Certain Public Employees

SPB 71	08 by	GO ; Flo	rida Retirem	ent System		
888268	Α	S	FAV	GO, Ring	Delete L.208:	03/20 10:17 A
235326	Α	S	FAV	GO, Ring	Delete L.239:	03/20 10:17 /
554386	Α	S	FAV	GO, Ring	Delete L.328 - 349:	03/20 10:17 A
SB 782	by Bra	andes;	(Similar to H	I 1231) Government Data Pr	actices	
450470	Α	S	RCS	GO, Bradley	Delete L.171 - 172:	03/20 10:17 A
133318	Α	S	RCS	GO, Bradley	Delete L.180 - 210:	03/20 10:17 A
-		/ TR, Br	randes; (Sin	nilar to CS/CS/H 0599) Publi	c Records/Automated License Plate R	ecognition Systems
Exemption			DCC	CO Boon	Dolo+o I 22 F9.	02/20 10:17 /
918076	А	S	RCS	GO, Bean	Delete L.23 - 58:	03/20 10:17 A
SB 366	by Bra	andes;	(Similar to C	S/CS/H 0643) Public Record	s/Trade Secrets/Computers	
644500	Α	S	RCS	GO, Bean	Delete L.28 - 59:	03/20 10:17 A
			CO-INTROD	OUCERS) Brandes; (Identio	cal to CS/H 0421) Public Records/Taxp	payer's Email Addres
SB 538	by La t	tvala (C		DUCERS) Brandes ; (Idention 47) OGSR/Scripps Florida Fu		oayer's Email Addres
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SB 816 by Bradley (CO-INTRODUCERS) Dean, Hays, Thrasher; (Similar to H 0649) Collective Bargaining for

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Thursday, March 20, 2014

TIME: 8:30 —10:00 a.m.

Pat Thomas Committee Room, 412 Knott Building PLACE:

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

GO RC

	Worker 4, 4	ommons, and omm	
TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Consideration of proposed committee	tee bill:	
1	SPB 7108	Florida Retirement System; Authorizing renewed membership in the retirement system for retirees who are reemployed in a position eligible for the Elected Officers' Class under certain circumstances; authorizing renewed membership in the retirement system for retirees of the Senior Management Service Optional Annuity Program who are reemployed on or after a specified date; requiring that certain retirees who are employed on or after a specified date be renewed members in the investment plan, etc.	Submitted as Committee Bill Yeas 8 Nays 0
2	SB 782 Brandes (Similar H 1231)	Government Data Practices; Requiring the Division of Library and Information Services of the Department of State to adopt rules providing procedures for an agency to establish schedules for the physical destruction or other disposal of records containing personal identification information; requiring an agency that collects and maintains personal identification information to post a privacy policy on the agency's website; requiring the Agency for Health Care Administration to provide specified data on assisted living facilities by a certain date, etc. GO 03/20/2014 Fav/CS AHS	Fav/CS Yeas 7 Nays 0
3	CS/SB 226 Transportation / Brandes (Similar CS/CS/H 599)	Public Records/Automated License Plate Recognition Systems Exemption; Creating a public records exemption for images obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated from such images; providing conditions for disclosure of such images and information, etc. TR 01/09/2014 Fav/CS GO 03/20/2014 Fav/CS	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Thursday, March 20, 2014, 8:30 —10:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 366 Brandes (Similar CS/CS/H 643, Compare CS/CS/H 641, Link CS/CS/S 364)	Public Records/Trade Secrets/Computers; Amending an exemption from public records requirements for data, programs, and supporting documentation that are trade secrets residing or existing internal or external to a computer, computer system, or computer network; expanding the exemption to include such trade secret information residing or existing internal or external to an electronic device; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc.	Fav/CS Yeas 8 Nays 0
		CU 02/04/2014 Favorable CJ 02/17/2014 Favorable GO 03/20/2014 Fav/CS RC	
5	SB 516 Latvala (Similar H 399)	Public Records/Point-In-Time Count and Survey/Homeless Management Information System; Creating a public records exemption for individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System; specifying that the exemption does not preclude the release of aggregate information; providing for future review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc.	Favorable Yeas 8 Nays 0
		RC	
6	SB 538 Latvala (Identical CS/H 421)	Public Records/Taxpayer's Email Address; Providing an exemption from public records requirements for email addresses obtained by the tax collector for the purpose of electronically sending tax notices or obtaining the consent of the taxpayer to the electronic transmission of tax notices; providing for future review and repeal of the exemption; providing a statement of public necessity, etc.	Favorable Yeas 8 Nays 0
		CA 01/14/2014 Favorable GO 03/20/2014 Favorable RC	
7	SB 996 Commerce and Tourism (Identical H 7047)	OGSR/Scripps Florida Funding Corporation; Repealing provisions which provide an exemption from public record and public meeting requirements for certain records and meetings of the Scripps Florida Funding Corporation, etc.	Favorable Yeas 8 Nays 0
		GO 03/20/2014 Favorable RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1290 Altman (Similar H 973)	Transportation Services Procurement; Requiring the Department of Management Services to adopt a rule relating to the procurement of certain transportation services; specifying requirements for the content and implementation of the rule; authorizing the department to submit a report to the Legislature, etc.	Fav/CS Yeas 8 Nays 0
		GO 03/20/2014 Fav/CS TR AP	
9	SB 776 Simpson (Similar H 767)	Business Entities; Revising the filing fees of a limited liability company, corporation, corporation not for profit, limited partnership, and partnership, etc.	Favorable Yeas 8 Nays 0
		CM 03/03/2014 Favorable GO 03/20/2014 Favorable AP	
10	SB 646 Montford (Similar H 7121)	OGSR/Education and Applicant Records/Public Postsecondary Educational Institutions; Amending provisions which provide an exemption from public records requirements for student education and applicant records of public postsecondary educational institutions; saving the exemption from repeal under the Open Government Sunset Review Act, etc.	Fav/CS Yeas 8 Nays 0
		ED 02/18/2014 Favorable GO 03/20/2014 Fav/CS RC	
11	SB 648 Montford (Compare H 7119)	OGSR/Education Records/Family Educational Rights and Privacy Act; Amending provisions which provide an exemption from public records requirements for education records, as defined in the Family Educational Rights and Privacy Act and related federal regulations; saving the exemption from repeal under the Open Government Sunset Review Act, etc.	Fav/CS Yeas 8 Nays 0
		ED 02/18/2014 Favorable GO 03/20/2014 Fav/CS RC	
12	SB 656 Montford (Similar H 7115)	OGSR/Active Investigations of Allegations/Testing Impropriety; Amending provisions which provide an exemption from public records requirements for certain information held by the Department of Education during active investigations of allegations of testing impropriety; saving the exemption from repeal under the Open Government Sunset Review Act, etc.	Fav/CS Yeas 8 Nays 0
		ED 02/18/2014 Favorable GO 03/20/2014 Fav/CS RC	

S-036 (10/2008) Page 3 of 4

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability Thursday, March 20, 2014, 8:30 —10:00 a.m.

AB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 816 Bradley (Similar H 649)	Collective Bargaining for Certain Public Employees; Specifying that, for purposes of resolving an impasse issue unrelated to wages, the sheriff, tax collector, property appraiser, supervisor of elections, or clerk of the circuit court is the legislative body for his or her respective employees; requiring the board of county commissioners to provide supplemental funds to a county constitutional officer if resolution of a disputed impasse issue over wages exceeds the officer's final offer, etc.	Not Considered
		GO 03/20/2014 Not Considered CA AP	

S-036 (10/2008) Page 4 of 4

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.)

Prepar	ed By: The Prof	essional S	Staff of the Com	mittee on Governme	ental Oversight and Accountability
BILL:	SPB 7108				
INTRODUCER:	For consider	ation by	the Governm	ental Oversight a	nd Accountability Committee
SUBJECT:	Florida Retin	rement S	ystem		
DATE:	March 18, 20	014	REVISED:	03/20/14	
ANAL [*] 1. <u>McKay</u>	YST	STAFF McVar	F DIRECTOR ney	REFERENCE	ACTION GO Submitted as Committee Bill

I. Summary:

SPB 7108 creates a limited exception to the prohibition on renewed membership in the Florida Retirement System. Retirees who retired from the investment plan, the Senior Management Service Optional Annuity Program (SMSOAP), the State University System Optional Retirement Program (SUSORP) or the State Community College System Optional Retirement Program (SCCSOAP) before July 1, 2010, and are employed in a regularly established position with a covered employer on or after January 1, 2015, will be a renewed member in the FRS as follows:

Investment Plan (all classes) → Investment Plan (Regular Class)
 SMSOAP → Investment Plan (Regular Class)

• SUSORP \rightarrow SUSORP • SCCSORP \rightarrow SCCSORP

Renewed members will have to meet the vesting requirements of the plans in which they become renewed members. Creditable service does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014, nor may employer or employee contributions be paid into a renewed member's investment plan account for employment with a covered employer during this time period.

The bill's exception to the prohibition on renewed membership does not extend to retirees of the pension plan.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the pension plan, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a

closed group. The FRS is a contributory system, with most members contributing 3 percent of their salaries. 2

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2013, the FRS had 621,774 active members, 347,962 retired members and beneficiaries, 16,018 disabled retirees, and 38,724 active participants of the Deferred Retirement Option Program (DROP).³ The FRS consists of 1,000 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 185 cities and 251 special districts that have elected to join the system.⁴

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

- Regular Class⁵ consists of 536,506 active members, plus 6,461 in renewed membership;
- Special Risk Class⁶ includes 68,800 active members;
- Special Risk Administrative Support Class⁷ has 58 active members;
- Elected Officers' Class⁸ has 2,094 active members, plus 152 in renewed membership; and
- Senior Management Service Class⁹ has 7,450 members, plus 210 in renewed membership. 10

Investment Plan

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

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

¹ The Florida Retirement System Annual Report, July 1, 2012 – June 30, 2013, at 16. Available online at: https://www.rol.frs.state.fl.us/forms/2012-13_Annual_Report.pdf

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System 2012-2013 Annual Report, at 10.

⁴ *Id.*, at 38.

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

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

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S. ⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district

officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

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

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

¹⁰ All figures from Florida Retirement System 2012-2013 Annual Report, at 47.

A member vests immediately in all employee contributions paid to the investment plan. ¹¹ With respect to the employer contributions, a member vests after completing one work year with an FRS employer. ¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution. ¹³ The investment plan also provides disability coverage for both inline-of-duty and regular disability retirement benefits. ¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan. ¹⁵

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

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement (division). ¹⁸ Investment management is handled by the State Board of Administration.

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

¹¹ Section 121.4501(6)(a), F.S.

 $^{^{12}}$ If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) - (d), F.S.

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an inline-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ Section 4, Art. IV, Fla. Const.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Optional Retirement Programs

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

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program (SMSOAP);²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program (SUSORP);²⁶ and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program (SCCSORP).²⁷

Reemployment Restrictions

For the purposes of the pension plan, a "retiree" means a former member of the FRS or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member. For the purposes of the investment plan, a "retiree" means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided the Internal Revenue Code. ²⁹

After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting their FRS benefits.

However, there are certain termination requirements and reemployment limitations that affect retirement benefits **if a retiree is employed with an FRS-participating employer** during the first 12 calendar months after the effective retirement date without DROP participation or after the DROP termination date. If a retiree returns to work during the **first six calendar months** of retirement or after their DROP termination date, then their retirement application is voided and all retirement benefits, including any funds accumulated during DROP participation, must be repaid to the FRS Trust Fund. This restriction applies even if the particular position held is not covered by the FRS. A retiree cannot become a newly hired employee until after meeting the definition of termination by remaining unemployed for six calendar months.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁵ The SMSOAP was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

²⁶ Eligible participants of the SUSORP are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

²⁷ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

²⁸ Section 121.021(60), F.S.

²⁹ Section 121.4501(2)(k), F.S.

A retiree may not receive both a salary and a retirement benefit in the same month during the **seventh through twelfth calendar months** of retirement or after the DROP termination date. There are no exceptions to this reemployment limitation during this period. This restriction applies even if the particular position held is not covered by the FRS. A retiree must inform the division if they work for an FRS employer during the reemployment limitation period.

Suspended retirement benefits for the months a reemployed retiree are employed by an FRS employer during the reemployment limitation period will never be received by the retiree. The reemployed retiree and their employing agency are jointly and severally liable for repaying any retirement benefits the employee receives while working during this period.

There are no limits on working for an FRS employer after a retiree has been retired for 12 calendar months.

If a retiree is re-employed with an FRS participating employer, they will be required to sign a statement that their reemployment does not violate these provisions.³⁰

Before July 1, 2010, there were various exceptions to employment with FRS-covered employers during the reemployment limitation period. All reemployment limitation exceptions that were not specific to educational institutions were closed by operation of HB 479, which also extended from one month to 12 months the exclusionary period immediately after retirement in which a retiree may not be reemployed with any FRS employer.³¹

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (Pension Plan or Investment Plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members who retire again, including former DROP participants, are once more subject to reemployment limitations.

Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent children of a renewed member may qualify for survivor benefits.

Prior to July 1, 2010, retirees of a state-administered retirement system reemployed by an FRS-participating employer were eligible for renewed membership in the FRS. Currently, retirees initially re-employed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and will not earn creditable service toward a subsequent retirement benefit. This restriction from renewed membership includes retirees of the FRS Pension Plan, the

³⁰ The information in this section of the bill analysis comes from the FRS Pension Plan member Handbook, 2013 edition, p. 56, located at: https://www.rol.frs.state.fl.us/forms/member_handbook.pdf. See also ss. 121.091(9), 121.122, and 1012.01(2), F.S.

³¹ Chapter 2009-209, L.O.F.

FRS Investment Plan, the SUSORP, the SMSOAP, and the SCCSORP.³²

Reemployed Retirees without Renewed Membership

Information provided by the DMS indicates that as of December of 2013, there were 5,703 employees who retired by June 30, 2010, and subsequently returned to FRS-covered employment, but are not permitted to be renewed members of the FRS. Of that number, 2,918 were retirees of the pension plan, and 2,616 were retirees of the investment plan. Anecdotal evidence suggests that some of these "retirees" were employees who took distributions from investment plan accounts prior to July 1, 2010, and rolled them into IRAs upon their termination from FRS-covered employment. The enactment on the bar to renewed membership means that anyone who took such a distribution is deemed retired, and cannot become a renewed member of the FRS.

III. Effect of Proposed Changes:

The bill creates a limited exception to the prohibition on renewed membership in the FRS.

Section 1 amends s. 121.053, F.S., to make conforming changes consistent with section 3 of the bill.

Section 2 amends s. 121.055, F.S., to make conforming changes consistent with section 3 of the bill.

Section 3 amends s. 121.122, F.S., to provide that a retiree of:

- the investment plan,
- the State University System Optional Retirement Program,
- the Senior Management Service Optional Annuity Program, or
- the State Community College System Optional Retirement Program,

who retired before July 1, 2010, and is employed in a regularly established position with a covered employer on or after January 1, 2015, will be a renewed member of the Regular Class of the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSOPRP or SCCSORP. The renewed member must satisfy the vesting requirements of the plan (one year for the investment plan). Members who retired and returned to renewed membership before July 1, 2010, may continue membership in the plan they choose.

Creditable service (including credit toward the retiree health insurance subsidy) does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014. Nor may employer or employee contributions be paid into a renewed member's investment plan account for employment with a covered employer during this time period.

Section 4 amends s. 121.4501, F.S., to make conforming changes consistent with section 3 of the bill.

³² *Id.*, at 57. See also ss. 121.053, 121.091(9), 121.122, and 238.181, F.S.

Section 5 makes the finding that the changes made by the bill fulfill an important state interest.

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated . . .".

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, community colleges, counties, and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Employers participating in the FRS that hire employees eligible for renewed membership will incur greater personnel costs associated with contributing to the FRS. Likewise, the public sector employees will also contribute 3% of their salaries to the FRS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.053, 121.055, 121.122, and 121.4501.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

	LEGISLATIVE ACTION	
Senate	•	House
Comm: FAV	•	
03/20/2014		
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The Committee on Governmental Oversight and Accountability (Ring) recommended the following:

Senate Amendment

Delete line 208

and insert:

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member of the Regular Class of the investment plan, regardless

of the position held, unless employed in a position

LEGISLATIVE ACTION Senate House Comm: FAV 03/20/2014

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

Senate Amendment (with title amendment)

3 Delete line 239

and insert:

position with a covered employer on or after January 1, 2015.

The employer and employee contributions shall be transferred to the investment plan and placed in a default fund as designated

by the state board. The retiree may move the contributions once

an account is activated in the investment plan.

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11	======== T I T L E A M E N D M E N T =========
12	And the title is amended as follows:
13	Between lines 23 and 24
14	insert:
15	providing for the administration of the employer and
16	employee contributions;

	LEGISLATIVE ACTION	
Senate		House
Comm: FAV		
03/20/2014		
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The Committee on Governmental Oversight and Accountability (Ring) recommended the following:

Senate Amendment (with title amendment)

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Delete lines 328 - 349

and insert:

3. Is a retired member of the investment plan, the State University System Optional Retirement Program, the Senior Management Service Optional Annuity Program, or the State Community College System Optional Retirement Program who retired before July 1, 2010 and is employed in a regularly established position on or after January 1, 2015, as provided in s. 121.122.

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12 The term does not include any member participating in the 13 Deferred Retirement Option Program established under s. 14 121.091(13), a retiree of a state-administered retirement system who retired initially reemployed in a regularly established 15 16 position on or after July 1, 2010, or a mandatory participant of 17 the State University System Optional Retirement Program

(4) PARTICIPATION; ENROLLMENT.-

established under s. 121.35.

(f) A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A member retiree who retires is initially reemployed in a regularly established position on or after July 1, 2010, is not eligible to be enrolled in renewed membership. A member who retired before July 1, 2010, and is employed on or after January 1, 2015, in a regularly established position shall be a renewed member as provided in s. 121.122, except that a retiree who has returned to covered employment before July 1, 2010 may continue membership in the plan he or she chooses.

32 ======= T I T L E A M E N D M E N T ========== 33

And the title is amended as follows:

Between lines 43 and 44 insert:

> specifying that a retiree who has returned to covered employment before a specified date may continue membership in his or her selected retirement plan;

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 ${\bf FOR}$ ${\bf CONSIDERATION}$ ${\bf By}$ the Committee on Governmental Oversight and Accountability

585-02532A-14 20147108

A bill to be entitled An act relating to the Florida Retirement System; amending s. 121.053, F.S.; authorizing renewed membership in the retirement system for retirees who are reemployed in a position eligible for the Elected Officers' Class under certain circumstances; amending s. 121.055, F.S.; authorizing renewed membership in the retirement system for retirees of the Senior Management Service Optional Annuity Program who are reemployed on or after a specified date; amending s. 121.122, F.S.; requiring that certain retirees who are employed on or after a specified date be renewed members in the investment plan; providing exceptions; providing that creditable service does not accrue for a reemployed retiree during a specified period; prohibiting certain funds from being paid into a renewed member's investment plan account for a specified period of employment; requiring the renewed member to satisfy vesting requirements; prohibiting a renewed member from receiving disability benefits; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions to the member's investment plan account; prohibiting the purchase of past service in the investment plan; authorizing a renewed member to receive additional credit toward the health insurance subsidy under certain circumstances; providing that a retiree employed on or after a specified date in a regularly established position eligible for the State

Page 1 of 13

 ${f CODING: Words \ \underline{stricken} \ are \ deletions; \ words \ \underline{underlined} \ are \ additions.}$

585-02532A-14 20147108

University System Optional Retirement Program is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program; providing that a retiree employed on or after a specified date in a regularly established position eligible for the State Community College System Optional Retirement Program is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program; amending s. 121.4501, F.S.; redefining the term "eligible employee"; conforming a provision to changes made by the act; providing that the act fulfills an important state interest; providing an effective date.

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

Section 1. Subsections (3) and (5) of section 121.053, 51 Florida Statutes, are amended to read:

121.053 Participation in the Elected Officers' Class for retired members.—

(3) On or after July 1, 2010:

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55 (a) A retiree of a state-administered retirement system who
56 is <u>initially reemployed in</u> elected or appointed for the first
57 time to an elective office in a regularly established position
58 with a covered employer may not reenroll in the Florida

Page 2 of 13

8.3

Retirement System, except as provided in s. 121.122.

- (b) An elected officer who is elected or appointed to an elective office and is participating in the Deferred Retirement Option Program is subject to termination as defined in s. 121.021 upon completion of his or her DROP participation period. An elected official may defer termination as provided in subsection (7).
- (5) Any renewed member, as described in <u>s. 121.122(1)</u>, (3), (4), or (5) subsection (1) or subsection (2), who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the maximum health insurance subsidy. Any additional subsidy due because of such additional credit may be received only at the time of payment of the second career retirement benefit. The total health insurance subsidy received from initial and renewed membership may not exceed the maximum allowed in s. 112.363.

Section 2. Paragraph (f) of subsection (1) and paragraph (c) of subsection (6) of section 121.055, Florida Statutes, are amended to read:

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

(1)

- (f) Effective July 1, 1997:
- 1. Except as provided in subparagraph 3., an elected state officer eligible for membership in the Elected Officers' Class under s. 121.052(2)(a), (b), or (c) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may,

Page 3 of 13

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585-02532A-14 20147108_

Florida Senate - 2014

(6)

within 6 months after assuming office or within 6 months after this act becomes a law for serving elected state officers, elect to participate in the Senior Management Service Optional Annuity Program, as provided in subsection (6), in lieu of membership in the Senior Management Service Class.

- 2. Except as provided in subparagraph 3., an elected officer of a local agency employer eligible for membership in the Elected Officers' Class under s. 121.052(2)(d) who elects membership in the Senior Management Service Class under s. 121.052(3)(c) may, within 6 months after assuming office, or within 6 months after this act becomes a law for serving elected officers of a local agency employer, elect to withdraw from the Florida Retirement System, as provided in subparagraph (b)2., in lieu of membership in the Senior Management Service Class.
- 3. A retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, through December 31, 2014, as an elected official eligible for the Elected Officers' Class may not be enrolled in renewed membership in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program as provided in subsection (6), and may not withdraw from the Florida Retirement System as a renewed member as provided in subparagraph (b)2., as applicable, in lieu of membership in the Senior Management Service Class. Effective January 1, 2015, a retiree of the Senior Management Service Optional Annuity Program who retired before July 1, 2010, and is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

Page 4 of 13

585-02532A-14

(c) Participation .-

- 1. An eligible employee who is employed on or before February 1, 1987, may elect to participate in the optional annuity program in lieu of participating in the Senior Management Service Class. Such election shall must be made in writing and filed with the department and the personnel officer of the employer on or before May 1, 1987. An eligible employee who is employed on or before February 1, 1987, and who fails to make an election to participate in the optional annuity program by May 1, 1987, iss-shall-be deemed to have elected membership in the Senior Management Service Class.
- 2. Except as provided in subparagraph 6., an employee who becomes eligible to participate in the optional annuity program by reason of initial employment commencing after February 1, 1987, may, within 90 days after the date of commencing employment, elect to participate in the optional annuity program. Such election shall must be made in writing and filed with the personnel officer of the employer. An eligible employee who does not within 90 days after commencing employment elect to participate in the optional annuity program is shall-be deemed to have elected membership in the Senior Management Service Class.
- 3. A person who is appointed to a position in the Senior Management Service Class and who is a member of an existing retirement system or the Special Risk or Special Risk Administrative Support Classes of the Florida Retirement System may elect to remain in such system or class in lieu of participating in the Senior Management Service Class or optional annuity program. Such election shall must be made in writing and

Page 5 of 13

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585-02532A-14 20147108_

filed with the department and the personnel officer of the employer within 90 days after such appointment. An eligible employee who fails to make an election to participate in the existing system, the Special Risk Class of the Florida Retirement System, the Special Risk Administrative Support Class of the Florida Retirement System, or the optional annuity program is shall be deemed to have elected membership in the Senior Management Service Class.

- 4. Except as provided in subparagraph 5., an employee's election to participate in the optional annuity program is irrevocable if the employee continues to be employed in an eligible position and continues to meet the eligibility requirements set forth in this paragraph.
- 5. Effective from July 1, 2002, through September 30, 2002, an active employee in a regularly established position who has elected to participate in the Senior Management Service Optional Annuity Program has one opportunity to choose to move from the Senior Management Service Optional Annuity Program to the Florida Retirement System Pension Plan.
- a. The election <u>shall</u> <u>must</u> be made in writing and <u>must</u> be filed with the department and the personnel officer of the employer before October 1, 2002, or, in the case of an active employee who is on a leave of absence on July 1, 2002, within 90 days after the conclusion of the leave of absence. This election is irrevocable.
- b. The employee shall receive service credit under the pension plan equal to his or her years of service under the Senior Management Service Optional Annuity Program. The cost for such credit is the amount representing the present value of that

Page 6 of 13

585-02532A-14

585-02532A-14 20147108

 $\mbox{\sc employee's accumulated benefit obligation for the affected period of service.}$

- c. The employee <u>shall</u> <u>must</u> transfer the total accumulated employer contributions and earnings on deposit in his or her Senior Management Service Optional Annuity Program account. If the transferred amount is not sufficient to pay the amount due, the employee <u>shall</u> <u>must</u> pay a sum representing the remainder of the amount due. The employee may not retain any employer contributions or earnings from the Senior Management Service Optional Annuity Program account.
- 6. A retiree of a state-administered retirement system who is initially reemployed on or after July 1, 2010, through December 31, 2014, may not renew membership in the Senior Management Service Optional Annuity Program. Effective January 1, 2015, a retiree of the Senior Management Service Optional Annuity Program who retired before July 1, 2010, and is reemployed in a regularly established position with a covered employer shall be enrolled as a renewed member as provided in s. 121.122.

Section 3. Subsection (2) of section 121.122, Florida Statutes, is amended, and subsections (3), (4), and (5) are added to that section, to read:

- 121.122 Renewed membership in system.-
- (2) Except as otherwise provided in subsections (3)-(5), a retiree of a state-administered retirement system who is initially reemployed in a regularly established position on or after July 1, 2010, may not be enrolled as a renewed member.
- (3) A retiree of the investment plan, the State University System Optional Retirement Program, the Senior Management

Page 7 of 13

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204	Service Optional Annuity Program, or the State Community College
205	System Optional Retirement Program who retired before July 1,
206	2010, and is employed in a regularly established position with a
207	covered employer on or after January 1, 2015, shall be a renewed
208	member of the investment plan, unless employed in a position
209	eligible for participation in the State University System
210	Optional Retirement Program or the State Community College
211	System Optional Retirement Program as provided in subsections
212	(4) and (5), respectively. The renewed member must satisfy the
213	vesting requirements and other provisions of this chapter.
214	(a) Creditable service, including credit toward the retiree
215	health insurance subsidy provided in s. 112.363, does not accrue
216	for a retiree's employment in a regularly established position
217	with a covered employer from July 1, 2010, through December 31,
218	<u>2014.</u>
219	(b) Employer and employee contributions, interest,
220	earnings, or any other funds may not be paid into a renewed
221	member's investment plan account for any employment in a
222	regularly established position with a covered employer from July
223	1, 2010, through December 31, 2014, by the renewed member or the
224	employer on behalf of the member.
225	(c) To be eligible to receive a retirement benefit, the
226	renewed member must satisfy the vesting requirements in s.
227	<u>121.4501(6).</u>
228	(d) The member is ineligible to receive disability benefits
229	as provided in s. 121.091(4) or s. 121.591(2).
230	(e) The member is subject to the reemployment after
231	retirement limitations provided in s. 121.091(9), as applicable.

Page 8 of 13

(f) The member must satisfy the requirements for

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585-02532A-14

585-02532A-14 20147108

termination from employment provided in s. 121.021(39).

