

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES

Senator Gardiner, Chair

Senator Smith, Vice Chair

MEETING DATE: Thursday, January 12, 2012

TIME: 8:00 —10:00 a.m.

PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Gardiner, Chair; Senator Smith, Vice Chair; Senators Altman, Benacquisto, Bogdanoff, Braynon, Diaz de la Portilla, Evers, Fasano, Flores, Joyner, Lynn, Margolis, Negron, and Sachs

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|-----------------------------|
| 1 | SB 844 Communications, Energy, and Public Utilities | OGSR/Sunshine State One-Call of Florida, Inc.; Amending provisions relating to an exemption from public records requirements for proprietary confidential business information held by Sunshine State One-Call of Florida, Inc.; saving the exemption from repeal under the Open Government Sunset Review Act; deleting the scheduled repeal of the exemption, etc. CU 01/12/2012 Favorable GO | Favorable Yeas 13 Nays 0 |
| 2 | SB 396 Oelrich (Identical H 231) | Intergovernmental Cooperation; Authorizing certain parties to an interlocal agreement to conduct public meetings and workshops by means of communications media technology; providing notice requirements; providing a definition, etc. CA 12/05/2011 Favorable CU 01/12/2012 Fav/CS | Fav/CS Yeas 13 Nays 0 |
| 3 | SB 416 Detert (Identical H 299, Compare H 39, H 187) | Use of Wireless Communications Devices While Driving; Creating the "Florida Ban on Texting While Driving Law"; prohibiting the operation of a motor vehicle while using a wireless communications device for certain purposes; specifying information that is admissible as evidence of a violation; providing penalties; providing for enforcement as a secondary action; providing for points to be assessed against a driver's license for the unlawful use of a wireless communications device resulting in a crash, etc. TR 12/07/2011 Favorable CU 01/12/2012 Fav/CS BC | Fav/CS Yeas 12 Nays 1 |
| 4 | 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 Communications, Energy, and Public Utilities Committee

BILL: SB 844

INTRODUCER: Communications, Energy, and Public Utilities Committee

SUBJECT: OGSR/Sunshine State One-Call of Florida, Inc.

DATE: December 19, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Wiehle | Carter | CU | Favorable |
| 2. | | | GO | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill amends section 556.113, F.S., to delete the automatic repeal of the public records exemption, thereby preserving the exemption.

The bill takes effect July 1, 2012.

The bill substantially amends section 556.113 of the Florida Statutes.

II. Present Situation:

Public Records and Meetings

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency

¹ Section 1390, 1391 Florida Statutes. (Rev. 1892).

² Article I, s. 24 of the State Constitution.

or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency⁴ records are available for public inspection. The term “public record” is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Article I, s. 24 of the State Constitution also provides that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the Legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution. In addition, the Sunshine Law, s. 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.

Only the Legislature is authorized to create exemptions to open government requirements.⁸ An exemption must be created in general law, must state the public necessity justifying it, and must

³ Chapter 119, F.S.

⁴ The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵ s. 119.011(12), F.S.

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

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

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

not be broader than necessary to meet that public necessity.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹² If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹³

The Open Government Sunset Review Act (the Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The Act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁵

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?

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

¹⁰ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹¹ Art. I, s. 24(c) of the State Constitution.

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ s. 119.15, F.S.

¹⁵ s. 119.15(6)(b), F.S.

- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Act may appear to limit the Legislature in the exemption review process, those aspects of the Act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.¹⁶ The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

... notwithstanding s. 778.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Sunshine State One-Call of Florida

Chapter 556, F.S., is the “Underground Facility Damage Prevention and Safety Act.” It provides for underground facility damage prevention and safety. Sunshine State One-Call of Florida, Inc., (One-Call) is a not-for-profit corporation created by the Florida Legislature in 1993 to be the administrator of Chapter 556, F. S. The corporation maintains and operates a free-access notification system, the purpose of which is to receive notification of planned excavation or demolition activities and to notify member operators so they may mark underground facilities to avoid damage to those underground facilities.

In general, the chapter requires the following.¹⁷ Every owner/operator of underground facilities in the state of Florida must be a member of, use, and participate in the intended excavation notification system.¹⁸ Before any person digs a hole in Florida the person must notify One-Call of the intended excavation, and One-Call must then notify member operators whose facilities are in the vicinity of the proposed excavation.¹⁹ Every member/operator so notified must locate their underground facilities and mark their horizontal location with paint or flags of a prescribed color.²⁰

Section 556.113, F.S., provides that proprietary confidential business information held by One-Call for the purpose of a member either using the member ticket management software system or

¹⁶ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

¹⁷ The following information was taken from document prepared by Dave Erwin, General Counsel, Sunshine State One-Call of Florida, Inc., and from conference call between legislative staff and One-Call representatives Dave Erwin, General Counsel; Mark Sweet, Executive Director; and Mike Moore, lobbyist, on August 17, 2011.

¹⁸ s. 556.104, F.S.

¹⁹ s. 556.105, F.S.

²⁰ s. 556.103(1), F. S.

describing the extent and root cause of damage to an underground facility is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The term “proprietary confidential business information” means information provided by:

- A member operator which is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, or trade secret as defined in s. 688.002, F.S., or which describes the exact location of a utility underground facility or the protection, repair, or restoration thereof, or an excavator in an internal damage investigation report or analysis relating to damage to underground utility facilities, and;
- Is intended to be and is treated by the member operator or the excavator as confidential;
 - The disclosure of which would likely be, or reasonably likely be, respectively, used by a competitor to harm the business interests of the member operator or excavator or could be used for the purpose of inflicting damage on underground facilities; and
 - Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to Sunshine State One-Call of Florida, Inc.

This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and stands repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

The member ticket management software system referred to in the exemption statute is a highly proprietary software system that automates the notification process.²¹ One-Call purchased the software in 2002 for \$349,000 for the purpose of allowing any of its members to use the software at a reduced cost. Prior to the purchase of the software from IRTTH Solutions (IRTH), any member who wished to use it had to purchase the software directly from IRTTH at significant cost to each user. The purchase price paid by One-Call, plus recurring annual maintenance charges, are rolled into the billing to each member and constitute a small fraction of the overall billing. The charge is much less than the charge that would be paid to IRTTH for an individual software package purchased directly.

