may not require a commercial
 210 establishment that generates source-separated recovered
 211 materials to sell or otherwise convey its recovered materials to
 212 the local government or to a facility designated by the local
 213 government, nor may the local government restrict such a
 214 generator's right to sell or otherwise convey such recovered
 215 materials to any properly certified recovered materials dealer
 216 who has satisfied the requirements of this section. A local
 217 government may not enact any ordinance that prevents such a
 218 dealer from entering into a contract with a commercial
 219 establishment to purchase, collect, transport, process, or
 220 receive source-separated recovered materials.

221 (b)1. Before engaging in business within the jurisdiction
 222 of the local government, a recovered materials dealer must
 223 provide the local government with a copy of the certification
 224 provided for in this section. In addition, the local government
 225 may establish a registration process whereby a recovered
 226 materials dealer must register with the local government before
 227 engaging in business within the jurisdiction of the local
 228 government. Such registration process is limited to requiring
 229 the dealer to register its name, including the owner or operator
 230 of the dealer, and, if the dealer is a business entity, its
 231 general or limited partners, its corporate officers and
 232 directors, its permanent place of business, evidence of its

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233 certification under this section, and a certification that the
 234 recovered materials will be processed at a recovered materials
 235 processing facility satisfying the requirements of this section.
 236 The local government may not use the information provided in the
 237 registration application to compete unfairly with the recovered
 238 materials dealer until 90 days after receipt of the application.
 239 All counties, and municipalities whose population exceeds 35,000
 240 according to the population estimates determined pursuant to s.
 241 186.901, may establish a reporting process that must ~~which shall~~
 242 be limited to the regulations, reporting format, and reporting
 243 frequency established by the department pursuant to this
 244 section, which must ~~shall~~, at a minimum, include requiring the
 245 dealer to identify the types and approximate amount of recovered
 246 materials collected, recycled, or reused during the reporting
 247 period; the approximate percentage of recovered materials
 248 reused, stored, or delivered to a recovered materials processing
 249 facility or disposed of in a solid waste disposal facility; and
 250 the locations where any recovered materials were disposed of as
 251 solid waste. ~~Information reported under this subsection which,
 252 if disclosed, would reveal a trade secret, as defined in s.
 253 812.081(1)(c), is confidential and exempt from the provisions of
 254 s. 24(a), Art. I of the State Constitution and s. 119.07(1).~~ The
 255 local government may charge the dealer a registration fee
 256 commensurate with and no greater than the cost incurred by the
 257 local government in operating its registration program.
 258 Registration program costs are limited to those costs associated
 259 with the activities described in this subparagraph ~~paragraph~~.
 260 Any reporting or registration process established by a local
 261 government with regard to recovered materials is ~~shall be~~

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262 governed by ~~the provisions of~~ this section and department rules
 263 adopted pursuant thereto.
 264 2. Information reported under this subsection which, if
 265 disclosed, would reveal a trade secret, as defined in s.
 266 812.081, is confidential and exempt from s. 119.07(1) and s.
 267 24(a), Art. I of the State Constitution. This subparagraph is
 268 subject to the Open Government Sunset Review Act in accordance
 269 with s. 119.15 and shall stand repealed on October 2, 2021,
 270 unless reviewed and saved from repeal through reenactment by the
 271 Legislature.
 272 Section 8. Section 403.73, Florida Statutes, is amended to
 273 read:
 274 403.73 Trade secrets; confidentiality.-
 275 (1) Records, reports, or information obtained from any
 276 person under this part, unless otherwise provided by law, must
 277 ~~shall~~ be available to the public, except upon a showing
 278 satisfactory to the department by the person from whom the
 279 records, reports, or information is obtained that such records,
 280 reports, or information, or a particular part thereof, contains
 281 trade secrets as defined in s. 812.081 ~~812.081(1)(c)~~. Such trade
 282 secrets are ~~shall be~~ confidential and are ~~are~~ exempt from the
 283 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 284 Constitution. The person submitting such trade secret
 285 information to the department must request that it be kept
 286 confidential and must inform the department of the basis for the
 287 claim of trade secret. The department shall, subject to notice
 288 and opportunity for hearing, determine whether the information,
 289 or portions thereof, claimed to be a trade secret is or is not a
 290 trade secret. Such trade secrets may be disclosed, however, to

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291 authorized representatives of the department or, pursuant to
 292 request, to other governmental entities in order for them to
 293 properly perform their duties, or when relevant in any
 294 proceeding under this part. Authorized representatives and other
 295 governmental entities receiving such trade secret information
 296 shall retain its confidentiality. Those involved in any
 297 proceeding under this part, including an administrative law
 298 judge, a hearing officer, or a judge or justice, shall retain
 299 the confidentiality of any trade secret information revealed at
 300 such proceeding.

301 (2) This section is subject to the Open Government Sunset
 302 Review Act in accordance with s. 119.15 and shall stand repealed
 303 on October 2, 2021, unless reviewed and saved from repeal
 304 through reenactment by the Legislature.

305 Section 9. Paragraphs (g) and (m) of subsection (8) of
 306 section 499.012, Florida Statutes, are amended to read:

307 499.012 Permit application requirements.—

308 (8) An application for a permit or to renew a permit for a
 309 prescription drug wholesale distributor or an out-of-state
 310 prescription drug wholesale distributor submitted to the
 311 department must include:

312 (g)1. For an application for a new permit, the estimated
 313 annual dollar volume of prescription drug sales of the
 314 applicant, the estimated annual percentage of the applicant's
 315 total company sales that are prescription drugs, the applicant's
 316 estimated annual total dollar volume of purchases of
 317 prescription drugs, and the applicant's estimated annual total
 318 dollar volume of prescription drug purchases directly from
 319 manufacturers.

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320 2. For an application to renew a permit, the total dollar
 321 volume of prescription drug sales in the previous year, the
 322 total dollar volume of prescription drug sales made in the
 323 previous 6 months, the percentage of total company sales that
 324 were prescription drugs in the previous year, the total dollar
 325 volume of purchases of prescription drugs in the previous year,
 326 and the total dollar volume of prescription drug purchases
 327 directly from manufacturers in the previous year.

328 3. Such portions of the information required pursuant to
 329 this paragraph which are a trade secret, as defined in s.
 330 812.081, shall be maintained by the department as trade secret
 331 information is required to be maintained under s. 499.051. This
 332 subparagraph is subject to the Open Government Sunset Review Act
 333 in accordance with s. 119.15 and shall stand repealed on October
 334 2, 2021, unless reviewed and saved from repeal through
 335 reenactment by the Legislature.

336 (m) For an applicant that is a secondary wholesale
 337 distributor, each of the following:

338 1. A personal background information statement containing
 339 the background information and fingerprints required pursuant to
 340 subsection (9) for each person named in the applicant's response
 341 to paragraphs (k) and (l) and for each affiliated party of the
 342 applicant.

343 2. If any of the five largest shareholders of the
 344 corporation seeking the permit is a corporation, the name,
 345 address, and title of each corporate officer and director of
 346 each such corporation; the name and address of such corporation;
 347 the name of such corporation's resident agent, such
 348 corporation's resident agent's address, and such corporation's

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349 state of its incorporation; and the name and address of each
350 shareholder of such corporation ~~who that~~ owns 5 percent or more
351 of the stock of such corporation.

352 3.a. The name and address of all financial institutions in
353 which the applicant has an account ~~that which~~ is used to pay for
354 the operation of the establishment or to pay for drugs purchased
355 for the establishment, together with the names of all persons
356 ~~who that~~ are authorized signatories on such accounts.

357 b. The portions of the information required pursuant to
358 this subparagraph which are a trade secret, as defined in s.
359 812.081, shall be maintained by the department as trade secret
360 information is required to be maintained under s. 499.051. This
361 sub-subparagraph is subject to the Open Government Sunset Review
362 Act in accordance with s. 119.15 and shall stand repealed on
363 October 2, 2021, unless reviewed and saved from repeal through
364 reenactment by the Legislature.

365 4. The sources of all funds and the amounts of such funds
366 used to purchase or finance purchases of prescription drugs or
367 to finance the premises on which the establishment is to be
368 located.

369 5. If any of the funds identified in subparagraph 4. were
370 borrowed, copies of all promissory notes or loans used to obtain
371 such funds.

372 Section 10. Subsection (7) of section 499.0121, Florida
373 Statutes, is amended to read:

374 499.0121 Storage and handling of prescription drugs;
375 recordkeeping.—The department shall adopt rules to implement
376 this section as necessary to protect the public health, safety,
377 and welfare. Such rules shall include, but not be limited to,

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378 requirements for the storage and handling of prescription drugs
379 and for the establishment and maintenance of prescription drug
380 distribution records.

381 (7) PRESCRIPTION DRUG PURCHASE LIST.—

382 (a) Each wholesale distributor, except for a manufacturer,
383 shall annually provide the department with a written list of all
384 wholesale distributors and manufacturers from whom the wholesale
385 distributor purchases prescription drugs. A wholesale
386 distributor, except a manufacturer, shall notify the department
387 not later than 10 days after any change to either list.

388 (b) Such portions of the information required pursuant to
389 this subsection which are a trade secret, as defined in s.
390 812.081, shall be maintained by the department as trade secret
391 information is required to be maintained under s. 499.051. This
392 paragraph is subject to the Open Government Sunset Review Act in
393 accordance with s. 119.15 and shall stand repealed on October 2,
394 2021, unless reviewed and saved from repeal through reenactment
395 by the Legislature.

396 Section 11. Subsection (7) of section 499.051, Florida
397 Statutes, is amended to read:

398 499.051 Inspections and investigations.—

399 (7) (a) The complaint and all information obtained pursuant
400 to the investigation by the department are confidential and
401 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
402 Constitution until the investigation and the enforcement action
403 are completed.

404 (b) ~~Information that constitutes a However,~~ trade secret,
405 as defined in s. 812.081, information contained in the complaint
406 and all information obtained by the department pursuant to the

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407 ~~investigation must therein as defined by s. 812.081(1)(c) shall~~
 408 remain confidential and exempt from ~~the provisions of s.~~
 409 119.07(1) and s. 24(a), Art. I of the State Constitution, as
 410 long as the information is retained by the department. This
 411 paragraph is subject to the Open Government Sunset Review Act in
 412 accordance with s. 119.15 and shall stand repealed on October 2,
 413 2021, unless reviewed and saved from repeal through reenactment
 414 by the Legislature.

415 (c) This subsection does not prohibit the department from
 416 using such information for regulatory or enforcement proceedings
 417 under this chapter or from providing such information to any law
 418 enforcement agency or any other regulatory agency. However, the
 419 receiving agency shall keep such records confidential and exempt
 420 as provided in this subsection. In addition, this subsection is
 421 not intended to prevent compliance with ~~the provisions of s.~~
 422 499.01212, and the pedigree papers required in that section are
 423 ~~shall not be~~ deemed a trade secret.

424 Section 12. Section 499.931, Florida Statutes, is amended
 425 to read:

426 499.931 Trade secret information.—Information required to
 427 be submitted under this part which is a trade secret as defined
 428 in s. ~~812.081~~ ~~812.081(1)(c)~~ and designated as a trade secret by
 429 an applicant or permitholder must be maintained as required
 430 under s. 499.051. This section is subject to the Open Government
 431 Sunset Review Act in accordance with s. 119.15 and shall stand
 432 repealed on October 2, 2021, unless reviewed and saved from
 433 repeal through reenactment by the Legislature.

434 Section 13. Section 502.222, Florida Statutes, is amended
 435 to read:

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436 502.222 Information relating to trade secrets
 437 confidential.—The records of the department regarding matters
 438 encompassed by this chapter are public records, subject to ~~the~~
 439 ~~provisions of~~ chapter 119, except that any information that
 440 ~~which~~ would reveal a trade secret, as defined in s. 812.081, of
 441 a dairy industry business is confidential and exempt from ~~the~~
 442 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 443 Constitution. If the department determines that any information
 444 requested by the public will reveal a trade secret, it shall, in
 445 writing, inform the person making the request of that
 446 determination. The determination is a final order as defined in
 447 s. 120.52. This section is subject to the Open Government Sunset
 448 Review Act in accordance with s. 119.15 and shall stand repealed
 449 on October 2, 2021, unless reviewed and saved from repeal
 450 through reenactment by the Legislature.

451 Section 14. Subsection (3) of section 570.48, Florida
 452 Statutes, is amended to read:

453 570.48 Division of Fruit and Vegetables; powers and duties;
 454 records.—The duties of the Division of Fruit and Vegetables
 455 include, but are not limited to:

456 (3) Maintaining the records of the division. The records of
 457 the division are public records; however, trade secrets as
 458 defined in s. 812.081 are confidential and exempt from ~~the~~
 459 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 460 Constitution. This subsection is subject to the Open Government
 461 Sunset Review Act in accordance with s. 119.15 and shall stand
 462 repealed on October 2, 2021, unless reviewed and saved from
 463 repeal through reenactment by the Legislature. This section may
 464 ~~shall~~ not be construed to prohibit:

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465 (a) A disclosure necessary to enforcement procedures.
 466 (b) The department from releasing information to other
 467 governmental agencies. Other governmental agencies that receive
 468 confidential information from the department under this
 469 subsection shall maintain the confidentiality of that
 470 information.
 471 (c) The department or other agencies from compiling and
 472 publishing appropriate data regarding procedures, yield,
 473 recovery, quality, and related matters, provided such released
 474 data do not reveal by whom the activity to which the data relate
 475 was conducted.