- (g) Upon the renewed membership or reemployment of a retiree, the employer and the retiree shall pay the applicable employer and employee contributions required under ss. 112.363, 121.71, 121.74, and 121.76. The contributions are payable only for employment and salary earned in a regularly established position with a covered employer on or after January 1, 2015.
- (h) The member may not purchase any past service in the investment plan, including employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014.
- (i) A renewed member who is a retiree of the investment plan and who is not receiving the maximum health insurance subsidy provided in s. 112.363 is entitled to earn additional credit toward the subsidy. Such credit may be earned only for employment in a regularly established position with a covered employer on or after January 1, 2015. Any additional subsidy due because of additional credit may be received only at the time of paying the second career retirement benefit. The total health insurance subsidy received by a retiree receiving benefits from initial and renewed membership may not exceed the maximum allowed under s. 112.363.
- (4) A retiree of the investment plan, the State University
 System Optional Retirement Program, the Senior Management
 Service Optional Annuity Program, or the State Community College
 System Optional Retirement Program who retired before July 1,
 2010, and is employed in a regularly established position
 eligible for participation in the State University System
 Optional Retirement Program on or after January 1, 2015, shall

Page 9 of 13

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262	become a renewed member of the optional retirement program. The
263	renewed member must satisfy the vesting requirements and other
264	provisions of this chapter. Once enrolled, a renewed member
265	remains enrolled in the optional retirement program while
266	employed in an eligible position for the optional retirement
267	program. If employment in a different covered position results
268	in the retiree's enrollment in the investment plan, the retiree
269	is no longer eligible to participate in the optional retirement
270	program unless employed in a mandatory position under s. 121.35.
271	(a) The member is subject to the reemployment after
272	retirement limitations provided in s. 121.091(9), as applicable.
273	(b) The member must satisfy the requirements for
274	termination of employment provided in s. 121.021(39).
275	(c) Upon renewed membership or reemployment of a retiree,
276	the employer and the retiree shall pay the applicable employer
277	and employee contributions required under s. 121.35.
278	(d) The member, or the employer on behalf of the member,
279	may not purchase any prior service in the optional retirement
280	program or employment from July 1, 2010, to December 31, 2014,
281	when renewed membership is not available.
282	(5) A retiree of the investment plan, the State University
283	System Optional Retirement Program, the Senior Management System
284	Optional Annuity Program, or the State Community College System
285	Optional Retirement Program who retired before July 1, 2010, and
286	is employed in a regularly established position eligible for
287	participation in the State Community College System Optional
288	Retirement Program as provided in s. 121.051(2)(c)4. on or after
289	January 1, 2015, shall become a renewed member of the optional

Page 10 of 13

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retirement program. The renewed member must satisfy the

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- (a) The member is subject to the reemployment after retirement limitations provided in s. 121.091(9), as applicable.
- (b) The member must satisfy the requirements for termination of employment provided in s. 121.021(39).
- (c) Upon renewed membership or reemployment of a retiree, the employer and the retiree shall pay the applicable employer and employee contributions required under ss. 121.051(2)(c) and 1012.875.
- (d) The member, or the employer on behalf of the member, may not purchase any past service in the optional retirement program or employment accrued from July 1, 2010, to December 31, 2014.
- Section 4. Paragraph (e) of subsection (2) and paragraph (f) of subsection (4) of section 121.4501, Florida Statutes, are amended to read:
 - 121.4501 Florida Retirement System Investment Plan.-
 - (2) DEFINITIONS.—As used in this part, the term:
- (e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:
- 1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the

Page 11 of 13

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585-02532A-14	20147108

Florida Retirement System initially enrolled before July 1, 321 2010; or

Florida Senate - 2014

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- 322 2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as 324 established under s. 121.055(6), the State Community College 325 System Optional Retirement Program as established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35; or
 - 3. Is a retired member of a state-administered retirement system who is reemployed in a regularly established position on or after January 1, 2015, as provided in s. 121.122.

The term does not include any member participating in the Deferred Retirement Option Program established under s. 121.091(13), a retiree of a state-administered retirement system initially reemployed in a regularly established position on or after July 1, 2010, through December 31, 2014, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

- (4) PARTICIPATION; ENROLLMENT.-
- (f) A member of the investment plan who takes a distribution of any contributions from his or her investment plan account is considered a retiree. A retiree who is initially reemployed in a regularly established position on or after July 1, 2010, through December 31, 2014, is not eligible to be enrolled in renewed membership, except as provided in s. 121.122. An investment plan retiree who is reemployed on or after January 1, 2015, in a regularly established position shall be a renewed member of the investment plan as provided in s.

Page 12 of 13

Florida Senate - 2014 (PROF	POSED COMMITTEE BILL) SPB 71	.08
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121.122. 349 350 Section 5. The Legislature finds that a proper and 351 legitimate state purpose is served when employees and retirees 352 of the state and its political subdivisions, and the dependents, 353 survivors, and beneficiaries of such employees and retirees, are 354 extended the basic protections afforded by governmental 355 retirement systems. These persons must be provided benefits that 356 are fair and adequate and that are managed, administered, and 357 funded in an actuarially sound manner, as required by s. 14, 358 Article X of the State Constitution and part VII of chapter 112, 359 Florida Statutes. Therefore, the Legislature determines and 360 declares that this act fulfills an important state interest. 361 Section 6. This act shall take effect July 1, 2014.

585-02532A-14

Page 13 of 13

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) Bill Number SB 7108 (if applicable) Amendment Barcode (if applicable) Teacher Job Title **∑**Against Speaking: For Information Representing Self Appearing at request of Chair: Yes Lobbyist registered with Legislature: Yes 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)

APPEARANCE RECORD

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

Topic _					Bill Number	56	7108	
Name _	Kars	Can			Amendment		*	(if applicable)
Job Title								(if applicable)
Address	Street			ų	Phone			
	Sireei				E-mail			
	City		State	Zip				
Speaking	g: For	Against	Information	1				
Repr	esenting	March	LATVE	-0-		<u>c</u> 5	-Ano-	
Appearin	g at request of	Chair: Yes	No	Lobbyist	registered wit	h Legisla	ture: 🔀 Y	es 🗌 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.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate F	Professional Staff conducting the meeting)
Topic Florida Retirement System Name Thevin Wotson	
Job Title 1 oloh; cot	(if applicable)
Address 213 6. Adams Street Street Tallahabee, FL 32301	E-mail/Layin, watson after laca
Speaking: V For Against Information Representing For A 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	
	obbyist 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.

APPEARANCE RECORD

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

Meeting Date	
Topic Florida Rehiment System	Bill Number SPB 7108 (if applicable)
Name Divid Murrell	Amendment Barcode
Job Title Director of Lagiclatine Service	(II applicable)
Address 300 E. Brevard SV.	Phone 850 - 22 2-3327
Address 300 E. Brevard St. Street Tallahassa FL 32321 City State Zip	E-mail davidma flyba.com
Speaking: Against Information	
Representing Florida Police Benevalary	A 5500, 2.652
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.

3-3-14

APPEARANCE RECORD

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

3 (20 1) 3	
Meeting Date	
Topic S	Bill Number / (if applicable)
Name WOOD YOURS!	_ Amendment Barcode
Job Title In DC Programs Officer	(if applicable)
Address 1801 Herritoge Block	Phone 4/3-1497
Street St 32308	E-mail
Speaking: State Zip Speaking: Against Information Representing	alion
	st 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.)

NTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes SUBJECT: Government Data Practices OATE: March 21, 2014 REVISED: ANALYST STAFF DIRECTOR REFERENCE ACTION McKay McVaney GO Fav/CS AHS	Prepar	ed By: The Profession	nal Staff of the Comr	nittee on Governm	ental Oversight	t and Accountability
SUBJECT: Government Data Practices DATE: March 21, 2014 REVISED: ANALYST STAFF DIRECTOR REFERENCE ACTION McKay McVaney GO Fav/CS AHS	BILL:	CS/SB 782				
ANALYST STAFF DIRECTOR REFERENCE ACTION McKay McVaney GO Fav/CS AHS	INTRODUCER:	Governmental Ov	versight and Acco	untability Comn	nittee and Ser	nator Brandes
ANALYST STAFF DIRECTOR REFERENCE ACTION McKay McVaney GO Fav/CS AHS	SUBJECT:	Government Data	Practices			
McKay McVaney GO Fav/CS AHS	DATE:	March 21, 2014	REVISED:			
AHS AHS	ANAL	YST ST	TAFF DIRECTOR	REFERENCE		ACTION
	. McKay	Mc	Vaney	GO	Fav/CS	
ΔD	· ·			AHS		
Ai	•			AP		
		Please see	Section IX. f	or Addition	al Informa	ition:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 782 specifies data and information requirements and initiatives in three subject areas: government data collection practices related to personal identification information, data related to assisted living facilities, and comprehensive health information data.

The bill requires agencies which collect and maintain personal identification information through websites to post privacy policies on those websites. Agency websites that use cookies must inform a website user, but the user must be allowed to use the website even if the user declines to have cookies installed. OPPAGA must submit a report that identifies the records in which state agencies hold personal identification information, describes how individuals may view and verify agency-held personal identification information, and identifies any obstacles to an individual's access to such records.

The bill also requires the Agency for Health Care Administration (AHCA) to provide electronic access to basic information on each state-licensed assisted living facilities. This information must include information on violations and links to inspection reports. The AHCA must provide a monitored comment webpage where the public can comment on assisted living facilities and representatives of assisted living facilities may respond.

The bill eliminates the Florida Center for Health Information and Policy Analysis (Florida Center, or Center) and replaces it with the Florida Health Information Transparency Initiative (Initiative). Specifically, the bill:

- Directs the AHCA to make available state-collected data on health providers, facilities, services, and payment sources.
- Requires the AHCA to develop new methods to disseminate state-collected data and to convert data into an easily usable, electronic format.
- Details the types of data and information the AHCA must include in the comprehensive health information system.
- States what functions the AHCA must perform while collecting and disseminating comprehensive health information and statistics.
- Mandates that the AHCA implement the Initiative in a manner that recognizes state-collected data as an asset and rewards taxpayer investment in information collection and management.
- Mandates that the AHCA ensure that any vendor who enters into a contract with the state under this section does not inhibit or impede consumer access to state-collected health data.
- Eliminates the State Consumer Health Information and Policy Advisory Council.

OPPAGA must monitor and report on the AHCA's implementation of the Initiative.

The bill has an effective date of July 1, 2014.

II. Present Situation:

Records Management

Section 257.36, F.S., creates a records and information management program within the Division of Library and Information Services of the Department of State. The division must establish and administer a records management program directed to the application of efficient and economical management methods relating to the creation, utilization, maintenance, retention, preservation, and disposal of records, including public records. Each agency, defined as any state, county, district, or municipal officer, department, division, bureau, board, commission, or other separate unit of government created or established by law, must establish and maintain an active and continuing program for the economical and efficient management of records.

Pursuant to s. 257.36(6), F.S., a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division. The division must adopt rules, which are binding on all agencies, relating to the destruction and disposition of records. The rules must provide at least the following:

- Procedures for complying and submitting to the division records-retention schedules;
- Procedures for the physical destruction or other disposal of records; and
- Standards for the reproduction of records for security or with a view to the disposal of the original record.

The division issues General Records Schedules¹ that establish minimum retention requirements for record series common to all agencies or specified types of agencies based on the legal, fiscal, administrative, and historical value of those record series to the agencies and to the State of Florida.² If an agency has a type of record not covered by an existing General Record Schedule, the agency must request the division to create a Records Retention Schedule for that type of record. When the division creates and approves such a schedule, the agency must adhere to it.³

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

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

Assisted Living Facilities

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator. A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication. Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility. The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria. If a resident no longer meets the criteria for continued residency, or the facility is unable to meet the resident's needs, as determined by the facility administrator or health care provider, the resident must be discharged in accordance with the Resident Bill of Rights.

¹ The 13 active schedules for the various types of public entities are available at: http://dlis.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm

² The General Records Schedules are referenced in in Rule 1B-24.003, F.A.C.

³ Rule 1B-24.003(7), F.A.C.

⁴ FLA. CONST., Art. I, s. 24(a).

⁵ *Id*.

⁶ Section 119.07(1)(a), F.S.

⁷ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

⁸ Section 429.02(16), F.S.

⁹ Section 429.02(1), F.S.

¹⁰ For specific minimum standards see Rule 58A-5.0182, F.A.C.

¹¹ Section 429.26, F.S., and Rule 58A-5.0181, F.A.C.

¹² Section 429.28, F.S.

In March of 2013, there were 3,036 licensed ALFs in Florida with 85,413 beds. An ALF must have a standard license issued by the Agency for Health Care Administration (AHCA), pursuant to part I of ch. 429, F.S., and part II of ch. 408, F.S. In addition to a standard license, an ALF may have one or more specialty licenses that allow the ALF to provide additional care. These specialty licenses include limited nursing services, limited mental health services, and extended congregate care services. There are 1,073 facilities having limited nursing services specialty licenses (LNS licenses), 279 having extended congregate care licenses (ECC licenses), and 1,084 having limited mental health specialty licenses (LMH licenses).

The Florida Center for Health Information and Policy Analysis

The Florida Center, housed within the AHCA, is responsible for collecting, compiling, coordinating, analyzing, and disseminating health related data and statistics for the purposes of developing public policy and promoting the transparency of consumer health care information. ¹⁸ The Center is divided into five offices each handling an area of Center responsibility:

- The Office of Data Collection and Quality Assurance collects patient discharge data from all licensed acute care hospitals (including psychiatric and comprehensive rehabilitation units), comprehensive rehabilitation hospitals, ambulatory surgical centers and emergency departments.¹⁹
- The Office of Risk Management and Patient Safety conducts in-depth analyses of reported incidents to determine what happened and how the involved facility responded to the incident.²⁰
- The Office of Data Dissemination and Communication maintains the AHCA's health information website, ²¹ provides technical assistance to data users, and creates consumer brochures and other publications. ²²
- The Office of Health Policy and Research conducts research and analysis of health care data from facilities and develops policy recommendations aimed at improving the delivery of health care services in Florida.²³
- The Office of Health Information Exchange monitors innovations in health information technology, informatics, and the exchange of health information and provides a

¹³ Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee February 4, 2013.

¹⁴ Section 429.07(3)(c), F.S.

¹⁵ Section 429.075, F.S.

¹⁶ Section 429.07(3)(b), F.S.

¹⁷ Agency for Health Care Administration, information provided to Senate Children, Families, and Elder Affairs Committee February 4, 2013.

¹⁸ Florida Center for Health Information and Policy Analysis, found at: http://ahca.myflorida.com/SCHS/index.shtml, last visited on Mar. 14, 2014.

¹⁹ Office of Data Collection & Quality Assurance, found at http://www.fdhc.state.fl.us/SCHS/division.shtml#DataC, last visited on Mar. 14, 2014.

²⁰ Office of Risk Management and Patient Safety, found at: http://www.fdhc.state.fl.us/SCHS/division.shtml#PatientSaftey, last visited on Mar. 14, 2014.

²¹ www.FloridaHealthFinder.gov

²² The Office of Data Dissemination and Communication, found at http://www.fdhc.state.fl.us/SCHS/division.shtml#DataD, last visited on Mar. 14, 2014.

²³ The Office of Health Policy and Research, found at http://www.fdhc.state.fl.us/SCHS/division.shtml#Policy Research, last visited on Mar. 14, 2014.

clearinghouse of technical resources on health information exchange, electronic prescribing, privacy and security, and other relevant issues.²⁴

Florida Center Data Collection

The Florida Center electronically collects patient data from every Florida licensed inpatient hospital, ambulatory surgery center (ASC), emergency department, and comprehensive rehabilitation hospital on a quarterly basis. The data is validated for accuracy and maintained in three major databases including the hospital inpatient database, the ambulatory surgery database, and the emergency department database:²⁵

- The hospital inpatient database contains records for each patient stay at Florida acute care facilities, including long-term care hospitals and psychiatric hospitals. These records contain extensive patient information including discharge records, patient demographics, admission information, medical information, and charge data. This database also includes comprehensive inpatient rehabilitation data on patient-level discharge information from Florida's licensed freestanding comprehensive inpatient rehabilitation hospitals and acute care hospital distinct part rehabilitation units. The patient rehabilitation hospitals and acute care hospital distinct part rehabilitation units.
- The ambulatory surgery database contains "same-day surgery" data on reportable patient
 visits to Florida health care facilities, including freestanding ambulatory surgery centers,
 short-term acute care hospitals, lithotripsy centers, and cardiac catheterization laboratories.²⁸
 Ambulatory surgery data records include, but are not limited to, patient demographics,
 medical information, and charge data.²⁹
- The emergency department database collects reports of all patients who visited an emergency department, but were not admitted for inpatient care. Reports are electronically submitted to the AHCA and include the hour of arrival, the patient's chief complaint, principal diagnosis, race, ethnicity, and external causes of injury.³⁰

In addition to these databases, the Office of Risk Management and Patient Safety collects adverse incident reports from health care providers including, hospitals, ambulatory surgical centers, nursing homes, and assisted living facilities.³¹

Florida Center Data Dissemination

The Office of Data Dissemination and Communication makes data collected by the Florida Center available in three ways: by updating and maintaining the AHCA's health information website at www.FloridaHealthFinder.gov, by issuing standard and ad hoc reports, and by responding to requests for de-identified data.³²

²⁴ Office of Health Information Exchange, found at: http://www.fdhc.state.fl.us/SCHS/division.shtml#HIE, last visited on Mar. 14, 2014.

²⁵ Florida Center for Health Information and Policy Analysis, *2011 Annual Report*, p. 2, found at: http://edocs.dlis.state.fl.us/fldocs/ahca/schs/schs ar2011.pdf, last visited on Mar. 14, 2014.

²⁶ *Id.*, p. 3

²⁷ *Id.*, p. 4

²⁸ *Id.*, p. 3

²⁹ *Id.*, p. 4

³⁰ *Id.*, p. 5

³¹ *Id*.

³² *Id.*, pp. 6-9

• The Florida Center maintains www.FloridaHealthFinder.gov (website) which was established to assist consumers in making informed health care decisions and lead to improvements in quality of care in Florida. The website provides a wide array of search and comparative tools to the public which allow easy access to information on hospitals, ambulatory surgery centers, emergency departments, hospice providers, physician volume, health plans, nursing homes, and prices for prescription drugs in Florida. The website also provides tools to researchers and professionals which allow specialized data queries that require users to have some knowledge of medical coding and terminology. The features and data available on the website include a multimedia encyclopedia and symptoms navigator, hospital and ambulatory surgery centers performance data, data on mortality, complication, and infection rates for hospitals, and a facility/provider locator.

- Standard and Ad Hoc Reports The Center disseminates three standard reports which detail hospital fiscal data including a prior year report, an audited financial statement, and hospital financial data report. Also, ad hoc reports may be requested for customers looking for very specific information not included on a standard report or for customers who do not wish to purchase an entire data set to obtain information. One example of an ad hoc report would be a request for the average length of stay of patients admitted to a hospital with diabetes as a principle or secondary diagnosis.³⁵ The Center charges a set fee for standard reports³⁶ and a variable fee based on the extensiveness of an ad hoc report.³⁷
- Requests for De-identified Data The Center also sells hospital inpatient, ambulatory surgery, and emergency department data to the general public in a non-confidential format. However, the requester must sign a limited set data use agreement which binds the requester to only using the data in a way specified in the agreement. Information not available in these limited data sets include: patient ID number, medical record number, social security number, dates of admission and discharge, visit beginning and end dates, age in days, payer, date of birth, and procedure dates.³⁸

The State Consumer Health Information and Policy Advisory Council

Also created by s. 408.05, F.S., the State Consumer Health Information and Policy Advisory Council (Advisory Council) was established to make recommendations to the Florida Center for Health Information and Policy Analysis. The mission of the Advisory Council is to assist the Florida Center in reviewing the comprehensive health information system, including the identification, collection, standardization, sharing, and coordination of health-related data, fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities and to recommend improvements for purposes of public health, policy analysis, health information exchange and transparency of consumer health care information. The Advisory Council assists the AHCA in determining the method and format for the public disclosure of data collected by the Florida Center and also works with the Florida Center in the development and implementation of a long-range plan for making available health care quality

http://floridahealthfinderstore.blob.core.windows.net/documents/researchers/OrderData/documents/PriceList%20Jan%20201 1.pdf, last visited on Mar. 14, 2014.

³³ *Id.*, p. 9

³⁴ *Id.*, pp. 9-13

³⁵ *Id.*, p. 8

³⁶ The price list for purchasing data from the Center is available at:

³⁷ Supra note 8, p. 7

³⁸ *Id.*, pp. 7-8. Also see note 19 for a price list.

measures and financial data that will allow consumers to compare health care services.³⁹ The Advisory Council met four times in 2013; the next meeting is scheduled for March 21, 2014. The membership of the Advisory Council is detailed in s. 408.05(8), F.S., and includes:

- An employee of the Executive Office of the Governor.
- An employee of the Office of Insurance Regulation.
- An employee of the Department of Education.
- Ten persons appointed by the Secretary of Health Care Administration, representing other state and local agencies, state universities, business and health coalitions, local health councils.

III. Effect of Proposed Changes:

Government Data Collection and Retention Practices

Section 1 amends s. 257.36, F.S., by requiring that the Department of State's Division of Library and Information Services rules on the destruction and disposition of records must provide procedures for an agency to establish schedules for the physical destruction or other disposal of records held by the agency which contain personal identification information, as defined in s. 282.801, after meeting retention requirements. Unless otherwise required by law, an agency may indefinitely retain records containing information that is not identifiable as related to a unique individual.

Section 2 creates s. 282.801, F.S., and Part IV of ch. 282, F.S., relating to government data collection practices.

The bill provides definitions for use in the substantive provisions. "Agency" means 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 bill also defines "cookie," which is data installed and used in tracking website information, and "individual." "Personal identification information," means an item, collection, or grouping of information that may be used, alone or in conjunction with other information, to identify a unique individual, including, but not limited to, his or her:

- Name:
- Postal or e-mail address;
- Telephone number:
- Social security number;
- Date of birth:
- Mother's maiden name:
- Official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, or Medicaid or food assistance account number;

³⁹ State Consumer Health Information and Policy Advisory Council, *Executive Summary*, found at: http://ahca.myflorida.com/SCHS/CommitteesCouncils/docs/AC-ExecutiveSummary0113.pdf, last visited on Mar. 14, 2014.

• Bank account number, credit or debit card number, or other number or information that can be used to access an individual's financial resources;

- Educational records;
- Medical records:
- License plate number of a registered motor vehicle;
- Images, including facial images;
- Biometric identification information:
- Criminal history; or
- Employment history.

An agency that collects personal identification information through a website and retains the information must conspicuously post a privacy policy on the website. The privacy policy must provide:

- A description of the services the website provides.
- A description of the personal identification information that the agency collects and maintains from an individual accessing or using the website.
- An explanation of whether the agency's data collecting and sharing practices are mandatory or allow a user to opt out of those practices.
- Any available alternatives to using the website.
- A statement as to how the agency uses the personal identification information, including whether and under what circumstances the agency discloses such information.
- Whether any other individual or public or private entity collects personal identification information through the website.
- A general description of the security measures in place to protect personal identification information.
- An explanation of public records requirements relating to the personal identification information of an individual using the website and if such information may be disclosed in response to a public records request.

An agency that uses a website to install cookies must inform an individual accessing the website of the use of cookies and request permission to install any cookie. Individuals declining the installation of cookies must still be allowed to use the website. This provision doesn't apply to a temporarily installed cookie that is deleted from memory when the website browser or website application is closed.

Any contract between a public agency and a contractor must specify that the contractor must comply with the privacy policy and cookie requirements in the bill.

The failure of an agency to comply with these provisions does not create a civil cause of action.

Section 3 requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the President of the Senate and the Speaker of the House of Representatives by July 1, 2015, which:

• Identifies personal identification information, as defined in s. 282.801, F.S., and the records in which such information is contained, held by a state agency;

BILL: CS/SB 782

 Describes the processes by which an individual may currently view and verify his or her personal identification information held by an agency, including how an individual may request the correction of incorrect personal identification information; and

• Identifies any obstacles that inhibit an individual's access to such records.

Section 7 reenacts 120.54(8), F.S., in order to incorporate the amendment made to s. 257.36, F.S., by this bill. This is not a substantive provision; it is a technical requirement undertaken to ensure that agency rulemaking records are retained according to all the records retention provisions in s. 257.36(6), F.S.

Data on Assisted Living Facilities

Section 4 creates s. 429.55, F.S., to require the AHCA, by November 1, 2014, to provide, maintain, and update electronically accessible data on assisted living facilities. The data must include:

- Information on each licensed assisted living facility;
- A list of the facility's violations; and
- Links to inspection reports on file with the agency.

The AHCA may provide a monitored comment webpage that allows the public to comment on specific state-licensed assisted living facilities. The AHCA must review comments for profanities and redact profanities before posting the comments to the webpage. AHCA must retain all comments as they were originally submitted, which are subject to Florida public records law. A controlling interest in an assisted living facility, or an employee or owner of an assisted living facility, is prohibited from posting comments on the page, but may respond to comments on the page. The AHCA must ensure that such responses are identified as being from a representative of the facility.

The AHCA may provide links to third-party websites that use the published data to assist consumers in evaluating the quality of care and service in assisted living facilities.

The AHCA may adopt rules to administer this section.

The Florida Health Information Transparency Initiative

Section 5 amends s. 408.05, F.S., to:

- Eliminate the Florida Center for Health Information and Policy Analysis.
- Create the Florida Health Information Transparency Initiative.
- Direct the AHCA to make state-collected data on health providers, facilities, services, and payment sources available in a manner that allows for and encourages multiple innovative uses for the data.
- Require the AHCA, subject to the General Appropriations Act, to develop new methods of
 dissemination and to convert data into an easily usable electronic format, either by internal
 development or by contract with one or more vendors.
- Detail the types of data and information the AHCA must include in the comprehensive health information system, including data and information on:
 - Health resources:

- Utilization of health resources:
- Health care costs and financing;
- The extent, source, and type of public and private health insurance coverage in the state; and
- Data necessary for measuring value and quality of care provided by various health care providers.
- State what functions the AHCA must perform in order to collect and disseminate comprehensive health information and statistics to the public and to support the development of policy recommendations, including:
 - Collecting and compiling data from all state agencies and programs involved in providing, regulating, and paying for health services.
 - o Promoting data sharing through the development, dissemination, and evaluation of state-collected health data and making such data available, transferable, and readily useable.
 - Developing written agreements with local, state, and federal agencies for the sharing of health-care-related data.
 - o Enabling and facilitating the sharing and use of all state-collected health data to the maximum extent allowed by law.
 - Monitoring data collection procedures, testing data quality, and taking such corrective
 actions as may be necessary to ensure that data disseminated under the Initiative are
 accurate, valid, reliable and complete.
 - o Initiating and maintaining the activities necessary to collect, edit, verify, archive and retrieve the data.
- Mandate that the AHCA implement the Initiative in a manner that recognizes state-collected data as an asset and rewards taxpayer investment in information collection and management.
- Mandate that the AHCA ensure that any vendor who enters into a contract with the state under this section does not inhibit or impede consumer access to state-collected health data.
- Strike significant portions of the statute regarding the Comprehensive Health Information System.
- Eliminate the State Consumer Health Information and Policy Advisory Council.

Section 6 requires OPPAGA to monitor the AHCA's implementation of section 5 of this bill. No later than one year after the agency completes implementation, OPPAGA must provide a report to the President of the Senate and the Speaker of the House of Representatives containing recommendations regarding the application of data practices made pursuant to s. 408.05, F.S., to other executive branch agencies

Sections 8 through 17 amend ss. 20.42, 381.026, 395.301, 395.602, 395.6025, 408.07, 408.18, 465.0244, 627.6499, and 641.54, F.S., respectively, to strike references made obsolete by the changes made to s. 408.05, F.S., by this bill.

Effective Date

Section 18 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Initiative is intended to modernize health care data collection and dissemination functions to facilitate public access to this data for innovative uses.

C. Government Sector Impact:

The bill's fiscal impact on the AHCA is indeterminate and would depend largely on services and functions that could be outsourced and whether such outsourcing would lead to reduction of AHCA staff. Any such vendor contracts are subject to the General Appropriations Act.

The AHCA also estimated that a substantively similar version of the bill from last session would result in an insignificant reduction in the agency's travel expenses that are associated with the State Consumer Health Information and Policy Advisory Council.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 4 requires the AHCA to give public access to data about assisted living facilities. As of March 20, 2014, these provisions are substantially similar to provisions in section 15 of CS/CS/SB 248.⁴⁰

⁴⁰ CS/CS/SB 248 was passed by the Senate on March 18, 2014.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 257.36, 408.05, 120.54, 20.42, 381.026, 395.301, 395.602, 395.6025, 408.07, 408.18, 465.0244, 627.6499, and 641.54.