The information referred to in the exemption statute resides in the software system on a One-Call server used by its members. All the information is accessible by One-Call, even though in practice it is never accessed without first receiving a member’s request to do so for one reason or another. According to One-Call representatives, the exemption should be maintained for the following reasons.²²

- As to the member ticket management software system, members fear that, without the exemption, anyone, including competitors could access their information. For example, it would be advantageous for a participant in the communications industry to know what technology its competitors were using in different locations as the type of service that can be provided frequently depends on technology used. This statement is borne out by the fact that until passage of the exemption statute, few members used the One-Call software;

²¹ While participation in the notification system is mandatory, participation by use of the automated version of the notification system using this software is voluntary.

²² The potential for misuse of such information was also recognized by the Legislature in enacting s. 556.105(1)(d), F.S., which provides “member operators shall use the information provided to the system by other member operators only for the purposes stated in this chapter and not for sales or marketing purposes.”

- usage has gone from virtually zero to 127 members since adoption of the public records exemption.
- As to the damage-related information, it too could provide information to competitors that could be used to the detriment of the owner of the damaged facility. Reporting damage is voluntary and only a few members do it; however, prior to the public records exemption, almost no one did.

Reenactment of the exemption is also supported under the public purpose of allowing the state to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption. The purpose of this government-created program is to prevent damage and promote safety, or as a One-Call representative put it, “to promote the continued provision of safe . . . utility service for all the citizens of the state.” As stated above, members did not use the One-Call software to fully automate the notification system until after passage of the exemption statute. Additionally, many of the current 127 users of the ticket management software could not afford an individual purchase arrangement and could not provide needed services at reasonable cost without the help of One-Call and its arrangement with IRT. Many of the members are small cities and counties and small utilities who can provide safer and better service using the ticket management system provided by One-Call.

This echoes statements made at the time the exemption was enacted. According to a bill analysis, at that time a One-Call representative said that “the member ticket management system is not being used by member operators to file tickets because potential excavators do not want the confidential information on ticket applications being stored on One-Call’s system which is subject to public disclosure” and “without the exemption the system will continue to not be used.”²³ Further, “members are not filing damage reports, also subject to open record requirements to One-Call, because they don’t want the public to be aware of problems during excavations” as “damage reports can raise negative public opinion and can harm the reputation of an excavator.”²⁴

As to other specific statutory questions, One-Call stated:

- the exempt information cannot be obtained by any other means except the appropriate use of a subpoena in a lawsuit or other proceeding;
- it does not believe that the records are protected by any other exemption, so there are not multiple exemptions for such records;
- as long as the protected information protected relates to in-use underground facilities or to current business practices, maps, plans, drawings or other business information, it could not eventually be made available for public inspection and copying; and
- protected information is not knowingly discussed at public meetings of One-Call or its committees, so no meeting exemption is necessary.

²³ Professional Staff Analysis and Economic Impact Statement, SB 1510, April 13, 2007, page 5.

²⁴ *Id.*

Information from First Amendment Foundation

The First Amendment Foundation “is not opposed to reenactment of the exemption in its current form.”²⁵

III. Effect of Proposed Changes:

The bill amends section 556.113, F.S., to delete the automatic repeal of the public records exemption, thereby preserving the exemption.

The bill takes effect July 1, 2012.

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

None.

B. Public Records/Open Meetings Issues:

The requirements of Article I, section 24(c) of the State Constitution and section 119.15, F.S. are met in that the public records exemption contained in section 556.113, F.S.:

- serves an identifiable public purpose in that it:
 - protects information of a confidential nature concerning One-Call’s members that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure them in the marketplace, and
 - allows One-Call to effectively and efficiently administer its governmental program, which administration would be significantly impaired without the exemption;
- the exemption is no broader than is necessary to meet the public purpose it serves; and
- the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

C. Trust Funds Restrictions:

None.

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

None.

²⁵ Letter from Barbara A. Peterson, President, First Amendment Foundation, to The Honorable Jeremy Ring, Chair, Senate Governmental Oversight and Accountability Committee (July 18, 2011) (RE: 2012 Open Government Sunset Reviews).

B. Private Sector Impact:

The automated notification system will continue to operate, more efficiently protecting the safety of those excavating and of the underground utility systems, and thereby protecting the services provided by those systems.

C. Government Sector Impact:

One-Call and other governmental entities involved in the notification process will be better able to fulfill their duties relating to chapter 556, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Communications, Energy, and Public Utilities
ITEM: SB 844
FINAL ACTION: Favorable
MEETING DATE: Thursday, January 12, 2012
TIME: 8:00 —10:00 a.m.
PLACE: 110 Senate Office Building

| FINAL VOTE | | SENATORS | | | | | | |
|------------|-----|---------------------|-----|-----|-----|-----|-----|-----|
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |
| X | | Altman | | | | | | |
| X | | Benacquisto | | | | | | |
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| X | | Braynon | | | | | | |
| X | | Diaz de la Portilla | | | | | | |
| | | Evers | | | | | | |
| X | | Fasano | | | | | | |
| X | | Flores | | | | | | |
| X | | Joyner | | | | | | |
| X | | Lynn | | | | | | |
| X | | Margolis | | | | | | |
| X | | Negron | | | | | | |
| X | | Sachs | | | | | | |
| X | | Smith, VICE CHAIR | | | | | | |
| X | | Gardiner, CHAIR | | | | | | |
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| 13 | 0 | | | | | | | |
| Yea | Nay | TOTALS | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

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 Communications, Energy, and Public Utilities Committee

BILL: CS/SB 396

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senators Oelrich and Gaetz

SUBJECT: Intergovernmental cooperation

DATE: January 12, 2012

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Anderson | Yeatman | CA | Favorable |
| 2. | Wiehle | Carter | CU | Fav/CS |
| 3. | | | | |
| 4. | | | | |
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| 6. | | | | |

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill authorizes a separate legal entity created by an interlocal agreement that has members located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of “communications media technology.” The bill defines the term “communications media technology” and sets out notice requirements for the meetings, including a requirement to provide a location where communications media technology facilities are available.