476 Section 15. Subsection (2) of section 573.123, Florida
 477 Statutes, is amended to read:
 478 573.123 Maintenance and production of records.—
 479 (2) Information that, if disclosed, would reveal a trade
 480 secret, as defined in s. 812.081, of any person subject to a
 481 marketing order is confidential and exempt from ~~the provisions~~
 482 ~~of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 483 and ~~may shall~~ not be disclosed except to an attorney who
 484 provides legal advice to the division about enforcing a
 485 marketing market order or by court order. A person who receives
 486 confidential information under this subsection shall maintain
 487 the confidentiality of that information. This subsection is
 488 subject to the Open Government Sunset Review Act in accordance
 489 with s. 119.15 and shall stand repealed on October 2, 2021,
 490 unless reviewed and saved from repeal through reenactment by the
 491 Legislature.
 492 Section 16. Subsection (8) of section 601.10, Florida
 493 Statutes, is amended to read:

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494 601.10 Powers of the Department of Citrus.—The department
 495 shall have and shall exercise such general and specific powers
 496 as are delegated to it by this chapter and other statutes of the
 497 state, which powers shall include, but are not limited to, the
 498 following:
 499 (8) (a) To prepare and disseminate information of importance
 500 to citrus growers, handlers, shippers, processors, and industry-
 501 related and interested persons and organizations relating to
 502 department activities and the production, handling, shipping,
 503 processing, and marketing of citrus fruit and processed citrus
 504 products. ~~Any information that constitutes a trade secret as~~
 505 ~~defined in s. 812.081(1)(c) is confidential and exempt from s.~~
 506 ~~119.07(1) and shall not be disclosed.~~ For referendum and other
 507 notice and informational purposes, the department may prepare
 508 and maintain, from the best available sources, a citrus grower
 509 mailing list. Such list shall be a public record available as
 510 other public records, but is it shall not be subject to the
 511 purging provisions of s. 283.55.
 512 (b) Any information provided to the department which
 513 constitutes a trade secret as defined in s. 812.081 is
 514 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 515 of the State Constitution. This paragraph is subject to the Open
 516 Government Sunset Review Act in accordance with s. 119.15 and
 517 shall stand repealed on October 2, 2021, unless reviewed and
 518 saved from repeal through reenactment by the Legislature.
 519 (c) ~~(b)~~ Any nonpublished reports or data related to studies
 520 or research conducted, caused to be conducted, or funded by the
 521 department under s. 601.13 is confidential and exempt from s.
 522 119.07(1) and s. 24(a), Art. I of the State Constitution. This

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523 paragraph is subject to the Open Government Sunset Review Act in
524 accordance with s. 119.15 and shall stand repealed on October 2,
525 2017, unless reviewed and saved from repeal through reenactment
526 by the Legislature.

527 Section 17. Paragraph (d) of subsection (7) of section
528 601.15, Florida Statutes, is amended to read:

529 601.15 Advertising campaign; methods of conducting;
530 assessments; emergency reserve fund; citrus research.—

531 (7) All assessments levied and collected under this chapter
532 shall be paid into the State Treasury on or before the 15th day
533 of each month. Such moneys shall be accounted for in a special
534 fund to be designated as the Florida Citrus Advertising Trust
535 Fund, and all moneys in such fund are appropriated to the
536 department for the following purposes:

537 (d)1. The pro rata portion of moneys allocated to each type
538 of citrus product in noncommodity programs shall be used by the
539 department to encourage substantial increases in the
540 effectiveness, frequency, and volume of noncommodity
541 advertising, merchandising, publicity, and sales promotion of
542 such citrus products through rebates and incentive payments to
543 handlers and trade customers for these activities. The
544 department shall adopt rules providing for the use of such
545 moneys. The rules shall establish alternate incentive programs,
546 including at least one incentive program for product sold under
547 advertised brands, one incentive program for product sold under
548 private label brands, and one incentive program for product sold
549 in bulk. For each incentive program, the rules ~~must shall~~
550 establish eligibility and performance requirements and must
551 ~~shall~~ provide appropriate limitations on amounts payable to a

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552 handler or trade customer for a particular season. Such
553 limitations may relate to the amount of citrus assessments
554 levied and collected on the citrus product handled by such
555 handler or trade customer during a 12-month representative
556 period.

557 2. The department may require from participants in
558 noncommodity advertising and promotional programs commercial
559 information necessary to determine eligibility for and
560 performance in such programs. Any information ~~se~~ required which
561 ~~that~~ constitutes a "trade secret" as defined in s. 812.081 is
562 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
563 of the State Constitution. This subparagraph is subject to the
564 Open Government Sunset Review Act in accordance with s. 119.15
565 and shall stand repealed on October 2, 2021, unless reviewed and
566 saved from repeal through reenactment by the Legislature.

567 Section 18. Paragraph (c) of subsection (8) of section
568 601.152, Florida Statutes, is amended to read:

569 601.152 Special marketing orders.—

570 (8)

571 (c)1. Every handler shall, at such times as the department
572 may require, file with the department a return, not under oath,
573 on forms to be prescribed and furnished by the department,
574 certified as true and correct, stating the quantity of the type,
575 variety, and form of citrus fruit or citrus product specified in
576 the marketing order first handled in the primary channels of
577 trade in the state by such handler during the period of time
578 specified in the marketing order. Such returns ~~must shall~~
579 contain any further information deemed by the department to be
580 reasonably necessary to properly administer or enforce this

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581 section or any marketing order implemented under this section.

582 2. Information that, if disclosed, would reveal a trade
583 secret, as defined in s. 812.081, of any person subject to a
584 marketing order is confidential and exempt from s. 119.07(1) and
585 s. 24(a), Art. I of the State Constitution. This subparagraph is
586 subject to the Open Government Sunset Review Act in accordance
587 with s. 119.15 and shall stand repealed on October 2, 2021,
588 unless reviewed and saved from repeal through reenactment by the
589 Legislature.

590 Section 19. Section 601.76, Florida Statutes, is amended to
591 read:

592 601.76 Manufacturer to furnish formula and other
593 information.—Any formula required to be filed with the
594 Department of Agriculture shall be deemed a trade secret as
595 defined in s. 812.081, is confidential and exempt from s.
596 119.07(1) and s. 24(a), Art. I of the State Constitution, and
597 may ~~shall only~~ be divulged only to the Department of Agriculture
598 or to its duly authorized representatives or upon court order
599 ~~orders of a court of competent jurisdiction~~ when necessary in
600 the enforcement of this law. A person who receives such a
601 formula from the Department of Agriculture under this section
602 shall maintain the confidentiality of the formula. This section
603 is subject to the Open Government Sunset Review Act in
604 accordance with s. 119.15 and shall stand repealed on October 2,
605 2021, unless reviewed and saved from repeal through reenactment
606 by the Legislature.

607 Section 20. Subsection (6) of section 815.04, Florida
608 Statutes, is amended, and subsections (3) and (4) of that
609 section are republished, to read:

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610 815.04 Offenses against intellectual property; public
611 records exemption.—

612 (3) Data, programs, or supporting documentation that is a
613 trade secret as defined in s. 812.081, that is held by an agency
614 as defined in chapter 119, and that resides or exists internal
615 or external to a computer, computer system, computer network, or
616 electronic device is confidential and exempt from the provisions
617 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

618 (4) A person who willfully, knowingly, and without
619 authorization discloses or takes data, programs, or supporting
620 documentation that is a trade secret as defined in s. 812.081 or
621 is confidential as provided by law residing or existing internal
622 or external to a computer, computer system, computer network, or
623 electronic device commits an offense against intellectual
624 property.

625 (6) Subsections (3) and (4) are subject to the Open
626 Government Sunset Review Act in accordance with s. 119.15, and
627 shall stand repealed on October 2, 2021 ~~2019~~, unless reviewed
628 and saved from repeal through reenactment by the Legislature.

629 Section 21. The Legislature finds that it is a public
630 necessity that financial information comprising a trade secret
631 as defined in s. 812.081, Florida Statutes, be made exempt or
632 confidential and exempt from s. 119.07(1), Florida Statutes, and
633 s. 24(a), Article I of the State Constitution. The Legislature
634 also finds that it is a public necessity that any portion of a
635 meeting in which a trade secret as defined in s. 812.081,
636 Florida Statutes, is discussed be made exempt from s. 286.011,
637 Florida Statutes, and s. 24(b), Article I of the State
638 Constitution. The Legislature recognizes that, in many

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639 instances, businesses are required to provide financial
640 information for regulatory or other purposes to public entities
641 and that disclosure of such information to competitors of those
642 businesses would be detrimental to the businesses. The
643 Legislature's intent is to protect trade secret information of a
644 confidential nature which includes, but is not limited to, a
645 formula, a pattern, a device, a combination of devices, or a
646 compilation of information used to protect or further a business
647 advantage over those who do not know or use the information, the
648 disclosure of which would injure the affected business in the
649 marketplace. Therefore, the Legislature finds that the need to
650 protect trade secret financial information is sufficiently
651 compelling to override this state's public policy of open
652 government and that the protection of such information cannot be
653 accomplished without these exemptions.

654 Section 22. This act shall take effect on the same date
655 that SB ___ or similar legislation relating to trade secrets
656 takes effect, if such legislation is adopted in the same
657 legislative session or an extension thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: September 17, 2015

I respectfully request that **Senate Bill #182**, relating to Public Records and Meetings/ Trade Secrets , be placed on the:

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

A handwritten signature in blue ink, appearing to read "Garrett Richter".

Senator Garrett Richter
Florida Senate, District 23

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-5-2015

Meeting Date

182

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10/5/15
Meeting Date

180
Bill Number (if applicable)

Topic TRADE SECRETS

Amendment Barcode (if applicable)

Name MARTY BOWEN

Job Title _____

Address 108 E JEFFERSON
Street

Phone 850 228-3900

City

State

Zip

Email mbbusa@1791.com

Speaking: For Against Information

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

Representing LEBS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

10/8/2015
Meeting Date

182
Bill Number (if applicable)

Topic Trade Secrets

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title

Address 108 E Jefferson St
Street
Tall FL 32385
City State Zip

Phone 850-559-0855

Email chenderson@me.com

Speaking: For Against Information

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

Representing Linebaugh

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 186

INTRODUCER: Commerce and Tourism Committee and Senator Clemens

SUBJECT: Social Media Privacy

DATE: October 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	McKay	CM	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 186 prohibits employers from requiring or requesting an employee or a prospective employee to provide a user name, password, or other means of accessing a social media account, unless it is an account used for business purposes. An employer may not take an adverse employment action against an employee or refuse to hire a prospective employee based on a refusal to provide such access. Employers who violate these provisions may be subject to a civil action, and if the employee or prospective employee prevails, he or she may be granted injunctive relief or may recover actual damages or \$500 for each violation, whichever is greater. A prevailing employee or prospective employee may also recover court costs and reasonable attorney fees. The bill provisions do not apply to: an employer complying with a duty to monitor or retain employee communications pursuant to state or federal law or a self-regulatory organization defined in the Securities Exchange Act; or law enforcement agencies screening prospective employees or investigating employees.

II. Present Situation:

Federal and State Employee Protections

Under current law, employers are prohibited from discriminating against applicants or employees on the basis of disabilities, race or color, gender, national origin, religion, age, or genetic

information.¹ These prohibitions can be found in the Americans with Disabilities Act,² the Civil Rights Act of 1964,³ the Age Discrimination in Employment Act of 1967,⁴ and the Genetic Information Nondiscrimination Act of 2008.⁵ Additionally, the federal bankruptcy law makes it illegal for an employer to discriminate against an individual based on bankruptcy.⁶

Florida law also provides similar protections from discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or marital status.⁷ Florida law also provides protection from employment discrimination on the basis of sickle-cell trait.⁸

Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. In some cases a job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Employers are not specifically prohibited from asking an employee or applicant his or her age or date of birth, race, national origin, gender, or status of pregnancy. In fact, it can be necessary for employers to track information about race for affirmative action purposes or applicant flow; the U.S. Equal Employment Opportunity Commission (EEOC) suggests the use of separate forms to keep information about race separate from the application. However, in general, with regard to interview questions, requests for certain information will be closely scrutinized to ensure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by a federal law. If the information is used in the selection decision and members of particular groups are excluded from employment, the inquiries can constitute evidence of discrimination. For example, unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions.⁹

Social Media and Employment

In recent years, the use of social media by individuals has become widespread and pervasive. Three of the largest social media communities collectively report more than 2 billion monthly average users.¹⁰ Social media refers to electronic communication through which users may create

¹ More information is available on the U.S. Equal Employment Opportunity Commission website, "Discrimination by Type," available at <http://www.eeoc.gov/laws/types/index.cfm> (last visited Sept. 23, 2015). Gender discrimination also includes issues related to pregnancy, childbirth, related medical conditions, sexual harassment, and equal pay.

² 42 U.S.C. s. 12101 et. seq.

³ 42 U.S.C. s. 2000e et. seq.

⁴ 29 U.S.C. s. 621 et. seq.

⁵ 29 U.S.C. s. 1635 et. seq.

⁶ 11 U.S.C. s. 525.

⁷ Chapter 760, F.S., Florida Civil Rights Act.

⁸ Section 448.075, F.S.

⁹ U.S. Equal Employment Opportunity Commission, "Questions and Answers About Race and Color Discrimination in Employment," available at http://www.eeoc.gov/policy/docs/qanda_race_color.html (last visited Sept. 23, 2015).

¹⁰ Facebook reports the number of average monthly active users is 1.49 billion as of June 30, 2015 ("Facebook Reports Second Quarter 2015 Results," available at <http://investor.fb.com/releasedetail.cfm?ReleaseID=924562> (last visited Sept. 23, 2015)); Twitter reports the number of average monthly users is 316 million as of June 30, 2015 ("Twitter Reports Second Quarter 2015 Results," available at http://files.shareholder.com/downloads/AMDA-2F526X/757570822x0x841607/E35857E7-8984-48C1-A33B-15B62F72A0F7/2015_Q2_Earnings_press_release.pdf (last

online communities to share information, personal messages, and other content.¹¹ Social media is used for both personal and commercial purposes, with businesses primarily using the platform to interact with consumers. Individuals may use the platform for a variety of reasons, including social, business, and educational uses.

Increasingly, employers have used social media to monitor employees' behavior outside the workplace and to screen applicants for employment.¹² Employers indicate that reviewing information about prospective employees available online helps reduce legal liability associated with negligent hiring or may be used to discover or investigate otherwise impermissible behavior such as harassment of a co-worker.¹³ However, access to social media accounts may also provide the employer information that it would not legally be permissible to inquire of an employee or an applicant, such as the nature of an individual's disability.¹⁴

In addition, as part of the terms of use for many social networking websites, the user agrees not to disclose the user name and password information. Failure to adhere to the terms of use may result in the user account being limited, suspended, or terminated.¹⁵

Since 2012, many states have introduced legislation or enacted laws that limit an employer's or prospective employer's ability to require access to the social media accounts of its employees or applicants.¹⁶ A few states have also passed laws that provide protection for students by limiting the ability of educational institutions to require access to social media accounts.