This bill creates section 282.801 and 429.55 of the Florida Statutes, and two unnumbered sections.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 20, 2014: The CS provides a definition of "state agency" for purposes of an OPPAGA report, clarifies that AHCA must maintain and update the assisted living facility database, and clarifies AHCA's duties with regards to redacting profanities on a comment webpage.

B. Amendments:

None.

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

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	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/20/2014		
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The Committee on Governmental Oversight and Accountability (Bradley) recommended the following:

Senate Amendment

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Delete lines 171 - 172

4 and insert:

> which such information is contained, held by a state agency. For purposes of this section, the term "state agency" has the same meaning as in s. 216.011(1)(qq), but does not include state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance



11	Corporati	ion,	the	Florida	Public	Service	Commission,	and	the
12	judicial	bra	nch.						

133318

	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/20/2014		

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

Senate Amendment (with title amendment)

3 Delete lines 180 - 210

and insert:

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Section 4. Section 429.55, Florida Statutes, is created to read:

429.55 Public access to data; comment page.-

(1) By November 1, 2014, the agency shall provide, maintain, and update at least quarterly, electronically accessible data on assisted living facilities. Such data must be



11	searchable, downloadable, and available in generally accepted
12	formats. At a minimum, such data must include:
13	(a) Information on each assisted living facility licensed
14	under this part, including:
15	1. The name and address of the facility.
16	2. The number and type of licensed beds in the facility.
17	3. The types of licenses held by the facility.
18	4. The facility's license expiration date and status.
19	5. Other relevant information that the agency currently
20	collects.
21	(b) A list of the facility's violations, including, for
22	each violation:
23	1. A summary of the violation presented in a manner
24	understandable by the general public;
25	2. Any sanctions imposed by final order; and
26	3. The date the corrective action was confirmed by the
27	agency.
28	(c) Links to inspection reports on file with the agency.
29	(2)(a) The agency may provide a monitored comment webpage
30	that allows members of the public to comment on specific
31	assisted living facilities licensed to operate in this state. At
32	a minimum, the comment webpage must allow members of the public
33	to identify themselves, provide comments on their experiences
34	with, or observations of, an assisted living facility, and view
35	others' comments.
36	(b) The agency shall review comments for profanities and
37	redact any profanities before posting the comments to the
38	webpage. After redacting any profanities, the agency shall post

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40	========= T I T L E A M E N D M E N T ==========
41	And the title is amended as follows:
42	Between lines 25 and 26
43	insert:
44	creating s. 429.55, F.S.;

By Senator Brandes

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22-00411B-14 2014782

A bill to be entitled An act relating to government data practices; amending s. 257.36, F.S.; requiring the Division of Library and Information Services of the Department of State to adopt rules providing procedures for an agency to establish schedules for the physical destruction or other disposal of records containing personal identification information; creating part IV of ch. 282, F.S., consisting of s. 282.801, F.S.; providing definitions; requiring an agency that collects and maintains personal identification information to post a privacy policy on the agency's website; prescribing minimum requirements for a privacy policy; requiring an agency to provide notice of the installation of cookies on an individual's computer; requiring that an individual who would otherwise be granted access to an agency's website be granted access even if he or she declines to have the cookie installed; providing an exception; requiring that privacy policy requirements be specified in a contract between a public agency and a contractor; specifying that a violation does not create a civil cause of action; requiring the Office of Program Policy Analysis and Government Accountability to submit a report to the Legislature by a specified date; providing report requirements; requiring the Agency for Health Care Administration to provide specified data on assisted living facilities by a certain date; providing minimum requirements for such data; authorizing the agency to create a comment

Page 1 of 32

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2014 SB 782

22-00411B-14 2014782 30 webpage regarding assisted living facilities; 31 providing minimum requirements; authorizing the agency 32 to provide links to certain third-party websites; 33 authorizing the agency to adopt rules; amending s. 34 408.05, F.S.; dissolving the Center for Health 35 Information and Policy Analysis within the Agency for 36 Health Care Administration; requiring the agency to 37 coordinate a system to promote access to certain data 38 and information; requiring that certain health-related 39 data be included within the system; assigning duties 40 to the agency relating to the collection and 41 dissemination of data; establishing conditions for the funding of the system; requiring the Office of Program 42 4.3 Policy Analysis and Government Accountability to monitor the agency's implementation of the health 45 information system; requiring the Office of Program 46 Policy Analysis and Government Accountability to 47 submit a report to the Legislature after completion of 48 the implementation; providing report requirements; 49 reenacting s. 120.54(8), F.S., relating to rulemaking, 50 to incorporate the amendment made to s. 257.36, F.S., 51 in a reference thereto; amending ss. 20.42, 381.026, 52 395.301, 395.602, 395.6025, 408.07, 408.18, 465.0244, 53 627.6499, and 641.54, F.S.; conforming provisions to 54 changes made by the act; providing an effective date. 55 56 Be It Enacted by the Legislature of the State of Florida: 57 58 Section 1. Subsection (6) of section 257.36, Florida

Page 2 of 32

22-00411B-14 2014782

Statutes, is amended to read:

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- 257.36 Records and information management.-
- (6) A public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the division. The division shall adopt reasonable rules consistent not inconsistent with this chapter which are shall be binding on all agencies relating to the destruction and disposition of records. Such rules must shall provide, but need not be limited to:
- (a) Procedures for complying and submitting to the division records—retention schedules.
- (b) Procedures for the physical destruction or other disposal of records.
- (c) Procedures for an agency to establish schedules for the physical destruction or other disposal of records held by the agency which contain personal identification information, as defined in s. 282.801, after meeting retention requirements. Unless otherwise required by law, an agency may indefinitely retain records containing information that is not identifiable as related to a unique individual.

(d)(e) Standards for the reproduction of records for security or with a view to the disposal of the original record.

Section 2. Part IV of chapter 282, Florida Statutes, consisting of section 282.801, Florida Statutes, is created to read:

PART IV

GOVERNMENT DATA COLLECTION PRACTICES

282.801 Government data practices.-

(1) For purposes of this part, the term:

Page 3 of 32

 ${f CODING: Words \ \underline{stricken} \ are \ deletions; \ words \ \underline{underlined} \ are \ additions.}$

Florida Senate - 2014 SB 782

22-00411B-14

2014782

88	(a) "Agency" has the same meaning as in s. 119.011.
89	(b) "Cookie" means data sent from a website which is
90	electronically installed on a computer or electronic device of
91	an individual who has accessed the website and transmits certain
92	information to the server of that website.
93	(c) "Individual" means a human being and does not include a
94	corporation, a partnership, or any other business entity.
95	(d) "Personal identification information" means an item,
96	collection, or grouping of information that may be used, alone
97	or in conjunction with other information, to identify a unique
98	individual, including, but not limited to, his or her:
99	1. Name;
100	<pre>2. Postal or e-mail address;</pre>
101	3. Telephone number;
102	4. Social security number;
103	5. Date of birth;
104	6. Mother's maiden name;
105	7. Official state-issued or United States-issued driver
106	license or identification number, alien registration number,
107	government passport number, employer or taxpayer identification
108	number, or Medicaid or food assistance account number;
109	8. Bank account number, credit or debit card number, or
110	other number or information that can be used to access an
111	<pre>individual's financial resources;</pre>
112	9. Educational records;
113	10. Medical records;
114	11. License plate number of a registered motor vehicle;
115	12. Images, including facial images;
116	13. Biometric identification information;

Page 4 of 32

2014782

22-00411B-14

	
117	14. Criminal history; or
118	15. Employment history.
119	(2) An agency that collects personal identification
120	information through a website and retains such information shall
121	maintain and conspicuously post a privacy policy on such
122	website. At a minimum, the privacy policy must provide:
123	(a) A description of the services the website provides.
124	(b) A description of the personal identification
125	information that the agency collects and maintains from an
126	individual accessing or using the website.
127	(c) An explanation of whether the agency's data collecting
128	and sharing practices are mandatory or allow a user to opt out
129	of those practices.
130	(d) Any available alternatives to using the website.
131	(e) A statement as to how the agency uses the personal
132	identification information, including, but not limited to,
133	whether and under what circumstances the agency discloses such
134	information.
135	(f) Whether any other person, as defined in s. 671.201,
136	collects personal identification information through the
137	website.
138	(g) A general description of the security measures in place
139	to protect personal identification information; however, such
140	description must not compromise the integrity of the security
141	measures.
142	(h) An explanation of public records requirements relating
143	to the personal identification information of an individual
144	using the website and if such information may be disclosed in
145	response to a public records request.

Page 5 of 32

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Florida Senate - 2014 SB 782

	22-00411B-14 2014782
146	(3) (a) An agency that uses a website to install a cookie on
147	an individual's computer or electronic device shall inform an
148	individual accessing the website of the use of cookies and
149	request permission to install a cookie on the individual's
150	<pre>computer.</pre>
151	(b) If an individual accessing the website of an agency
152	declines to have cookies installed, such individual shall still
153	be allowed to access and use the website.
154	(c) This subsection does not apply to a cookie temporarily
155	installed on an individual's computer or electronic device by an
156	agency if the cookie is installed only in the computer's or
157	electronic device's memory and is deleted from such memory when
158	the website browser or website application is closed.
159	(4) Any contract between a public agency, as defined in s.
160	$\underline{119.0701}$ (1) (b), and a contractor, as defined in s.
161	119.0701(1)(a), must specify that the contractor must comply
162	with the requirements in subsections (2) and (3).
163	(5) The failure of an agency to comply with this section
164	does not create a civil cause of action.
165	Section 3. The Office of Program Policy Analysis and
166	Government Accountability shall submit a report to the President
167	of the Senate and the Speaker of the House of Representatives by
168	<u>July 1, 2015, which:</u>
169	(1) Identifies personal identification information, as
170	defined in s. 282.801, Florida Statutes, and the records in
171	which such information is contained, held by an agency of the
172	executive or legislative branch of state government.
173	(2) Describes the processes by which an individual may
174	currently view and verify his or her personal identification

Page 6 of 32

2014782__

22-00411B-14

.75	information held by an agency, including how an individual may
76	request the correction of incorrect personal identification
.77	information.
.78	(3) Identifies any obstacles that inhibit an individual's
79	access to such records.
80	Section 4. (1) By November 1, 2014, the Agency for Health
81	Care Administration shall provide electronic access to data on
82	assisted living facilities. Such data must be searchable,
.83	downloadable, and available in generally accepted formats. At a
84	minimum, such data must include:
.85	(a) Information on each assisted living facility licensed
.86	under part I of chapter 429, Florida Statutes, including:
87	1. The name and address of the facility.
88	2. The number and type of licensed beds in the facility.
.89	3. The types of licenses held by the facility.
.90	4. The facility's license expiration date and status.
.91	$\underline{\text{5. Other relevant information that the agency currently}}$
92	collects.
93	(b) A list of the facility's violations, including, for
94	<pre>each violation:</pre>
.95	1. A summary of the violation presented in a manner
.96	understandable by the general public;
.97	2. Any sanctions imposed by final order; and
.98	3. The date the corrective action was confirmed by the
.99	agency.
00	(c) Links to inspection reports on file with the agency.
01	(2) (a) The agency may provide a monitored comment webpage
202	that allows members of the public to comment on specific
203	assisted living facilities licensed to operate in this state. At

Page 7 of 32

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Florida Senate - 2014 SB 782

2014782

22-00411B-14

204	a minimum, the comment webpage must allow members of the public
205	to identify themselves, provide comments on their experiences
206	with, or observations of, an assisted living facility, and view
207	others' comments.
208	(b) The agency shall review comments for profane content
209	and redact such content before posting the comments to the
210	webpage. After redacting profane content, the agency shall post
211	all comments, and shall retain all comments as they were
212	originally submitted, which are subject to the requirements of
213	chapter 119, Florida Statutes, and which shall be retained by
214	the agency for inspection by the public without further
215	redaction pursuant to retention schedules and disposal processes
216	for such records.
217	(c) A controlling interest, as defined in s. 408.803,
218	Florida Statutes, in an assisted living facility, or an employee
219	or owner of an assisted living facility, is prohibited from
220	posting comments on the page. A controlling interest, employee,
221	or owner may respond to comments on the page, and the agency
222	shall ensure that such responses are identified as being from a
223	representative of the facility.
224	(3) The agency may provide links to third-party websites
225	that use the data published pursuant to this section to assist
226	consumers in evaluating the quality of care and service in
227	assisted living facilities.
228	(4) The agency may adopt rules to administer this section.
229	Section 5. Section 408.05, Florida Statutes, is amended to
230	read:
231	408.05 Florida <u>Health Information Transparency Initiative</u>
232	Center for Health Information and Policy Analysis

Page 8 of 32

22-00411B-14 2014782

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- (1) CREATION AND PURPOSE ESTABLISHMENT. The agency shall create a comprehensive health information system to promote accessibility, transparency, and utility of state-collected data and information about health providers, facilities, services, and payment sources. The agency is responsible for making statecollected health data available in a manner that allows for and encourages multiple and innovative uses of data sets. Subject to funding by the General Appropriations Act, the agency shall develop and deploy, through a contract award with one or more vendors or internal development, new methods of dissemination and ways to convert data into easily usable electronic formats establish a Florida Center for Health Information and Policy Analysis. The center shall establish a comprehensive health information system to provide for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of both purposefully collected and extant health-related data and statistics. The center shall be staffed with public health experts, biostatisticians, information system analysts, health policy experts, economists, and other staff necessary to carry out its functions.
- (2) HEALTH-RELATED DATA.—The comprehensive health information system <u>must include the following data and information</u> operated by the Florida Center for Health Information and Policy Analysis shall identify the best available data sources and coordinate the compilation of extant health-related data and statistics and purposefully collect data on:
- (a) The extent and nature of illness and disability of the state population, including life expectancy, the incidence of

Page 9 of 32

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Florida Senate - 2014 SB 782

2014782

22-00411B-14

262	various acute and chronic illnesses, and infant and maternal
263	morbidity and mortality.
264	(b) The impact of illness and disability of the state
265	population on the state economy and on other aspects of the
266	well being of the people in this state.
267	(c) Environmental, social, and other health hazards.
268	(d) Health knowledge and practices of the people in this
269	state and determinants of health and nutritional practices and
270	status.
271	(a) (e) Health resources, including licensed health
272	professionals, licensed health care facilities, managed care
273	organizations, and other health services regulated or funded by
274	the state physicians, dentists, nurses, and other health
275	professionals, by specialty and type of practice and acute,
276	long-term care and other institutional care facility supplies
277	and specific services provided by hospitals, nursing homes, home
278	health agencies, and other health care facilities.
279	(b) (f) Utilization of health resources care by type of
280	provider .
281	$\underline{\text{(c)}}_{\text{(g)}}$ Health care costs and financing, including $\underline{\text{Medicaid}}$
282	claims and encounter data and data from other public and private
283	payors trends in health care prices and costs, the sources of
284	payment for health care services, and federal, state, and local
285	expenditures for health care.
286	(h) Family formation, growth, and dissolution.
287	$\underline{\text{(d)}}$ (i) The extent, source, and type of public and private
288	health insurance coverage in this state.
289	$\underline{\text{(e)}}\overline{\text{(j)}}$ The $\underline{\text{data necessary for measuring value and}}$ quality
290	of care provided by various health care providers, including

Page 10 of 32

22-00411B-14 2014782

applicable credentials, accreditation status, use, revenues and expenses, outcomes, site visits, and other regulatory reports, and the results of administrative and civil litigation related to health care.

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- (3) COORDINATION COMPREHENSIVE HEALTH INFORMATION SYSTEM.—
 In order to collect comprehensive produce comparable and uniform health information and statistics and to disseminate such information to for the public, as well as for the development of policy recommendations, the agency shall perform the following functions:
- (a) Collect and compile data from all agencies and programs that provide, regulate, and pay for health services Coordinate the activities of state agencies involved in the design and implementation of the comprehensive health information system.
- (b) <u>Promote data sharing through the Undertake research</u>, development, <u>dissemination</u>, and evaluation <u>of state-collected</u> <u>health data and by making such data available</u>, transferable, and <u>readily usable</u> <u>respecting the comprehensive health information system</u>.

(c) Review the statistical activities of state agencies to ensure that they are consistent with the comprehensive health information system.

(c)(d) Develop written agreements with local, state, and federal agencies for the sharing of health-care-related data or using the facilities and services of such agencies. State agencies, local health councils, and other agencies under state contract shall assist the agency center in obtaining, compiling, and transferring health-care-related data maintained by state and local agencies. Written agreements must specify the types,

Page 11 of 32

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Florida Senate - 2014 SB 782

2014782

22-00411B-14

320 methods, and periodicity of data exchanges and specify the types 321 of data that will be transferred to the center. 322 (d) (e) Enable and facilitate the sharing and use of all 323 state-collected health data to the maximum extent allowed by law 324 Establish by rule the types of data collected, compiled, 325 processed, used, or shared. Decisions regarding center data sets should be made based on consultation with the State Consumer 326 327 Health Information and Policy Advisory Council and other public 328 and private users regarding the types of data which should be 329 collected and their uses. The center shall establish 330 standardized means for collecting health information and statistics under laws and rules administered by the agency. 331 332 (f) Establish minimum health-care-related data sets which 333 are necessary on a continuing basis to fulfill the collection 334 requirements of the center and which shall be used by state 335 agencies in collecting and compiling health-care-related data. The agency shall periodically review ongoing health care data 336 337 collections of the Department of Health and other state agencies 338 to determine if the collections are being conducted in 339 accordance with the established minimum sets of data. 340 (g) Establish advisory standards to ensure the quality of health statistical and epidemiological data collection, 341 342 processing, and analysis by local, state, and private 343 organizations. 344 (e) (h) Monitor data collection procedures, test data 345 quality, and take such corrective actions as are necessary to 346 ensure that data and information disseminated under the 347 initiative are accurate, valid, reliable, and complete Prescribe standards for the publication of health-care-related data 348

Page 12 of 32

22-00411B-14 2014782

reported pursuant to this section which ensure the reporting of accurate, valid, reliable, complete, and comparable data. Such standards should include advisory warnings to users of the data regarding the status and quality of any data reported by or available from the center.

(f) (i) Initiate and maintain activities necessary to collect, edit, verify, archive, and retrieve data compiled pursuant to this section Prescribe standards for the maintenance and prescrvation of the center's data. This should include methods for archiving data, retrieval of archived data, and data editing and verification.

(j) Ensure that strict quality control measures are maintained for the dissemination of data through publications, studies, or user requests.

(k) Develop, in conjunction with the State Consumer Health Information and Policy Advisory Council, and implement a long-range plan for making available health care quality measures and financial data that will allow consumers to compare health care services. The health care quality measures and financial data the agency must make available include, but are not limited to, pharmaceuticals, physicians, health care facilities, and health plans and managed care entities. The agency shall update the plan and report on the status of its implementation annually. The agency shall also make the plan and status report available to the public on its Internet website. As part of the plan, the agency shall identify the process and timeframes for implementation, barriers to implementation, and recommendations of changes in the law that may be enacted by the Legislature to climinate the barriers. As preliminary elements of the plan, the

Page 13 of 32

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Florida Senate - 2014 SB 782

22-00411B-14 2014782__

378 agency shall:

1. Make available patient-safety indicators, inpatient quality indicators, and performance outcome and patient charge data collected from health care facilities pursuant to s. 408.061(1)(a) and (2). The terms "patient-safety indicators" and "inpatient quality indicators" have the same meaning as that ascribed by the Centers for Medicare and Medicaid Services, an accrediting organization whose standards incorporate comparable regulations required by this state, or a national entity that establishes standards to measure the performance of health care providers, or by other states. The agency shall determine which conditions, procedures, health care quality measures, and patient charge data to disclose based upon input from the council. When determining which conditions and procedures are to be disclosed, the council and the agency shall consider variation in costs, variation in outcomes, and magnitude of variations and other relevant information. When determining which health care quality measures to disclose, the agency:

a. Shall consider such factors as volume of cases; average patient charges; average length of stay; complication rates; mortality rates; and infection rates, among others, which shall be adjusted for case mix and severity, if applicable.

b. May consider such additional measures that are adopted by the Centers for Medicare and Medicaid Studies, an accrediting organization whose standards incorporate comparable regulations required by this state, the National Quality Forum, the Joint Commission on Accreditation of Healthcare Organizations, the Agency for Healthcare Research and Quality, the Centers for Disease Control and Prevention, or a similar national entity

Page 14 of 32

22-00411B-14 2014782

that establishes standards to measure the performance of health care providers, or by other states.

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When determining which patient charge data to disclose, the agency shall include such measures as the average of undiscounted charges on frequently performed procedures and preventive diagnostic procedures, the range of procedure charges from highest to lowest, average net revenue per adjusted patient day, average cost per adjusted patient day, and average cost per admission, among others.

2. Make available performance measures, benefit design, and premium cost data from health plans licensed pursuant to chapter 627 or chapter 641. The agency shall determine which health care quality measures and member and subscriber cost data to disclose, based upon input from the council. When determining which data to disclose, the agency shall consider information that may be required by either individual or group purchasers to assess the value of the product, which may include membership satisfaction, quality of care, current enrollment or membership, coverage areas, accreditation status, premium costs, plan costs, premium increases, range of benefits, copayments and deductibles, accuracy and speed of claims payment, credentials of physicians, number of providers, names of network providers, and hospitals in the network. Health plans shall make available to the agency such data or information that is not currently reported to the agency or the office.

3. Determine the method and format for public disclosure of data reported pursuant to this paragraph. The agency shall make its determination based upon input from the State Consumer

Page 15 of 32

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Florida Senate - 2014 SB 782

i	22-00411B-14 2014782
436	Health Information and Policy Advisory Council. At a minimum,
437	the data shall be made available on the agency's Internet
438	website in a manner that allows consumers to conduct an
439	interactive search that allows them to view and compare the
440	information for specific providers. The website must include
441	such additional information as is determined necessary to ensure
442	that the website enhances informed decisionmaking among
443	consumers and health care purchasers, which shall include, at a
444	minimum, appropriate guidance on how to use the data and an
445	explanation of why the data may vary from provider to provider.
446	4. Publish on its website undiscounted charges for no fewer
447	than 150 of the most commonly performed adult and pediatric
448	procedures, including outpatient, inpatient, diagnostic, and
449	preventative procedures.
450	(4) TECHNICAL ASSISTANCE
451	(a) The center shall provide technical assistance to
452	persons or organizations engaged in health planning activities
453	in the effective use of statistics collected and compiled by the
454	center. The center shall also provide the following additional
455	technical assistance services:
456	1. Establish procedures identifying the circumstances under
457	which, the places at which, the persons from whom, and the
458	methods by which a person may secure data from the center,
459	including procedures governing requests, the ordering of
460	requests, timeframes for handling requests, and other procedures
461	necessary to facilitate the use of the center's data. To the
462	extent possible, the center should provide current data timely
463	in response to requests from public or private agencies.
464	2. Provide assistance to data sources and users in the

Page 16 of 32

22-00411B-14

areas of database design, survey design, sampling procedures, statistical interpretation, and data access to promote improved health-care-related data sets.

3. Identify health care data gaps and provide technical

assistance to other public or private organizations for meeting documented health care data needs.

4. Assist other organizations in developing statistical abstracts of their data sets that could be used by the center.

5. Provide statistical support to state agencies with regard to the use of databases maintained by the center.

6. To the extent possible, respond to multiple requests for information not currently collected by the center or available from other sources by initiating data collection.

7. Maintain detailed information on data maintained by other local, state, federal, and private agencies in order to advise those who use the center of potential sources of data which are requested but which are not available from the center.

8. Respond to requests for data which are not available in published form by initiating special computer runs on data sets available to the center.

9. Monitor innovations in health information technology, informatics, and the exchange of health information and maintain a repository of technical resources to support the development of a health information network.

(b) The agency shall administer, manage, and monitor grants to not-for-profit organizations, regional health information organizations, public health departments, or state agencies that submit proposals for planning, implementation, or training projects to advance the development of a health information

Page 17 of 32

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Florida Senate - 2014 SB 782

22-00411B-14

494	network. Any grant contract shall be evaluated to ensure the
495	effective outcome of the health information project.
496	(c) The agency shall initiate, oversee, manage, and
497	evaluate the integration of health care data from each state
498	agency that collects, stores, and reports on health care issues
499	and make that data available to any health care practitioner
500	through a state health information network.
501	(5) PUBLICATIONS; REPORTS; SPECIAL STUDIES.—The center
502	shall provide for the widespread dissemination of data which it
503	collects and analyzes. The center shall have the following
504	publication, reporting, and special study functions:
505	(a) The center shall publish and make available
506	periodically to agencies and individuals health statistics
507	publications of general interest, including health plan consumer
508	reports and health maintenance organization member satisfaction
509	surveys; publications providing health statistics on topical
510	health policy issues; publications that provide health status
511	profiles of the people in this state; and other topical health
512	statistics publications.
513	(b) The center shall publish, make available, and
514	disseminate, promptly and as widely as practicable, the results
515	of special health surveys, health care research, and health care
516	evaluations conducted or supported under this section. Any
517	publication by the center must include a statement of the
518	limitations on the quality, accuracy, and completeness of the
519	data.
520	(c) The center shall provide indexing, abstracting,
521	translation, publication, and other services leading to a more
522	effective and timely dissemination of health care statistics.

Page 18 of 32

22-00411B-14 2014782_ (d) The center shall be responsible for publishing and

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disseminating an annual report on the center's activities.

(c) The center shall be responsible, to the extent resources are available, for conducting a variety of special studies and surveys to expand the health care information and statistics available for health policy analyses, particularly for the review of public policy issues. The center shall develop a process by which users of the center's data are periodically surveyed regarding critical data needs and the results of the survey considered in determining which special surveys or studies will be conducted. The center shall select problems in health care for research, policy analyses, or special data collections on the basis of their local, regional, or state importance; the unique potential for definitive research on the problem; and opportunities for application of the study findings.

 $\underline{(4)}$ (6) PROVIDER DATA REPORTING.—This section does not confer on the agency the power to demand or require that a health care provider or professional furnish information, records of interviews, written reports, statements, notes, memoranda, or data other than as expressly required by law.

(5) (7) HEALTH INFORMATION ENTERPRISE BUDGET; FEES. -

- (a) The agency shall implement the comprehensive health information system in a manner that recognizes state-collected data as an asset and rewards taxpayer investment in information collection and management Legislature intends that funding for the Florida Center for Health Information and Policy Analysis be appropriated from the General Revenue Fund.
 - (b) The agency Florida Center for Health Information and

Page 19 of 32

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Florida Senate - 2014 SB 782

22-00411B-14 2014782 552 Policy Analysis may apply for, and receive, and accept grants, 553 gifts, and other payments, including property and services, from a any governmental or other public or private entity or person 554 555 and make arrangements for as to the use of such funds same, 556 including the undertaking of special studies and other projects relating to health-care-related topics. Funds obtained pursuant 557 558 to this paragraph may not be used to offset annual 559 appropriations from the General Revenue Fund. 560 (c) The agency shall ensure that a vendor who enters into a 561 contract with the state under this section does not inhibit or 562 impede public access to state-collected health data and 563 information center may charge such reasonable fees for services as the agency prescribes by rule. The established fees may not 564 565 exceed the reasonable cost for such services. Fees collected may not be used to offset annual appropriations from the General 566 Revenue Fund. 567 (8) STATE CONSUMER HEALTH INFORMATION AND POLICY ADVISORY 568 COUNCIL.-569 570 (a) There is established in the agency the State Consumer 571 Health Information and Policy Advisory Council to assist the center in reviewing the comprehensive health information system, 572 including the identification, collection, standardization, 573 574 sharing, and coordination of health-related data, fraud and 575 abuse data, and professional and facility licensing data among 576 federal, state, local, and private entities and to recommend 577 improvements for purposes of public health, policy analysis, and 578 transparency of consumer health care information. The council 579 shall consist of the following members:

Page 20 of 32

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1. An employee of the Executive Office of the Governor, to

22-00411B-14

be appointed by the Governor.