The bill substantially amends s. 163.01 of the Florida Statutes.

II. Present Situation:

Open Meetings Laws

Article I, s. 24(b) of the State Constitution sets forth the state’s public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public.

Public policy regarding access to public meetings is addressed further in the Florida Statutes. The Sunshine Law¹ requires that all meetings of a public board or commission be open to the public.² Reasonable notice of such meetings must be provided.³

For a meeting or hearing where notice is required, the notice must include the advice that:

If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The requirements of this section do not apply to the notice provided in s. 200.065(3).⁴

The Administrative Procedure Act

The Administrative Procedure Act requires the Administration Commission to adopt uniform rules of procedure.⁵ The uniform rules of procedure, which are to be used by each state agency, must provide procedures for conducting public meetings, hearings, and workshops, in person, and by means of communications media technology. “Communications media technology” is defined as the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.⁶

If a public meeting, hearing, or workshop is conducted by means of communications media technology, or if attendance may be provided by such means, the public notice must state how persons may attend and name locations where communications media technology facilities will be available.⁷

The uniform rules of procedure for conducting public meetings, hearings, and workshops, in person, and by means of communications media technology, may not be construed to diminish the right to inspect public records under chapter 119, F.S. Limiting points of access to public meetings, hearings, and workshops subject to the provisions of the Sunshine Law to places not normally open to the public is presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect.⁸

¹ See s. 286.011, F.S.

² Section 286.011(1), F.S., specifically states: “All meetings of any board or commission of a state agency or authority, or of an agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken, are declared to be public meetings open to the public at all times, and no resolution, rule or formal action is considered binding except as taken or made at such meeting.”

³ Section 286.011(1), F.S.

⁴ Section 286.0105, F.S.

⁵ See Chapter 120, F.S.

⁶ See s. 120.54(5)(b)2., F.S.

⁷ *Id.*

⁸ *Id.*

Interlocal Agreements

The Florida Interlocal Cooperation Act of 1969 (Act)⁹ authorizes public agencies¹⁰ to exercise jointly, by contract in the form of an interlocal agreement, any power, privilege, or authority shared by those agencies in order to more efficiently provide services and facilities.¹¹ An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement.¹²

A separate legal or administrative entity created by an interlocal agreement is authorized to:

- Make and enter into contracts;
- Employ agencies or employees;
- Acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- Acquire, hold, or dispose of property; and
- Incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.¹³

Florida courts have held that the Sunshine Law extends to discussions and deliberations as well as formal actions taken by a public board or commission.¹⁴ Consequently, meetings of a separate legal or administrative entity and its governing board are subject to Florida's public meetings requirements.¹⁵ The Act does not include an authorization to conduct public meetings, hearings, or workshops by means of communications media technology.

III. Effect of Proposed Changes:

Section 1 amends s. 163.01, F.S., to authorize a separate legal entity created under the Interlocal Cooperation Act with member public agencies located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of communications media technology. It defines the term “communications media technology” as a conference telephone, a video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate.

It provides that participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop.

⁹ See s. 163.01, F.S.

¹⁰ Section 163.01(3)(b), F.S., defines a public agency as: “A political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity, an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.”

¹¹ Section 163.01(4) and (5), F.S.

¹² Section 163.01(7)(a), F.S.

¹³ Section 163.01(7)(b), F.S.

¹⁴ *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973) (Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter upon which foreseeable action will be taken by the board or commission).

¹⁵ Florida Attorney General Opinion 82-66.

- The bill requires the notice for any such meeting or workshop to:
- state that the meeting or workshop will be conducted through the use of communications media technology,
- specify how persons interested in attending may do so, and
- provide a location where communications media technology facilities are available.

Section 2 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24 (b), Art. 1 of the State Constitution, states:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

The Office of the Attorney General (OAG) has issued numerous opinions regarding the participation of local governmental board members in public meetings through use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In one opinion, the OAG concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her. The opinion recognized that s. 125.001, F.S., required that meetings of the county commission be held in a public place in the county but noted that a quorum of the members of the county commission would be present at the public place.¹⁶ A similar conclusion was reached in a later opinion that stated a district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board was physically present at the meeting site.¹⁷

However, in general, the OAG has displayed a reluctance to allow members of local boards or commissions to use telecommunications media:

¹⁶ Florida Attorney General Opinion 92-44.

¹⁷ Florida Attorney General Opinion 98-28.

Allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission such as a school board, the representation on a school board is local and such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting.¹⁸

The OAG has argued that a concern about the validity of official actions taken by a public body when less than a quorum is present requires a very conservative reading of the statutes. Thus, the OAG has concluded that, in the absence of a statute to the contrary, a quorum of the members must be physically present at a meeting in order to take action.¹⁹ To further this point, in 2009, the OAG provided that “the legislative requirement of a quorum and the designation of the number required to constitute a quorum argues for the physical presence of that number of board members at a meeting.”²⁰

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill could potentially save money by reducing travel and per diem expenses for members of the separate legal entity due to the use of communications media technology. However, the requirement to provide a location where communications media technology is available to the public may create an expense.

¹⁸ *Id.*

¹⁹ Florida Attorney General Opinions 83-100 and 89-39 quoting 62 C.J.S. Municipal Corporations s. 399, p. 757, which provides: "In order to constitute a quorum the requisite number of members must be actually present at the meeting and the requisite number cannot be made up by telephoning absent members and obtaining their vote over the telephone."

²⁰ Florida Attorney General Opinion 09-56.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Communications, Energy, and Public Utilities Committee on January 12, 2012:

The committee substitute reduces the requirement that a separate legal entity have member public agencies located in at least 10 counties to conduct public meetings and workshops by means of communications media technology to at least five counties, of which at least three are not contiguous.

B. Amendments:

None.