Federal Law and Social Media

*National Labor Relations Act*¹⁷

The National Labor Relations Board (NLRB) has issued guidance that certain work-related conversations may be protected concerted activity under the National Labor Relations Act

visited Sept. 23, 2015)); LinkedIn reports a membership of 380 million members ("LinkedIn Announces Second Quarter 2015 Results," available at <https://press.linkedin.com/site-resources/news-releases/2015/linkedin-announces-second-quarter-2015-results> (last visited Sept. 23, 2015)).

¹¹ Merriam-Webster definition, available at <http://www.merriam-webster.com/dictionary/social%20media> (last visited February 4, 2014).

¹² Sprague, Robert, *Invasion of the Social Networks: Blurring the Line between Personal Life and the Employment Relationship*, 50 U. Louisville L. Rev. 1, 4 (2011).

¹³ Id. at 7-9, 19-27.

¹⁴ Id. at 11-12.

¹⁵ For more information, see Facebook. "Statement of Rights and Responsibilities," available at <http://www.facebook.com/terms.php> (last visited Sept. 23, 2015); LinkedIn, "User Agreement," available at http://www.linkedin.com/legal/user-agreement?trk=hb_ft_userag (last visited Sept. 23, 2015); and Instagram, "Terms of Use," available at <http://instagram.com/legal/terms/> (last visited Sept. 23, 2015).

¹⁶ The states who have enacted laws include Arkansas, California, Colorado, Connecticut, Illinois, Louisiana, Maryland, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Virginia, Washington, and Wisconsin. National Conference of State Legislatures, "Employer Access to Social Media Usernames and Passwords," available at <http://www.ncsl.org/research/telecommunications-and-information-technology/state-laws-prohibiting-access-to-social-media-usernames-and-passwords.aspx> (last visited Sept. 23, 2015).

¹⁷ 29 U.S.C. s. 151 et. seq. The NLRA does not apply to the federal government or any wholly owned government corporation, federal reserve banks, state government or its political divisions, those subject to the Railway Labor Act, agricultural laborers, independent contractors, or those employed by either a parent or spouse.

(NLRA).¹⁸ The NLRA protects the rights of certain employees to organize into labor organizations and engage in concerted activity for the purposes of collective bargaining. The law prohibits employers from interfering or restraining this activity. The guidance from the NLRB, provided in a series of memos from its General Counsel, advises that activity on social media in which terms and conditions of employment were addressed with other employees, is protected communication as “protected concerted activity.” The General Counsel also advises that social media policies should not be so broad as to prohibit activities that would be protected under federal law, and that an employee’s “gripes” are not protected activity if they are not made in relation to group activity among employees.¹⁹

Stored Communications Act²⁰

The Stored Communications Act (SCA), enacted in 1986, makes it unlawful for anyone who “intentionally accesses without authorization a facility through which an electronic communications service is provided; or intentionally exceeds an authorization to access such facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in the electronic storage in such system. . . .”²¹ The SCA includes some exceptions to its provisions, including conduct authorized by the person or entity providing the electronic communications service, by a user of that service, or certain governmental agencies with specific authorization.

A few courts have found that the SCA provides individuals with some privacy rights. For example, *Ehling v. Monmouth-Ocean Hospital Service Corp.*, involved screenshots of an employee’s Facebook wall that were provided to a supervisor by a co-worker. Based on the information provided in these screenshots, the employer took adverse employment action against the employee and the employee brought suit alleging violations of the SCA and invasion of privacy, among other claims. The court held that a Facebook wall post met the definition of an electronic communication and is held in electronic storage on the Facebook servers.²² If a user chooses to make posts on her or his Facebook wall private, meaning that it is not publicly available, then it would be protectable under the SCA.²³

Fair Credit Reporting Act²⁴

Under the Fair Credit Reporting Act (FCRA), employers are permitted to obtain consumer reports for employment purposes.²⁵ The uses may include employment, promotion, reassignment

¹⁸ Although the NLRA does not define “concerted activity,” the NLRB defines it as “two or more employees tak[ing] action for their mutual aid or protection regarding terms and conditions of employment.” National Labor Relations Board, “Employee Rights,” available at <https://www.nlr.gov/rights-we-protect/employee-rights> (last visited Sept. 23, 2015).

¹⁹ The NLRB and Social Media, available at <http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media> (last visited Sept. 23, 2015).

²⁰ 18 U.S.C. s. 2701 et. seq.

²¹ 18 U.S.C. s. 2701(a).

²² 961 F.Supp.2d 659 (D.N.J. Aug. 20, 2013). The employee had her profile set to “private,” and limited access to only her Facebook friends, and the supervisor was not a friend on Facebook. See also *Pietrylo v. Hillstone Restaurant Group*, 2009 WL 3128420 (D.N.J. Sept. 25, 2009).

²³ Id. citing *Viacom Int’l Inc. v. YouTube, Inc.* 253 F.R.D. 256, 265 (S.D.N.Y. 2008); *Crispin v. Christian Audiger, Inc.* 717 F.Supp.2d 965, 991 (C.D. Cal 2010); cf. *Snow v. DirecTV, Inc.* 450 F.3d 1314, 1321 (11th Cir. 2006).

²⁴ 15 U.S.C. s. 1681 et. seq.

²⁵ A consumer report is any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or

or retention as an employee. The FCRA places a number of requirements on the employer regarding notification and disclosure about the use of the consumer reports and only applies to those reports obtained from a third party that are utilized to make an employment decision.²⁶ The employer must obtain written consent from the applicant or employee authorizing the employer to obtain a consumer report. If a consumer report that is used for employment purposes contains information that is obtained from a social media account, the third party provider must comply with the FCRA, including taking reasonable steps to ensure the accuracy of the information, providing a dispute process, and requiring any employer using its services to certify that the consumer report will not be used in any way to violate federal or state equal employment opportunity laws.²⁷

III. Effect of Proposed Changes:

Section 1 creates s. 488.077, F.S., to limit an employer's or prospective employer's access to a social media²⁸ account of an employee or prospective employee.

This bill prohibits an employer from requesting the username, password, or any other means of accessing the social media account of an employee or prospective employee, if the social media account's contents are not available to the general public. Nothing in the bill prohibits an employer from accessing and viewing publicly available information on an employee's social media account. The bill also allows an employer to request or require access to a social media account used primarily for the employer's business purposes.

The employer may not take any retaliatory personnel action as a result of an employee's refusal to allow the employer access to his or her private social media account.²⁹ An employer may not refuse or fail to hire an individual based on a refusal to allow employer access to the individual's social media account.

The bill creates a private right of action against an employer or prospective employer who violates the provisions of the bill. The civil action must be brought within two years after the violation occurred and remedies include injunctive relief to enjoin the employer from continuing to violate the provisions of the bill, as well as damages equal to the amount of actual damages or \$500 per violation, whichever is greater. A prevailing plaintiff is also entitled to recover court costs and reasonable attorney fees.

mode of living which is issued or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance, employment, or any other authorized purpose. 15 U.S.C. s. 1681a(d)(1). An employment purpose is defined as "a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee." 15 U.S.C. s. 1681a(h).

²⁶ If the applicant has applied by mail, telephone, computer or other similar means, the applicant must be advised by oral, written, or electronic means that a consumer report may be obtained for employment purposes and the applicant must consent orally, in writing, or electronically.

²⁷ Fair, Lesley, Federal Trade Commission, "The Fair Credit Reporting Act & Social Media: What Businesses Should Know," (June 23, 2011), available at <https://www.ftc.gov/news-events/blogs/business-blog/2011/06/fair-credit-reporting-act-social-media-what-businesses> (last visited Sept. 23, 2015).

²⁸ "Social media" is defined as an interactive personal account or profile that an individual establishes and uses through an electronic application, service, or platform to generate or to store content, including, but not limited to, videos, photographs, blogs, instant messages, audio recordings, and e-mail.

²⁹ "Retaliatory personnel action" is defined as the discharge, suspension, demotion, or any other adverse employment action in the terms and conditions of employment taken by an employer against an employee. See s. 488.101, F.S.

The bill's provisions do not apply to:

- an employer complying with a duty to monitor or retain employee communications pursuant to state or federal law;
- a self-regulatory organization defined in the Securities Exchange Act;³⁰ or
- law enforcement and prosecutorial agencies³¹ screening prospective employees or investigating employees.

Section 2 provides an effective date of October 1, 2016.

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:

Businesses may incur costs in defending lawsuits alleging violations of these provisions.

C. Government Sector Impact:

SB 186 may have some indeterminate impact on the State Court System due to the availability of a new cause of action.

If the employers impacted by the bill include all public employers, all levels of government in Florida could incur costs in defending lawsuits alleging violations of these provisions.

³⁰ 15 U.S.C. s. 78c(a)(26) defines “self-regulatory organization” as any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 78s (b), 78s (c), and 78w (b) of Title 15 of the U.S. Code) the Municipal Securities Rulemaking Board established by section 78o–4 of Title 15.

³¹ A “prosecutorial agency” is defined as any local, state, or federal entity charged with the investigation and prosecution of violations of criminal law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide a definition of “employer.” Without a definition, the bill appears to apply to employers of every size, whether public or private.

VIII. Statutes Affected:

This bill creates section 448.077 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on October 5, 2015:

The CS provides that a “prosecutorial agency” is defined as any local, state, or federal agency that is charged with the investigation and prosecution of violations of criminal law.

- B. **Amendments:**

None.



649918

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
10/06/2015	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Thompson) recommended the following:

Senate Amendment

Delete lines 29 - 36
and insert:

(a) "Prosecutorial agency" means any local, state, or federal entity charged with the investigation and prosecution of violations of criminal law.

(b) "Retaliatory personnel action" has the same meaning as in s. 448.101.

(c) "Social media account" means an interactive personal



649918

11 account or profile that an individual establishes and uses
12 through an electronic application, service, or platform to
13 generate or to store content, including, but not limited to,
14 videos, still photographs, blogs, video blogs, instant messages,
15 audio recordings, and e-mail.

By Senator Clemens

27-00288-16

2016186__

A bill to be entitled

An act relating to social media privacy; creating s. 448.077, F.S.; defining terms; prohibiting an employer from requesting or requiring access to a social media account of an employee or prospective employee; prohibiting an employer from taking retaliatory personnel action against an employee as a result of the employee's refusal to allow access to his or her social media account; prohibiting an employer from failing or refusing to hire a prospective employee as a result of the prospective employee's refusal to allow access to his or her social media account; authorizing civil action for a violation; requiring that the civil action be brought within a specified timeframe; providing a penalty for a violation; providing for recovery of attorney fees and court costs; specifying that an employer is not prohibited from seeking access to social media accounts used primarily for the employer's business purposes; providing an effective date.

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

Section 1. Section 448.077, Florida Statutes, is created to read:

448.077 Employer access to employee social media accounts prohibited.

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

(a) "Retaliatory personnel action" has the same meaning as

Page 1 of 3

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

27-00288-16

2016186__

in s. 448.101.

(b) "Social media account" means an interactive personal account or profile that an individual establishes and uses through an electronic application, service, or platform to generate or to store content, including, but not limited to, videos, still photographs, blogs, video blogs, instant messages, audio recordings, and e-mail.

(2) An employer may not do any of the following:

(a) Request or require an employee or prospective employee to take an action that allows the employer to gain access to the employee's or prospective employee's social media account, including, but not limited to, requesting him or her to disclose the username, password, or other means of accessing his or her social media account if the social media account's contents are not available to the general public.

(b) Take retaliatory personnel action against an employee as a result of the employee's refusal to allow the employer access to the employee's social media account.

(c) Fail or refuse to hire a prospective employee as a result of the prospective employee's refusal to allow the employer access to the prospective employee's social media account.

(3) An employee or prospective employee may bring a civil action against an employer who violates this section in a court located in the county in which the employee or prospective employee resides or where the alleged violation occurred. Such action must be brought within 2 years after the violation occurred. The employee or prospective employee may seek injunctive relief to restrain the employer from continuing to

Page 2 of 3

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27-00288-16

2016186__

59 act in violation of this section and may recover damages in an
60 amount equal to the actual damages arising from the violation or
61 \$500 per violation, whichever is greater. An employee or
62 prospective employee who prevails is entitled to recover court
63 costs and reasonable attorney fees.

64 (4) This section does not prevent an employer from
65 requesting or requiring an employee to disclose a username,
66 password, or other means of accessing a social media account
67 used primarily for the employer's business purposes.

68 (5) This section does not prohibit or restrict an employer
69 from complying with a duty to monitor or retain employee
70 communications which is established under state or federal law
71 or by a self-regulatory organization as defined in s. 3(a)(26)
72 of the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(26),
73 or from screening a prospective employee who completes an
74 application for employment at a law enforcement or prosecutorial
75 agency or an employee who is the subject of a conduct
76 investigation performed by a law enforcement or prosecutorial
77 agency.

78 Section 2. This act shall take effect October 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Vice Chair*
Banking and Insurance
Criminal Justice
Education Pre-K-12
Ethics and Elections
Fiscal Policy

SENATOR JEFF CLEMENS

27th District

September 17, 2015

Senator Nancy C. Detert, Chair
Committee on Commerce and Tourism
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Detert:

I respectfully request that SB 186 – Social Media Privacy be added to the agenda for the next Committee on Commerce and Tourism meeting.

SB 186 will make it illegal for an employer to request or require passwords to personal internet and social networking accounts as a condition of employment. The bill will also protect the privacy of current employees against employers demanding passwords to social media accounts.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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



10-5-2015
Meeting Date

186
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-5-15

Meeting Date

SB 186

Bill Number (if applicable)

Topic Social Media Privacy

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N. Adans St

Phone 224-7373

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 198

INTRODUCER: Senator Hukill

SUBJECT: Sales Tax Holiday

DATE: October 2, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 198 establishes a 10-day sales tax holiday beginning August 5, 2016, and ending August 14, 2016. During the holiday, specific “back to school” purchases of clothing, school supplies, and personal computers are exempt from the state sales tax and county discretionary sales surtaxes.

The Revenue Estimating Conference determined that the bill will reduce General Revenue receipts by \$56.1 million and local revenues will decrease by \$5.3 million in Fiscal Year 2016-2017.

The bill provides the Department of Revenue (DOR) a nonrecurring General Revenue appropriation of \$233,730 in Fiscal Year 2016-2017 to administer the provisions of this act.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² commercial real estate rentals,³ and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of taxable goods or services, and collected from the purchaser at the time of sale.