2. An employee of the Office of Insurance Regulation, to be appointed by the director of the office.

3. An employee of the Department of Education, to be appointed by the Commissioner of Education.

4. Ten persons, to be appointed by the Secretary of Health Care Administration, representing other state and local agencies, state universities, business and health coalitions, local health councils, professional health-care-related associations, consumers, and purchasers.

(b) Each member of the council shall be appointed to serve for a term of 2 years following the date of appointment, except the term of appointment shall end 3 years following the date of appointment for members appointed in 2003, 2004, and 2005. A vacancy shall be filled by appointment for the remainder of the term, and each appointing authority retains the right to reappoint members whose terms of appointment have expired.

(c) The council may meet at the call of its chair, at the request of the agency, or at the request of a majority of its membership, but the council must meet at least quarterly.

(d) Members shall elect a chair and vice chair annually.
(e) A majority of the members constitutes a quorum, and the affirmative vote of a majority of a quorum is necessary to take action.

(f) The council shall maintain minutes of each meeting and shall make such minutes available to any person.

(g) Members of the council shall serve without compensation but shall be entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061.

Page 21 of 32

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Florida Senate - 2014 SB 782

22-00411B-14

610	(h) The council's duties and responsibilities include, but
611	are not limited to, the following:
612	1. To develop a mission statement, goals, and a plan of
613	action for the identification, collection, standardization,
614	sharing, and coordination of health related data across federal,
615	state, and local government and private sector entities.
616	2. To develop a review process to ensure cooperative
617	planning among agencies that collect or maintain health-related
618	data.
619	3. To create ad hoc issue-oriented technical workgroups on
620	an as-needed basis to make recommendations to the council.
621	(9) APPLICATION TO OTHER AGENCIES. Nothing in this section
622	shall limit, restrict, affect, or control the collection,
623	analysis, release, or publication of data by any state agency
624	pursuant to its statutory authority, duties, or
625	responsibilities.
626	Section 6. The Office of Program Policy Analysis and
627	Government Accountability (OPPAGA) shall monitor the Agency for
628	Health Care Administration's implementation of s. 408.05,
629	Florida Statutes, as amended by this act. No later than 1 year
630	after the agency completes implementation, OPPAGA shall provide
631	a report to the President of the Senate and the Speaker of the
632	House of Representatives containing recommendations regarding
633	the application of data practices made pursuant to s. 408.05,
634	Florida Statutes, to other executive branch agencies.
635	Section 7. For the purpose of incorporating the amendment
636	made by this act to section 257.36, Florida Statutes, in a
637	reference thereto, subsection (8) of section 120.54, Florida
638	Statutes, is reenacted to read:

Page 22 of 32

22-00411B-14 2014782_

120.54 Rulemaking.-

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- (8) RULEMAKING RECORD.—In all rulemaking proceedings the agency shall compile a rulemaking record. The record shall include, if applicable, copies of:
 - (a) All notices given for the proposed rule.
- (b) Any statement of estimated regulatory costs for the rule.
 - (c) A written summary of hearings on the proposed rule.
- (d) The written comments and responses to written comments as required by this section and s. 120.541.
 - (e) All notices and findings made under subsection (4).
- (f) All materials filed by the agency with the committee under subsection (3).
- (g) All materials filed with the Department of State under subsection (3).
- (h) All written inquiries from standing committees of the Legislature concerning the rule.

Each state agency shall retain the record of rulemaking as long as the rule is in effect. When a rule is no longer in effect, the record may be destroyed pursuant to the records-retention schedule developed under s. 257.36(6).

Section 8. Subsection (3) of section 20.42, Florida Statutes, is amended to read:

20.42 Agency for Health Care Administration.-

(3) The department \underline{is} shall be the chief health policy and planning entity for the state. The department is responsible for health facility licensure, inspection, and regulatory enforcement; investigation of consumer complaints related to

Page 23 of 32

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2014 SB 782

22-00411B-14 2014782 668 health care facilities and managed care plans; the 669 implementation of the certificate of need program; the operation 670 of the Florida Center for Health Information and Policy Analysis; the administration of the Medicaid program; the 672 administration of the contracts with the Florida Healthy Kids 673 Corporation; the certification of health maintenance organizations and prepaid health clinics as set forth in part III of chapter 641; and any other duties prescribed by statute 676 or agreement. 677 Section 9. Paragraph (c) of subsection (4) of section 678 381.026, Florida Statutes, is amended to read: 679 381.026 Florida Patient's Bill of Rights and Responsibilities .-680 681 (4) RIGHTS OF PATIENTS.-Each health care facility or provider shall observe the following standards: (c) Financial information and disclosure.-683 684 1. A patient has the right to be given, upon request, by the responsible provider, his or her designee, or a 685 686 representative of the health care facility full information and 687 necessary counseling on the availability of known financial resources for the patient's health care. 688 689 2. A health care provider or a health care facility shall, 690

2. A health care provider or a health care facility shall, upon request, disclose to each patient who is eligible for Medicare, before treatment, whether the health care provider or the health care facility in which the patient is receiving medical services accepts assignment under Medicare reimbursement as payment in full for medical services and treatment rendered in the health care provider's office or health care facility.

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3. A primary care provider may publish a schedule of

Page 24 of 32

22-00411B-14 2014782

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charges for the medical services that the provider offers to patients. The schedule must include the prices charged to an uninsured person paying for such services by cash, check, credit card, or debit card. The schedule must be posted in a conspicuous place in the reception area of the provider's office and must include, but is not limited to, the 50 services most frequently provided by the primary care provider. The schedule may group services by three price levels, listing services in each price level. The posting must be at least 15 square feet in size. A primary care provider who publishes and maintains a schedule of charges for medical services is exempt from the license fee requirements for a single period of renewal of a professional license under chapter 456 for that licensure term and is exempt from the continuing education requirements of chapter 456 and the rules implementing those requirements for a single 2-year period.

- 4. If a primary care provider publishes a schedule of charges pursuant to subparagraph 3., he or she shall must continually post it at all times for the duration of active licensure in this state when primary care services are provided to patients. If a primary care provider fails to post the schedule of charges in accordance with this subparagraph, the provider shall be required to pay any license fee and comply with any continuing education requirements for which an exemption was received.
- 5. A health care provider or a health care facility shall, upon request, furnish a person, before the provision of medical services, a reasonable estimate of charges for such services. The health care provider or the health care facility shall

Page 25 of 32

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Florida Senate - 2014 SB 782

2014782

726 provide an uninsured person, before the provision of a planned 727 nonemergency medical service, a reasonable estimate of charges 728 for such service and information regarding the provider's or 729 facility's discount or charity policies for which the uninsured 730 person may be eligible. Such estimates by a primary care 731 provider must be consistent with the schedule posted under 732 subparagraph 3. To the extent possible, estimates shall, to the 733 extent possible, be written in language comprehensible to an 734 ordinary layperson. Such reasonable estimate does not preclude 735 the health care provider or health care facility from exceeding 736 the estimate or making additional charges based on changes in the patient's condition or treatment needs. 737

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- 6. Each licensed facility not operated by the state shall make available to the public on its Internet website or by other electronic means a description of and a link to the performance outcome and financial data that is published by the agency pursuant to s. 408.05(3)(k). The facility shall place in its reception area a notice stating that the in the reception area that such information is available electronically and providing the facility's website address. The licensed facility may indicate that the pricing information is based on a compilation of charges for the average patient and that each patient's bill may vary from the average depending upon the severity of illness and individual resources consumed. The licensed facility may also indicate that the price of service is negotiable for eligible patients based upon the patient's ability to pay.
- 7. A patient has the right to receive a copy of an itemized bill $\underline{\text{and}}$ upon request. A patient has a right to be given an explanation of charges upon request.

Page 26 of 32

22-00411B-14 2014782

Section 10. Subsection (11) of section 395.301, Florida Statutes, is amended to read:

395.301 Itemized patient bill; form and content prescribed by the agency.—

(11) Each licensed facility shall make available on its Internet website a link to the performance outcome and financial data that is published by the Agency for Health Care Administration pursuant to s. 408.05(3)(k). The facility shall place in its reception area a notice stating in the reception area that the information is available electronically and providing the facility's Internet website address.

Section 11. Paragraph (e) of subsection (2) of section 395.602, Florida Statutes, is amended to read:

395.602 Rural hospitals.-

- (2) DEFINITIONS.—As used in this part:
- (e) "Rural hospital" means an acute care hospital licensed under this chapter, having 100 or fewer licensed beds and an emergency room, which is:
- 1. The sole provider within a county with a population density of no greater than 100 persons per square mile;
- 2. An acute care hospital, in a county with a population density of no greater than 100 persons per square mile, which is at least 30 minutes of travel time, on normally traveled roads under normal traffic conditions, from any other acute care hospital within the same county;
- 3. A hospital supported by a tax district or subdistrict whose boundaries encompass a population of 100 persons or fewer per square mile;
 - 4. A hospital in a constitutional charter county with a

Page 27 of 32

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Florida Senate - 2014 SB 782

	22-00411B-14 2014782_				
784	population of more than over 1 million persons that has imposed				
785	a local option health service tax pursuant to law and in an area				
786	that was directly impacted by a catastrophic event on August 24,				
787	1992, for which the Governor of Florida declared a state of				
788	emergency pursuant to chapter 125, and has 120 beds or less that				
789	serves an agricultural community with an emergency room				
790	utilization of no less than 20,000 visits and a Medicaid				
791	inpatient utilization rate greater than 15 percent;				
792	5. A hospital with a service area that has a population of				
793	100 persons or fewer per square mile. As used in this				
794	subparagraph, the term "service area" means the fewest number of				
795	zip codes that account for 75 percent of the hospital's				
796	discharges for the most recent 5-year period, based on				
797	information available from the $\underline{agency's}$ hospital inpatient				
798	discharge database in the Florida Center for Health Information				
799	and Policy Analysis at the agency; or				
800	6. A hospital designated as a critical access hospital, as				
801	defined in s. 408.07.				
802					
803	Population densities used in this paragraph must be based upon				
804	the most recently completed United States census. A hospital				

that received funds under s. 409.9116 for a quarter beginning no later than July 1, 2002, is deemed to have been and shall continue to be a rural hospital from that date through June 30, 2015, if the hospital continues to have 100 or fewer licensed beds and an emergency room, or meets the criteria of subparagraph 4. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this paragraph shall be granted such designation upon

Page 28 of 32

22-00411B-14 2014782

application, including supporting documentation, to the agency. A hospital that was licensed as a rural hospital during the 2010-2011 or 2011-2012 fiscal year shall continue to be a rural hospital from the date of designation through June 30, 2015, if the hospital continues to have 100 or fewer licensed beds and an emergency room.

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Section 12. Section 395.6025, Florida Statutes, is amended to read:

395.6025 Rural hospital replacement facilities.-Notwithstanding the provisions of s. 408.036, a hospital defined as a statutory rural hospital in accordance with s. 395.602, or a not-for-profit operator of rural hospitals, is not required to obtain a certificate of need for the construction of a new hospital located in a county with a population of at least 15,000 but no more than 18,000 and a density of less than 30 persons per square mile, or a replacement facility, if provided that the replacement, or new, facility is located within 10 miles of the site of the currently licensed rural hospital and within the current primary service area. As used in this section, the term "service area" means the fewest number of zip codes that account for 75 percent of the hospital's discharges for the most recent 5-year period, based on information available from the Agency for Health Care Administration's hospital inpatient discharge database in the Florida Center for Health Information and Policy Analysis at the Agency for Health Care Administration.

Section 13. Subsection (43) of section 408.07, Florida Statutes, is amended to read:

408.07 Definitions.—As used in this chapter, with the

Page 29 of 32

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Florida Senate - 2014 SB 782

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842	exception of ss. 408.031-408.045, the term:
843	(43) "Rural hospital" means an acute care hospital licensed
844	under chapter 395, having 100 or fewer licensed beds and an
845	emergency room, and which is:
846	(a) The sole provider within a county with a population
847	density of no greater than 100 persons per square mile;
848	(b) An acute care hospital, in a county with a population
849	density of no greater than 100 persons per square mile, which is
850	at least 30 minutes of travel time, on normally traveled roads
851	under normal traffic conditions, from another acute care
852	hospital within the same county;
853	(c) A hospital supported by a tax district or subdistrict
854	whose boundaries encompass a population of 100 persons or fewer
855	per square mile;
856	(d) A hospital with a service area that has a population of
857	100 persons or fewer per square mile. As used in this paragraph,
858	the term "service area" means the fewest number of zip codes
859	that account for 75 percent of the hospital's discharges for the
860	most recent 5-year period, based on information available from
861	the $\underline{\text{Agency for Health Care Administration's}}$ hospital inpatient
862	discharge database in the Florida Center for Health Information
863	and Policy Analysis at the Agency for Health Care
864	Administration; or
865	(e) A critical access hospital.
866	
867	Population densities used in this subsection must be based upon
868	the most recently completed United States census. A hospital
869	that received funds under s. 409.9116 for a quarter beginning no
870	later than July 1, 2002, is deemed to have been and shall

Page 30 of 32

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22-00411B-14 2014782

continue to be a rural hospital from that date through June 30, 2015, if the hospital continues to have 100 or fewer licensed beds and an emergency room, or meets the criteria of s. 395.602(2)(e)4. An acute care hospital that has not previously been designated as a rural hospital and that meets the criteria of this subsection shall be granted such designation upon application, including supporting documentation, to the Agency for Health Care Administration.

Section 14. Paragraph (a) of subsection (4) of section 408.18, Florida Statutes, is amended to read:

(4) (a) Members of the health care community who seek antitrust guidance may request a review of their proposed business activity by the Attorney General's office. In conducting its review, the Attorney General's office may seek whatever documentation, data, or other material it deems necessary from the Agency for Health Care Administration, the Florida Center for Health Information and Policy Analysis, and the Office of Insurance Regulation of the Financial Services Commission.

Section 15. Section 465.0244, Florida Statutes, is amended to read:

465.0244 Information disclosure.—Every pharmacy shall make available on its Internet website a link to the performance outcome and financial data that is published by the Agency for Health Care Administration pursuant to s. 408.05(3) (k) and shall place in the area where customers receive filled prescriptions

Page 31 of 32

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Florida Senate - 2014 SB 782

22-00411B-14

900	notice that such information is available electronically and the
901	address of its Internet website.
902	Section 16. Subsection (2) of section 627.6499, Florida
903	Statutes, is amended to read:
904	627.6499 Reporting by insurers and third-party
905	administrators
906	(2) Each health insurance issuer shall make available on
907	its $\frac{1}{2}$ Internet website a link to the performance outcome and
908	financial data that is published by the Agency for Health Care
909	Administration pursuant to s. $408.05(3)(k)$ and shall include in
910	every policy delivered or issued for delivery to any person in
911	the state or any materials provided as required by s. 627.64725
912	notice that such information is available electronically and the
913	address of its Internet website.
914	Section 17. Subsection (7) of section 641.54, Florida
915	Statutes, is amended to read:
916	641.54 Information disclosure
917	(7) Each health maintenance organization shall make
918	available on its Internet website a link to the performance
919	outcome and financial data that is published by the Agency for
920	Health Care Administration pursuant to s. $408.05(3)(k)$ and shall
921	include in every policy delivered or issued for delivery to any
922	person in the state or $\frac{\partial f}{\partial x}$ materials provided as required by s.
923	627.64725 notice that such information is available
924	electronically and the address of its $\frac{1}{2}$
925	Section 18. This act shall take effect July 1, 2014.

Page 32 of 32



The Florida Senate

Committee Agenda Request

То:		Senator Jeremy Ring, Chair Committee on Governmental Oversight and Accountability				
Subje	ct:	Committee Agenda Request				
Date:		February 7, 2014				
I respe the:	ectfully 1	request that Senate Bill #782, relating to Government Data Practices, be placed on				
		committee agenda at your earliest possible convenience.				
		next committee agenda.				

Senator Jeff Brandes Florida Senate, District 22

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.)

Prepar	ed By: The P	rofessional	Staff of the Com	mittee on Governm	ental Oversight	and Accountability	
BILL:	CS/CS/SB 226						
INTRODUCER:		Governmental Oversight and Accountability Committee; Transportation Committee; and Senator Brandes					
SUBJECT:	Public Re	cords/Auto	omated License	e Plate Recogniti	on Systems H	Exemption	
DATE:	March 21	, 2014	REVISED:				
ANAL	YST	STAF	F DIRECTOR	REFERENCE		ACTION	
1. Everette		Eichin		TR	Fav/CS		
2. Kim		McVaney		GO	Fav/CS		
3				RC			
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Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 226 creates a public records exemption for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system. This information will be confidential and exempt from public disclosure. CS/CS/SB 226 provides that an agency may release this information to a criminal justice agency in the performance of its official duties. This bill also provides that a person to whom a license plate is registered may also have access to his or her own information, as long as the information is not subject to an active public criminal investigation. This bill also provides for retroactive application.

CS/CS/SB 226 is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

An automated license plate recognition system (ALPRS) uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. It is sometimes also referred to as automated number plate recognition system or automated

licensed reader. The extracted information can be used with or without a database in many applications, such as electronic payment systems (toll payment, parking fee payment), and freeway and arterial monitoring systems for traffic surveillance. The ALPRS uses either a color, black and white, or ultraviolet camera to take images of passing license plates and quickly processes the data under different environmental conditions, such as indoors, outdoors, day or night.

Data obtained from an ALPRS is generally used to check license plates against law enforcement "hot" lists. This captured information (i.e., license plate number, date, time, and location) is collected, matched to personal identifying databases and sometimes pooled into regional sharing systems. As a result, enormous databases may house the location and travel patterns of thousands, if not millions of individual motorists.

As an operational tool for law enforcement, ALPRSs scan the license plates of moving or parked vehicles while either mounted on a moving patrol car or attached to a fixed location, such as a toll plaza or free-standing installation. Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features.

In July 2012, the American Civil Liberties Union (ACLU) sent public records act requests to nearly 600 local and state police departments and other state and federal agencies to obtain information on how these agencies use such information. In response, 26,000 pages were received detailing the use of the technology around the country. The ACLU report found that although police departments typically only have a few of its vehicles equipped with the ALPRSs, they project increased numbers within the next five years. The same report found that law enforcement agencies were increasingly capturing drivers' locations outside church, the doctor's office, and school, etc., giving law enforcement and private companies the ability to build detailed pictures of citizens' lives. In some instances the stored information stretched back months, even years.²

The ACLU recommends the following principles for the use and disclosure of automated license plate recognition systems:

- Law enforcement agencies must place access controls on license plate reader databases. Only agents who have been trained in the departments' policies governing such databases should be permitted access, and departments should log access records pertaining to the databases.
- People should be able to find out if plate data of vehicles registered to them are contained in a law enforcement agency's database. They should also be able to access the data. This policy should also apply to disclosure to a third party if the registered vehicle owner consents, or for criminal defendants seeking relevant evidence.

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¹ https://www.aclu.org/alpr (last visited on Jan. 6, 2014)

² Id.

• Law enforcement agencies should not share license plate reader data with third parties that do not conform to the above retention and access principles, and should be transparent regarding with whom license plate reader data are shared.³

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁶ guarantees every person's right to inspect and copy any state or local government public record⁷ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸

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

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or

³https://www.aclu.org/files/assets/071613-aclu-alprreport-opt-v05.pdf (last visited Jan. 7, 2014)

⁴ FLA CONST., art. I, s. 24(a).

⁵ Id.

⁶ Chapter 119, F.S.

⁷ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

⁸ Section 119.07(1)(a), F.S.

⁹ 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 (see WFTV, Inc. v. The School Board of Seminole, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Riviera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 2004); and Williams v. City of Minneola, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

substantial amendment, unless the Legislature reenacts the exemption.¹⁴ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.

Section 119.15(6)(b), F.S. provides that an exemption may be created if it serves an identifiable public purpose and the exemption is tailored to that public purpose. An identifiable public purpose is served if the exemption allows a government entity to effectively perform its duties, protections a person from defamation and if it protects confidential business information.¹⁵

Currently, there are no general public records exemptions for images or data generated by automated license plate recognition systems in the State of Florida.

III. Effect of Proposed Changes:

Section 1 creates a confidential and exempt standard of protection for data generated by automated license plate recognition system. Section 316.0777, F.S., defines "agency" as having the same meaning as in s. 119.011, F.S.,16 and "automated license plate recognition system" as a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data."

The bill requires that such information may be disclosed under the following conditions:

• By or to a criminal justice agency, as defined in s. 119.011(4), F.S.¹⁷ in performance of the agency's official duties.

¹⁵ Section 119.15(6)(1), F.S. provides:

An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and 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:

- 1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- 3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.
- ¹⁶ Section 119.011(2), F.S. defines an agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
- ¹⁷ Section 119.011(4), F.S., provides that "[c]riminal justice agency" means: (a) Any law enforcement agency, court, or prosecutor; (b) Any other agency charged by law with criminal law enforcement duties; (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or (d) The Department of Corrections."

¹⁴ Section 119.15(3), F.S.

To a license plate registrant requesting his or her own information, as long as it is not related to any ongoing criminal investigation, as defined in s. 119.011(3), F.S.¹⁸

The exemption applies to ALPRS images and data containing or providing personal identifying information, as well as personal identifying information derived from ALPRS data or images. This exemption would apply to personal identifying information held by any agency before, on, or after the passage of this exemption.

The bill further requires, in accordance with s. 119.15, F.S., this section is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, if it is not saved from repeal through reenactment by the Legislature.

Section 2 provides the public necessity statement for this bill. The public necessity statement provides the release of personal identifying information collected by an ALPRS could enable a third party to track a person's movements and that the disclosure of such information would be an invasion of personal privacy. The public necessity statement also states that the public disclosure of sensitive personal information could be defamatory or jeopardize an individual's safety. Finally, the public necessity statement provides that the harm from public disclosure outweighs any public benefit.

The act will take effect on July 1, 2014.

¹⁸ Section 119.011(3), F.S., provides:

- (a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.
- (b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.
- (c) "Criminal intelligence information" and "criminal investigative information" shall not include:
- 1. The time, date, location, and nature of a reported crime.
- 2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h).
- 3. The time, date, and location of the incident and of the arrest.
- 4. The crime charged.
- 5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in
- s.119.071(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:
- a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
- b. Impair the ability of a state attorney to locate or prosecute a codefendant.
- 6. Informations and indictments except as provided in s. 905.26.
- (d) The word "active" shall have the following meaning:
- 1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
- 2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to Department of Highway Safety and Motor Vehicles, it may be difficult for agencies to identify and redact personal identifying information if a public records request is made.

VI. Technical Deficiencies:

According to Department of Highway Safety and Motor Vehicles, automatic license plate recognitions systems which are used for tolls and as red-light cameras may be included in this bill and that this exemption could potentially affect the usage of toll and red-light cameras. The Department of Highway Safety and Motor Vehicles did not provide more detailed information.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 316.0777 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Governmental Oversight and Accountability on March 20, 2014:

The CS/CS narrows the exemption to personal identifying information in images and data collected by ALPRS. The CS/CS also makes technical changes in the organization of the legislation and in the public necessity statement.

CS by Transportation on January 9, 2014:

The CS differs from the original bill in that it:

- Changes the standard of protection from "exempt" to "confidential and exempt" in order to specify conditions for disclosure.
- Specifies the following conditions under which the confidential and exempt information may be disclosed:
 - o For any such information, by or to a criminal justice agency in the performance of its official duties.
 - For any information relating to a license registered to an individual, to such individual. Such information may not be released if it is relevant to an ongoing criminal investigation.

B. Amendments:

None.

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

¹⁹ For an explanation of the difference between the standards, see supra note 9.



	LEGISLATIVE ACTION	
Senate	•	House
Comm: RCS	•	
03/20/2014	•	
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The Committee on Governmental Oversight and Accountability (Bean) recommended the following:

Senate Amendment (with title amendment)

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Delete lines 23 - 58

4 and insert:

- (a) "Active," "criminal intelligence information," and "criminal investigative information" have the same meanings as provided in s. 119.011(3).
- (b) "Agency" has the same meaning as provided in s. 119.011.
 - (c) "Automated license plate recognition system" means a

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11 system of one or more mobile or fixed high-speed cameras 12 combined with computer algorithms to convert images of license 13 plates into computer-readable data.

- (d) "Criminal justice agency" has the same meaning as provided in s. 119.011.
- (2) The following information held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
- (a) Images and data containing or providing personal identifying information obtained through the use of an automated license plate recognition system.
- (b) Personal identifying information of an individual in data generated or resulting from images obtained through the use of an automated license plate recognition system.
 - (3) Such information may be disclosed as follows:
- (a) Any such information may be disclosed by or to a criminal justice agency in the performance of the criminal justice agency's official duties.
- (b) Any such information relating to a license plate registered to an individual may be disclosed to the individual, unless such information constitutes active criminal intelligence information or active criminal investigative information.
- (4) This exemption applies to such information held by an agency before, on, or after the effective date of this exemption.
- (5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.



Section 2. The Legislature finds that it is a public necessity that images and data containing personal identifying information obtained through the use of an automated license plate recognition system held by an agency and personal identifying information in data generated from such images be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The exemption protects sensitive personal information that, if released, could be defamatory to an individual or jeopardize the safety of an individual by allowing a third party to ======== T I T L E A M E N D M E N T ========= And the title is amended as follows: Delete line 4 and insert: public records exemption for certain images and data obtained through

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Florida Senate - 2014 CS for SB 226

By the Committee on Transportation; and Senator Brandes

596-00988A-14 2014226c1

A bill to be entitled An act relating to public records; creating s. 316.0777, F.S.; providing definitions; creating a public records exemption for images obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated from such images; providing conditions for disclosure of such images and information; providing for retroactive application of 10 the public records exemption; providing for future 11 repeal and legislative review of the exemption under 12 the Open Government Sunset Review Act; providing a 13 statement of public necessity; providing an effective 14 date. 15

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

Section 1. Section 316.0777, Florida Statutes, is created to read:

316.0777 Automated license plate recognition systems; public records exemption.—

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

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- (a) "Agency" has the same meaning as in s. 119.011.
- (b) "Automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.

Page 1 of 3

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2014 CS for SB 226

	596-00988A-14 2014226c1
30	of the State Constitution:
31	(a) Images obtained through the use of an automated license
32	plate recognition system.
33	(b) Personal identifying information of an individual in
34	data generated or resulting from images obtained through the use
35	of an automated license plate recognition system.
36	(3) Such information may be disclosed as follows:
37	(a) Any such information may be disclosed by or to a
38	criminal justice agency, as defined in s. 119.011(4), in the
39	performance of a criminal justice agency's official duties.
40	(b) Any such information relating to a license plate
41	registered to an individual may be disclosed to the individual,
42	$\underline{\text{unless such information constitutes active criminal intelligence}}$
43	information or active criminal investigative information, as
44	<u>defined in s. 119.011(3).</u>
45	(4) This exemption applies to such information held by an
46	agency before, on, or after the effective date of this
47	<pre>exemption.</pre>
48	(5) This section is subject to the Open Government Sunset
49	Review Act in accordance with s. 119.15 and shall stand repealed
50	on October 2, 2019, unless reviewed and saved from repeal
51	through reenactment by the Legislature.
52	Section 2. The Legislature finds that it is a public
53	necessity that images obtained through the use of an automated
54	license plate recognition system held by an agency and personal
55	identifying information in data generated from such images be
56	$\underline{\text{confidential}}$ and exempt from public records requirements. The
57	release of such images and data gathered through automated
58	license plate recognition systems could enable a third party to

Page 2 of 3

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

Florida Senate - 2014 CS for SB 226

596-00988A-14 2014226c1 59 track a person's movements and compile a history on where a 60 person has driven. This exemption is necessary because the 61 public disclosure of such information constitutes an unwarranted 62 invasion into the personal life and privacy of a person. The 63 harm from disclosing such information outweighs any public 64 benefit that can be derived from widespread and unregulated 65 public access to such information. 66 Section 3. This act shall take effect July 1, 2014.

Page 3 of 3

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ are additions.