782768

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 01/12/2012 | . | |
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The Committee on Communications, Energy, and Public Utilities
(Fasano) recommended the following:

Senate Amendment

Delete line 15
and insert:
which has member public agencies located in at least five
counties, of which at least three are not contiguous,

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/12/2012
Meeting Date

Topic Intergovernmental Cooperation

Bill Number SB 396
(if applicable)

Name Karen Peterson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 310 West College Ave
Street
Tallahassee FL 32301
City State Zip

Phone 850/212-7485

E-mail Karena.BillPeebles.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Gas Utility

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

01 / 12 / 2012
Meeting Date

Topic INTERCONTINENTAL COOPERATION

Bill Number SB 396
(if applicable)

Name HOWARD E. GENE ADAMS

Amendment Barcode 782768
(if applicable)

Job Title _____

Address 215 SOUTH MONROE ST., 2ND FLOOR
Street
TALLAHASSEE FLA. 32301
City State Zip

Phone 850-222-3533

E-mail GENE@PENNINGTONLAW.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing FLA. GOVERNMENTAL UTILITIES AUTHORITY

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Communications, Energy, and Public Utilities
ITEM: SB 396
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Thursday, January 12, 2012
TIME: 8:00 —10:00 a.m.
PLACE: 110 Senate Office Building

| FINAL VOTE | | SENATORS | 1/12/2012 8:00AM 1 Amendment 782768 Fasano | | | | | |
|------------|-----|---------------------|--|-----|-----|-----|-----|-----|
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |
| X | | Altman | X | | | | | |
| X | | Benacquisto | X | | | | | |
| | | Bogdanoff | | | | | | |
| X | | Braynon | X | | | | | |
| X | | Diaz de la Portilla | X | | | | | |
| | | Evers | | | | | | |
| X | | Fasano | X | | | | | |
| X | | Flores | X | | | | | |
| X | | Joyner | X | | | | | |
| X | | Lynn | X | | | | | |
| X | | Margolis | X | | | | | |
| X | | Negron | X | | | | | |
| X | | Sachs | X | | | | | |
| X | | Smith, VICE CHAIR | X | | | | | |
| X | | Gardiner, CHAIR | X | | | | | |
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| 13 | 0 | TOTALS | RCS | - | | | | |
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order

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 Communications, Energy, and Public Utilities Committee

BILL: CS/SB 416

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Detert

SUBJECT: Use of Wireless Communications Devices While Driving

DATE: January 12, 2012

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Davis | Buford | TR | Favorable |
| 2. | Wiehle | Carter | CU | Fav/CS |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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

I. Summary:

This bill is the “Florida Ban on Texting While Driving Law”, modeled after a Sample Law promulgated by the United States Department of Transportation (USDOT). The bill prohibits the operation of a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other text in a wireless communication device, or sending or reading data in the device, for the purpose of non-voice interpersonal communication. The bill makes exceptions for emergency workers performing official duties, reporting emergencies or suspicious activities, and for receiving various types of navigation information, emergency traffic data, and radio broadcasts. The bill also makes an exception for interpersonal communications that can be conducted without the need to manually type messages.

The prohibition is enforceable as a secondary offense. A first violation is punishable as a nonmoving violation, with a fine of \$30 plus court costs which vary by county. A second violation committed within 5 years of the first is a moving violation punishable by a \$60 fine plus court costs.

In addition to these penalties, any violation of the ban which results in a crash will result in 6 points added to the offender’s driver’s license record and any violation of the ban committed in

conjunction with any moving violation for which points are assessed, when committed within a school safety zone, will result an assessment of 2 points.

This bill may generate additional revenues for local and state governments as a result of the penalties for using wireless communications devices for texting purposes while operating a motor vehicle.

The bill has an effective date of October 1, 2012.

This bill creates s. 316.305, F.S., and substantially amends s. 322.27, F.S.

II. Present Situation:

Laws in other states

Public concern over distracted driving has resulted in a number of jurisdictions making it illegal to use hand-held cellular telephones for talking and/or texting while driving. In November 2001, New York became the first state to implement a ban on hand-held cellular telephone use for drivers. The District of Columbia passed a ban in 2004. Connecticut's ban took effect in 2005. Thirty-five states and the District of Columbia have passed a ban on text-while-driving for all drivers. The National Conference of State Legislators has the following chart detailing each state's cellular telephone use laws.¹

| States | Hand-held ban | All cell phone ban | Texting ban | Enforcement |
|-----------------------------|----------------------------------|---|----------------------------------|--|
| Alabama | No | Drivers age 16 and 17 who have held an intermediate license for less than 6 months. | No | Not applicable |
| Alaska | No | No | All drivers | Primary |
| Arizona | No | School bus drivers | No | Primary |
| Arkansas | No | School bus drivers, drivers younger than 18 | All drivers | Primary for texting by all drivers and cell phone use by school bus drivers; secondary for cell phone use by young drivers |
| California | All drivers | School and transit bus drivers and drivers younger than 18 | All drivers | Primary |
| Colorado | No | Drivers younger than 18 | All drivers | Primary |
| Connecticut | All drivers | Learner's permit holders, drivers younger than 18, and school bus drivers | All drivers | Primary |
| Delaware | All drivers (effective 01/02/11) | Learner's permit and intermediate license holders and school bus drivers | All drivers (effective 01/02/11) | Primary |
| District of Columbia | All drivers | School bus drivers and learner's permit holders | All drivers | Primary |
| Florida | No | No | No | Not applicable |

¹ "Cell Phone Use and Texting While Driving Laws," updated November, 2011. Available online at, <http://www.ncsl.org/?tabid=17057>, Document No. 17057.