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Florida Department of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at: http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited October 2, 2015).

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes. The surtax applies to all transactions occurring in the county subject to the ch. 212, F.S., state tax imposed on sales, use, services, rental, admissions, and other transactions,⁴ and on communications services as defined in ch. 202, F.S.

The “Florida Residents’ Tax Relief Act of 1998” established Florida’s first tax holiday, during which clothing purchases of \$50 or less were exempt from tax.⁵ In 1999, backpacks were explicitly added to the tax holiday;⁶ school supplies were added in 2001.⁷ Since its inception, the duration of similar “back to school” sales tax holidays varied from 3 to 10 days, as have the type and value of exempt items.

III. Effect of Proposed Changes:

The bill provides for a 10-day sales tax holiday, which begins August 5, 2016, and ends August 14, 2016. During the holiday, the following items that cost \$100 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing, defined as an “article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs”;
- Footwear, which does not include skis, swim fins, roller blades, and skates;
- Wallets; and
- Bags, which include handbags, backpacks, fanny packs, and diaper bags, but exclude briefcases, suitcases and other garment bags.

The bill also exempts “school supplies” that cost \$15 or less per item.

The first \$750 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use is also exempt. This exemption includes electronic book readers, tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture, and devices or software intended primarily for recreational use are not exempt.

The “back to school” sales tax holiday does not apply to the following sales:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The bill authorizes a nonrecurring appropriation of \$233,730 from the General Revenue Fund to the Department of Revenue to implement this section.

⁴ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

⁵ Ch. 341, Laws of Fla. (1998).

⁶ Ch. 229, Laws of Fla. (1999).

⁷ Ch. 148, Laws of Fla. (2001).

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

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of Article VII, s. 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, these requirements do not apply to laws that have an insignificant fiscal impact, which for FY 2016-2017, is \$2,012,772.30 or less.^{8,9,10}

The Revenue Estimating Conference determined that this bill will reduce local revenues by \$5.3 million in Fiscal Year 2016-2017.¹¹

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The Revenue Estimating Conference determined that the bill will reduce General Revenue receipts by \$56.1 million in Fiscal Year 2016-2017. Local revenues will decrease by \$5.3 million in Fiscal Year 2016-2017.¹²

B. Private Sector Impact:

The sales tax holiday may promote retail sales at businesses that qualify under this bill.

⁸ FLA. CONST. art. VII, s. 18(d).

⁹ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last accessed October 2, 2015).

¹⁰ Based on the Demographic Estimating Conference's population adopted on July 9, 2015. The conference packet can be found at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last accessed October 2, 2015).

¹¹ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, School Sales Tax Holiday, SB 198, p. 4, September 18, 2015, Revenue Impact Results, available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/Impact0918.pdf> (last accessed October 2, 2015).

¹² *Id.*

C. **Government Sector Impact:**

The bill provides the DOR a nonrecurring General Revenue appropriation of \$233,730 in Fiscal Year 2016-2017 to administer the provisions of the act. The Department estimates its cost of administration will be \$229,982.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

The bill creates an unnumbered section of Florida law.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.

By Senator Hukill

8-00227-16

2016198__

A bill to be entitled

An act relating to a sales tax holiday; providing an exemption from the sales and use tax for the retail sale of certain clothing, school supplies, and personal computers and personal computer-related accessories during a specified period; providing exceptions to the exemption; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation to the department for implementation purposes; providing an effective date.

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

Section 1. Clothing, school supplies, and personal computers and personal computer-related accessories sales tax holiday.—

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 5, 2016, through 11:59 p.m. on August 14, 2016, on the retail sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of \$100 or less per item. As used in this paragraph, the term "clothing" means:

1. Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and
2. All footwear, excluding skis, swim fins, roller blades,

Page 1 of 3

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8-00227-16

2016198__

and skates.

(b) School supplies having a sales price of \$15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(2) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 5, 2016, through 11:59 p.m. on August 14, 2016, on the first \$750 of the sales price of personal computers or personal computer-related accessories purchased for noncommercial home or personal use. As used in this subsection, the term:

(a) "Personal computers" includes electronic book readers, laptops, desktops, handhelds, tablets, or tower computers. The term does not include cellular telephones, video game consoles, digital media receivers, or devices that are not primarily designed to process data.

(b) "Personal computer-related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. The term does not include furniture or systems, devices, software, or peripherals that are designed or intended primarily for recreational use.

(c) "Monitors" does not include devices that include a television tuner.

Page 2 of 3

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

8-00227-16

2016198__

59 (3) The tax exemptions provided in this section do not
60 apply to sales within a theme park or entertainment complex as
61 defined in s. 509.013(9), Florida Statutes, within a public
62 lodging establishment as defined in s. 509.013(4), Florida
63 Statutes, or within an airport as defined in s. 330.27(2),
64 Florida Statutes.

65 (4) The Department of Revenue may, and all conditions are
66 deemed met to, adopt emergency rules pursuant to s. 120.54(4),
67 Florida Statutes, to administer this section.

68 (5) For the 2016-2017 fiscal year, the sum of \$233,730 in
69 nonrecurring funds is appropriated from the General Revenue Fund
70 to the Department of Revenue for the purpose of implementing
71 this section.

72 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

September 15, 2015

The Honorable Nancy C. Detert
310 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 198 – Sales Tax Holiday

Dear Chairwoman Detert:

Senate Bill 198, relating to Sales Tax Holiday has been referred to the Commerce and Tourism Committee. I am requesting your consideration on placing SB 198 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: Todd McKay, Staff Director of the Commerce and Tourism Committee
Patty Blackburn, Administrative Assistant of the Commerce and Tourism Committee

REPLY TO:

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

September 29, 2015

The Honorable Nancy Detert
Senate Committee on Commerce and Tourism, Chair
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 198 – Sales Tax Holiday

Dear Chairwoman Detert:

Senate Bill 198, relating to Sales Tax Holiday, is on the Commerce and Tourism Committee agenda for October 5, 2015. I will not be able to present the bill as I will be out of town due to a family event.

Please recognize my Legislative Assistant, Elizabeth Fetterhoff, to present SB 198 on my behalf. Thank you for your kind consideration of this legislation and allowing it to be presented in your committee. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill
State Senator, District 08

cc: Todd McKay, Staff Director

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

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ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

10-5-2015

Meeting Date

198

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.

Phone 727/897-9291

Street

St Petersburg

City

FL

State

33705

Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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198

Meeting Date

Bill Number (if applicable)

Topic Sales Tax Holiday

Amendment Barcode (if applicable)

Name Melissa Rambo

Job Title Director of Legislative Affairs

Address 229 S Adams Street

Phone 850-570-0269

Street

Tallahassee FL 323

Email Melissa@frf.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

10-5-15

Meeting Date

SB 198

Bill Number (if applicable)

Topic Sales Tax Holiday

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 N. Adans St

Phone 224-7373

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/14/14)



**FLORIDA
DEPARTMENT *of*
ECONOMIC
OPPORTUNITY**

Reemployment Assistance Program

Jesse Panuccio
DEO Executive Director
October 5, 2015



Overview

- Fraud Prevention and Detection
- Employment in Florida and Claims for the Reemployment Assistance Program
- Reemployment Assistance Taxes
- Staffing and Funding





Prevalence of Fraud



ID Theft is at crisis levels

U.S. Population: 320,000,000

Records Breached in 2014: 1,023,108,267

A sampling of populations hit by identity theft in recent years:

- Court Ventures: 200,000,000
- EBay: 145,000,000
- Heartland: 130,000,000
- TJ Maxx: 94,000,000
- AOL: 92,000,000
- Anthem: 80,000,000
- Sony: 77,000,000
- JP Morgan: 76,000,000
- Target: 70,000,000
- Home Depot: 56,000,000
- U.S. OPM: 21,500,000
- Virginia DOH: 8,200,000
- Texas HHS: 2,000,000
- N.D. Univ. Sys: 292,000
- U. Maryland: 287,000
- IRS: 100,000





Identity Theft and Fraud



What is being done with the hundreds of millions of stolen IDs?

“An estimated \$445 billion or 1 percent of the world’s economy was lost due to identity theft or cyber crimes in 2014” – WaPo 2014

- Obtain other identifying information/government documents
- Credit cards, checking, savings
Utility accounts
- Insurance accounts
- Loans
- Housing rentals
- Job applications
- Cell phones
- Financial aid
- Medical care
- Firearms purchases
- Tax returns
- **Government benefits**





Public Benefits Fraud



- ***Criminals, including organized gangs, are using stolen IDs to steal massive sums from government agencies .***
- ***Miami US Attorney: “a tsunami of fraud”; stolen IDs are the “new crack-cocaine” of criminal street gangs.***
- ***“Government benefits fraud was the most common form of reported identity theft in 2014.” – FTC Feb 2015***
- ***“Tax-refund fraud is estimated to reach \$21 billion by 2016 due to identity theft.” – CNBC Feb 2015***



Why so much fraud?

- Ease of stealing IDs (information is everywhere and unprotected).
- Automation and use of Internet as the primary benefit delivery system.
- Mandates for fast payment vs. fraud detection.
- Many agencies are not looking for this and are not coordinating.
- A profitable crime
 - One claim in all 53 UI programs = More than \$20,000 per week



Florida Solution



- Fraud Initiative Rating and Rules Engine (**FIRRE**) looks for patterns that indicate fraud.
- Started as a manual process looking intra-day.
- Upgraded to automated process looking across timeframes; getting better at catching fraudulent claims earlier.
- FIRRE is updated regularly to search for new patterns as criminals adapt.
- Pace of identified fraud has not slackened.



Florida Solution



- **2013:** Identified about **9,600 fraudulent claims**
- **2014:** fully deployed in-house data analytics program (FIRRE) and found nearly **70,000 fraudulent claims.**
- **2015** (as of 9/26): identified **60,000 fraudulent claims** (on pace for **80,000 fraudulent claims**).
- Potential value of fraudulent claims = **\$529 million.**



Florida Solution



- DEO's goal is to be the national leader in best practices for public-benefits fraud detection.
- DEO is consulting with other agencies in Florida and in other states to raise awareness of the fraud crisis and to export best practices.
- DEO's FIRRE team has twice won the Prudential Productivity Award.
- DEO this week will be presented with NASWA's State Excellence Award for Leadership.



Florida Solution



- DEO has also revamped its security procedures to protect data from theft or inadvertent disclosure.
- For example:
 - Physical patrols of employee work stations
 - No camera phones near work stations
 - No individual printers at sensitive work stations
 - No removable storage at sensitive work stations
 - Continuous review/restriction of access rights
 - Elimination of telecommuting
 - Restructuring of physical space
 - Random audits of computer activity
 - Automated review of computer activity (internal FIRRE)



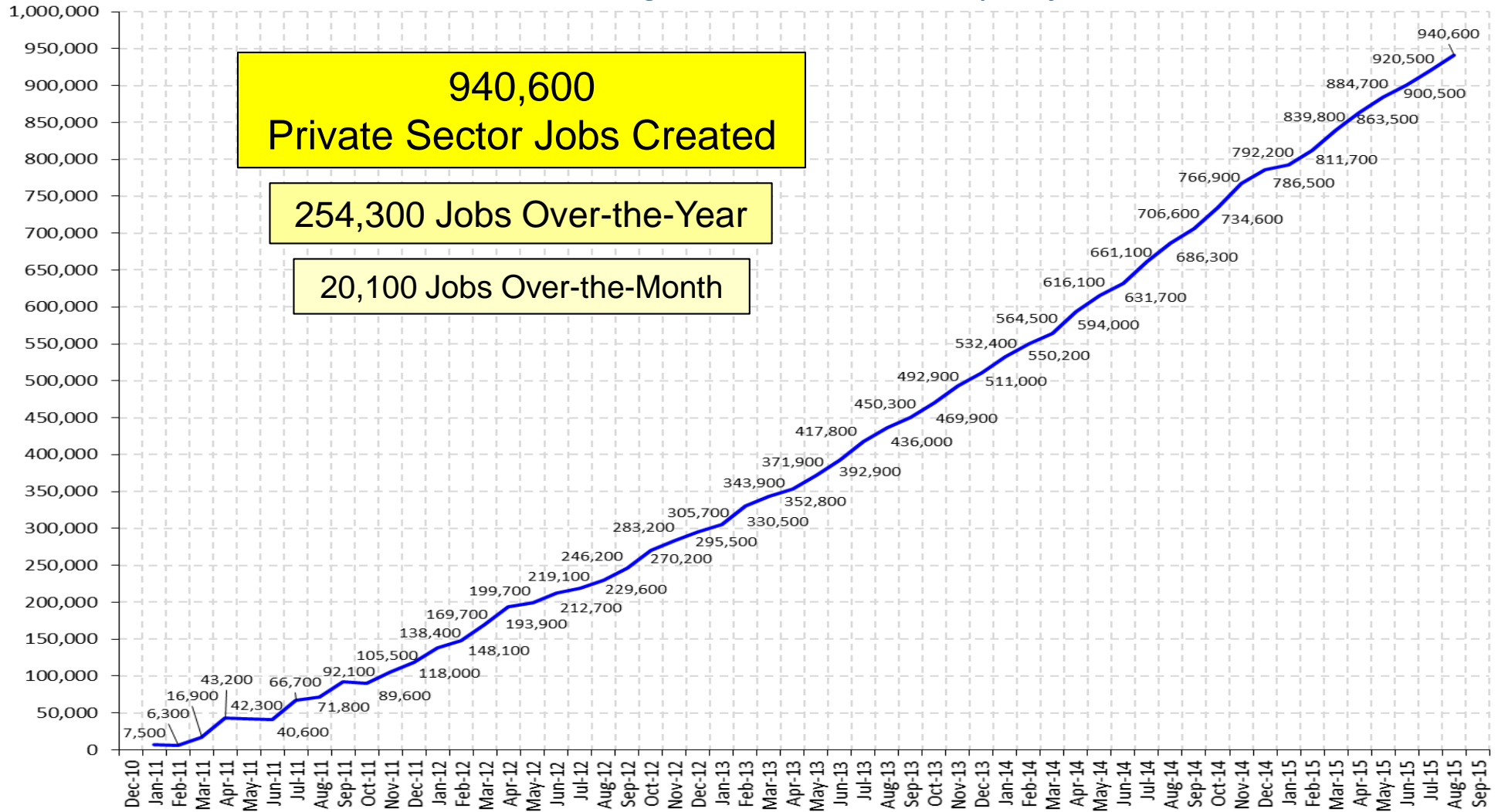
Overview

- Fraud Prevention and Detection
- Employment in Florida and Claims for the Reemployment Assistance Program
- Reemployment Assistance Taxes
- Staffing and Funding