The Florida Senate

Committee Agenda Request

То:	Senator Jeremy Ring, Chair Committee on Governmental Oversight and Accountability
Subject:	Committee Agenda Request
Date:	January 17, 2014
	request that Senate Bill #226 , relating to Public Records/ Automated Licence Plate Systems Exemption, be placed on the:
	committee agenda at your earliest possible convenience.
\boxtimes	next committee agenda.

Senator Jeff Brandes Florida Senate, District 22

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.)

Prepa	red By: The Pr	ofessional Staff of the Com	mittee on Governm	ental Oversight and Accountability				
BILL:	CS/SB 366	CS/SB 366						
INTRODUCER:	Governme	ntal Oversight and Acco	ountability Comm	nittee and Senator Brandes				
SUBJECT:	Public Rec	cords/Trade Secrets/Con	nputers					
DATE:	March 20,	2014 REVISED:						
ANAL	YST	STAFF DIRECTOR	REFERENCE	ACTION				
. Wiehle		Caldwell	CU	Favorable				
2. Cellon		Cannon	CJ	Favorable				
3. Kim		McVaney	GO	Fav/CS				
ļ.		-	RC					

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 366 expands an existing public records exemption for data, programs, or supporting documentation that contain trade secrets as defined in s. 812.081, F.S., reside or exist internal or external to a computer, computer system, or computer network, and are held by an agency. This bill is the public records companion to CS/CS/SB 364, which provides criminal penalties for computer related crimes.

The exemption is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a statement of public necessity as required by the Florida Constitution.

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

II. Present Situation:

Florida's Public Records Law

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

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

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions. ¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. ¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose. ¹²

¹ FLA. CONST., art. I, s. 24(a).

 $^{^{2}}$ Id.

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see WFTV, Inc. v. The School Board of Seminole, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Riviera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 2004); and Williams v. City of Minneola, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets. 14

The Act also requires specified questions to be considered during the review process. 15

Offenses Against Intellectual Property- Public Records Exemption

Section 815.04(3), F.S, makes data, programs, or supporting documentation that are a trade secret as defined in s. 812.081, F.S., reside or exist internal or external to a computer, computer system, or computer network, and are held by an agency as defined in chapter 119, confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. A person who willfully, knowingly, and without authorization discloses or takes such information commits an offense against intellectual property.

III. Effect of Proposed Changes:

CS/SB 366 is a public records bill linked to CS/CS/SB 364, which addresses computer crimes. CS/CS/SB 364 amends the law on computer related crimes by expanding terminology and creating additional offenses, including crimes related to electronic devices. ¹⁶

¹⁵ Section 119.15(6)(a), F.S. provides specified questions which the Legislature must consider:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?
- ¹⁶ Appropriations Subcommittee on Criminal and Civil Justice Pre-Meeting Analysis, filed on March 11, 2014. The Summary section of the Analysis states:

CS/CS/SB 364 recognizes that advancements in technology have led to an increase in computer related crimes while greatly extending their reach. CS/CS/SB 364 addresses this increase in computer crimes by updating and expanding terminology used to define these crimes and creating additional offenses. Three crimes are added to "offenses against users of computer networks and electronic devices" including:

Audio and video surveillance of an individual without that individual's knowledge by accessing any inherent feature or component of a computer, computer system, computer network, or electronic devices;

¹³ Section 119.15(6)(b), F.S.

¹⁴ Id

CS/SB 366 expands an existing public records exemption for computer related crimes to include electronic devices. CS/SB 366 is subject to the Open Government Sunset Review Act. This bill will stand repealed on October 2, 2019, unless reviewed and saved through reenactment by the Legislature prior to that date.

CS/SB 366 contains a finding of public necessity for this exemption. The public necessity statement provides:

that it is a public necessity that trade secrets and intellectual property be protected from disclosure by persons gaining unauthorized access into computer networks and electronic devices. Trade secrets and intellectual property are already afforded public records exemptions because of the immense importance of this type of proprietary information to the economic competition between this state and other states and nations. As technology continues to evolve, it is important that the existing public records exemption for trade secrets and intellectual property expand accordingly to encompass new technology used in association with sensitive trade secrets and intellectual property. Thus the Legislature declares that it is a public necessity that data, programs, and supporting documentation that are trade secrets, are held by an agency and reside or exist internal or external to a computer, computer system, computer network, or electronic device be confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill takes effect on the same date that CS/CS/SB 364 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The Florida Constitution provides that every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with

Intentionally interrupting the transmittal of data to or from, or gaining unauthorized access to a computer, computer system, computer network, or electronic device belonging to a mode of public or private transit; and Disrupting a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.

[&]quot;Offenses against public utilities" are created in the bill and two additional crimes are created, including:
Gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized, a third degree felony; and Physically tampering with, inserting software into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility, a second degree felony.

respect to records exempted pursuant to this section or specifically made confidential by this Constitution. ¹⁷ However, the Legislature may provide for the exemption of records from these requirements by general law passed by a two-thirds vote of each house, provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. ¹⁸ Such laws may contain only exemptions from these requirements and must relate to one subject. ¹⁹

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Those persons who have trade secrets contained in documents held by agencies on computers and electronic devices will be better protected.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 815.04 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS makes technical changes and adds a missing bill number in Section 3.

¹⁷ Art. I, s. 24(c) of the State Constitution.

¹⁸ *Id*

¹⁹ *Id*.

R	Amend	ments.
1).		111111111111111111111111111111111111111

None.

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



	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/20/2014		
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The Committee on Governmental Oversight and Accountability (Bean) recommended the following:

Senate Amendment

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Delete lines 28 - 59

and insert:

(b) Whoever willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation which is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

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

Section 2. The Legislature finds that it is a public necessity that data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, Florida Statutes, that is held by an agency as defined in chapter 119, Florida Statutes, and that resides or exists internal or external to an electronic device be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The public release of such data, programs, and supporting documentation would negatively impact the business interests of those providing an agency such trade secrets by damaging the business in the marketplace. Without the public records exemption, those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing data, programs, or supporting documentation that is a trade secret, and that resides or exists internal or external to an electronic device, significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by the nondisclosure of such trade secrets.

Section 3. This act shall take effect on the same date that SB 364 or similar legislation takes effect, if such

Florida Senate - 2014 SB 366

By Senator Brandes

22-00259A-14 2014366_ A bill to be entitled

An act relating to public records; amending s. 815.04, F.S.; amending an exemption from public records requirements for data, programs, and supporting documentation that are trade secrets residing or existing internal or external to a computer, computer system, or computer network; expanding the exemption to include such trade secret information residing or existing internal or external to an electronic device; providing for legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

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Section 1. Subsection (3) of section 815.04, Florida Statutes, is amended to read:

815.04 Offenses against intellectual property; public records exemption.—

- (3) (a) Data, programs, or supporting documentation that which is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that which resides or exists internal or external to a computer, computer system, or computer network, or electronic device which is held by an agency as defined in chapter 119 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
- (b) A person who Whoever willfully, knowingly, and without authorization discloses or takes data, programs, or supporting

Page 1 of 3

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2014 SB 366

22-00259A-14 2014366 documentation that which is a trade secret as defined in s. 31 812.081 or is confidential as provided by law residing or 32 existing internal or external to a computer, computer system, or computer network, or electronic device commits an offense against intellectual property. 35 (c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand 37 repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. 38 39 Section 2. The Legislature finds that it is a public 40 necessity that trade secrets and intellectual property be protected from disclosure by persons gaining unauthorized access into computer networks and electronic devices. Trade secrets and 42 4.3 intellectual property are already afforded public records exemptions because of the immense importance of this type of proprietary information to the economic competition between this 45 state and other states and nations. As technology continues to 46 evolve, it is important that the existing public records exemption for trade secrets and intellectual property expand 49 accordingly to encompass new technology used in association with sensitive trade secrets and intellectual property. Thus the 50 51 Legislature declares that it is a public necessity that data, 52 programs, and supporting documentation that are trade secrets 53 which are held by an agency and which reside or exist internal 54 or external to a computer, computer system, computer network, or electronic device be confidential and exempt from the 55 56 requirements of s. 119.07(1), Florida Statutes, and s. 24(a), 57 Article I of the State Constitution. 58 Section 3. This act shall take effect on the same date that

Page 2 of 3

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

Florida Senate - 2014 SB 366

22-00259A-14

2014366__

SB ____ or similar legislation takes effect, if such
legislation is adopted in the same legislative session or an
extension thereof and becomes a law.

Page 3 of 3

 ${f CODING:}$ Words ${f stricken}$ are deletions; words ${f underlined}$ are additions.



The Florida Senate

Committee Agenda Request

To:	Senator Jeremy Ring, Chair Committee on Governmental Oversight and Accountability
Subject:	Committee Agenda Request
Date:	February 21, 2014
I respectfolion	ully request that Senate Bill #366 , relating to Public Records/Trade Secrets/Computers, on the:
	committee agenda at your earliest possible convenience.
\succeq	next committee agenda.

Senator Jeff Brandes Florida Senate, District 22

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.)

Prepar	ed By: The Professi	onal Staff of the Comr	nittee on Governme	ental Oversight and Accoun	ntability
BILL:	SB 516				
INTRODUCER:	Senator Latvala				
SUBJECT:	Public Records/ System	Point-In-Time Cou	nt and Survey/H	omeless Management I	nformation
DATE:	March 18, 2014	REVISED:			
ANAL	YST	STAFF DIRECTOR	REFERENCE	ACTIO	N
1. <u>Kim</u>		lcVaney	GO	Favorable	
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I. Summary:

SB 516 creates a public records exemption for information contained within a Point-In-Time Count or in a Homeless Management Information System (HMIS) that could directly or indirectly identify a specific person, be manipulated to identify a specific person, or be linked with other available information to identify a specific person. This information would be held exempt from public disclosure. The bill does not preclude the release of information in the aggregate contained within a Point-In-Time Count or Homeless Management System that does not disclose individual identifying information of a person.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies public records and open meetings requirements. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be

¹ FLA. CONST., art. I, s. 24(a).

 $^{^{2}}$ Id.

taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ 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.⁸

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

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, 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 as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1), F.S.

⁷ Section 286.011, F.S.

⁸ 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 Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

[•] All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and

[•] 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 or to take formal legislative action, must be reasonably open to the public.

⁹ 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 (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions. ¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. ¹⁴

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose. ¹⁵ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets. 16

The Act also requires specified questions to be considered during the review process. 17

If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required. ¹⁸ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are *not* required.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

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

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id*.

¹⁸ FLA. CONST., art. I, s. 24(c). An existing exemption may be treated as a new exemption if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

Homeless Continuums of Care in Florida

A Continuums of Care (CoC) provides emergency, transitional, and permanent housing and services to address the various needs of the homeless and those at risk of homelessness. ¹⁹ The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions in a community or region. ²⁰

The Department of Children and Families (DCF) interacts with the state's 28 CoCs through the Office of Homelessness (Office), which serves as the state's central point of contact on homelessness. The Office is responsible for coordinating resources and programs across all levels of government, and with private providers that serve the homeless. It also manages targeted state grants to support the implementation of local homeless service CoC plans. The Office has recognized and designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The Office has made these designations in consultation with the local homeless coalitions and the Florida offices of the U.S. Department of Housing and Urban Development (HUD). The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD.

CoCs and Point-In-Time Count Surveys

HUD requires that CoCs conduct an annual count of the homeless persons who are sheltered in emergency shelters, transitional housing, and safe havens on a single night called a Point-In-Time Count Survey. ²² Further, HUD requires CoCs to conduct a count of the unsheltered homeless population every other year on odd numbered years. For 2013, the state's 28 CoCs carried out both the sheltered and unsheltered counts. The goal is to produce an unduplicated, statistically reliable count and estimate of the homeless in the community. ²³

The intent is to identify those men, women, and children who meet HUD's definition of a homeless person. This is limited to:

- Those living in a publicly or privately operated shelter providing temporary living arrangements;
- Those persons whose primary nighttime residence is a public or private place not intended to be used as an accommodation for human beings, such as a car, park, abandoned building, or camping ground;
- A person who is exiting from an institution, where he or she lived for 90 days or less, and who was otherwise homeless immediately prior to entering that institution;
- A person who is fleeing from a domestic violence situation; or

¹⁹ Section 420.624(1), F.S.

²⁰ Section 420.624(2), F.S.

²¹ *Homelessness*; Florida Department of Children and Families; (can be found at: http://www.myflfamilies.com/service-programs/homelessness) last accessed on February 8, 2014.

²² Sample surveys are located at https://www.onecpd.info/resource/1698/homeless-pit-count-survey-domestic-violence-form-sample/ and https://www.onecpd.info/resource/1698/homeless-pit-count-survey-domestic-violence-form-sample. The surveys request personal information such as a person's name, date of birth, social security number, race, marital status, disability (including personal health information) and veteran status. The identities of an individual's children are also requested.

²³ 2013 Report; Florida Council on Homelessness; (can be found at:

http://www.dcf.state.fl.us/programs/homelessness/docs/2013CouncilReport.pdf) last accessed on February 8, 2014.

 A person who will lose their primary nighttime residence within 14 days, no subsequent dwelling has been found, and the individual lacks the resources to obtain permanent housing.²⁴

For the 28 CoC planning areas reporting in 2013, the total number of sheltered and unsheltered homeless persons was 45,364. The 2012 number of homeless persons was 54,972 for these 28 planning areas.²⁵

Point-In-Time Surveys and Homeless Management Information Systems

Data collected through these Point-In-Time Surveys and during other counts is managed through a Homeless Management Information System (HMIS), a software application designed to record and store client-level information on the characteristics and service needs of homeless persons. An HMIS is typically a web-based software application that homeless assistance providers use to coordinate care, manage their operations, and better serve their clients. ²⁶ The HUD Homelessness Data Exchange allows local homeless Continuums of Care (CoC)²⁷ to submit data directly from their local HMIS to HUD. ²⁸

III. Effect of Proposed Changes:

The bill creates a public records exemption for individual identifying information of persons contained in a Point-In-Time Count and Survey or data within an HMIS. This information would be exempt from public disclosure. The bill defines "individual identifying information" as information that identifies a specific person either directly or indirectly, can be manipulated to identify a specific person, or can be linked with other available information to identify specific a person.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that the exemption is necessary to protect the homeless from discrimination and ridicule, which could make them reluctant to seek assistance. Public knowledge of their identities could make people at greater risk of injury, as many of the homeless were survivors of domestic violence or suffer from mental illness or substance abuse. Finally, the public necessity statement provides that public disclosure of individual identifying information could lead to identity theft and fraud.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

²⁴ Id.

²⁵ Id

²⁶ Homeless Assistance; U.S. Department of Housing and Urban Development; (can be found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/homeless) last accessed on February 8, 2014 ²⁷ For more detailed information, see 24 CFR Section 578, or the Interim Final Rule on Homeless Emergency Assistance and Rapid Transition to Housing in Federal Register Volume 77, number 147, July 31, 2012. The interim rule became effective August 30, 2012.

²⁸ *Homelessness Data Exchange*; U.S. Department of Housing and Urban Development; (can be found at: http://www.hudhdx.info/) last accessed on February 8, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house. This bill creates a new public records exemption; therefore, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating a public records exemption to contain a public necessity statement. This bill includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public records exemption for individual identifying information in Point-in-Time Count and Survey data and HMIS databases, which is sufficiently narrowly tailored to meet this requirement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

Agencies will have to redact information for future public records requests, which may expend agency resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

Florida Senate - 2014 SB 516

By Senator Latvala

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20-00281A-14 2014516

A bill to be entitled
An act relating to public records; creating s.
420.6231, F.S.; creating a public records exemption
for individual identifying information of a person
contained in a Point-In-Time Count and Survey or data
in a Homeless Management Information System; defining
the term "individual identifying information";
providing for retroactive application of the
exemption; specifying that the exemption does not
preclude the release of aggregate information;
providing for future review and repeal under the Open
Government Sunset Review Act; providing a statement of
public necessity; providing an effective date.

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

Section 1. Section 420.6231, Florida Statutes, is created to read:

420.6231 Individual identifying information in specified homelessness surveys and databases; public records exemption.—

- (1) As used in this section, "individual identifying information" means information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person.
- (2) Individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations

Page 1 of 3

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Florida Senate - 2014 SB 516

2014516

20-00281A-14

30	provided in 24 C.F.R. part 91, is exempt from s. 119.07(1) and
31	s. 24(a), Art. I of the State Constitution. This exemption
32	applies to such information held before, on, or after the
33	effective date of this section.
34	(3) This section does not preclude the release in the
35	aggregate of information from a Point-In-Time Count and Survey
36	or data in a Homeless Management Information System which does
37	not disclose individual identifying information of a person.
38	(4) This section is subject to the Open Government Sunset
39	Review Act in accordance with s. 119.15 and shall stand repealed
40	on October 2, 2019, unless reviewed and saved from repeal
41	through reenactment by the Legislature.
42	Section 2. The Legislature finds that it is a public
43	necessity that individual identifying information of a person
44	contained in a Point-In-Time Count and Survey or data in a
45	Homeless Management Information System collected pursuant to 42
46	U.S.C. chapter 119, subchapter IV, and related regulations
47	provided in 24 C.F.R. part 91, be made exempt from public
48	records requirements. Pursuant to 42 U.S.C. s. 11363, the
49	Secretary of Housing and Urban Development is required to
50	instruct service providers not to disclose personally
51	identifying information about any client for purposes of the
52	Homeless Management Information System, which includes Point-In-
53	Time Count and Survey information. The public release of such
54	sensitive information could lead to discrimination against or
55	ridicule of such individuals and could make them reluctant to
56	seek assistance for themselves or their family members. The
57	public release of such information may put affected individuals
58	at greater risk of injury as a significant proportion of such

Page 2 of 3

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Florida Senate - 2014 SB 516

2014516 individuals are survivors of domestic violence or suffer from mental illness or substance abuse. Additionally, public access to such information may put affected individuals at a heightened risk for fraud and identity theft. The harm from disclosing such information outweighs any public benefit that can be derived from widespread and unfettered access to such information. This exemption is narrowly drawn so that aggregate information that does not disclose individual identifying information of a person from the Point-In-Time Count and Survey and data in a Homeless Management Information System collected pursuant to 42 U.S.C. chapter 119, subchapter IV, and related regulations provided in 24 C.F.R. part 91, may be disclosed. Section 3. This act shall take effect upon becoming a law.

20-00281A-14

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Page 3 of 3

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, Chair
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA

20th District

December 18, 2013

The Honorable Jeremy Ring Senate Governmental Oversight and Accountability Committee 404 S. Monroe St., 525 K Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully request that my bill, SB 516/Public Records/Point-In-Time Count and Survey/Homeless Management Information System, be placed on the agenda of the Senate Governmental Oversight and Accountability Committee at the earliest possible time.

Information collected for the Point-In-Time Count and Survey for the Homeless Management Information System requires personal data on homeless individuals. This bill will protect the identity of vulnerable homeless Floridians from being accessed by the public.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

Jack Latvala State Senator District 20

JL:tc

CC: Joe McVaney, Staff Director

fack fatvala

26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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.)

Prepar	ed By: The Pr	ofessional Staff of	of the Comr	nittee on Governme	ental Oversight and Accountability		
BILL:	SB 538						
INTRODUCER:	Senators Latvala and Brandes						
SUBJECT:	Public Rec	ords/Taxpayer	's Email A	Address			
DATE:	March 18,	2014 RE	EVISED:				
ANAL	YST	STAFF DIR	ECTOR	REFERENCE	ACTION		
. Stearns		Yeatman		CA	Favorable		
2. Kim		McVaney		GO	Favorable		
3.				RC			

I. Summary:

SB 538 creates an exemption from the public records laws for e-mail addresses of taxpayers held by tax collectors for the purposes of e-mailing tax notices or obtaining permission from the taxpayer to do so. Current law does not provide an exemption for e-mail addresses held for such purposes. This bill makes those e-mail addresses confidential and exempt from the public records disclosure laws.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

II. Present Situation:

Public Records Status of E-mail Addresses; Agency Website Notice

Under Florida law, e-mail addresses are public records. Agency websites that use e-mail are required to post a notice to users making them aware of this fact and advising them not to send

¹ Section 119.011(12), F.S., defines "public records" as "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." *See* Attorney General Opinion 96-34, May 15, 1996.

² Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

BILL: SB 538 Page 2

e-mail to the agency if they do not want their e-mail address released in response to a public records request.³

Public Records Laws

The State Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

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

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

Notices of Taxation

Tax collectors may send notices of taxation to taxpayers by e-mail in two situations: (1) if the taxpayer has applied to participate in a prepayment installment plan, ¹² or (2) if the tax collector has received express consent from the taxpayer to do so. ¹³

To be able to e-mail a tax notice to a taxpayer, a tax collector must first have the taxpayer's email address on file.

³ Section 668.6076, F.S.

⁴ FLA. CONST., art. I, s. 24(a).

⁵ *Id*.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see WFTV, Inc. v. The School Board of Seminole, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Riviera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 2004); and Williams v. City of Minneola, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (see Attorney General Opinion 85-62, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 197.222(3), F.S.

¹³ Sections 197.322(3), 197.343, and 197.344(1), F.S.

BILL: SB 538 Page 3

III. Effect of Proposed Changes:

This bill makes taxpayer e-mail addresses confidential and exempt from the public records laws if the e-mail addresses are held by tax collectors specifically for the purposes of:

- Sending a quarterly tax notice for prepayment of estimated taxes under s. 197.222(3), F.S., to the taxpayer;
- Obtaining the taxpayer's consent to send the tax notice described in s. 197.322(3), F.S.;
- Sending an additional tax notice or delinquent tax notice to the taxpayer under s. 197.343, F.S.; or
- Sending a tax notice to a designated third party, mortgagee, or vendee as provided under s. 197.344(1), F.S.

However, taxpayer e-mail addresses provided to a tax collector via the tax collector's website for purposes other than those listed above are not exempt from the public records laws.

This bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that a person's email address, when combined with their personal identifying information, exposes people to identity theft, taxpayer scams and invasive contacts.

The bill provides that the exemption will take effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for taxpayer e-mail addresses held by a tax collector; thus, it requires a two-thirds vote for final passage.

BILL: SB 538 Page 4

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for taxpayer information; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill provides that a tax payer's e-mail address is confidential and exempt in four specific instances. 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill likely would benefit taxpayers by reducing their exposure to economic harm from tax related fraud, identity theft or spam e-mail.

C. Government Sector Impact:

The bill may impact tax collectors, because staff responsible for complying with public record requests could require additional training related to expansion of the public record exemption. In addition, tax collectors could incur costs associated with redacting confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the staff of the tax collectors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 197.3225 of the Florida Statutes.

BILL: SB 538 Page 5

IX. **Additional Information:**

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

None.

B. Amendments:

None.

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

Florida Senate - 2014 SB 538

By Senator Latvala

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20-00502-14 2014538_

A bill to be entitled
An act relating to public records; creating s.
197.3225, F.S.; providing an exemption from public records requirements for e-mail addresses obtained by the tax collector for the purpose of electronically sending tax notices or obtaining the consent of the taxpayer to the electronic transmission of tax notices; providing for future review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 197.3225, Florida Statutes, is created to read:

197.3225 Confidentiality of e-mail addresses.-

- (a) Sending a quarterly tax notice for prepayment of estimated taxes under s. 197.222(3) to the taxpayer.
- (b) Obtaining the taxpayer's consent to send the tax notice described in s. 197.322(3).
- (c) Sending an additional tax notice or delinquent tax notice to the taxpayer under s. 197.343.
- (d) Sending a tax notice to a designated third party, mortgagee, or vendee as provided under s. 197.344(1).
 - (2) An e-mail address provided by a taxpayer to the tax

Page 1 of 3

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Florida Senate - 2014 SB 538

2014538

20-00502-14

30	collector via the tax collector's website or other
31	correspondence for a purpose other than those listed in
32	subsection (1) is not exempt from the state's public record law
33	pursuant to s. 668.6076.
34	(3) This section is subject to the Open Government Sunset
35	Review Act in accordance with s. 119.15 and shall stand repealed
36	on October 2, 2019, unless reviewed and saved from repeal
37	through reenactment by the Legislature.
38	Section 2. The Legislature finds that it is a public
39	necessity that the e-mail address of a taxpayer which is held by
40	the tax collector for the purpose of sending a tax notice or
41	obtaining the consent of the taxpayer to the electronic
42	transmission of a tax notice be made confidential and exempt
43	from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
44	the State Constitution. E-mail rather than traditional postal
45	mail is increasingly used as a means for communicating and
46	conducting business, including official state business such as
47	the payment of taxes. In order to carry out business
48	electronically with the tax collector, the taxpayer must report
49	his or her personal e-mail address. Under current law, e-mail
50	addresses are public records available to anyone for any
51	purpose. However, such addresses are unique to the individual
52	and, when combined with other personal identifying information,
53	can be used for identity theft, taxpayer scams, and other
54	invasive contacts. The public availability of personal e-mail
55	addresses invites and exacerbates thriving and well-documented
56	criminal activities putting property owners at increased risk of
57	harm. Such harm could be significantly curtailed by allowing the
58	tax collector to remove the availability of taxpayer e-mail

Page 2 of 3

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Florida Senate - 2014 SB 538

20-00502-14 2014538__
59 addresses.
60 Section 3. This act shall take effect July 1, 2014.

Page 3 of 3

 ${f CODING:}$ Words ${f stricken}$ are deletions; words ${f underlined}$ are additions.

THE FLORIDA SENATE



Taliahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, Chair
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

January 15, 2014

The Honorable Jeremy Ring, Chair Senate Governmental Oversight and Accountability Committee 404 S. Monroe St., 525 Knott Building Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully request that my bill, SB 538, Public Records/Taxpayer's Email Address, be placed on the agenda of the Senate Governmental Oversight and Accountability Committee at the earliest possible time. The bill was referred favorably from the Senate Community Affairs Committee on January 14, 2014.

This bill provides a public records exemption for the private email addresses of residents who receive electronic payment and notice documents directly from their tax collector.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

Jack Latvala State Senator District 20

JL.bj

C: Joe McVaney, Staff Director

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Senate's Website: www.flsenate.gov

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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.)

Prepar	ed By: The Pi	ofessional S	Staff of the Comr	nittee on Governme	ental Oversight and Accountability	
BILL:	SB 996					
INTRODUCER:	Commerce	e and Tour	ism Committe	e		
SUBJECT:	OGSR/Scripps Florida Funding Corporation					
DATE:	March 18,	2014	REVISED:			
ANAL	YST	STAFI	DIRECTOR	REFERENCE	ACTION	
Malcolm		Hrdlicka			CM 7032 as introduced	
1. Kim		McVa	ney	GO	Favorable	
2.				RC		

I. Summary:

In 2003, the Legislature appropriated \$310 million for the California-based Scripps Research Institute (SRI) to open a Florida research facility (Scripps Florida), the Legislature also created the Scripps Florida Funding Corporation (the Funding Corporation) to release the funds to Scripps Florida according to a 20-year agreement. Additionally, the Legislature created public records and public meeting exemptions for certain records and information provided by SRI or Scripps Florida to the Funding Corporation. These exemptions are codified in s. 288.9551, F.S., which is set to expire on October 2, 2014.

SB 996 repeals the public records and public meetings exemptions in s. 288.9551, F.S. because the Funding Corporation has indicated that it operates in the sunshine and does not receive such confidential and exempt information.⁴

¹ Chapter 2003-420, s. 5, Laws of Fla.

² Chapter 2003-420, s. 1, Laws of Fla.

³ Chapter 2003-419, s. 1, Laws of Fla. The 2009 reenactment of s. 288.9551, F.S., removed reference to records and meetings held by the former Office of Tourism, Trade, and Economic Development (OTTED). Chapter 2009-236, Laws of Fla. ⁴ The Funding Corporation's response to the joint Senate and House questionnaire regarding the open government sunset review of s. 288.9551, F.S., response completed by Sara Misselhorn, Project Director, received Sept. 10, 2013, questions 13 and 19. SRI, Scripps Florida, and the Department of Economic Opportunity have also indicated to committee staff that the exemptions are no longer necessary. Telephone conversation with Tom Northrup, General Counsel for SRI and Scripps Florida (Aug. 28, 2013); E-mail from Karl Blischke, Chief, Bureau of Compliance and Accountability, Department of Economic Opportunity, (Nov. 1, 2013) (on file with the Committee on Commerce and Tourism).