| States | Hand-held ban | All cell phone ban | Texting ban | Enforcement |
|----------------------|---|--|--|------------------------------|
| Georgia | Drivers younger than 18 (effective 07/01/10) | School bus drivers. Drivers younger than 18. | All drivers (effective 07/01/10) | Primary |
| Hawaii | No | No | No | Not applicable |
| Idaho | No | No | No | Not applicable |
| Illinois | Drivers in construction and school speed zones | Learner's permit holders younger than 19, drivers younger than 19, and school bus drivers | All drivers | Primary |
| Indiana | No | Drivers under the age of 18. | All drivers (effective 07/01/11). | Primary |
| Iowa | No | Learner's permit and intermediate license holders | All drivers | Secondary for texting |
| Kansas | No | Learner's permit and intermediate license holders | All drivers (effective 07/01/10). | Primary |
| Kentucky | No | Drivers younger than 18 (effective 07/13/10), school bus drivers | All drivers (effective 07/13/10) | Primary (effective 07/13/10) |
| Louisiana | No | School bus drivers, learner's permit and intermediate license holders, drivers under age 18 | All drivers | Primary |
| Maine** | No | Learner's permit and intermediate license holders | All drivers (effective 09/13/11) | Primary |
| Maryland | All drivers (effective 10/01/10), School Bus Drivers. | Learner's permit and intermediate license holders under 18. School bus drivers | All drivers | Primary for texting |
| Massachusetts | Local option | School bus drivers, passenger bus drivers, drivers younger than 18 | All drivers (effective 09/30/10) | Primary |
| Michigan | Local option | No | All drivers (effective 07/01/10) | Primary (effective 07/01/10) |
| Minnesota | No | School bus drivers, learner's permit holders, and provisional license holders during the first 12 months after licensing | All drivers | Primary |
| Mississippi | No | School bus drivers. | Learner's permit holders and intermediate license holders | Primary |
| Missouri | No | No | Drivers 21 years of age or younger | Primary |
| Montana | No | No | No | Not applicable |
| Nebraska | No | Learner's permit and intermediate license holders younger than 18 | Learner's permit and intermediate license holders younger than 18 All drivers | Secondary |
| Nevada | All drivers (effective 01/01/12) | No | All drivers (effective 01/01/12) | Not applicable |
| New Hampshire | No | No | All drivers | Primary |

| States | Hand-held ban | All cell phone ban | Texting ban | Enforcement |
|-----------------------|---|---|--|---|
| New Jersey | All drivers | School bus drivers, and learner's permit and intermediate license holders | All drivers | Primary |
| New Mexico | Local option | Learners permit and intermediate license holders | No | Not applicable |
| New York | All drivers | No | All drivers | Primary |
| North Carolina | No | Drivers younger than 18 and school bus drivers | All drivers | Primary |
| North Dakota | Drivers younger than 18 (effective 01/01/12) | Drivers younger than 18 (effective 01/01/12) | All drivers (effective 08/01/11) | Primary (effective 08/01/11) |
| Ohio | Local option | No | No | Not applicable |
| Oklahoma | Learner's permit and intermediate license holders, school bus drivers and public transit drivers (effective 11/01/10) | School Bus Drivers and Public Transit Drivers (effective 11/01/10) | Learner's permit and intermediate license holders, school bus drivers and public transit drivers (effective 11/01/10) | Primary |
| Oregon | All drivers | Drivers younger than 18 | All drivers | Primary |
| Pennsylvania | Local option | No | All drivers | Primary |
| Rhode Island | No | School bus drivers and drivers younger than 18 | All drivers | Primary |
| South Carolina | No | No | No | Not applicable |
| South Dakota | No | No | No | Not applicable |
| Tennessee | No | School bus drivers, and learner's permit and intermediate license holders | All drivers | Primary |
| Texas | Drivers in school crossing zones | Bus drivers. Drivers younger than 18. (09/01/11) | Bus drivers when a passenger 17 and younger is present; intermediate license holders for first 12 months, drivers in school crossing zones | Primary |
| Utah | See footnote* | No | All drivers | Primary for texting; secondary for talking on hand-held phone |
| Vermont | No | Drivers younger than 18 shall not use any portable electronic device while driving | All drivers | Primary |
| Virginia | No | Drivers younger than 18 and school bus drivers | All drivers | Secondary; primary for school bus drivers |
| Washington | All drivers | Learners permit and intermediate license holders | All drivers | Primary |
| West Virginia | No | Drivers younger than 18 who hold either a learner's permit or an intermediate license | Drivers younger than 18 who hold either a learner's permit or an intermediate license | Primary |
| Wisconsin | No | No | All drivers (effective 12/01/10) | Primary (effective 12/01/10) |

| States | Hand-held ban | All cell phone ban | Texting ban | Enforcement |
|---------|---------------|--------------------|-------------|-------------|
| Wyoming | No | No | All drivers | Primary |

* Utah considers speaking on a cell phone, without a hands-free device, to be an offense only if a driver is also committing some other moving violation (other than speeding).

** Maine has a law that makes driving while distracted a traffic infraction. 29-A M.R.S.A. Sec. 2117.

*** Listed as a part of contributing factors

Federal Sample Law

In February 2010, USDOT unveiled a “Sample Law” to be used as a starting point for states crafting new laws to prohibit texting while driving.² Recognizing states have had some difficulty drafting language prohibiting dangerous behaviors, but allowing certain minimal uses of technology, USDOT requested the participation of several national groups to draft language satisfactory to all. The Sample Law, prepared by the National Highway Traffic Safety Administration (NHTSA), and a cross-section of safety and industry organizations, would authorize law enforcement officers to stop a vehicle and issue a citation to drivers who are texting while driving.³ The sample state law is patterned on the Executive Order issued by President Obama on October 1, 2009, directing federal employees not to engage in text messaging while driving government-owned vehicles or with government-owned equipment. Federal employees were required to comply with the ban starting on December 30, 2009.⁴

Contributors to the Sample Law include: Advocates for Highway and Auto Safety, Alliance of Automobile Manufacturers, American Association of Motor Vehicle Administrators, American Association of State Highway and Transportation Officials, AAA, Centers for Disease Control and Prevention, CTIA- The Wireless Association, Governors Highway Safety Association, ITS America, International Association of Chiefs of Police, National Conference of State Legislatures, National Safety Council, The National Traffic Law Center of the National District Attorneys Association, and Safe Kids USA.⁵

Florida Law

The state has expressly preempted all regulation of the use of electronic communications devices in a motor vehicle.⁶ There are currently no prohibitions related to texting or talking while driving. However, existing laws may apply more generally to distracted operators of motor vehicles. Operators of motor vehicles are in violation of existing statutes when driving carelessly or recklessly.