Private-Sector Jobs Created In Florida

December 2010 – August 2015, Seasonally Adjusted



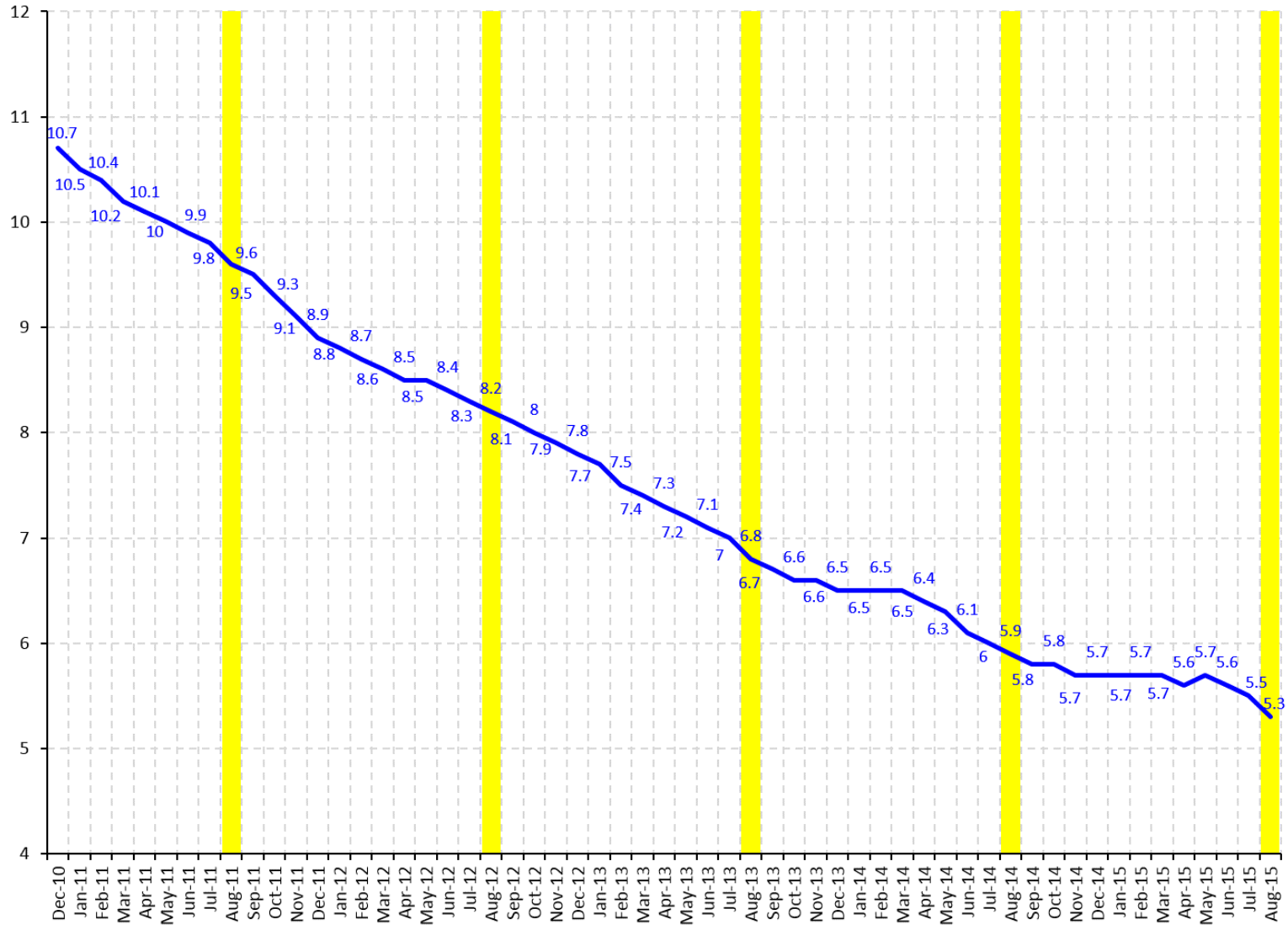
September 18, 2015



FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY

Unemployment Rate for Florida

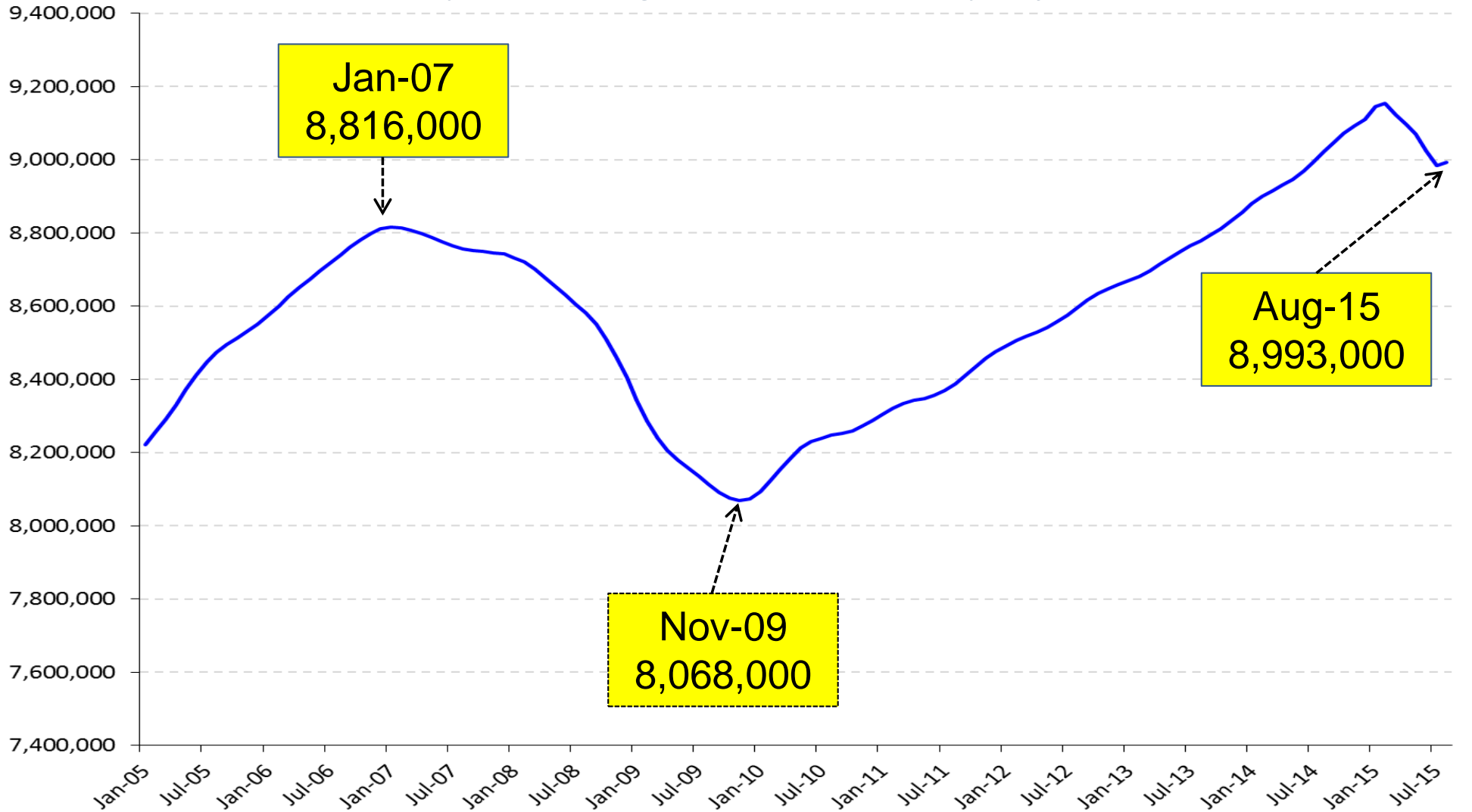
December 2010 – August 2015. Seasonally Adjusted



FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY

Total Employment In Florida

January 2005 – August 2015, Seasonally Adjusted



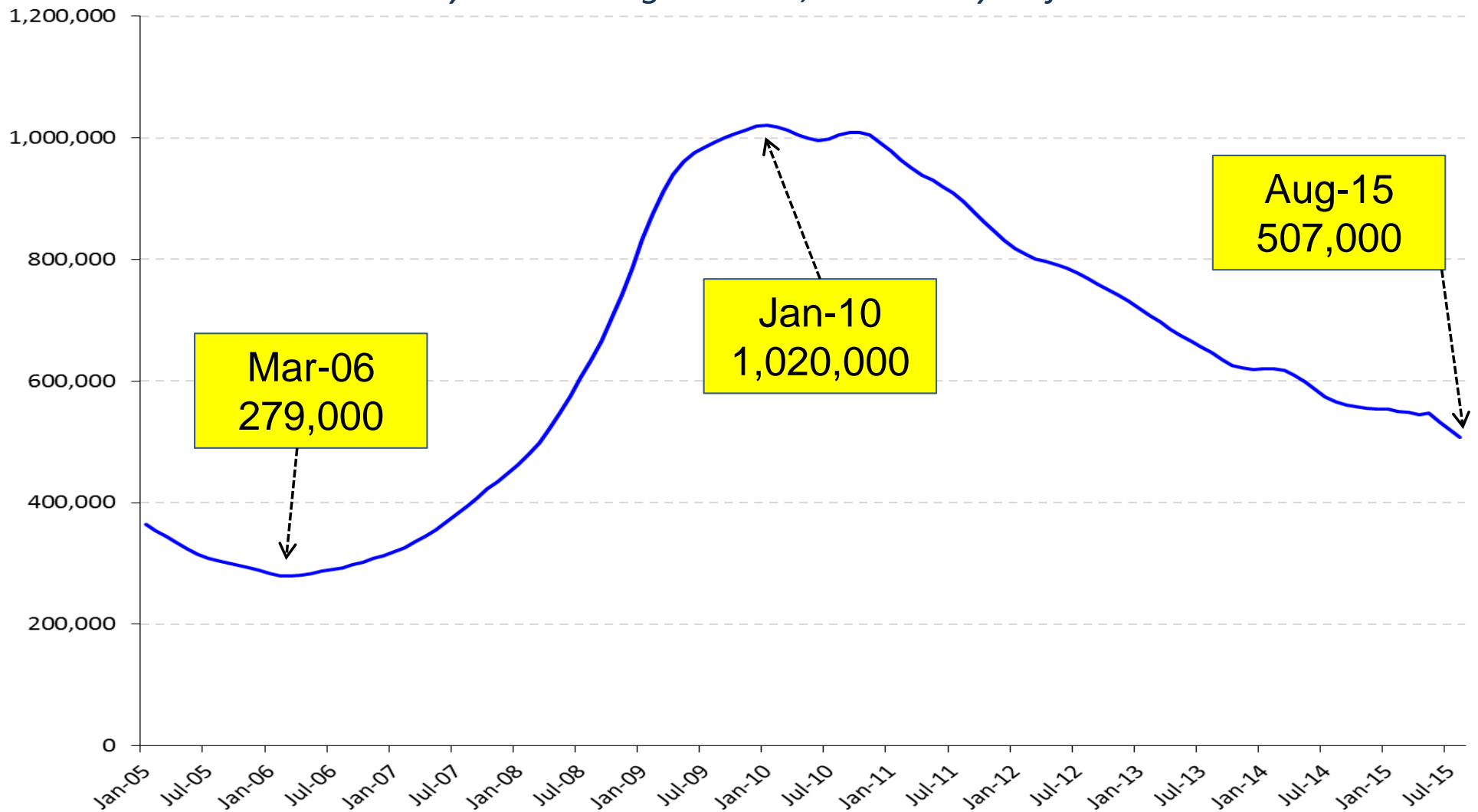
September 18, 2015



FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY

Total Unemployment In Florida

January 2005 – August 2015, Seasonally Adjusted

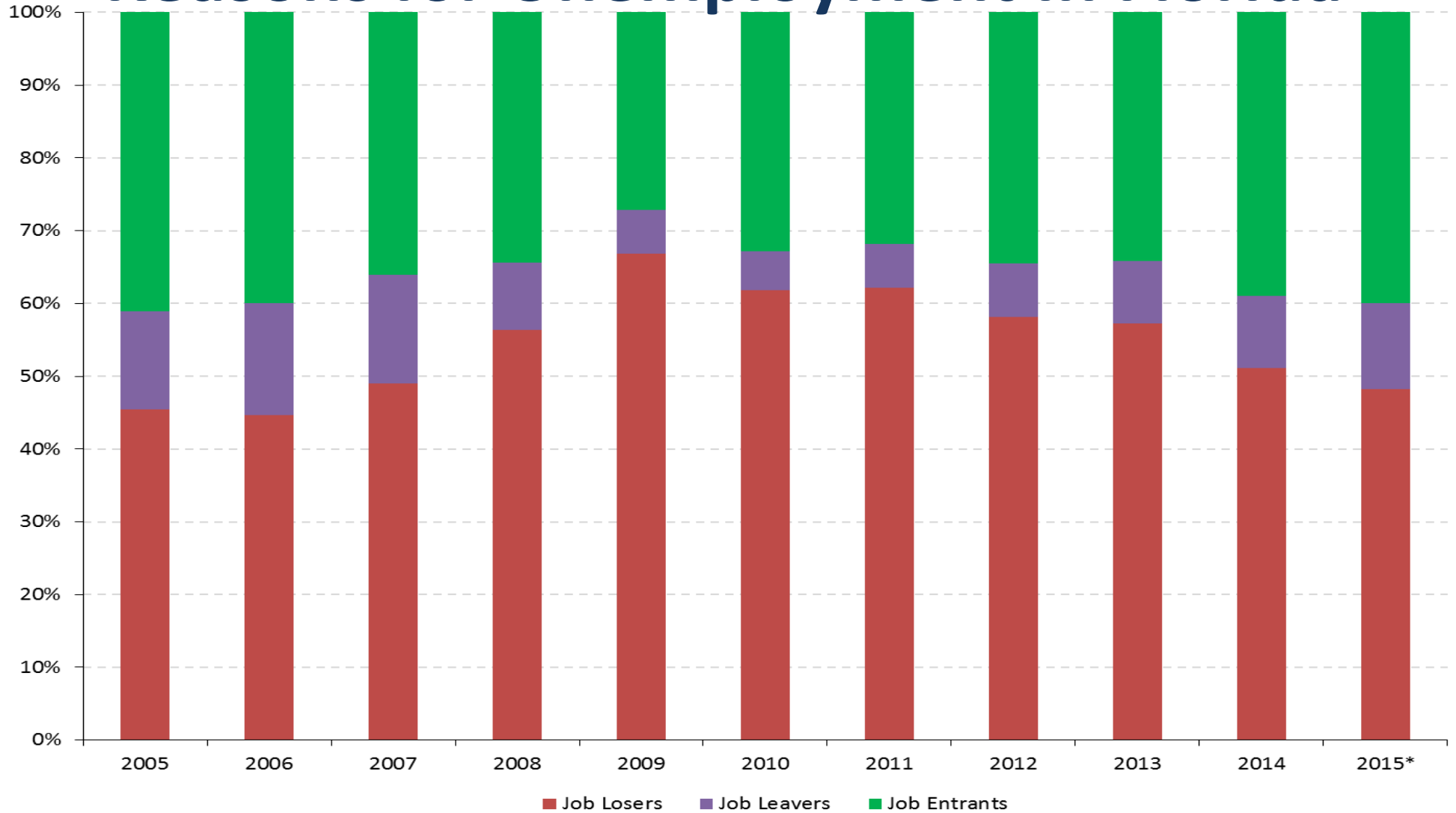


September 18, 2015



FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY

Reasons for Unemployment In Florida



*2015: Includes all 2015 estimates through August

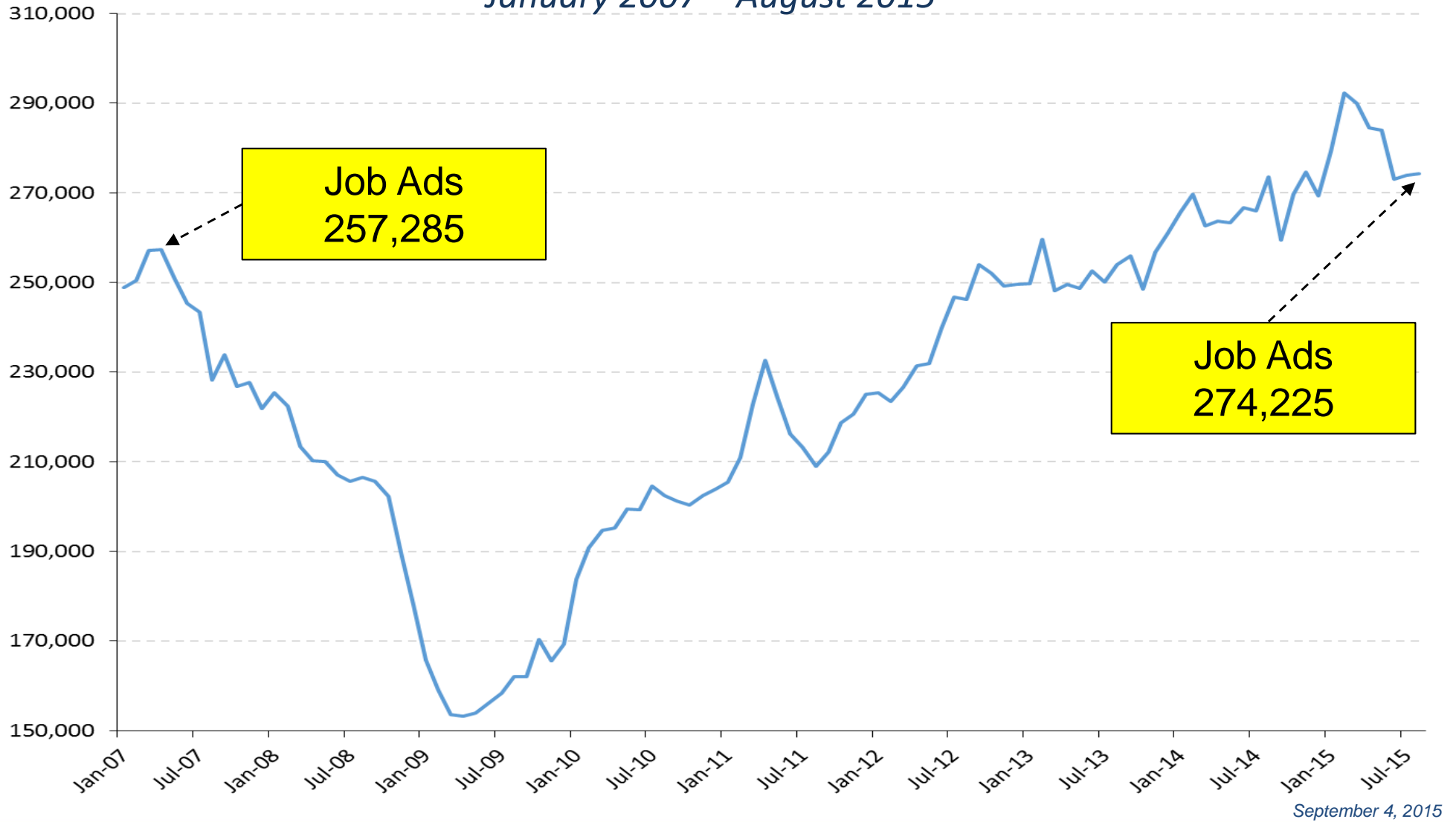
September 18, 2015



FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY

Job Demand In Florida

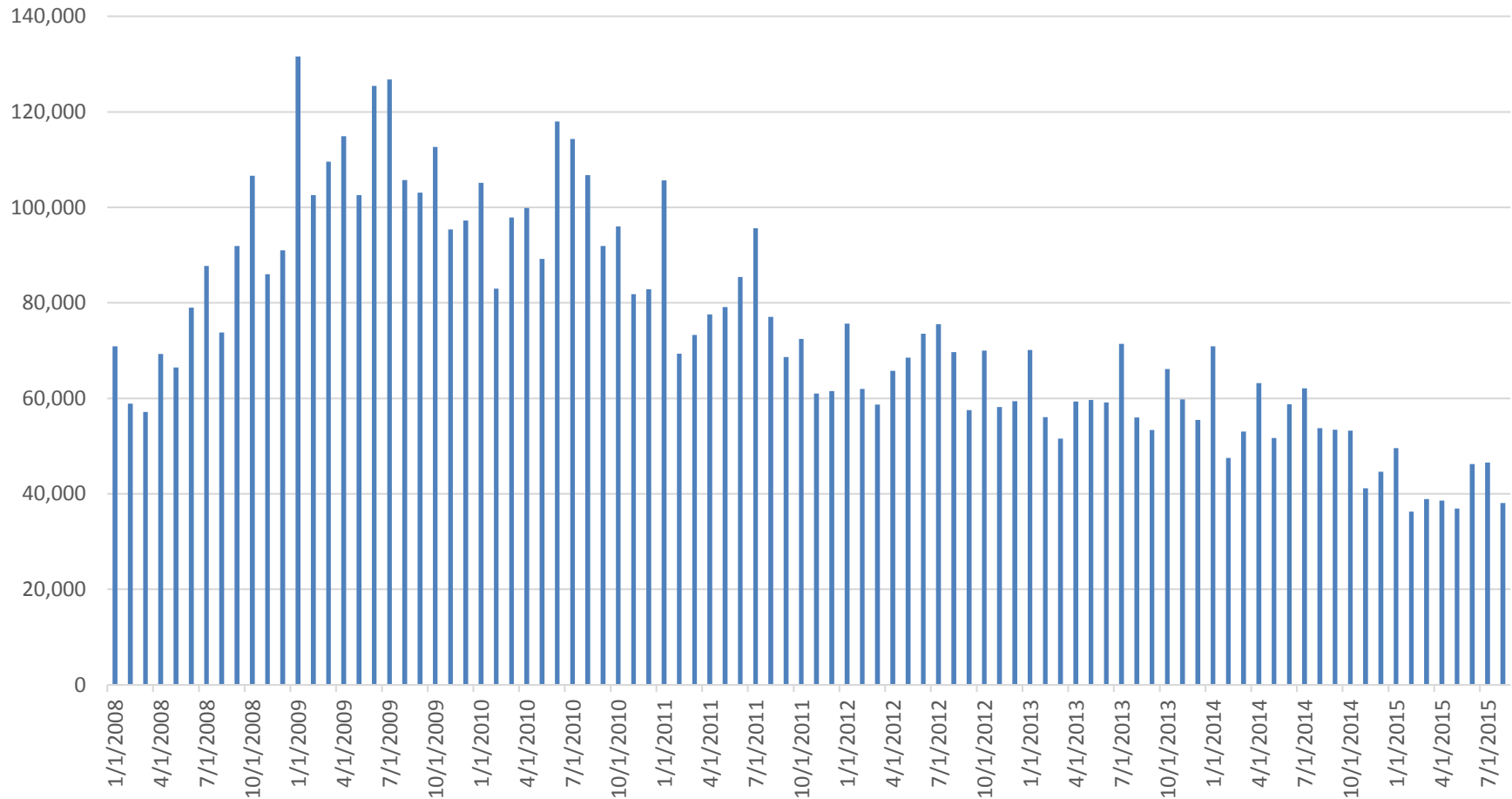
January 2007 – August 2015



FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY



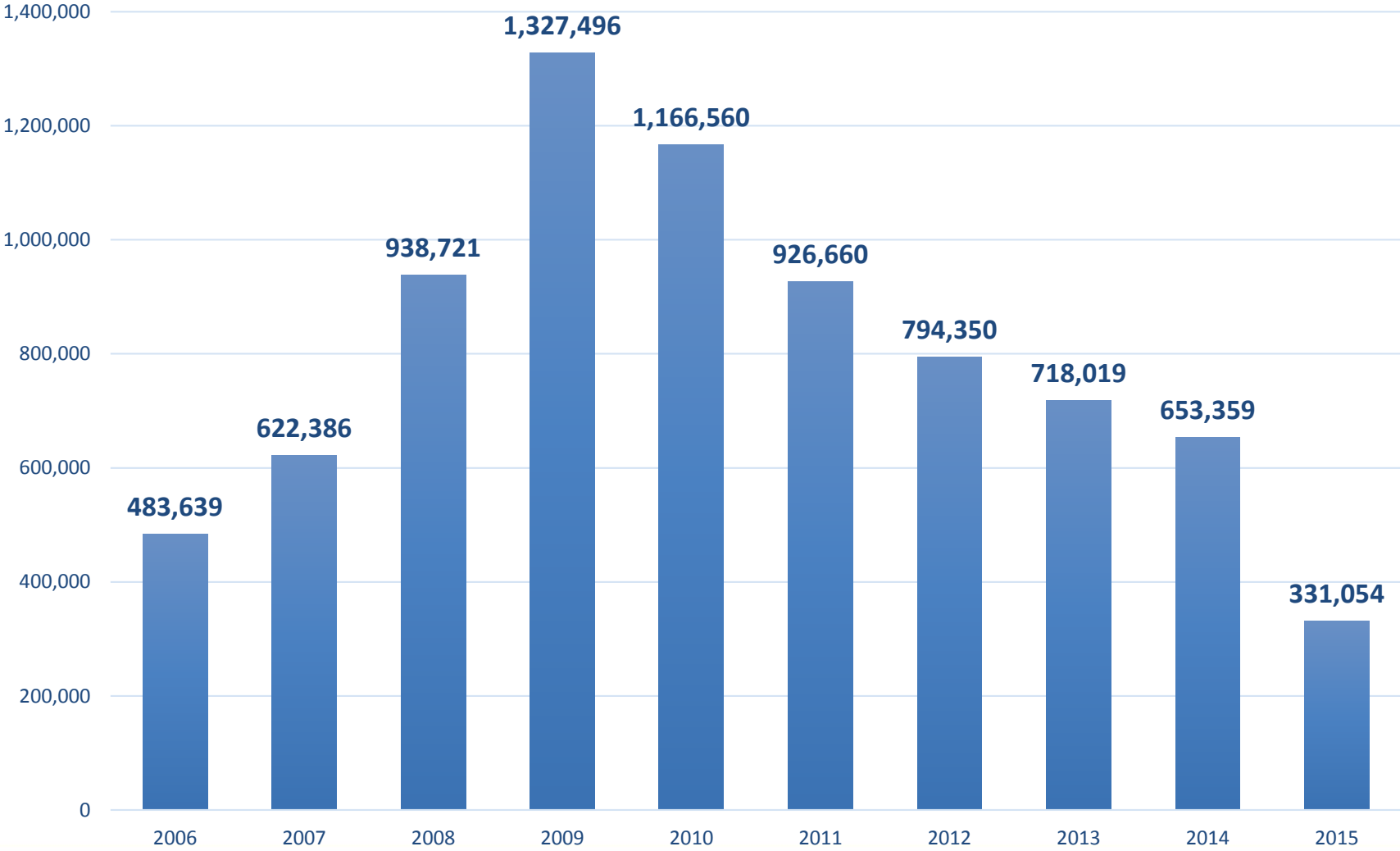
Florida RA Initial Claims By Month



FLORIDA DEPARTMENT *of* ECONOMIC OPPORTUNITY



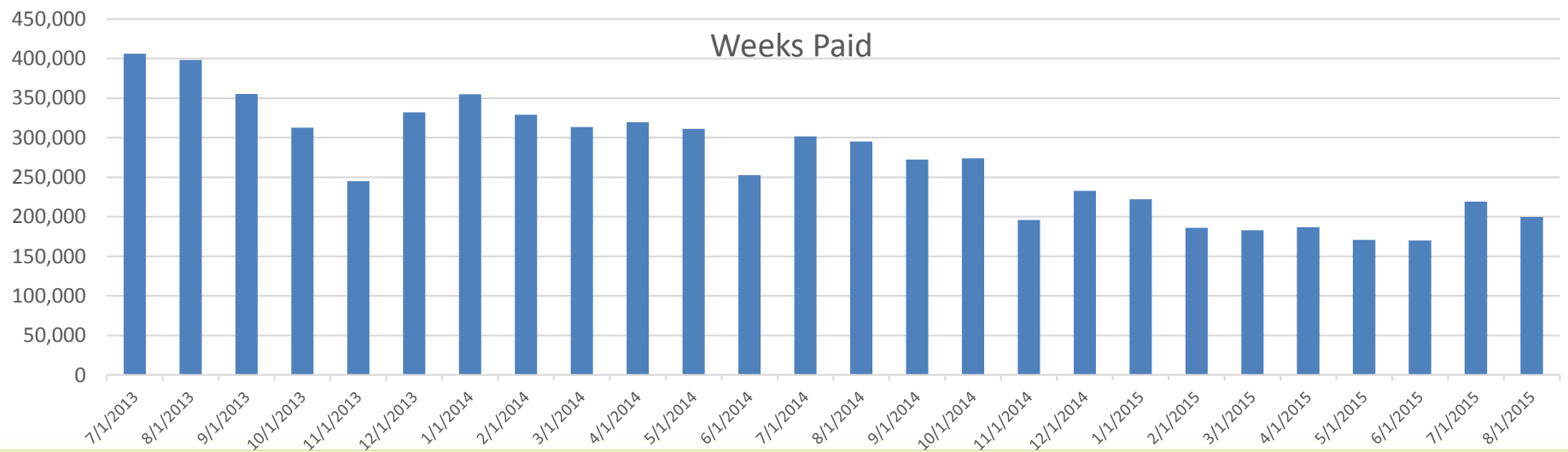
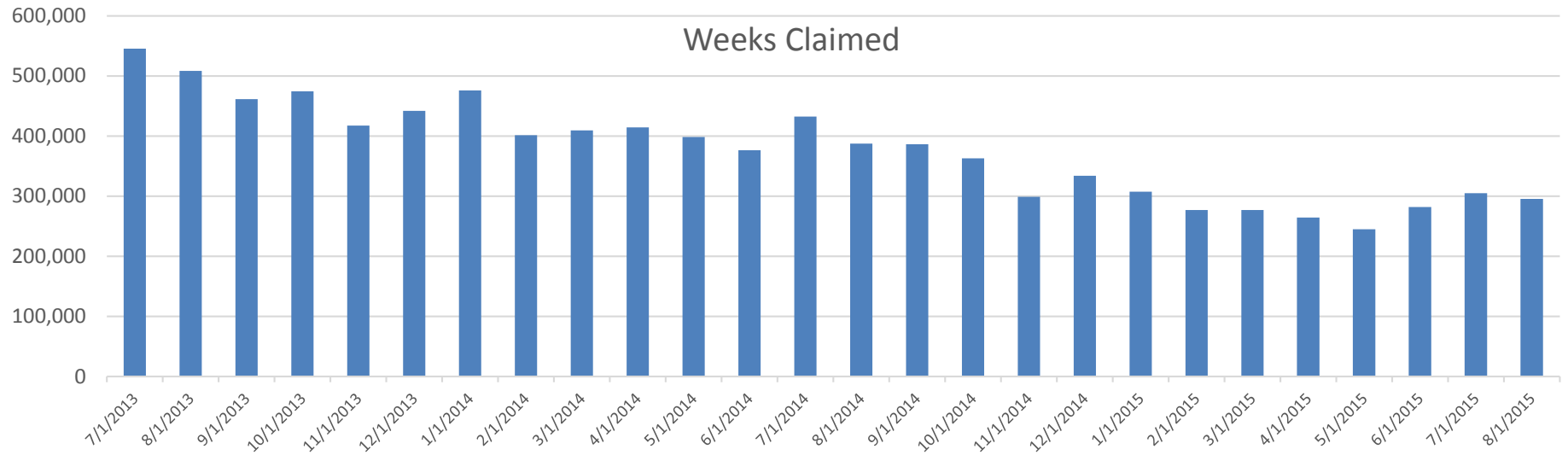
Florida RA Initial Claims By Calendar Year



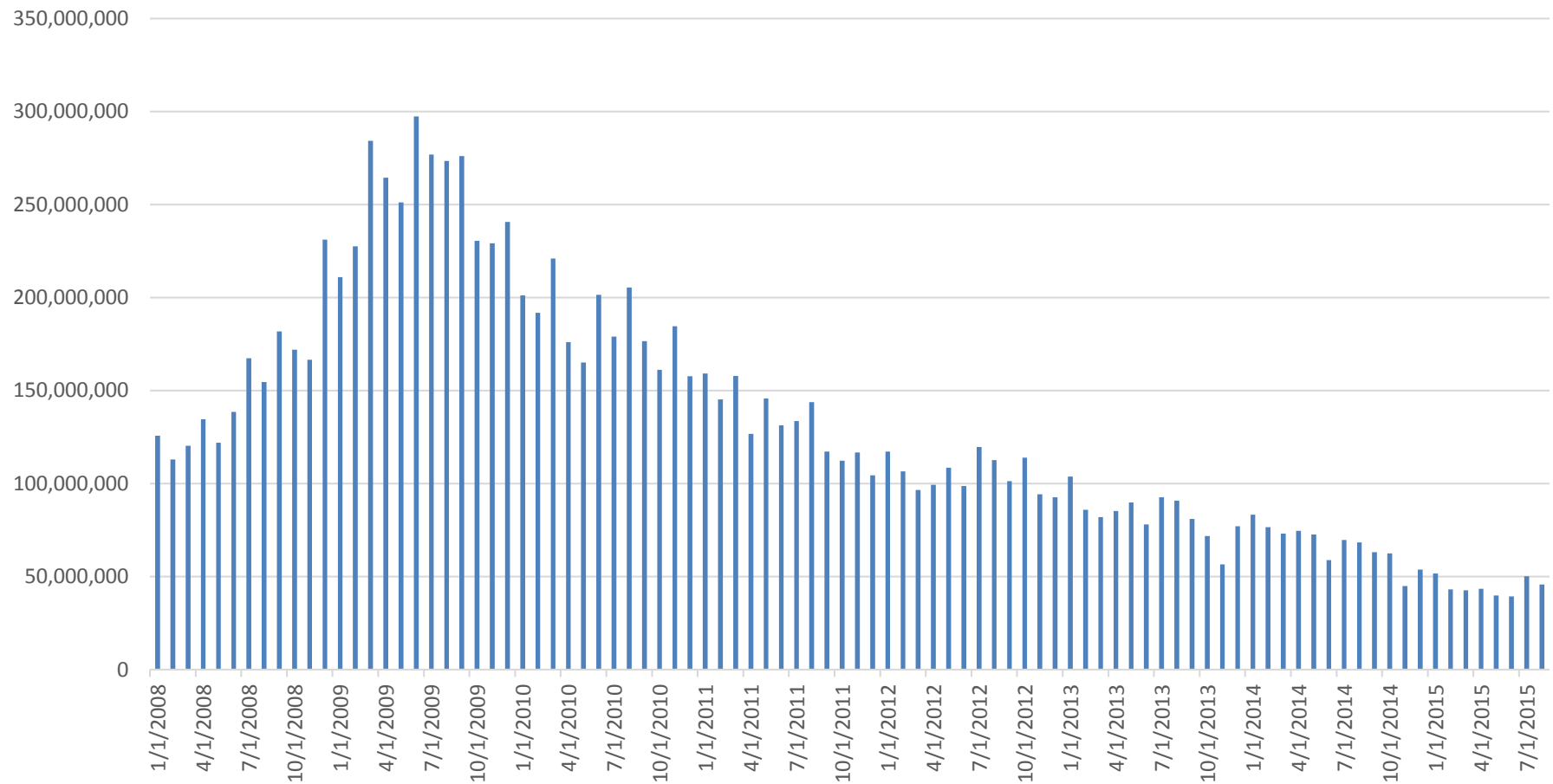
FLORIDA DEPARTMENT *of* ECONOMIC OPPORTUNITY



Florida RA Weeks Claimed and Paid By Month



Florida RA Total Benefits Paid By Month



FLORIDA DEPARTMENT *of* ECONOMIC OPPORTUNITY

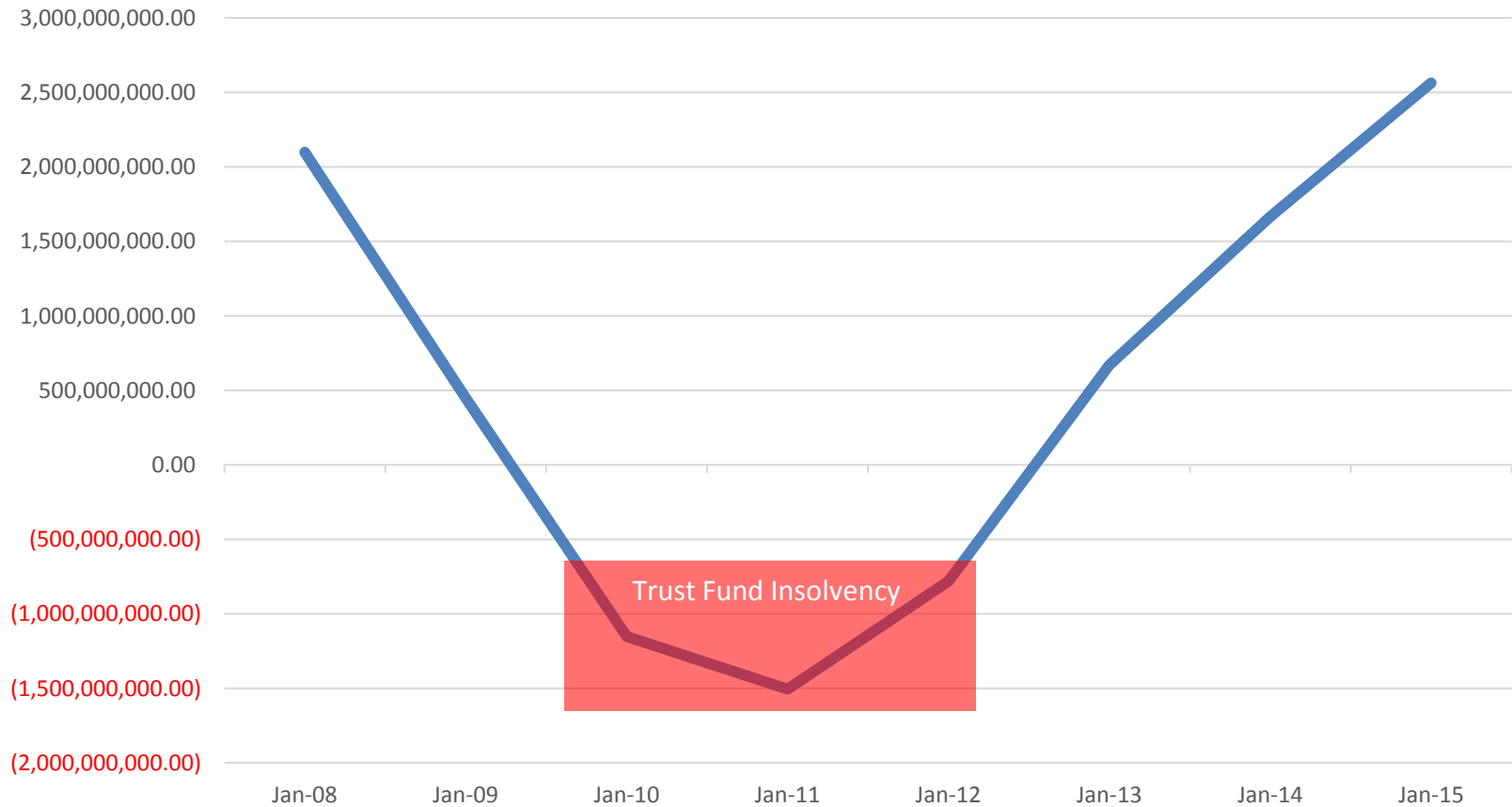


Overview

- Fraud Prevention and Detection
- Employment in Florida and Claims for the Reemployment Assistance Program
- **Reemployment Assistance Taxes**
- Staffing and Funding