BILL: SB 996 Page 2

II. Present Situation:

Public Records in Florida

Florida has a long history of providing public access to government records. In 1992, the State Constitution was amended to provide the public a broad right to access government records.⁵ Article I, s. 24, provides in part:

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.

In addition to the State Constitution, the Public Records Law,⁶ which pre-dates article I, s. 24, specifies conditions under which an agency must grant public access to government records.⁷ It states,

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸

Unless specifically exempt, all agency records are available for public inspection. The term "public record" is broadly defined to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.¹⁰

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to perpetuate, communicate, or formalize knowledge.¹¹

⁵ FLA. CONST. art. I, s. 24.

⁶ Chapter 119, F.S.

⁷ 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 . . . 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."

⁸ Section 119.07(1)(a), F.S.

⁹ Fla. Const. art. I, s. 24(a).

¹⁰ Section 119.011(12), F.S.

¹¹ Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633, 640 (Fla. 1980).

Only the Legislature is authorized to create exemptions to open government requirements.¹² Exemptions must be created by general law, must specifically state the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.¹³ A bill enacting an exemption¹⁴ may not contain other substantive provisions, but it may contain multiple exemptions that relate to one subject.¹⁵

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. ¹⁶ If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances. ¹⁷

Open Government Sunset Review Act¹⁸

The Open Government Sunset Review Act (the Sunset Act) provides for the systematic, five year review of any exemption from the Public Records Law or the Public Meetings Law.¹⁹

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

- (1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) 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
- (3) 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.²¹

¹² Fla. Const. art. I, s. 24(c).

¹³ Fla. Const. art. I, s. 24(c).

¹⁴ Under s. 119.15(4)(b), F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁵ Fla. Const. art. I, s. 24 (c).

¹⁶ See Attorney General Opinion 85-62, WFTV, Inc., v. School Bd. of Seminole, 874, So.2d 48 (2004).

¹⁷ Williams v. City of Minneola, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁸ Section 119.15, F.S.

¹⁹ Section 119.15(3), F.S..

²⁰ Section 119.15 (6)(b), F.S.

²¹ Section 119.15(6)(b), F.S.

The Sunset Act also requires consideration of the following issues:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?²²

Scripps Florida Funding Corporation

In 2003, the Legislature created the Funding Corporation, a nine-member, not-for-profit entity, to enter into and monitor a 20-year agreement with SRI to establish a biomedical research facility in Florida (Scripps Florida) and to disburse state funds on a schedule that coincides with Scripps Florida meeting job-creation and other contractual targets.²³

The Legislature provided a one-time appropriation of \$310 million for Scripps Florida with the funds to be disbursed over a seven year period.²⁴ Due to site-selection and permitting delays, the disbursement period was extended to 10 years.²⁵ As of September 2013, the Funding Corporation had disbursed \$349 million (including \$40.3 million in interest earnings) to Scripps Florida.²⁶ The final disbursement occurred in December 2013.²⁷

Because the Funding Corporation is a public body it would be subject to Florida's public records and open meetings laws but for the public records and public meetings exemptions in s. 288.9551, F.S.

Scripps Florida

Scripps Florida is a division of the California-based, non-profit SRI. State funds provided to Scripps Florida are spent only on approved expenditures. Though it receives public funds, SRI (and by extension, Scripps Florida) is a private, not-for-profit research institute, and is not subject to Florida's public records and open meetings laws.²⁸

²² Section 119.15(6)(a), F.S. While the standards in the Sunset 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. *See Neu v. Miami Herald Pub. Co.*, 462 So.2d 821, 824 (Fla. 1985). Accordingly, the Legislature is only limited in its review process by constitutional requirements. Moreover, s. 119.15(8), F.S., states that the failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

²³ Chapter 2003-420, s. 1, Laws of Fla.

²⁴ Section 288.955(11)(a), F.S.

²⁵ Amendment to Operating and Funding Agreement, Nov. 28, 2006 (on file with the Committee on Commerce and Tourism).

²⁶ Scripps Florida Funding Corporation, 2013 Annual Report, 36, available at http://www.scripps.edu/florida/about/scientificreports_pdfs/2013SFFCAnnualReport_20140108133315_659841.pdf (last visited Jan. 16, 2014).

²⁷ *Id.* at 43

²⁸ See s. 288.955(1)(c), F.S.

Scripps Florida is a biomedical research facility located on 30 acres adjoining the Florida Atlantic University campus in Jupiter, Florida. There are 528 scientists, technicians, and administrative staff employed in the 345,000 square-foot, biomedical research facility. Scripps Florida research targets include neurobiology (Alzheimer's, Parkinson's, autism, schizophrenia, anxiety/depression and addiction), cancer biology, immune system studies (asthma and rheumatoid arthritis), cardiovascular and metabolic research (heart disease, diabetes, obesity and metabolic syndrome), and infectious diseases (Creutzfeldt-Jakob disease, malaria, tuberculosis, hepatitis C, and HIV/AIDS).

Scripps Florida Public Records Exemption

As part of the establishment of the Funding Corporation, s. 288.9551, F.S., was enacted to provide a public records exemption for certain records and meetings of Scripps Florida that are held by the Funding Corporation.³¹ In 2009, the exemption was modified and extended for another five years.³² The following records are confidential and exempt from public disclosure:

- Materials that relate to methods of manufacture or production, potential and actual trade secrets, ³³ patentable material, or proprietary information received, generated, ascertained, or discovered by or through Scripps Florida.
- Agreements and proposals to receive funding, including grant applications.³⁴
- Materials relating to the recruitment of scientists and researchers.
- The identity of donors or potential donors who wish to remain anonymous.
- Any information received from a person or another state or nation or the Federal Government, which is otherwise confidential or exempt pursuant to that state's or nation's laws or pursuant to federal law.
- Personal identifying information of individuals who participate in human trials or experiments.
- Any medical or health records relating to participants in clinical trials.³⁵

Additionally, those portions of board meetings by the Funding Corporation's directors during which exempt and confidential information is presented or discussed must be closed to the public, and records of the closed portions of the meetings are exempt and confidential.³⁶

²⁹ Funding Corporation *2013 Annual Report* at 36. Under the terms of its amended agreement, Scripps Florida is required to hire 545 employees by the end of 2014. Amendment to Operating and Funding Agreement, Nov. 28, 2006 (on file with the Committee on Commerce and Tourism).

³⁰ Scripps Florida, *Research Overview – Florida Campus*, http://www.scripps.edu/florida/research/index.html (last visited Jan. 21, 2014).

³¹ The 2009 extension of s. 288.9551, F.S., removed reference to records and meetings held by the former OTTED. Ch. 2009-236, s. 2, Laws of Fla.

³² Chapter 2009-236, s. 2, Laws of Fla.

³³ "Trade secret" is defined in s. 688.002, F.S.

³⁴ However, the portions of such agreements and proposals to receive funding, including grant applications, that do not contain information made confidential and exempt by s. 288.9551, F.S., shall not be confidential and exempt upon issuance of the report that is made after the conclusion of the project for which funding was provided. Excluded from this exemption is the agreement between the Funding Corporation and SRI that governs the release of the state funds. Section 288.9551(2)(b), F.S.

³⁵ Section 288.9551(2), F.S.

³⁶ Section 288.9551(3), F.S.

Exempt and confidential information must be released to public employees exclusively for the performance of their duties.³⁷ Violating the exemption is a second-degree misdemeanor³⁸

When originally enacted in 2003, the constitutionally required public necessity statement accompanying the exemptions asserted a number of reasons supporting the confidentiality of certain information that Scripps Florida could provide the Funding Corporation.³⁹ For example:

- The state was making a substantial financial investment in the SRI project.
- Disclosure of certain SRI information and records could create an unfair competitive advantage for persons receiving the information, in turn putting SRI at a competitive disadvantage and negatively impacting anticipated benefits to the state, its economy, and its academic community.
- Specifically, disclosure of grant applications and proposals could put SRI at a competitive
 disadvantage for receiving research funds; disclosure of materials related to staff recruitment
 could allow competitors to outbid SRI for scientists and researchers; and failure to protect the
 identities of donors and potential donors could reduce private contributions to SRI.

Originally, the exemptions created under s. 288.9551, F.S., were scheduled for repeal on October 2, 2009, unless reenacted after review by the Legislature under the Sunset Act.⁴⁰ In 2009, following review pursuant to the Sunset Act, the Legislature renewed the exemptions for a period of five years to October 2, 2014, unless reenacted after legislative review under the Sunset Act.⁴¹

The Funding Corporation recommends repealing the public records and public meeting exemptions because the Funding Corporation does not receive or collect the exempt information listed in the statute and does not hold any exempt meetings. ⁴² Scripps Florida, SRI, and DEO are neutral on whether the exemptions are repealed or extended. ⁴³

III. Effect of Proposed Changes:

Section 1 of the bill repeals s. 299.9551, F.S., which provides a public record exemption for proprietary business information and certain financial and research information held by the Scripps Florida Funding Corporation and provides a public meetings exemption for meetings where such information is discussed.

Section 2 of the bill provides an effective date of October 1, 2014.

³⁷ Section 288.9551(4), F.S.

³⁸ Section 288.9551(5), F.S..

³⁹ Chapter 2003-419, s. 2, Laws of Fla.

⁴⁰ Chapter 2003-419, s. 1, Laws of Fla.

⁴¹ Chapter 2009-236, s. 2, Laws of Fla.

⁴² The Funding Corporation's response to the joint Senate and House questionnaire regarding the open government sunset review of s. 288.9551, F.S., response completed by Sara Misselhorn, Project Director, received Sept. 10, 2013, questions 13 and 19 (on file with Committee on Commerce and Tourism).

⁴³ Telephone conversation with Tom Northrup, General Counsel for SRI and Scripps Florida (Aug. 28, 2013); E-mail from Karl Blischke, Chief, Bureau of Compliance and Accountability, Department of Economic Opportunity, (Nov. 1, 2013) (on file with Committee on Commerce and Tourism).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill repeals the public records exemption and the public meeting exemption for the Scripps Florida Funding Corporation. The bill complies with the requirement of article I, s. 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill repeals section 288.9551 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B.	Δι	mer	dm	ents:

None.

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

By the Committee on Commerce and Tourism

577-01739-14 2014996 A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; repealing s. 288.9551, F.S., which provides an exemption from public record and public meeting requirements for certain records and meetings of the Scripps Florida Funding Corporation; providing

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11 12 Be It Enacted by the Legislature of the State of Florida:

an effective date.

Section 1. <u>Section 288.9551</u>, Florida Statutes, is repealed. Section 2. This act shall take effect October 1, 2014.

Page 1 of 1

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



The Florida Senate

Committee Agenda Request

То:	Senator Jeremy Ring, Chair Committee on Governmental Oversight and Accountability
Subject:	Committee Agenda Request
Date:	February 18, 2014
I respectfully on the:	y request that 996, relating to OGSR/Scripps Florida Funding Corporation, be placed
	committee agenda at your earliest possible convenience.
\boxtimes	next committee agenda.

Senator Nancy C. Detert Florida Senate, District 28

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.)

Prepa	red By: The F	Professional	Staff of the Com	mittee on Governm	ental Oversight	t and Accountability	
BILL:	CS/SB 1290						
INTRODUCER:	Governm	Governmental Oversight and Accountability Committee, Senator Altman, and others					
SUBJECT:	Transpor	Transportation Services Procurement					
DATE:	March 20), 2014	REVISED:				
ANAL	_YST	STAF	F DIRECTOR	REFERENCE		ACTION	
. McKay		McVa	aney	GO	Fav/CS		
				TR			
				AP			
	Pleas	se see S	Section IX. f	or Addition	al Informa	tion.	

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1290 creates a new provision within the state agency procurement laws mandating that an agency must consider the following two things, when evaluating replies to competitive solicitations for cargo, freight, or package delivery services:

- Whether a vendor uses alternative fuels, and
- The fuel efficiency of the vehicles used by the vendor.

II. Present Situation:

State Procurement of and Contracts for Personal Property and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property² and services.³ The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.⁴ The Division of State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals (RFP), which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN), which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁵

Criteria used to evaluate proposals received pursuant to a request for proposals must include, but are not limited to:

- Price;
- Renewal price, if renewal is contemplated; and
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.⁶

¹ As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

² Personal property" is not independently defined for purposes of ch. 287, F.S., but the chapter title for Chapter 287, F.S., is "Procurement of Personal Property and Services." Additionally, the definition of "commodity" in s. 287.012(5), F.S., is "any of the various supplies, materials, goods, merchandise, food, equipment, information technology, *and other personal property*, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies." This definition is used in Part I of Ch. 287, F.S., "Commodities, Insurance, and Contractual Services."

³ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

⁴ See ss. 287.032 and 287.042, F.S.

⁵ See ss. 287.012(6) and 287.057, F.S.

⁶ Section 287.057(1)(b)3., F.S.

In invitations to negotiate, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN.⁷

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process. However, specified contractual services and commodities are not subject to competitive solicitation requirements. 9

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or certain other agencies.¹⁰

III. Effect of Proposed Changes:

The bill creates s. 287.0836, F.S., relating to sustainable transportation services procurements.

The bill requires an agency to consider the following two things, when evaluating replies to competitive solicitations for cargo, freight, or package delivery services:

- Whether a vendor uses alternative fuels (including natural gas), and
- The fuel efficiency of the vehicles used by the vendor.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ Section 287.057(1)(c)3., F.S.

⁸ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁹ See s. 287.057(3)(f), F.S.

¹⁰ See s. 287.042(2)(c), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. If the bill is interpreted as a preference for vendors with alternative fuel or fuel-efficient vehicles, vendors with those operational characteristics might obtain more contracts.

C. Government Sector Impact:

Indeterminate. The bill does not address price, and the interplay between the implied preference in the bill and cost is difficult to determine in advance.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires agencies to "consider" vendor use of alternative fuels and vehicle fuel efficiency in certain procurements. Use of the word "consider" means that agencies will have discretion to weigh the relevance of these factors in any given procurement. The exercise of discretion in the procurement process can provide grounds for aggrieved vendors to protest agency decisions.

The bill requires consideration of whether a vendor uses alternative fuels and fuel-efficient vehicles generally. It does not require information related to a vendor's fuel usage *in performance of the Florida contract*. If the intent of the legislature is to reward or incentivize vendor use of alternative fuels and fuel-efficient vehicles in performance of contracts in Florida, the bill should so specify. Otherwise, a vendor could get consideration for conduct occurring outside Florida.

VIII. Statutes Affected:

This bill creates section 287.0836 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS narrows the bill to merely require an agency to consider the following two things, when evaluating replies to competitive solicitations for cargo, freight, or package delivery services:

- Whether a vendor uses alternative fuels, and
- The fuel efficiency of the vehicles used by the vendor.

B. Amendments:

None.

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

388444

LEGISLATIVE ACTION Senate House Comm: RCS 03/20/2014

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 287.0836, Florida Statutes, is created to read:

287.0836 Sustainable transportation services procurement.-An agency must consider the following criteria when evaluating a proposal or reply received pursuant to a request for a proposal or an invitation to negotiate for services related to cargo,

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11	freight, or package delivery:
12	(1) Whether the vendor uses alternative fuels, including
13	natural gas fuel as defined in s. 377.810.
14	(2) The fuel efficiency of the vehicles used by the vendor.
15	Section 2. This act shall take effect July 1, 2014.
16	
17	========= T I T L E A M E N D M E N T ==========
18	And the title is amended as follows:
19	Delete everything before the enacting clause
20	and insert:
21	A bill to be entitled
22	An act relating to transportation services
23	procurement; creating s. 287.0836, F.S.; requiring an
24	agency to consider specified criteria when evaluating
25	a proposal or reply received for procurement of
26	specified transportation services; providing an
27	effective date.

By Senator Altman

16-01032-14 20141290 A bill to be entitled

to submit a report to the Legislature; providing an

An act relating to transportation services procurement; creating s. 287.0836, F.S.; requiring the Department of Management Services to adopt a rule relating to the procurement of certain transportation services; specifying requirements for the content and implementation of the rule; authorizing the department

effective date.

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WHEREAS, the Legislature encourages the voluntary reduction of regulated pollutants at the lowest possible cost in order to maintain the state's economic and environmental leadership, and WHEREAS, strategic investments in the transportation sector promise new jobs, new taxable wealth, and overall increased efficiency, NOW, THEREFORE, Be It Enacted by the Legislature of the State of Florida: Section 1. Section 287.0836, Florida Statutes, is created to read: 287.0836 Sustainable transportation services procurement.-(1) The department shall adopt a rule requiring that a vendor submitting a proposal in response to a competitive solicitation for transportation services, including, but not limited to, cargo, freight, and package delivery, disclose certain information regarding energy consumption. The rule shall provide that each solicitation for the procurement for transportation services require the vendor to disclose how its Page 1 of 2

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Florida Senate - 2014 SB 1290

201/1200

16-01022-14

	10-01032-14
30	services will:
31	(a) Reduce regulated pollutants from mobile sources used in
32	providing the services, including, but not limited to, cars,
33	light and heavy trucks, aircraft, buses, and locomotives.
34	(b) Reduce regulated pollutants from stationary sources
35	used in providing the services.
36	(c) Reduce the overall consumption of conventional oil and
37	gasoline from strategic capital investments made by the vendor.
38	(d) Stimulate capital investment of new fueling
39	infrastructure that results in the use of more fuel-efficient
40	vehicles.
41	(e) Lower the long-term fuel costs of the services by
42	reducing fuel consumption.
43	(2) By January 1, 2015, the department shall publish a
44	notice of proposed rule for the rule required by subsection (1).
45	(3) If the department desires to comment on the combined
46	economic and environmental impacts of implementing this section,
47	the department may submit a written report to the President of
48	the Senate and the Speaker of the House of Representatives.
49	Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Profession	nal Staff conducting the meeting)
Meeting Date	
Topic Transportation Procurement	Bill Number/290
Name Ceticia Adams	(if applicable) Amendment Barcode
Job Title Senion Policy Dinectin	(if applicable)
Address 136 J. Bronough 8.7	Phone 850 544 6866
City State Zip	E-mail /adams & flok imbar con
Speaking: For Against Information	
Representing Florida Chamben of	Commance
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 meeting. Those who do speak may be asked to limit their remarks so that as mai	all persons wishing to speak to be heard at this ny persons as possible can be heard.
This form is part of the public record for this meeting.	S 004 (40/00/44)

APPEARANCE RECORD

3-20-14
Meeting Date

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

Topic	Bill Number 1290
Name Dale Calhonn	(if applicable) Amendment Barcode
Job Title	(if applicable)
Address 214 S Monroe 86	Phone 850 681 0496
Address 214 5 Monroe 84 Street allahassee FL 32301 City State Zip	E-mail
Speaking: Against Information	
Representing Florida Wateral Gas	Association
Appearing at request of Chair: Yes No Lobbyis	t 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)

APPEARANCE RECORD

Meeting Date (Deliver BOTH copies of this form to the Senator of Senate Profession)	ial Starr conducting the meeting)
Topic Natural, 6as Name Steve UHLFELDER	Bill Number (if applicable) Amendment Barcode (if applicable)
Job Title LAWYER	
Address 519 E PARK	Phone 980-6438
Street Tall Fla 3230/	E-mail School
Speaking: State Zip Speaking: Against Information	Saltw. bet
Representing UPS	
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	t 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)



Tallahassee, Florida 32399-1100

COMMITTEES:

Military Affairs, Space, and Domestic Security, Chair Appropriations Subcommittee on Criminal and Civil Justice

Appropriations Subcommittee on Finance and Tax Children, Families, and Elder Affairs Criminal Justice

Environmental Preservation and Conservation

SELECT COMMITTEE

Indian River Lagoon and Lake Okeechobee

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR THAD ALTMAN
16th District

March 20, 2014

The Honorable Jeremy Ring Senate Committee on Government Oversight and Accountability, Chair 405 Senate Office Building 404 South Monroe Street Tallahassee, FL 32399

Dear Chairman Ring:

Senate Bill 1290, related to *Transportation Services Procurement* is on the Government Oversight and Accountability Committee agenda today, March 20, 2014. Since I will be in the Environmental, Preservation and Conservation Committee meeting I will be unable to attend.

Please recognize my Legislative Assistant Rick Kendust to present SB 1290 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

Thad Altman

cc: Joe McVaney, Staff Director, 525 Knott Building Bethany Jones, Committee Administrative Assistant

TA/svb

REPLY TO:

☐ 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138

□ 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov



Tallahassee, Florida 32399-1100

COMMITTEES:

Military Affairs, Space, and Domestic Security, Chair Appropriations Subcommittee on Criminal and Civil Justice

Appropriations Subcommittee on Finance and Tax Children, Families, and Elder Affairs Criminal Justice

Environmental Preservation and Conservation

SELECT COMMITTEE

Indian River Lagoon and Lake Okeechobee Basin

JOINT COMMITTEE:

Public Council Oversight Committee

SENATOR THAD ALTMAN
16th District

March 5, 2014

The Honorable Jeremy Ring Senate Committee on Government Oversight and Accountability, Chair 405 Senate Office Building 404 South Monroe Street Tallahassee, FL 32399

Dear Chairman Ring:

I respectfully request that SB 1290, *Transportation Services Procurement*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration. Please contact me should you have any questions.

Sincerely,

Thad Altman

cc: Joe McVaney, Staff Director, 525 Knott Building Bethany Jones, Committee Administrative Assistant

TA/sb

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.)

Prepar	ed By: The Pr	ofessional	Staff of the Comr	nittee on Governme	ental Oversight an	d Accountability
BILL:	SB 776					
INTRODUCER:	Senator Simpson					
SUBJECT:	Business Entities					
DATE:	March 18,	2014	REVISED:			
ANAL	YST	STAF	F DIRECTOR	REFERENCE		ACTION
1. Malcolm		Hrdlic	ka	CM	Favorable	
2. McKay		McVa	ney	GO	Favorable	
3.				AP		_

I. Summary:

SB 776 reduces and standardizes the various filing fees and other costs limited liability companies (LLCs), for-profit corporations, not-for-profit corporations, and partnerships pay to the Department of State (DOS). The bill reduces filing fees for most documents to \$25 and reduces the cost to have documents provided by the DOS to \$8.75.

The bill also repeals the \$88.75 supplemental corporate fee that is currently paid by LLCs, for-profit corporations, and certain partnerships, and as a consequence, reduces the total costs associated with filing an annual report for these entities to \$125.

Lastly, the bill replaces the flat \$400 late charge for annual reports that are filed after May 1 each year with a tiered late charge structure that provides incrementally larger late charges. Under the tiered system, a business entity filing its annual report after May 1, but during the month of May, will be subject to a late fee of \$125. After May 31, the late fee is \$250. After June 30, the late fee is \$375, and after July 31, the maximum late fee of \$400 will apply.

II. Present Situation:

Business entities, such as LLCs, for-profit corporations, not-for-profit corporations, and partnerships that do business in Florida are required to file a number of documents with the DOS. Some of the documents that a business must file include its initial filings, such as articles of incorporation or organization and registered agent designation, and filings related to certain business transactions, such as a certificate or articles of merger and amendments of articles of incorporation. Along with the required documents, the business entity must also pay a filing fee, which ranges from \$5 to over \$900 based on the type of document filed and the type of business entity filing the document.

One of the most significant documents a business entity must file is its annual report. A business must file its annual report by May 1 of each year¹ and pay a fee of \$50 if it's an LLC,² \$61.25 if it's a for-profit or a not-for-profit corporation,³ \$411.25 if it's a limited partnership (LP) or limited liability limited partnership (LLP),⁴ or \$25 if it's a limited liability partnership (LLP).⁵ In addition to the fee for filing an annual report, an LLC, a for-profit corporation, an LP, and an LLLP must also pay an additional annual supplemental corporate fee of \$88.75 at the same time it files its annual report.⁶ Failure to file an annual report and pay the annual report filing fee and supplemental corporate fee by May 1 results in a \$400 late charge, unless the business entity was administratively dissolved or its certificate of authority was revoked due to its failure to file an annual report and the entity subsequently applied for reinstatement and paid the applicable reinstatement fee.⁷

III. Effect of Proposed Changes:

LLC Fees

Section 1 amends s. 605.0213, F.S., to change the fees paid by LLCs to the DOS under ch. 605, F.S.

	Current Fee	New Fee Under the Bill
Original articles of organization	\$100	\$125 ⁸
Annual report	\$50	\$125 ⁹
Articles of revocation of dissolution	\$100	\$25
Foreign LLC's application for a certificate of authority to transact business	\$100	\$125 ¹⁰
Certificate of merger	\$25 per party to the merger, unless a specific fee is required for a party under other law	\$25 flat fee
Registered agent's statement of resignation from an active LLC	\$85	\$25

¹ Sections 605.0212(3), 607.1622(5), 617.1622(5), 620.1210(3), and 620.9003(2), F.S.

² Section 605.0213(5), F.S.

³ Sections 607.0122(17) and 617.0122(17), F.S.

⁴ Section 620.1109(7), F.S.

⁵ Section 620.81055(1)(h), F.S.

⁶ Section 607.193, F.S.

 $^{^{7}}$ *Id.* at (2)(b).

⁸ Includes the \$25 filing fee for the initial registered agent designation, which is consistent with both the current \$25 filing fee for registered agents in s. 605.0213(7), F.S., and the filing fee for the same in section 1 of the bill.

⁹ According to the DOS, this increase incorporates a portion of the \$88.75 supplemental corporate fee under s. 607.0193(1), F.S., that is repealed in section 5 of the bill. Telephone conversation with the DOS (Feb. 21, 2013).

¹⁰ Supra note 8.

Registered agent's statement of resignation from a dissolved LLC	\$25	No change
Application for reinstatement after an administrative or judicial dissolution or a revocation of authority to transact business	\$100	No change
Certificate designating or changing a registered agent	\$25	No change
Certificate of conversion of an LLC	\$25	No change
Certified copy furnished by the DOS	\$30	\$8.75
Certificate of status furnished by the DOS	\$5	No change
Any other LLC document	\$25	No change

For-profit Corporation Fees

Section 2 amends s. 607.0122, F.S., to change the fees paid by for-profit corporations to the DOS under ch. 607, F.S.

	Current Fee	New Fee Under the Bill
Articles of incorporation	\$35	\$7011
Annual report	\$61.25	\$125 ¹²
Supplemental corporate fee	\$88.75	Repealed: \$0
Application for registered		
name and renewal of	\$87.50	\$25
registered name		
Application for certificate of		
authority to transact business	\$35	\$70 ¹³
by a foreign corporation		
Articles of merger or share	\$35 per party	\$25 flat fee
exchange	\$33 per party	\$23 Hat ICC
Agent's statement of		
resignation from active	\$87.50	\$25
corporation		
Application for reinstatement		
following administrative	\$600	No change
dissolution		

¹¹ Includes the \$35 filing fee for the initial registered agent designation, which is consistent with the current \$35 filing fee for registered agents in s. 607.0122(5), F.S.

12 Supra note 9.

13 Supra note 11.

Agent's statement of resignation from an inactive corporation	\$35	\$25
Statement of change of		
registered agent or registered office (if not included on the annual report)	\$35	\$25
Designation of and		
acceptance by registered	\$35	\$25
agent	Ψ33	Ψ25
Amendment of articles of		
incorporation	\$35	\$25
Restatement of articles of		
incorporation with	\$35	\$25
amendment of articles	φ33	\$23
Articles of dissolution	\$35	\$25
Articles of dissolution Articles of revocation of	φ33	\$23
dissolution	\$35	\$25
Application for amended certificate of authority	\$35	\$25
Application for certificate of withdrawal by a foreign corporation	\$35	\$25
Articles of correction	\$35	\$25
Certificate of domestication of a foreign corporation	\$50	\$25
The DOS serving as agent for substitute service of process	\$87.50	\$8.75
Certified copy furnished by the DOS	\$52.50	\$8.75
Certificate of status furnished by the DOS	\$8.75	No change
Any other filed document	\$35	\$25
· · ·		•

Not-for-profit Corporation Fees

Section 6 amends. s. 617.0122, F.S., to change the fees paid by not-for-profit corporations to the DOS under ch. 617, F.S.