Careless driving is the failure to drive the same as other operators of motor vehicles, in a careful and prudent manner, having regard to all attendant circumstances, so as not to endanger the life,

² “New Sample Bill Will Aid States in Banning Texting While Driving,” United States Department of Transportation, DOT 31-10. USDOT Secretary Ray LaHood, February 22, 2010. <http://www.dot.gov/affairs/2010/dot3110.htm>

³ *Id.*

⁴ *Id.*

⁵ http://www.nhtsa.gov/staticfiles/rulemaking/pdf/Texting_Law_021910.pdf

⁶ s. 316.0075, F.S.

limb, or property of any person.⁷ Any person who violates the restriction against careless driving shall be cited for a moving violation.⁸

Reckless driving involves willful or wanton disregard for the safety of persons or property. Upon a first conviction, reckless driving is punishable by some combination of imprisonment,⁹ and at least a \$25 fine¹⁰ or by both such fine and imprisonment. A second or subsequent conviction requires a fine of at least \$50,¹¹ but may also result in imprisonment for not more than 6 months. Additionally, reckless driving that causes damage to the property or person of another commits a misdemeanor of the first degree.¹² Reckless driving that causes serious bodily injury¹³ to another commits a felony of the third degree.¹⁴

While prohibitions exist against vehicle operators wearing headsets, headphones, or other listening devices, there are exceptions.¹⁵ A driver is permitted to use a headset in conjunction with a cellular telephone that only provides sound through one ear and allows surrounding sounds to be heard with the other ear.¹⁶ The Department of Highway Safety and Motor Vehicles (DHSMV) is granted further rulemaking authority to detail the standards and specifications of radio equipment permitted by statute.¹⁷ DHSMV inspects and reviews all such devices submitted to it and publishes a list by name and type of approved equipment.

Section 322.27(3), F.S., provides a point system used to evaluate the qualifications of any person to operate a motor vehicle after accumulating multiple violations of motor vehicle laws. Moving violations typically result in assessment of three points, unless the infraction or offense is among those considered more serious. For example, pursuant to s. 322.27(3)(d), F.S., reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted limit all require assessment of four points. Leaving the scene of a crash and speeding resulting in a crash require assessment of six points.

DHSMV may suspend a driver for 30 days if the driver accumulates 12 or more points within a 12-month period,¹⁸ up to three months if the driver accumulates 18 points in 18 months,¹⁹ and up to one year if the driver accumulates 24 points within 36 months.²⁰

⁷ s. 316.1925, F.S.

⁸ Punishable as provided in ch. 318, F.S.

⁹ For period of not more than 90 days. Section 316.192(2)(a), F.S.

¹⁰ Not less than \$25 nor more than \$500. Section 316.192(2)(a), F.S.

¹¹ But no more than \$1,000. Section 316.192(2)(b), F.S.

¹² Punishable as provided in ss. 775.082 and 775.083, F.S.

¹³ The term “serious bodily injury” means an injury to another person, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ. Section 316.192(3)(c)(2), F.S.

¹⁴ Punishable as provided in ss. 775.082 - 775.084, F.S.

¹⁵ s. 316.304, F.S.

¹⁶ s. 316.304(2)(d), F.S.

¹⁷ s. 316.304(3), F.S.

¹⁸ s. 322.27(3)(a), F.S.

¹⁹ s. 322.27(3)(b), F.S.

²⁰ s. 322.27(3)(c), F.S.

III. Effect of Proposed Changes:

The bill draws heavily on the Sample Law promulgated by USDOT, particularly with regard to the express legislative intent and the prohibition itself. The penalties are modified somewhat to provide a graduated approach and to integrate with existing Florida Statutes.

Specific Intent

The bill's specific intention is to:

- Improve roadway safety for motor vehicle operators, passengers, bicyclists, pedestrians and all other road users;
- Prevent crashes related to the act of text messaging while driving;
- Reduce injuries, deaths, property damage, health care costs, health insurance, and automobile insurance rates related to motor vehicle crashes; and
- Authorize law enforcement officers to issue citations for text messaging while driving as a secondary offense.

Prohibition on Texting While Driving

To achieve these goals, the bill prohibits the operation of a motor vehicle “while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data in such a device for the purpose of nonvoice interpersonal communication.”

The bill defines the term “wireless communication device” as any device designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any other communications service²¹ and which allows text communications. The bill also specifies that for purposes of the prohibition on texting, a person is not operating a vehicle when legally parked.²² Violations are enforceable as secondary violations.

Exceptions

The bill makes exceptions for:

- Law enforcement, fire service, or emergency medical services personnel, or any operator of an authorized emergency vehicle as defined in s. 322.01, F.S.,²³ performing official duties;

²¹ “Communications service” itself is defined by reference to s. 812.15, F.S. In that statute, the term “communications service” means:

any service lawfully provided for a charge or compensation by any cable system or by any radio, fiber optic, photooptical, electromagnetic, photoelectronic, satellite, microwave, data transmission, Internet-based, or wireless distribution network, system, or facility, including, but not limited to, any electronic, data, video, audio, Internet access, microwave, and radio communications, transmissions, signals, and services, and any such communications, transmissions, signals, and services lawfully provided for a charge or compensation, directly or indirectly by or through any of those networks, systems, or facilities.

²² Sections 316.194 and 316.1945, F.S., prohibit stopping, standing or parking in certain areas. Therefore, the driver of a vehicle stopped, standing, or parked in one of the prohibited locations may not be considered legally parked.