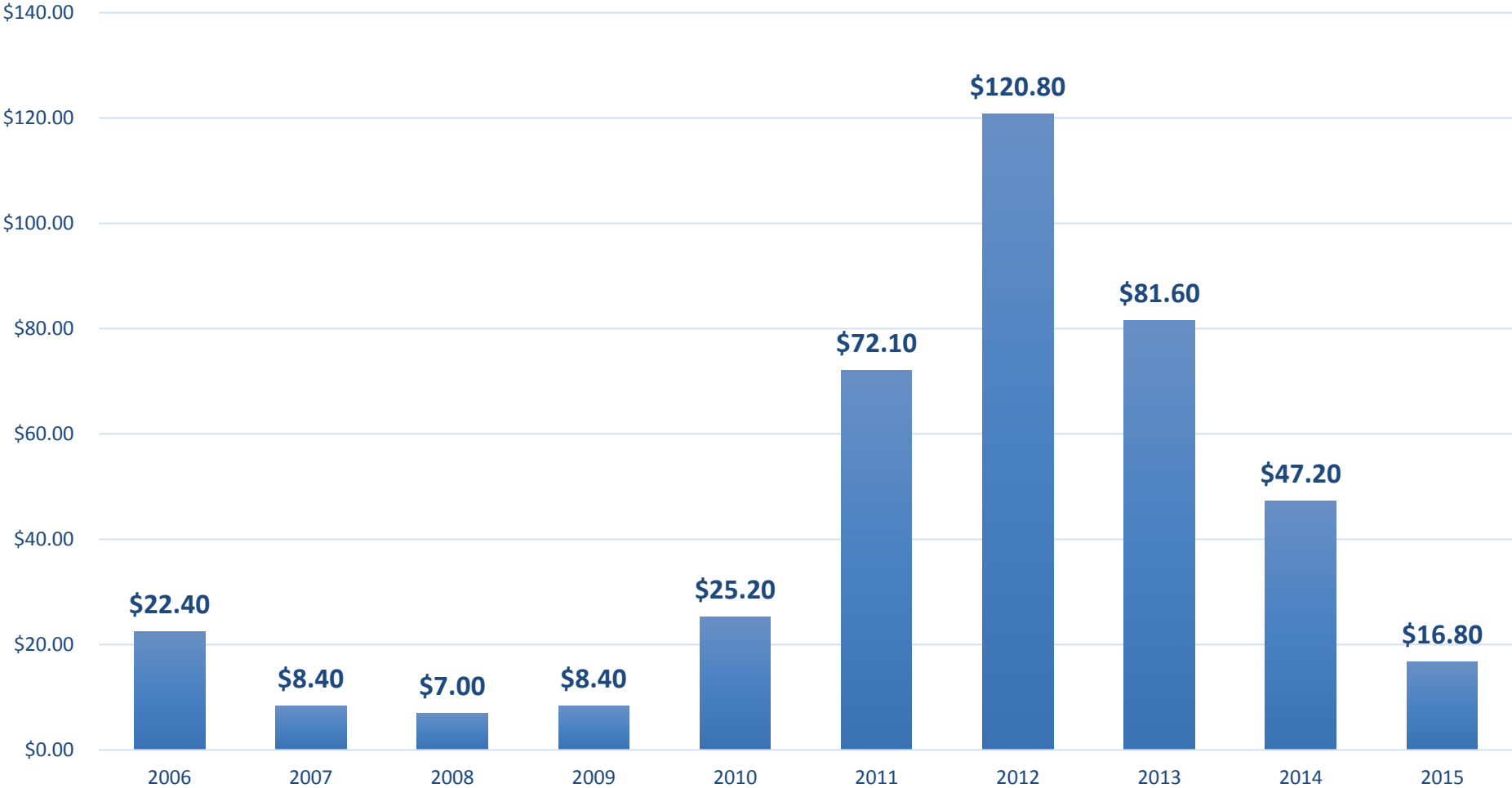


Unemployment Trust Fund

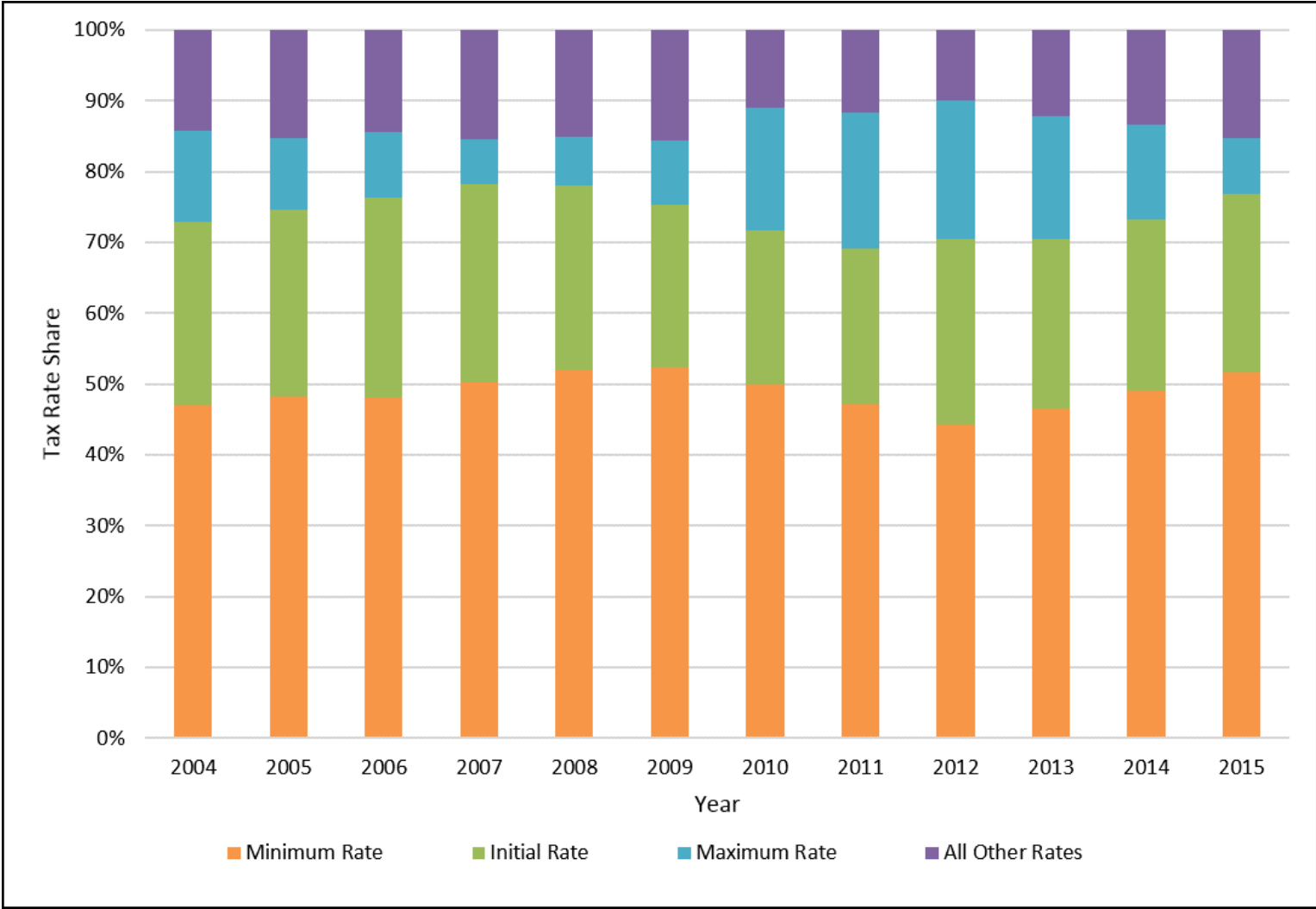


Minimum RA Tax Rate

2006-Present, Calendar Year



RA Tax Rate Distribution

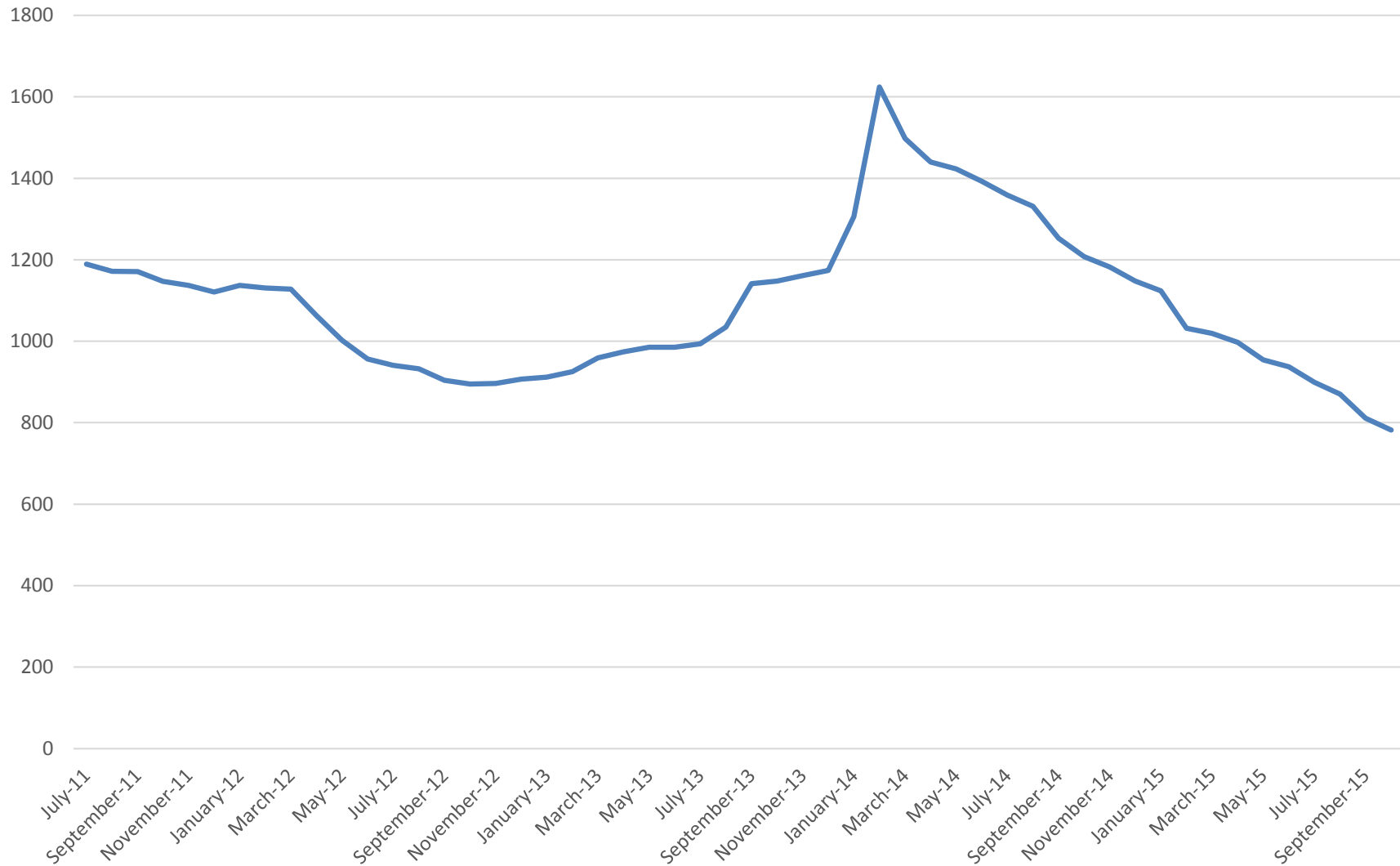


Overview

- Fraud Prevention and Detection
- Employment in Florida and Claims for the Reemployment Assistance Program
- Reemployment Assistance Taxes
- **Staffing and Funding**



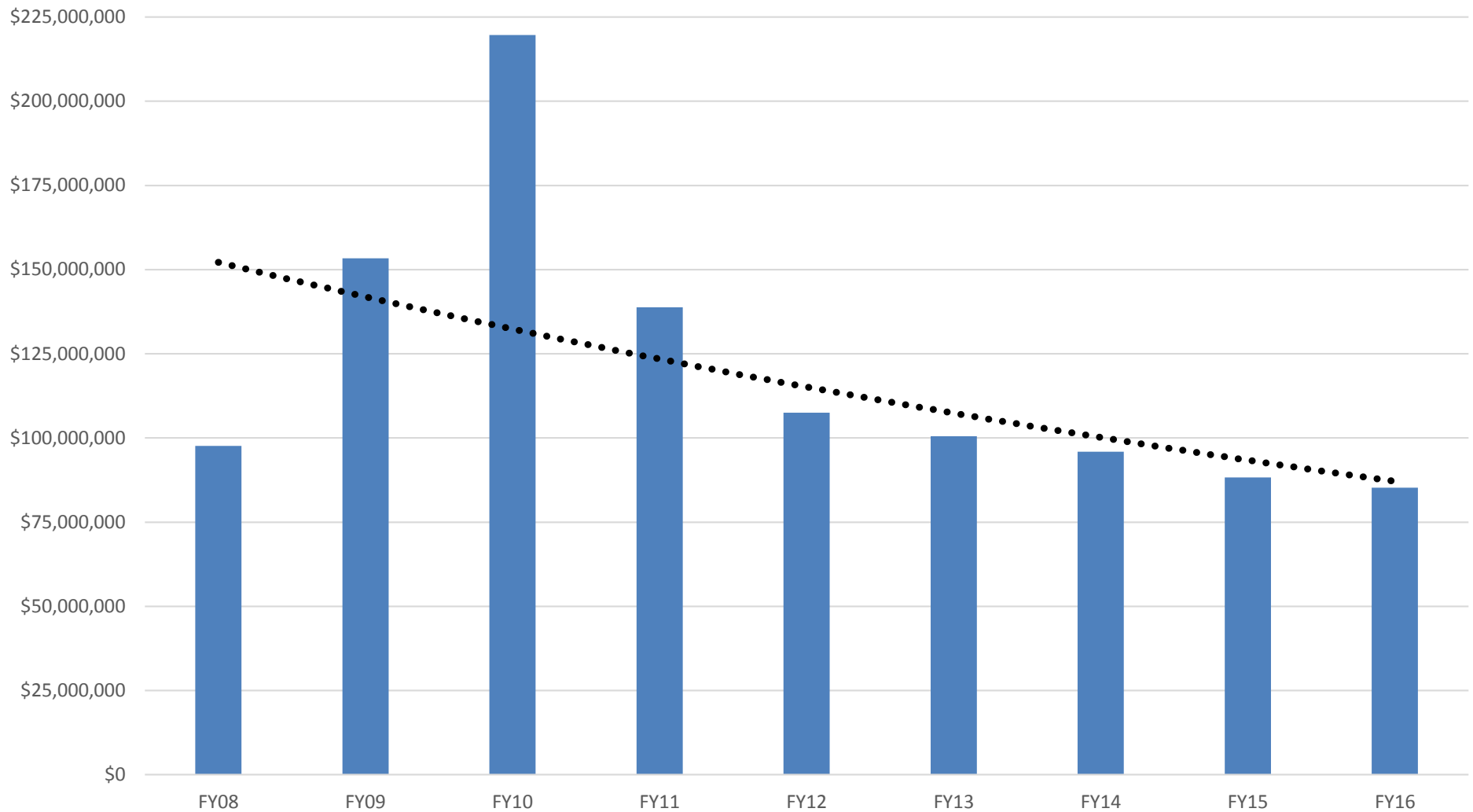
RA Staffing



FLORIDA DEPARTMENT of ECONOMIC OPPORTUNITY



Federal Administrative Funding



FLORIDA DEPARTMENT *of* ECONOMIC OPPORTUNITY



THE FLORIDA SENATE
APPEARANCE RECORD

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10/5/15
Meeting Date

Bill Number (if applicable)

Topic REEMPLOYMENT ASSISTANCE PROGRAM

Amendment Barcode (if applicable)

Name JESSE PANUCCIO

Job Title EXECUTIVE DIRECTOR, DED

Address CAUDWELL BUILDING

Phone 245-7116

Street

TALLAHASSEE

FL

32399

Email JESSE.PANUCCIO@DED.MYFLORIDA

City

State

Zip

COM.

Speaking: For Against Information

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

Representing DEO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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10/5/15

Meeting Date

Tab 6

Bill Number (if applicable)

Topic Unemployment Insurance

Amendment Barcode (if applicable)

Name Rid Templin

Job Title

Address 135 S. Monroe

Phone 850-566-4348

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: [] For [] Against [X] Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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