	Current Fee	New Fee Under the Bill
Articles of incorporation	\$35	\$7014
Annual report	\$61.25	No change

¹⁴ Includes the \$35 filing fee for the initial registered agent designation, which is consistent with the current \$35 filing fee for registered agents in s. 617.0122(5), F.S.

Application for no sistemed		
Application for registered	¢07.50	\$25
name and renewal of	\$87.50	\$25
registered name		
Application for certificate of	42.7	o=015
authority to transact business	\$35	$$70^{15}$
by a foreign corporation		
Articles of merger	\$35 per party	\$25 flat fee
Agent's statement of		
resignation from active	\$87.50	\$25
corporation		
Agent's statement of		
resignation from inactive	\$35	\$25
corporation		
Statement of change of		
registered agent or registered	¢25	\$25
office (if not included on the	\$35	\$25
annual report)		
Designation of and acceptance	425	Φ2.7
by registered agent	\$35	\$25
Amendment of articles of	407	***
incorporation	\$35	\$25
Restatement of articles of		
incorporation with	\$35	\$25
amendment of articles	400	4-5
Articles of dissolution	\$35	\$25
Articles of revocation of		
dissolution	\$35	\$25
Application for reinstatement		
following administrative	\$175	No change
dissolution	Ψ173	140 change
Application for amended		
certificate of authority	\$35	\$25
Application for certificate of		
withdrawal by a foreign	\$35	\$25
corporation	φυυ	$\Psi \mathcal{L} \mathcal{J}$
Articles of correction	\$35	\$25
Certificate of conversion of a	φυυ	Ψ43
limited agricultural association to a domestic	\$35	\$25
corporation		
The DOS serving as agent for	\$87.50	\$8.75
substitute service of process		
Certificate of status furnished	\$8.75	No change
by the DOS	•	U-

¹⁵ Supra note 14.

Certified copy furnished by the DOS	\$52.50	\$8.75
Any other filed document	\$35	\$25

Partnership Fees

Part I of ch. 620, F.S., applies to LPs and LLLPs. 16 Part II of ch. 620, F.S., applies to general partnerships and LLPs. 17

Section 8 amends s. 620.1109, F.S., to change the fees paid by LPs and LLLPs to the DOS under part I of ch. 620, F.S.

	Current Fee	New Fee Under the Bill
Original certificate of limited partnership	\$965	\$1,000 ¹⁸
Original application for registration as a foreign limited partnership	\$965	\$1,000 ¹⁹
Annual report	\$411.25	\$125 ²⁰
Certificate of merger	\$52.50 per party	\$25 flat fee
Reinstatement application	\$500 for each year in which the partnership was administratively dissolved or revoked	No change
Certificate resigning as a registered agent	\$87.50	\$25
Certificate designating a registered agent	\$35	\$25
Certificate changing a registered agent or registered office address	\$35	\$25
Certificate of conversion	\$52.50	\$25
Certificate of amendment or restatement of the certificate of limited partnership	\$52.50	\$25
Statement of termination	\$52.50	\$25
Notice of cancellation for foreign limited partnership	\$52.50	\$25
Certificate of dissolution	\$52.50	\$25

¹⁶ Section 620.2204(2), F.S.; *see* s. 620.1102(12), F.S. (including "limited liability limited partnership" within the definition of "limited partnership").

¹⁷ Section 620.8106(2), F.S.

¹⁸ Includes the \$35 filing fee for the initial registered agent designation, which is consistent with the current \$35 filing fee for registered agents in s. 620.1109(8), F.S.

¹⁹ Supra note 18.

²⁰ The reduction from \$411.25 to \$125 makes this filing fee for LPs and LLLPs the same as those for LLCs and for-profit corporations in sections 1 and 2 of the bill.

Certificate of revocation of dissolution	\$52.50	\$25
Certified copy furnished by	\$52.50 for first 15 pages plus	\$8.75
the DOS	\$1 for each additional page	Ψ0.73
Certificate of status or		
authorization furnished by the	\$8.75	No change
DOS		
Filing any other document	\$52.50	\$25

Section 10 amends s. 620.81055, F.S., to change the fees paid by general partnerships and LLPs under part II of ch. 620, F.S. The current fees in s. 620.81055, F.S., are consistent with the new fees in s. 620.1109, F.S., as updated in section 9 of the bill. The only substantive update to the fees in s. 620.81055, F.S., in the bill is to change the filing fee for a certificate of merger from \$25 per party to a flat fee of \$25. This change is consistent with other certificate of merger filing fee changes in the bill.

Supplemental Corporate Fees and Late Charges

Sections 4 and 5 repeal s. 607.193, F.S., and create s. 607.1623, F.S., to repeal the \$88.75 supplemental corporate fee and \$400 late charge for annual reports not filed by May 1 each year that applies to LLCs, for-profit corporations, LPs, and LLLPs. The bill replaces the \$400 late charge for these entities with a tiered late fee for annual reports filed after May 1 as follows:

Annual report fee remitted after May 1:	\$125
Annual report fee remitted after May 31:	\$250
Annual report fee remitted after June 30:	\$375
Annual report fee remitted after July 31:	\$400

A late charge will not be incurred if a business entity is administratively dissolved or its certificate of authority is revoked due to its failure to file an annual report and the entity subsequently applies for reinstatement and pays the applicable reinstatement fee.

Technical Changes and Effective Date

Sections 3, 7, and 9 amend ss. 607.01401, 620.1102, and 620.8101, F.S., respectively, to define the term "department" as used in chapters 607 and 620, F.S., to mean the Department of State.

Sections 11 through 15 amends ss. 339.12, 605.0118, 607.0505, 610.104, and 631.0515, F.S., respectively, to conform to changes made by the bill, to conform cross-references, and to delete obsolete cross-references.

Section 16 provides an effective date of January 1, 2015.

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:

The Revenue Estimating Conference estimates SB 776 will result in the following negative impact to the General Revenue Fund:²¹

	General Revenue ²²
	Recurring
FY 2014-15	(40.7)
FY 2015-16	(41.7)
FY 2016-17	(42.6)
FY 2017-18	(43.4)
FY 2018-19	(44.1)

B. Private Sector Impact:

The decreased and standardized filing fees and costs for documents filed with the DOS will likely reduce costs for LLCs, for-profit corporations, not-for-profit corporations, and partnerships that operate in Florida. Specifically, the repeal of the \$88.75 supplemental corporate fee will likely result in net savings of \$13.75 for an LLC, \$25 for a for-profit corporation, and \$286.25 for an LP or LLLP due to a net reduction in fees when an annual report is filed. Additionally, business entities will also no longer pay a flat \$400 late charge for annual reports that are filed after May 1 each year, but instead will pay a late charge based on a tiered charge that increases each 30 days past due the annual report is late up to a maximum of \$400.

²¹ Office of Economic and Demographic Research, Revenue Estimating Conference, *Analysis of HB 767: Corporate Filing Fees* (Feb. 6, 2014) *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2014/pdf/pages165-168.pdf (last visited Feb. 25, 2014).

²² Amounts are in millions of dollars.

C. Government Sector Impact:

According to the DOS, the bill will not have any fiscal impact on its operations; however, the DOS notes the bill will have an impact on its technology system due to extensive computer code changes necessitated by the bill.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0213, 607.0122, 607.01401, 617.0122, 620.1102, 620.1109, 620.8101, 620.81055, 339.12, 605.0118, 607.0505, 610.104, and 631.0515.

This bill creates section 607.1623 of the Florida Statutes.

This bill repeals section 607.193 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

²³ DOS, Analysis of SB 776 (Feb. 24, 2014) (on file with the Committee on Commerce and Tourism).

By Senator Simpson

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18-00880A-14 2014776_ A bill to be entitled

An act relating to business entities; amending s. 605.0213, F.S.; revising the filing fees of a limited liability company; making technical changes; amending s. 607.0122, F.S.; revising the filing fees for a corporation; making technical changes; amending s. 607.01401, F.S.; defining the term "department"; creating s. 607.1623, F.S.; requiring a fee to be imposed for late annual reports; specifying the fee; repealing s. 607.193, F.S., relating to a supplemental corporate fee; amending 617.0122, F.S.; revising the filing fees of a corporation not for profit; making technical changes; amending s. 620.1102, F.S.; defining the term "department"; amending s. 620.1109, F.S.; revising the filing fees of a limited partnership; making technical changes; amending s. 620.8101, F.S.; defining the term "department"; amending s. 620.81055, F.S.; revising the filing fees of a partnership; making technical changes; amending ss. 339.12, 605.0118, 607.0505, 610.104, and 631.0515, F.S.; conforming cross-references to changes made in the act; providing an effective date. Be It Enacted by the Legislature of the State of Florida: Section 1. Section 605.0213, Florida Statutes, is amended to read:

Page 1 of 19

(1) The fees of the department shall collect the following

605.0213 Fees of the department.-

CODING: Words $\underline{\textbf{stricken}}$ are deletions; words $\underline{\textbf{underlined}}$ are additions.

Florida Senate - 2014 SB 776

	18-00880A-14 2014776
30	$\underline{\text{fees on documents delivered to the department for filing } \underline{\text{under}}$
31	this chapter are as follows:
32	(1) For furnishing a certified copy, \$30.
33	(a) (2) For filing Original articles of organization and
34	initial registered agent designation or articles of revocation
35	of dissolution, \$125 \$100.
36	(b) (3) For filing a Foreign limited liability company's
37	application for a certificate of authority to transact business
38	and initial registered agent designation, \$125 \$100.
39	(c) (4) For filing a Certificate of merger of limited
40	liability companies or other business entities, \$25 per
41	constituent party to the merger, unless a specific fee is
42	required for a party under other applicable law.
43	$\underline{\text{(d)}}$ (5) For filing an Annual report, $\underline{\$125}$ $\$50$.
44	(e) (6) For filing an Application for reinstatement after an
45	administrative or judicial dissolution or a revocation of
46	authority to transact business, \$100.
47	$\underline{\text{(f)}}$ (7) For filing a Certificate designating a registered
48	agent or changing a registered agent, \$25.
49	$\underline{(g)}$ (8) For filing a Registered agent's statement of
50	resignation from <u>a</u> an active limited liability company, $\frac{$25}{}$
51	(9) For filing a registered agent's statement of
52	resignation from a dissolved limited liability company, \$25.
53	$\underline{\text{(h)}}$ (10) For filing a Certificate of conversion of a limited
54	liability company, \$25.
55	(i) Articles of revocation of dissolution, \$25.
56	(j) (11) For filing Any other limited liability company
57	document, \$25.
58	(12) For furnishing a certificate of status, \$5.

Page 2 of 19

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

SB 776 Florida Senate - 2014

	18-00880A-14 2014776
9	(2) The department shall collect the following fees on
0	documents furnished by the department:
1	(a) Certified copy, \$8.75.
2	(b) Certificate of status, \$5.
3	Section 2. Section 607.0122, Florida Statutes, is amended
4	to read:
5	607.0122 Fees of the department for filing documents and
6	issuing certificates
7	(1) The department of State shall collect the following
8	fees on when the documents described in this section are
9	delivered to the department for filing:
0	(a) (1) Original articles of incorporation and initial
1	registered agent designation, \$70: \$35.
2	(b) (2) Application for registered name, $\$25$: $\$87.50$.
3	(c) (3) Application for renewal of registered name, \$25÷
4	\$87.50 .
5	(d) (4) Corporation's statement of change of registered
6	agent or registered office or both if not included on the annual
7	report <u>, \$25</u> : \$35.
8	$\underline{\text{(e)}}$ (5) Designation of and acceptance by registered agent $\underline{\textbf{.}}$
9	<u>\$25</u> : \$35.
0	$\underline{\text{(f)}}$ (6) Agent's statement of resignation, \$25 from active
1	corporation: \$87.50.
2	(7) Agent's statement of resignation from an inactive
3	corporation: \$35.
4	$\underline{\text{(g)}}$ (8) Amendment of articles of incorporation, \$25: \$35.
5	$\underline{\text{(h)}}$ (9) Restatement of articles of incorporation with
6	amendment of articles, $\$25$: $\$35$.
7	(i) (10) Articles of merger or share exchange, \$25 for each

Page 3 of 19

 ${f CODING:}$ Words ${f stricken}$ are deletions; words ${f underlined}$ are additions.

Florida Senate - 2014 SB 776

	18-00880A-14 2014776
88	party thereto: \$35.
89	(j) (11) Articles of dissolution, \$25: \$35.
90	(k) (12) Articles of revocation of dissolution, $$25: 35 .
91	(1) (13) Application for reinstatement following
92	administrative dissolution + \$600.
93	(m) (14) Application for certificate of authority to
94	transact business in this state by a foreign corporation and
95	initial registered agent designation, \$70: \$35.
96	$\underline{\text{(n)}}$ (15) Application for amended certificate of authority,
97	\$25 : \$35 .
98	(o) (16) Application for certificate of withdrawal by a
99	foreign corporation, \$25: \$35.
100	<u>(p) (17)</u> Annual report <u>, \$125</u> : \$61.25.
101	(q) (18) Articles of correction, \$25: \$35.
102	(19) Application for certificate of status: \$8.75.
103	$\underline{\text{(r)}}$ (20) Certificate of domestication of a foreign
104	corporation <u>, \$25</u> : \$50.
105	(21) Certified copy of document: \$52.50.
106	(22) Serving as agent for substitute service of process:
107	\$ 87.50.
108	(23) Supplemental corporate fee: \$88.75.
109	(s) (24) Any other document required or permitted to be
110	filed by this act, $\$25$: $\$35$.
111	(2) The department shall collect the following fees on
112	documents furnished by the department:
113	(a) Certified copy, \$8.75.
114	(b) Certificate of status, \$8.75.
115	(3) The department shall collect a fee of \$8.75 to serve as
116	an agent for substitute service of process.

Page 4 of 19

 ${f CODING:}$ Words ${f stricken}$ are deletions; words ${f underlined}$ are additions.

	18-00880A-14 2014776
117	Section 3. Present subsections (8) through (31) of section
118	607.01401, Florida Statutes, are redesignated as subsections (9)
119	through (32), respectively, and a new subsection (8) is added to
120	that section, to read:
121	607.01401 Definitions.—As used in this act, unless the
122	context otherwise requires, the term:
123	(8) "Department" means the Department of State.
124	Section 4. Section 607.1623, Florida Statutes, is created
125	to read:
126	607.1623 Annual report late fee
127	(1) In addition to the fees required under ss. 605.0213,
128	607.0122, and 620.1109, the department shall collect one of the
129	following late fees:
130	(a) If the annual report fee is remitted after May 1, \$125.
131	(b) If the annual report fee is remitted after May 31,
132	<u>\$250.</u>
133	(c) If the annual report fee is remitted after June 30,
134	<u>\$375.</u>
135	(d) If the annual report fee is remitted after July 31,
136	<u>\$400.</u>
137	(2) A late fee under subsection (1) may not be collected if
138	a business entity is administratively dissolved or its
139	certificate of authority is revoked due to its failure to file
140	an annual report and the entity subsequently applies for
141	reinstatement and pays the applicable reinstatement fee.
142	Section 5. Section 607.193, Florida Statutes, is repealed.
143	Section 6. Section 617.0122, Florida Statutes, is amended
144	to read:
145	617.0122 Fees of the department for filing documents and

Page 5 of 19

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ are additions.

Florida Senate - 2014 SB 776

	18-00880A-14 2014776
146	issuing certificates
147	(1) The department of State shall collect the following
148	fees on documents delivered to the department for filing:
149	(a) (1) Original articles of incorporation and initial
150	registered agent designation, \$70: \$35.
151	(b) (2) Application for registered name, \$25: \$87.50.
152	(c) (3) Application for renewal of registered name, \$25÷
153	\$87.50 .
154	(d) (4) Corporation's statement of change of registered
155	agent or registered office or both if not included on the annual
156	report <u>, \$25</u> : \$35.
157	$\underline{\text{(e)}}$ (5) Designation of and acceptance by registered agent $\underline{\textit{L}}$
158	<u>\$25</u> : \$35.
159	$\underline{\text{(f)}}$ (6) Agent's statement of resignation, \$25 from active
160	corporation: \$87.50.
161	(7) Agent's statement of resignation from inactive
162	corporation: \$35.
163	(g) (8) Amendment of articles of incorporation, \$25: \$35.
164	$\underline{\text{(h)}}$ (9) Restatement of articles of incorporation with
165	amendment of articles, $\$25$: $\$35$.
166	(i) (10) Articles of merger, \$25 for each party thereto:
167	\$35 .
168	$\underline{(j)}$ (11) Articles of dissolution, \$25: \$35.
169	(k) (12) Articles of revocation of dissolution, \$25: \$35.
170	$\underline{(1)}$ (13) Application for reinstatement following
171	administrative dissolution \underline{t} \$175.
172	$\underline{\text{(m)}}$ (14) Application for certificate of authority to
173	transact business in this state by a foreign corporation $\underline{\text{and}}$
174	initial registered agent designation, \$70: \$35.

Page 6 of 19

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2014776

18-00880A-14

175	$\underline{\text{(n)}}$ (15) Application for amended certificate of authority.
176	<u>\$25</u> : \$35 .
177	(o) (16) Application for certificate of withdrawal by a
178	foreign corporation <u>, \$25</u> : \$35.
179	<u>(p) (17)</u> Annual report <u>,</u> + \$61.25.
180	<u>(q) (18)</u> Articles of correction <u>, \$25</u> : \$35.
181	(19) Application for certificate of status: \$8.75.
182	(20) Certified copy of document: \$52.50.
183	(21) Serving as agent for substitute service of process:
184	\$ 87.50.
185	(r) (22) Certificate of conversion of a limited agricultural
186	association to a domestic corporation, $\$25$: $\$35$.
187	(s) (23) Any other document required or permitted to be
188	filed by this chapter <u>, \$25</u> : \$35.
189	(2) The department shall collect the following fees on
190	documents furnished by the department:
191	(a) Certified copy, \$8.75.
192	(b) Certificate of status, \$8.75.
193	(3) The department shall collect a fee of \$8.75 to serve as
194	an agent for substitute service of process.
195	$\underline{\text{(4)}}$ A $\underline{\text{Any}}$ citizen support organization that is required by
196	rule of the Department of Environmental Protection to be formed
197	as a nonprofit organization and is under contract with the
198	department is exempt from \underline{the} \underline{any} fees required for
199	incorporation as a nonprofit organization, and the Secretary of
200	State may not assess any such fees if the citizen support
201	organization is certified by the Department of Environmental
202	Protection to the Secretary of State as being under contract
203	with the Department of Environmental Protection.

Page 7 of 19

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Florida Senate - 2014 SB 776

	18-00880A-14 2014776
204	Section 7. Present subsections (5) through (26) of section
205	620.1102, Florida Statutes, are redesignated as subsections (6)
206	through (27), respectively, and a new subsection (5) is added to
207	that section, to read:
208	620.1102 Definitions.—As used in this act:
209	(5) "Department" means the Department of State.
210	Section 8. Section 620.1109, Florida Statutes, is amended
211	to read:
212	620.1109 Fees of the department of State; fees
213	(1) The department shall collect the following fees on
214	documents delivered to the department for filing $\frac{1}{2}$ In addition to
215	the supplemental corporate fee of \$88.75 imposed pursuant to s.
216	607.193, the fees of the Department of State under this act are
217	as follows:
218	(1) For furnishing a certified copy, \$52.50 for the first
219	15 pages plus \$1.00 for each additional page.
220	(a) (2) For filing an Original certificate of limited
221	partnership and initial registered agent designation, \$1,000
222	\$965 .
223	(b) (3) For filing an Original application for registration
224	as a foreign limited partnership $\underline{\text{and initial registered agent}}$
225	<u>designation</u> , <u>\$1,000</u> \$965 .
226	$\underline{\text{(c)}}$ (4) For filing Certificate of conversion, $\underline{\$25}$ $\underline{\$52.50}$.
227	(d) (5) For filing Certificate of merger, $$25$
228	each party thereto.
229	(e) (6) For filing a Reinstatement application, \$500 for
230	each calendar year or part thereof the limited partnership was
231	administratively dissolved or foreign limited partnership was
232	revoked in the records of the Department of State.

Page 8 of 19

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	18-00880A-14 2014776
233	(f) For filing an Annual report, $$125$ $$411.25$.
234	(g) (8) For filing a Certificate:
235	(a) designating a registered agent, \$25. \$35;
236	(h) (b) Certificate changing a registered agent or
237	registered office address, <u>\$25.</u> \$35;
238	(i) (c) Certificate resigning as a registered agent, \$25.
239	\$87.50; or
240	(j) (d) Certificate of amendment or restatement of the
241	certificate of limited partnership, \$25. \$52.50;
242	(k) (9) For filing a Statement of termination, \$25 \$52.50.
243	(1) (10) For filing a Notice of cancellation for foreign
244	limited partnership, \$25 \$52.50.
245	(11) For furnishing a Certificate of status or
246	authorization, \$8.75.
247	$\underline{\text{(m)}}$ (12) For filing a Certificate of dissolution, $\underline{\$25}$
248	\$52.50 .
249	(n) (13) For filing a Certificate of revocation of
250	dissolution, $\frac{$25}{}$ $\frac{$52.50}{}$.
251	(o) (14) For filing Any other domestic or foreign limited
252	partnership document, $\frac{$25}{}$ \$52.50.
253	(2) The department shall collect the following fees on
254	documents furnished by the department:
255	(a) Certified copy, \$8.75.
256	(b) Certificate of status or authorization, \$8.75.
257	Section 9. Present subsections (4) through (16) of section
258	620.8101, Florida Statutes, are redesignated as subsections (5)
259	through (17), respectively, and a new subsection (4) is added to
260	that section, to read:
261	620.8101 Definitions.—As used in this act, the term:

Page 9 of 19

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Florida Senate - 2014 SB 776

	18-00880A-14 2014776
262	(4) "Department" means the Department of State.
263	Section 10. Section 620.81055, Florida Statutes, is amended
264	to read:
265	620.81055 Fees of the department for filing documents and
266	issuing certificates; powers and authority of the department of
267	State
268	(1) The department of State shall collect the following
269	fees <u>on</u> when documents authorized by this act are delivered to
270	the department of State for filing:
271	(a) Partnership registration statement $\underline{\cdot}$ ÷ \$50.
272	(b) Statement of partnership authority <u>.</u> ÷ \$25.
273	(c) Statement of denial <u>,</u> ÷ \$25.
274	(d) Statement of dissociation <u>.</u> ÷ \$25.
275	(e) Statement of dissolution $\underline{\cdot}$ \$25.
276	(f) Statement of qualification $\underline{\cdot}$ \$25.
277	(g) Statement of foreign qualification $\underline{\cdot}$ \$25.
278	(h) Limited liability partnership annual report $\underline{\cdot}$ \$25.
279	(i) Certificate of merger <u>,</u> for each party thereto: \$25.
280	(j) Amendment to any statement or registration, \div \$25.
281	(k) Cancellation of any statement or registration $\underline{\cdot}$ \$25.
282	(1) Certified copy of any recording or part thereof:
283	\$52.50.
284	(m) Certificate of status: \$8.75.
285	$\underline{\text{(1)}}_{\text{(n)}}$ Certificate of conversion $\underline{,}$ ÷ \$25.
286	(m) (o) Any other document required or permitted to be filed
287	by this act <u>,</u> ÷ \$25.
288	(2) The department shall collect the following fees on
289	documents furnished by the department:
290	(a) Certified copy, \$8.75.

Page 10 of 19

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18-00880A-14 2014776

(b) Certificate of status, \$8.75.

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(3) (2) The department of State has the power and authority reasonably necessary to enable it to administer this act efficiently, to perform the duties imposed upon it by this act, and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act conferring duties upon it.

Section 11. Paragraph (a) of subsection (4) of section 339.12, Florida Statutes, is amended to read:

339.12 Aid and contributions by governmental entities for department projects; federal aid.— $\,$

(4) (a) Prior to accepting the contribution of road bond proceeds, time warrants, or cash for which reimbursement is sought, the department shall enter into agreements with the governing body of the governmental entity for the project or project phases in accordance with specifications agreed upon between the department and the governing body of the governmental entity. The department in no instance is to receive from such governmental entity an amount in excess of the actual cost of the project or project phase. By specific provision in the written agreement between the department and the governing body of the governmental entity, the department may agree to reimburse the governmental entity for the actual amount of the bond proceeds, time warrants, or cash used on a highway project or project phases that are not revenue producing and are contained in the department's adopted work program, or any public transportation project contained in the adopted work program. Subject to appropriation of funds by the Legislature, the department may commit state funds for reimbursement of such projects or project phases. Reimbursement to the governmental

Page 11 of 19

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Florida Senate - 2014 SB 776

	18-00880A-14 2014776
320	entity for such a project or project phase must be made from
321	funds appropriated by the Legislature, and reimbursement for the
322	cost of the project or project phase is to begin in the year the
323	project or project phase is scheduled in the work program as of
324	the date of the agreement. Funds advanced pursuant to this
325	section, which were originally designated for transportation
326	purposes and so reimbursed to a county or municipality, shall be
327	used by the county or municipality for any transportation
328	expenditure authorized under s. 336.025(7). Also, cities and
329	counties may receive funds from persons, and reimburse those
330	persons, for the purposes of this section. Such persons may
331	include, but are not limited to, those persons defined in $\underline{\mathbf{s.}}$
332	<u>607.01401(20)</u> s. 607.01401(19) .
333	Section 12. Subsection (3) of section 605.0118, Florida
334	Statutes, is amended to read:
335	605.0118 Delivery of record.—
336	(3) If a check is mailed to the department for payment of
337	an annual report fee or the annual fee required under s.
338	607.193, the check shall be deemed to have been received by the
339	department as of the postmark date appearing on the envelope or
340	package transmitting the check if the envelope or package is
341	received by the department.
342	Section 13. Paragraph (b) of subsection (1) and subsections
343	(5) and (6) of section 607.0505, Florida Statutes, are amended
344	to read:
345	607.0505 Registered agent; duties.—
346	(1)
347	(b) Each such corporation, foreign corporation, or alien
348	business organization which fails to have and continuously

Page 12 of 19

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18-00880A-14 2014776 349 maintain a registered office and a registered agent as required 350 in this section will be liable to this state for \$500 for each 351 year, or part of a year, during which the corporation, foreign 352 corporation, or alien business organization fails to comply with 353 these requirements; but such liability will be forgiven in full 354 upon the compliance by the corporation, foreign corporation, or 355 alien business organization with the requirements of this 356 subsection, even if such compliance occurs after an action to 357 collect such liability is instituted. The Department of Legal 358 Affairs may file an action in the circuit court for the judicial 359 circuit in which the corporation, foreign corporation, or alien 360 business organization is found or transacts business, or in 361 which real property belonging to the corporation, foreign 362 corporation, or alien business organization is located, to 363 petition the court for an order directing that a registered 364 agent be appointed and that a registered office be designated, 365 and to obtain judgment for the amount owed under this 366 subsection. In connection with such proceeding, the Department 367 of Legal Affairs may, without prior approval by the court, file 368 a lis pendens against real property owned by the corporation, 369 foreign corporation, or alien business organization, which lis 370 pendens shall set forth the legal description of the real 371 property and shall be filed in the public records of the county 372 where the real property is located. If the lis pendens is filed 373 in any county other than the county in which the action is 374 pending, the lis pendens which is filed must be a certified copy 375 of the original lis pendens. The failure to comply timely or 376 fully with an order directing that a registered agent be appointed and that a registered office be designated will result

Page 13 of 19

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Florida Senate - 2014 SB 776

2014776

18-00880A-14

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378 in a civil penalty of not more than \$1,000 for each day of 379 noncompliance. A judgment or an order of payment entered 380 pursuant to this subsection will become a judgment lien against any real property owned by the corporation, foreign corporation, 382 or alien business organization when a certified copy of the 383 judgment or order is recorded as required by s. 55.10. The Department of Legal Affairs will be able to avail itself of, and 385 is entitled to use, any provision of law or of the Florida Rules 386 of Civil Procedure to further the collecting or obtaining of 387 payment pursuant to a judgment or order of payment. The state, through the Attorney General, may bid, at any judicial sale to 389 enforce its judgment lien, any amount up to the amount of the 390 judgment or lien obtained pursuant to this subsection. All moneys recovered under this subsection shall be treated as 392 forfeitures under ss. 895.01-895.09 and used or distributed in 393 accordance with the procedure set forth in s. 895.09. A 394 corporation, foreign corporation, or alien business organization 395 which fails to have and continuously maintain a registered 396 office and a registered agent as required in this section may 397 not defend itself against any action instituted by the Department of Legal Affairs or by any other agency of this state 399 until the requirements of this subsection have been met.