²³ Section 322.01(4), F.S., defines an “authorized emergency vehicle” as:

a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by

- Reporting an emergency or criminal or suspicious activity to law enforcement;
- Receiving messages related to:
 - The operation or navigation of a motor vehicle;
 - Safety-related information including emergency, traffic, or weather alerts;
 - Data used primarily by the motor vehicle; or
 - Radio broadcasts;
- Using a device or system for navigation purposes; or
- Conducting wireless interpersonal communication that does *not* require manual entry of multiple letters, numbers, or symbols, or reading text messages (except to activate or deactivate or initiate a feature or function).

Penalties

Enforcement is only allowed as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision relating to the traffic code, motor vehicle licensing, or driver's license requirements.

In any proceeding to determine whether a violation of this section has been committed, a driver's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may be admissible as evidence.

A penalty for a first violation of the prohibition is a non-moving violation, punishable as provided in ch. 318, F.S. Non-moving violations result in a \$30 fine, plus court costs which vary by jurisdiction.

If a person commits a second violation of the prohibition within 5 years of the first violation, the penalty is increased to a moving violation resulting in 3 points being assigned to the person's driver license. Chapter 318, F.S., provides a \$60 fine plus court costs.

The bill provides DHSMV will assign 6 points to the driver's license of any driver whose use of a wireless communications device results in a crash (regardless of whether the offense is a first or subsequent offense). This is identical to the number of points that would apply to a driver's license when the operator caused a crash as a result of unlawful speed. Additionally, any violation of the ban committed in conjunction with any moving violation for which points are assessed, when committed within a school safety zone, will result in an assessment of 2 points.

The bill has an effective date of October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

s. 316.2397 to display red or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

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:

An individual violating the prohibition on using wireless communications devices for texting purposes while operating a motor vehicle would be subject to a civil penalties and points being assigned to his or her driver license depending whether the violation is a first offense or a second or subsequent offense and whether it resulted in a crash.

C. Government Sector Impact:

The bill may generate an indeterminate amount of revenue for both state and local law enforcement agencies, depending on the number of secondary violations issued by law enforcement officials and the frequency with which violators commit subsequent violations, incurring large penalties.

According to DHSMV, programming modifications will be required to implement the bill; however, the necessary hours can be incorporated into ISA's normal workload.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Communications, Energy, and Public Utilities Committee on January 12, 2012:

The committee substitute provides that any violation of the texting ban committed in

²⁴ Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 416* (Oct. 19, 2011, on file with the Senate Transportation Committee).

conjunction with any moving violation for which points are assessed, when committed within a school safety zone, will result in an assessment of 2 points.

B. Amendments:

None.

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



130954

LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 01/12/2012 | . | |
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The Committee on Communications, Energy, and Public Utilities
(Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 138 and 139
insert:

11. Any moving violation covered in this paragraph
committed in conjunction with the unlawful use of a wireless
communication device within a school safety zone-2 points.

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

And the title is amended as follows:

Delete line 14
and insert:



130954

13
14

communications device within a school safety zone or
resulting in a crash; providing

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/12/12

Meeting Date

Topic Texting

Bill Number SB 416
(if applicable)

Name H. Lee Moffitt

Amendment Barcode _____
(if applicable)

Job Title Legislative Counsel

Address 3225 South MacDill Avenue, Suite 129-336

Phone 813-831-1500

Street

Tampa

FL

33629

City

State

Zip

E-mail mrspeaker@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AAA Auto Club

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

Reichenbach

1/12/12

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

Meeting Date

Topic

Texting

Bill Number

SB 416

(if applicable)

Name

James D. "Doc" Reichenbach

Amendment Barcode

(if applicable)

Job Title

State President

Address

PO Box 712

Phone

352-625-6353

Street

Silver Springs FL 34489

E-mail

abatefl@afl.net

City

State

Zip

Speaking:

☒ For

☐ Against

☐ Information

Representing

ABATE of Florida, Inc.

Appearing at request of Chair:

☐ Yes

☐ No

Lobbyist registered with Legislature:

☒ Yes

☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-12-12

Meeting Date

Topic Wireless Comm. Devices

Bill Number 416
(if applicable)

Name Rebecca O'Hara

Amendment Barcode _____
(if applicable)

Job Title Vice Pres Govt Affairs

Address 1139 College
Street

Phone 339 6211

Tallah FL 32301
City State Zip

E-mail rohara@flmedical.org

Speaking: ☒ For ☐ Against ☐ Information

Representing Fla. Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

12 JAN 2012
Meeting Date

Topic USE OF WIRELESS DEVICES

Bill Number 0416
(if applicable)

Name CHARLES MILSTED

Amendment Barcode _____
(if applicable)

Job Title ASSOCIATE STATE DIRECTOR

Address 200 WEST COLLEGE AVENUE
Street
Tallahassee, FL 32312
City State Zip

Phone 850-577-5190

E-mail cmilsted@arp.org

Speaking: ☒ For ☐ Against ☐ Information

Representing ARP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/12/12

Meeting Date

Topic TEXTING WHILE DRIVING

Bill Number SB 416
(if applicable)

Name KEYNA CORY

Amendment Barcode _____
(if applicable)

Job Title LOBBYIST

Address 110 E. COLLEGE AVE
Street
TAUAHASSEE FL 32301
City State Zip

Phone 850 681-1065

E-mail keynacory@pacconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

Representing NATIONAL SOLID WASTES MANAGEMENT ASSN (NSWMA) FL CHAPTER

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/12/12

Meeting Date

Topic Wireless Communications While Driving

Bill Number 416
(if applicable)

Name Graham I. Rabinowitsch

Amendment Barcode _____
(if applicable)

Job Title _____

Address 9824 Fairway Cove Lane

Phone (954) 592-4194

Street

Plantation

FL

33324

City

State

Zip

E-mail g.rabinowitsch@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-12-2012

Meeting Date

Topic Texting while Driving

Bill Number 416
(if applicable)

Name Frank Menesini

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2901 E Bradford
Street

Phone 576-5858

Tall Fl. 32310
City State Zip

E-mail _____

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Sheriffs Assoc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/12/12

Meeting Date

Topic Texting

Bill Number SB 416
(if applicable)

Name H. Lee Moffitt

Amendment Barcode 130954
(if applicable)

Job Title Legislative Counsel

Address 3225 South MacDill Avenue, Suite 129-336

Phone 813-831-1500

Street

Tampa

FL

33629

City

State

Zip

E-mail mrspeaker@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Representing AAA Auto Club

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

Carbone11

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

1/12/12

Meeting Date

Topic texting while driving in school speed zones

Bill Number SB 416
(if applicable)

Name ANA CARBONELL

Amendment Barcode 130954
(if applicable)

Job Title MANAGING PARTNER

Address 501 Brickell Key Drive
Street

Phone 305 7103025

MIAMI FL 33131
City State Zip

E-mail acarbowell@the-factory.com

Speaking: ☒ For ☐ Against ☐ Information

Representing MIAMI-DADE COUNTY PUBLIC SCHOOLS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Communications, Energy, and Public Utilities
ITEM: SB 416
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Thursday, January 12, 2012
TIME: 8:00 —10:00 a.m.
PLACE: 110 Senate Office Building

| FINAL VOTE | | SENATORS | 1/12/2012 8:00AM 1 Amendment 130954 Diaz de la Portilla | | | | | |
|------------|-----|---------------------|---|-----|-----|-----|-----|-----|
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |
| X | | Altman | X | | | | | |
| X | | Benacquisto | X | | | | | |
| | | Bogdanoff | | | | | | |
| X | | Braynon | X | | | | | |
| X | | Diaz de la Portilla | X | | | | | |
| | | Evers | | | | | | |
| X | | Fasano | X | | | | | |
| X | | Flores | X | | | | | |
| X | | Joyner | X | | | | | |
| X | | Lynn | X | | | | | |
| VA | | Margolis | VA | | | | | |
| | X | Negron | X | | | | | |
| VA | | Sachs | VA | | | | | |
| X | | Smith, VICE CHAIR | X | | | | | |
| X | | Gardiner, CHAIR | X | | | | | |
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| 12 | 1 | | RCS | - | | | | |
| Yea | Nay | TOTALS | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Budget - Subcommittee on Finance and Tax,
Chair
Budget
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Communications, Energy, and Public Utilities
Education Pre-K - 12
Governmental Oversight and Accountability
Regulated Industries

JOINT COMMITTEE:

Administrative Procedures, *Alternating Chair*

SENATOR ELLYN SETNOR BOGDANOFF

25th District

November 14, 2011

Senator Andy Gardiner, Chair
The Committee on Communications, Energy, and Public Utilities
531 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: January 12, 2012 Meeting Excusal

Dear Chairman Gardiner:

Please excuse my absence from the November 14, 2011 meeting of the Committee on Communications, Energy and Public Utilities. I was presenting a bill in the Committee on Community Affairs.

Please do not hesitate to call me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellyn Setnor Bogdanoff", is written over the typed name.

Ellyn Setnor Bogdanoff
State Senator – District 25
bogdanoff.ellyn.web@flsenate.gov

cc: Matthew Carter, *Staff Director*

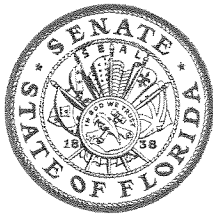
REPLY TO:

- ☐ 312 Clematis Street, Suite 403, West Palm Beach, FL 33401 (561) 650-6833
- ☐ 1845 Cordova Road, Suite 202, Fort Lauderdale, Florida 33316 (954) 467-4205
- ☐ 212 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5100

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GREG EVERS

2nd District

COMMITTEES:

Criminal Justice, *Chair*
Transportation, *Vice Chair*
Budget - Subcommittee on Criminal and Civil Justice
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Communications, Energy, and Public Utilities
Reapportionment
Rules - Subcommittee on Ethics and Elections

SELECT COMMITTEE:

Protecting Florida's Children

January 12, 2012

Senator Andy Gardiner, Chairman
Communications, Energy and
Public Utilities Committee
330 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Gardiner,

I respectfully request to be excused from the Communications, Energy and Public Utilities meeting this morning. I am ill and need to remain home in order to rest and recover. Please do not hesitate to contact me if you have any questions or need more information.

Warm regards,

A handwritten signature in cursive script that reads "Greg Evers".

Greg Evers

REPLY TO:

- ☐ 598 North Ferdon Boulevard, Crestview, Florida 32536 (850) 689-0556
- ☐ 24 North Tarragona, Pensacola, Florida 32502 (850) 595-0213
- ☐ 308 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5000

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: EL 110
Case:
Caption: Communications, Energy, and Public Utilities

Type:
Judge:

Started: 1/12/2012 8:05:51 AM
Ends: 1/12/2012 8:21:22 AM **Length:** 00:15:32

8:05:55 AM Chairman Gardiner calls meeting to order
8:06:01 AM AA calls roll
8:06:31 AM Senator Detert, SB 416
8:07:47 AM Sen. Gardiner calls for Amendment 130954
8:08:08 AM Sen. Diaz De La Portilla presented Amendment 130954
8:08:40 AM Question from Sen. Fasano
8:09:27 AM Question from Sen. Smith
8:10:35 AM Question from Sen. Gardiner
8:11:34 AM Sen. Smith debate
8:12:12 AM Sen. Joyner debate
8:12:52 AM Sen. Detert Closes
8:13:48 AM AA calls roll on SB 416
8:14:03 AM CS/SB 416 passes favorably
8:14:27 AM Sen. Lynn presents SB 844
8:14:57 AM AA calls roll on SB 844
8:15:34 AM SB 844 passes favorably
8:15:54 AM Sen. Oelrich's aide (Frank Blanco) presents SB 396
8:17:00 AM Speaker, Karen Peterson, Florida Gas Utility
8:17:25 AM Question from Sen. Sachs
8:17:45 AM Sen. Fasano, Amendment 782768
8:19:01 AM AA calls roll on SB 396
8:19:19 AM CS/SB 396 passes favorably
8:19:32 AM Comments by Chairman Gardiner
8:20:47 AM Sen. Margolis and Sen. Sachs would like to vote favorably on SB 416
8:21:10 AM Sen. Negrón moves to adjourn