(5) If a corporation, foreign corporation, or alien business organization fails without lawful excuse to comply timely or fully with a subpoena issued pursuant to subsection (2), the Department of Legal Affairs may file an action in the circuit court for the judicial circuit in which the corporation, foreign corporation, or alien business organization is found or transacts business or in which real property belonging to the

Page 14 of 19

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18-00880A-14 2014776 407 corporation, foreign corporation, or alien business organization 408 is located, for an order compelling compliance with the 409 subpoena. The failure without a lawful excuse to comply timely 410 or fully with an order compelling compliance with the subpoena 411 will result in a civil penalty of not more than \$1,000 for each 412 day of noncompliance with the order. In connection with such 413 proceeding, the Department of Legal Affairs may, without prior 414 approval by the court, file a lis pendens against real property 415 owned by the corporation, foreign corporation, or alien business 416 organization, which lis pendens shall set forth the legal 417 description of the real property and shall be filed in the 418 public records of the county where the real property is located. If the lis pendens is filed in any county other than the county 419 420 in which the action is pending, the lis pendens which is filed 421 must be a certified copy of the original lis pendens. A judgment 422 or an order of payment entered pursuant to this subsection will 423 become a judgment lien against any real property owned by the 424 corporation, foreign corporation, or alien business organization 425 when a certified copy of the judgment or order is recorded as 426 required by s. 55.10. The Department of Legal Affairs will be 42.7 able to avail itself of, and is entitled to use, any provision 428 of law or of the Florida Rules of Civil Procedure to further the 429 collecting or obtaining of payment pursuant to a judgment or 430 order of payment. The state, through the Attorney General, may 431 bid, at any judicial sale to enforce its judgment lien, an 432 amount up to the amount of the judgment or lien obtained 433 pursuant to this subsection. All moneys recovered under this 434 subsection shall be treated as forfeitures under ss. 895.01-895.09 and used or distributed in accordance with the procedure

Page 15 of 19

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Florida Senate - 2014 SB 776

18-00880A-14 2014776

436 set forth in s. 895.09.

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- 437 (6) Information provided to, and records and transcriptions 438 of testimony obtained by, the Department of Legal Affairs pursuant to this section are confidential and exempt from the 440 provisions of s. 119.07(1) while the investigation is active. 441 For purposes of this section, an investigation shall be considered "active" while such investigation is being conducted with a reasonable, good faith belief that it may lead to the 444 filing of an administrative, civil, or criminal proceeding. An 445 investigation does not cease to be active so long as the 446 Department of Legal Affairs is proceeding with reasonable 447 dispatch and there is a good faith belief that action may be initiated by the Department of Legal Affairs or other 448 administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information, as 451 defined in s. 119.011, and information which, if disclosed, 452 would reveal a trade secret, as defined in s. 688.002, or would 453 jeopardize the safety of an individual, all information, 454 records, and transcriptions become public record when the 455 investigation is completed or ceases to be active. The 456 Department of Legal Affairs may shall not disclose confidential 457 information, records, or transcriptions of testimony except 458 pursuant to the authorization by the Attorney General in any of 459 the following circumstances:
 - (a) To a law enforcement agency participating in or conducting a civil investigation under chapter 895, or participating in or conducting a criminal investigation.
 - (b) In the course of filing, participating in, or conducting a judicial proceeding instituted pursuant to this

Page 16 of 19

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18-00880A-14 2014776

465 section or chapter 895.

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- (c) In the course of filing, participating in, or conducting a judicial proceeding to enforce an order or judgment entered pursuant to this section or chapter 895.
 - (d) In the course of a criminal or civil proceeding.

A person or law enforcement agency which receives any information, record, or transcription of testimony that has been made confidential by this subsection shall maintain the confidentiality of such material and shall not disclose such information, record, or transcription of testimony except as provided for herein. Any person who willfully discloses any information, record, or transcription of testimony that has been made confidential by this subsection, except as provided for herein, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any information, record, or testimony obtained pursuant to subsection (2) is offered in evidence in any judicial proceeding, the court may, in its discretion, seal that portion of the record to further the policies of confidentiality set forth herein.

Section 14. Subsection (12) of section 610.104, Florida Statutes, is amended to read:

610.104 State authorization to provide cable or video service.—

(12) Beginning 5 years after approval of the certificateholder's initial certificate of franchise issued by the department, and every 5 years thereafter, the certificateholder shall update the information contained in the

Page 17 of 19

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Florida Senate - 2014 SB 776

18-00880A-14 2014776 494 original application for a certificate of franchise. At the time 495 of filing the information update, the certificateholder shall 496 pay a processing fee of \$1,000. Any certificateholder that fails 497 to file the updated information and pay the processing fee on the 5-year anniversary dates shall be subject to cancellation of 498 its state-issued certificate of franchise authority if, upon 499 notice given to the certificateholder at its last address on file with the department, the certificateholder fails to file 502 the updated information and pay the processing fee within 30 503 days after the date notice was mailed. The application and 504 processing fees imposed in this section shall be paid to the 505 Department of State for deposit into the Clearing Funds Trust Fund for immediate transfer by the Chief Financial Officer to 506 507 the General Inspection Trust Fund of the Department of Agriculture and Consumer Services. The Department of Agriculture 509 and Consumer Services shall maintain a separate account within 510 the General Inspection Trust Fund to distinguish cable franchise 511 revenues from all other funds. The application, any amendments 512 to the certificate, or information updates must be accompanied 513 by a fee to the Department of State equal to that for filing 514 articles of incorporation under s. 607.0122 pursuant to s. 515 607.0122(1). 516 Section 15. Section 631.0515, Florida Statutes, is amended 517 to read: 631.0515 Appointment of receiver; insurance holding 518

Page 18 of 19

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company. - A delinquency proceeding pursuant to this chapter

constitutes the sole and exclusive method of dissolving,

liquidating, rehabilitating, reorganizing, conserving, or

appointing a receiver of a Florida corporation which is not

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523 insolvent as defined by s. 607.01401(17) s. 607.01401(16); which 524 through its shareholders, board of directors, or governing body 525 is deadlocked in the management of its affairs; and which directly or indirectly owns all of the stock of a Florida 526 527 domestic insurer. The department may petition for an order directing it to rehabilitate such corporation if the interests 528 529 of policyholders or the public will be harmed as a result of the 530 deadlock. The department shall use due diligence to resolve the 531 deadlock. Whether or not the department petitions for an order, 532 the circuit court does shall not have jurisdiction pursuant to 533 s. 607.271, s. 607.274, or s. 607.277 to dissolve, liquidate, or 534 appoint receivers with respect to $_{7}$ a Florida corporation that 535 which directly or indirectly owns all of the stock of a Florida 536 domestic insurer and $\underline{\text{that}}$ which is not insolvent as defined by 537 s. 607.01401(17) s. 607.01401(16). However, a managing general 538 agent or holding company with a controlling interest in a 539 domestic insurer in this state is subject to jurisdiction of the 540 court under the provisions of s. 631.025. 541 Section 16. This act shall take effect January 1, 2015.

18-00880A-14

Page 19 of 19

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THE FLORIDA SENATE



Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*Appropriations Subcommittee on General
Government

Appropriations Subcommittee on Transportation, Tourism, and Economic Development Commerce and Tourism Communications, Energy, and Public Utilities Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON

18th District

March 4, 2014

Senator Jeremy Ring, Chair Committee on Governmental Oversight and Accountability 525 Knott Building 404 S. Monroe Street Tallahassee, FL 32399

Senator Ring,

Please place Senate Bill 776 relating to business filing fee reductions, on the next Committee on Governmental Oversight and Accountability agenda. This bill passed its first committee with a unanimous favorable vote.

Please contact my office with any questions.

Wilton Simpson

Senator, 18th District

- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- ☐ Post Office Box 938, Brooksville, Florida 34605
- ☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

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.)

Prepar	ed By: The Pr	ofessional	Staff of the Comr	mittee on Governme	ental Oversight and Accountability	
BILL:	CS/SB 646	j				
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Montford					
SUBJECT:	OGSR/Education and Applicant Records/Public Postsecondary Educational Institutions					
DATE:	March 20,	2014	REVISED:			
ANAL	YST	STAF	F DIRECTOR	REFERENCE	ACTION	
. Letarte		Klebacha		ED	Favorable	
. McVaney		McVa	ney	GO	Fav/CS	
3.				RC		

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 646 continues the current public records exemption for a student's education records and an applicant's records at a public postsecondary educational institution by removing the repeal date. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.¹

The bill takes effect on October 1, 2014.

II. Present Situation:

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very 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.²

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¹ Section 1006.52(3), F.S.

² Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term "public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical

Under Florida law, "[e]very 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."³

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.⁴ Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSRA) provides a review process for public records exemptions.⁶ OGSRA requires that a new (or substantially amended) exemption be set to repeal on October 2nd of the fifth year after enactment, unless reenacted by the Legislature.⁷

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is substantially amended but not necessary if the exemption is reenacted without expansion. A substantial amendment exists if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption."

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(12), F.S.

Responses to these questions from the Florida Department of Education and the State University System of Florida Board of Governors are on file with the Senate Committee on Education.

³ Section 119.07(1)(a), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ *Id*.

⁶ Section 119.15, F.S. The statute provides specific questions to be considered during the review process. Section 119.15(6)(a), F.S. The questions are:

[•] What specific records or meetings are affected by the exemption?

[•] Whom does the exemption uniquely affect, as opposed to the general public?

[•] What is the identifiable public purpose or goal of the exemption?

[•] Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Is the record or meeting protected by another exemption?

[•] Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁷ Section 119.15(3), F.S.

⁸ See Section 119.15(4), F.S.

⁹ Section 119.15(4)(b), F.S.

Federal and State Law Regarding Privacy of Education Records

Federal Law: Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) applies to educational agencies or institutions that receive federal funds. ¹⁰ FERPA prohibits funding from being provided to an educational agency or institution that does not allow access to a student's education records ¹¹ by a student or a parent pursuant to FERPA, or does not appropriately limit the transfer of a student's education records in accordance with FERPA. ¹² Compliance with FERPA is a condition for receiving federal funds. ¹³

Florida Law: Section 1006.52, F.S., Education Records and Applicant Records

Florida law codifies FERPA into state law to ensure compliance with FERPA and continued receipt of federal funds. ¹⁴ Section 1006.52, Florida Statutes, makes education records of students and applicants of a public postsecondary educational institution confidential and exempt from public records requirements. ¹⁵ "Education records" are defined as in FERPA and its regulations and include "records, files, documents, and other materials" containing "information directly related to a student" and are "maintained by an educational agency or institution or by a person acting for such agency or institution." ¹⁶ "Applicant records" consist of information "[d]irectly related to an applicant for admission to a public postsecondary educational institution who has not been in attendance at the institution" and are "[m]aintained by a public postsecondary educational institution or by a party acting on behalf of the public postsecondary educational institution."

¹⁰ 20 U.S.C. §1232g(a). An "educational agency or institution" is defined as "any public or private agency or institution which is the recipient of funds under any applicable program." *Id.* §1232(a)(3).

¹¹ Infra note 16 and accompanying text (providing FERPA's definition of "education records").

¹² 20 U.S.C. §1232g(a) and (b). FERPA provides that funding will not be provided to a program, agency, or institution "which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without written consent of their parents" *Id.* §1232g(b)(1).

¹³ 20 U.S.C. §1232g(a)(1) and (2); *see* 34 C.F.R. §99.67(a) (identifying actions that may be taken against an educational agency or institution that does not comply with FERPA, which include withholding further payments, compelling compliance through a cease and desist order, and terminating eligibility to receive funding under any applicable program).

¹⁴ See s. 1006.52, F.S.; s. 3, ch. 2009-240, L.O.F. (providing that noncompliance with FERPA could result in the loss of federal funding and that "[t]he Legislature finds that in order to comply with the applicable federal requirements regarding the collection, use, and release of education records, such records must be made confidential and exempt from public disclosure).

¹⁵ See ss. 2-3, ch. 2009-240, L.O.F. (providing that education records, as defined by the Family Educational Rights and Privacy Act, are confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I, Florida Constitution). ¹⁶ 20 U.S.C. §1232g(a)(4)(A); s. 1006.52, F.S.; see also Florida Department of Education, Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records (Jan. 13, 2014) (on file with Senate Committee on Education).

¹⁷ Section 1006.52(1), F.S. Applicant records were made confidential and exempt because the Legislature found that records of an applicant who is not admitted or does not enroll at an institution contain private information identical to that of an enrolled student and should be protected in the same manner. Section 3, ch. 2009-240, L.O.F.

Current law prohibits a public postsecondary educational institution from releasing a student's education records and personally identifiable information contained therein¹⁸ without a student's written consent except in accordance with the FERPA.¹⁹ Additionally, Florida law requires that education records released to the Auditor General and the Office of Program Policy Analysis and Government Accountability for official business be used and maintained in accordance with FERPA.²⁰

The exemption in s. 1006,52, Florida Statutes, which makes a student's education records and an applicant's records at a public postsecondary educational institution confidential and exempt from public records disclosure requirements, is set to repeal on October 2, 2014 unless reviewed and saved through reenactment by the Legislature.²¹

III. Effect of Proposed Changes:

CS/SB 646 continues the current public records exemption for a student's education records and an applicant's records at a public postsecondary educational institution by removing the repeal date. The bill does not require a public necessity statement or a two-thirds vote for passage because the bill does not create a new exemption or substantially amend an existing exemption.

If the exemption is not reenacted, a conflict would exist between a public postsecondary educational institution's obligations under public records laws and the privacy rights afforded to students under FERPA.²² Noncompliance with FERPA may result in the loss of federal funding to educational agencies and institutions.²³

The bill takes effect on October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁸ See 20 U.S.C. §1232(g)(b)(1)(providing that funding will not be provided to an educational agency or institution that has a policy or practice of releasing such information without consent).

¹⁹ Section 1006.52(2), F.S.

²⁰ *Id*.

²¹ Section 1006.52(3), F.S.

²² Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records* (Jan. 13, 2014) (on file with Senate Committee on Education); *see* 20 U.S.C. §1232g; Art. I, s. 24(a), Fla. Const.; s. 119.011(12), F.S.

²³ 20 U.S.C. §1232g(a)-(b); 34 C.F.R. §99.67(a); Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records* (Jan. 17, 2014) (on file with Senate Committee on Education).

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U.	Hust	runus	Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1006.52 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS integrates technical changes.

B. Amendments:

None.

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

LEGISLATIVE ACTION House Senate Comm: RCS 03/20/2014

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

Senate Amendment (with title amendment)

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Delete everything after the enacting clause and insert:

Section 1. Section 1006.52, Florida Statutes, is amended to read:

1006.52 Education records and applicant records; public records exemption.-

(1) Each public postsecondary educational institution may prescribe the content and custody of records that the

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institution may maintain on its students and applicants for admission. A student's education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232q, and the federal regulations issued pursuant thereto, and applicant records are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For the purpose of this subsection, applicant records are shall be considered to be records that are:

- (a) Directly related to an applicant for admission to a public postsecondary educational institution who has not been in attendance at the institution; and
- (b) Maintained by a public postsecondary educational institution or by a party acting on behalf of the public postsecondary educational institution.
- (2) (a) A public postsecondary educational institution may not release a student's education records without the written consent of the student to any individual, agency, or organization, except in accordance with and as permitted by the FERPA.
- (b) Education records released by public postsecondary educational institutions to the Auditor General or the Office of Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities, must shall be used and maintained by the Auditor General and the Office of Program Policy Analysis and Government Accountability in accordance with the FERPA.
- (3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal



40 through reenactment by the Legislature. Section 2. This act shall take effect October 1, 2014. 41 42 ======== T I T L E A M E N D M E N T ========= 43 44 And the title is amended as follows: 45 Delete everything before the enacting clause 46 and insert: A bill to be entitled 47 An act relating to a review under the Open Government 48 Sunset Review Act; amending s. 1006.52, F.S., relating 49 50 to an exemption from public records requirements for 51 postsecondary education records and applicant records; 52 saving the exemption from repeal under the Open 53 Government Sunset Review Act; providing an effective

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date.

By Senator Montford

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1006.52, F.S., which provides an exemption from public records requirements for student education and applicant records of public postsecondary educational institutions; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 1006.52, Florida Statutes, is amended to read:

1006.52 Education records and applicant records.-

- (1) Each public postsecondary educational institution may prescribe the content and custody of records that the institution may maintain on its students and applicants for admission. A student's education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, and applicant records are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For the purpose of this subsection, applicant records shall be considered to be records that are:
- (a) Directly related to an applicant for admission to a public postsecondary educational institution who has not been in attendance at the institution; and
- (b) Maintained by a public postsecondary educational institution or by a party acting on behalf of the public

Page 1 of 2

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2014 SB 646

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postsecondary educational institution.

(2) A public postsecondary education.

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(2) A public postsecondary educational institution may not release a student's education records without the written consent of the student to any individual, agency, or organization, except in accordance with and as permitted by the FERPA. Education records released by public postsecondary educational institutions to the Auditor General or the Office of Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities, shall be used and maintained by the Auditor General and the Office of Program Policy Analysis and Government Accountability in accordance with the FERPA.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. This act shall take effect October 1, 2014.

Page 2 of 2

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

THE FLORIDA SENATE



Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, Chair
Appropriations Subcommittee on Education, Vice Chair
Education, Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:

Select Committee on Indian River Lagoon and Lake Okeechobee Basin, Vice Chair

SENATOR BILL MONTFORD

Democratic Policy Chair 3rd District

March 11, 2014

Senator Jeremy Ring, Chair Senate Committee on Governmental Oversight & Accountability 525 Knott Building Tallahassee, Florida 32399-1100

Dear Chairman Ring;

I respectfully request that the following bill be scheduled for a hearing before the Senate Committee on Governmental Oversight & Accountability:

SB 646 OGSR/Education and Applicant Records

SB 648 OGSR/Education Records/Family Educational Rights and Privacy Act

SB 656 OGSR/Active Investigations of Allegations/Testing Impropriety

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

William "Bill" Montford State Senator, District 3

Cc: Joe McVaney, Staff Director

WM/md

REPLY TO:

☐ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003

☐ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656

☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

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.)

Prepai	red By: The P	rofessional S	Staff of the Comr	nittee on Governme	ental Oversight and Accountability
BILL:	CS/SB 648	3			
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Montford				
SUBJECT:	OGSR/Education Records/Family Educational Rights and Privacy Act				
DATE:	March 20,	2014	REVISED:		
ANAL	YST	STAFI	DIRECTOR	REFERENCE	ACTION
Letarte		Klebacha		ED	Favorable
. McVaney		McVai	ney	GO	Fav/CS
·				RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 648 continues the current public records exemption for education records of K-12 students held by an educational agency or institution by removing the repeal date. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.¹

The bill takes effect on October 1, 2014.

II. Present Situation:

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very 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.²

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¹ Section 1002.221(3), F.S.

² Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term "public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical

Under Florida law, "[e]very 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."³

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.⁴ Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSRA) provides a review process for public records exemptions.⁶ OGSRA requires that a new exemption or substantial amendment of an existing exemption be set to repeal on October 2nd of the fifth year after enactment, unless reenacted by the Legislature.⁷

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is substantially amended but not necessary if the exemption is reenacted without expansion. A substantial amendment exists "if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption."

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(12), F.S.

Responses to these questions from the Florida Department of Education and the State University System of Florida Board of Governors are on file with the Senate Committee on Education.

³ Section 119.07(1)(a), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ *Id*.

⁶ Section 119.15, F.S. The statute provides specific questions to be considered during the review process. Section 119.15(6)(a), F.S. The questions are:

[•] What specific records or meetings are affected by the exemption?

[•] Whom does the exemption uniquely affect, as opposed to the general public?

[•] What is the identifiable public purpose or goal of the exemption?

[•] Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Is the record or meeting protected by another exemption?

[•] Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁷ Section 119.15(3), F.S.

⁸ See Section 119.15(4), F.S.

⁹ Section 119.15(4)(b), F.S.

Federal and State Law Regarding Privacy of Education Records

Federal Law: Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) applies to educational agencies or institutions that receive federal funds. ¹⁰ FERPA prohibits funding from being provided to an educational agency or institution that does not allow access to a student's education records ¹¹ by a student or a parent pursuant to FERPA, or does not appropriately limit the transfer of a student's education records in accordance with FERPA. ¹² Compliance with FERPA is a condition for receiving federal funds. ¹³

Florida Law: Section 1002.221, F.S., K-12 Education Records

Florida law codifies FERPA into state law to ensure compliance with FERPA and continued receipt of federal funds. ¹⁴ Section 1002.221, Florida Statutes, makes education records of students in kindergarten through grade twelve (K-12) confidential and exempt from public records disclosure requirements. ¹⁵ "Education records" are defined as in FERPA and its regulations and include "records, files, documents, and other materials" containing "information directly related to a student" and are "maintained by an educational agency or institution or by a person acting for such agency or institution." ¹⁶

¹⁰ 20 U.S.C. §1232g(a). An "educational agency or institution" is defined as "any public or private agency or institution which is the recipient of funds under any applicable program." *Id.* §1232(a)(3).

¹¹ Infra note 16 and accompanying text (providing FERPA's definition of "education records").

¹² 20 U.S.C. §1232g(a) and (b). FERPA provides that funding will not be provided to a program, agency, or institution "which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without written consent of their parents" *Id.* §1232g(b)(1).

¹³ 20 U.S.C. §1232g(a)(1) and (2); *see* 34 C.F.R. §99.67(a) (identifying actions that may be taken against an educational agency or institution that does not comply with FERPA, which include withholding further payments, compelling compliance through a cease and desist order, and terminating eligibility to receive funding under any applicable program).

¹⁴ See s. 1002.221, F.S.; s. 3, ch. 2009-240, L.O.F. (providing that noncompliance with FERPA could result in the loss of federal funding and that "[t]he Legislature finds that in order to comply with the applicable federal requirements regarding the collection, use, and release of education records, such records must be made confidential and exempt from public disclosure).

¹⁵ Section 1, ch. 2009-240, L.O.F. (stating that education records, as defined by the Family Educational Rights and Privacy Act, are confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I, Florida Constitution).

¹⁶ 20 U.S.C. §1232g(a)(4)(A); *see also* Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 13, 2014) (on file with Senate Committee on Education).

Under current law, agencies¹⁷ and institutions that are part of Florida's education system¹⁸ may not release a student's education records, or personally identifiable information therein,¹⁹ without written consent from the student or student's parent except in accordance with the FERPA.²⁰ Additionally, Florida law requires that education records released to the Auditor General and the Office of Program Policy Analysis and Government Accountability for official business be used and maintained in accordance with FERPA.²¹ In 2010, s. 1002.221, F.S. was amended to allow release of a student's record without consent, in accordance with FERPA, to "parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies" for the purpose of reducing juvenile crime and providing appropriate programs and services to a juvenile and a juvenile's family.²²

The exemption in s. 1002.221, Florida Statutes, which removes education records of students in kindergarten through grade twelve from public records requirements, is set to repeal on October 2, 2014 unless reviewed and saved through reenactment by the Legislature.²³

III. Effect of Proposed Changes:

CS/SB 648 continues the current public records exemption for education records of students in kindergarten through grade twelve held by an educational agency or institution.²⁴ The bill does not require a public necessity statement or a two-thirds vote for passage because the bill does not create a new exemption or substantially amend an existing exemption.

If the exemption is not continued, a conflict will exist between a public educational agency or institution's obligations under Florida's public records requirements and the privacy rights afforded to students and parents under FERPA.²⁵ Noncompliance with FERPA may result in the loss of federal funding to educational agencies and institutions.²⁶

¹⁷ Section 1002.22(1)(a), F.S. (defining an agency as "any board, agency, or other entity that provides administrative control or direction of or performs services for public elementary or secondary schools, centers, or other institutions as defined in this chapter").

¹⁸ Section 1002.221(2)(a), F.S. (referencing s. 1000.04(1), (3), and (4), F.S., which describe the components for delivery of public education including public K-12 schools, Florida School for the Deaf, and Blind and the Florida Virtual School). Public K-12 schools "include charter schools and consist of kindergarten classes, elementary, middle, and high school grades and special classes; virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be operated under the control of district school boards; and lab schools operated under the control of state universities." Section 1000.04(1), F.S.

¹⁹ See 20 U.S.C. §1232(g)(b)(1)(providing that funding will not be provided to an educational agency or institution that has a policy or practice of releasing such information without consent).

²⁰ Section 1002.221(2)(a), F.S.

²¹ Section 1002.221(2)(a), F.S.

²² Section 1002.221(2)(b), F.S.; s. 2, ch. 2010-192, L.O.F.

²³ Section 1002.221(3), F.S.

²⁴ See s. 1002.221, F.S.

²⁵ Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 13, 2014) (on file with Senate Committee on Education); *see* 20 U.S.C. §1232g; Art. I, s. 24(a), Fla. Const.; s. 119.011(12), F.S.

²⁶ 20 U.S.C. §1232g(a)-(b); 34 C.F.R. §99.67(a); Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 17, 2014) (on file with Senate Committee on Education).

The bill also repeals a statement in current law that provided the purpose of an interagency agreement to allow release of certain records to DJJ, the school, law enforcement authorities, and other signatory agencies.

The bill takes effect on October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1002.221 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS integrates several technical changes and repeals a statement in current law that provided the purpose of an interagency agreement to allow release of certain records to DJJ, the school, law enforcement authorities, and other signatory agencies.

B. Amendments:

None.

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



	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/20/2014		
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The Committee on Governmental Oversight and Accountability (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 1002.221, Florida Statutes, is amended to read:

1002.221 K-12 education records; public records exemption.-

(1) Education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, are confidential

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and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) An agency or institution, as defined in s. 1002.22 1002.22(1)(a), or a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), or (4), may not release a student's education records without the written consent of the student or parent to any individual, agency, or organization, except in accordance with and as permitted by the FERPA.

(b) Education records released by an agency or institution, as defined in s. 1002.22 1002.22(1)(a), or by a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), or (4), to the Auditor General or the Office of Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities, must shall be used and maintained by the Auditor General and the Office of Program Policy Analysis and Government Accountability in accordance with the FERPA.

(c) (b) In accordance with FERPA and the federal regulations issued pursuant to FERPA, an agency or institution, as defined in s. 1002.22, or a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), or (4) may release a student's education records without written consent of the student or parent to parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies. The purpose of such an agreement and information sharing is to reduce juvenile crime, especially

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motor vehicle theft, by promoting cooperation and collaboration and the sharing of appropriate information in a joint effort to improve school safety, to reduce truancy and in-school and outof-school suspensions, and to support alternatives to in-school and out-of-school suspensions and expulsions, which provide structured and well-supervised educational programs supplemented by a coordinated overlay of other appropriate services designed to correct behaviors that lead to truancy, suspensions, and expulsions and that support students in successfully completing their education. Information provided in furtherance of an interagency agreement is intended solely for use in determining the appropriate programs and services for each juvenile or the juvenile's family, or for coordinating the delivery of the programs and services, and as such is inadmissible in any court proceeding before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of the juvenile.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. This act shall take effect October 1, 2014.

======== T I T L E A M E N D M E N T ========== And the title is amended as follows:

Delete everything before the enacting clause and insert:

> A bill to be entitled An act relating to a review under the Open Government



Sunset Review Act; amending s. 1002.221, F.S.,						
relating to an exemption from public records						
requirements for K-12 education records; saving the						
exemption from repeal under the Open Government Sunset						
Review Act; deleting provisions to conform; providing						
an effective date.						

By Senator Montford

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3-00325A-14 2014648

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1002.221, F.S., which provides an exemption from public records requirements for education records, as defined in the Family Educational Rights and Privacy Act and related federal regulations; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Section 1002.221, Florida Statutes, is amended to read:

1002.221 K-12 education records.-

- (1) Education records, as defined in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal regulations issued pursuant thereto, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
- (2) (a) An agency, as defined in s. 1002.22(1)(a), or a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), or (4) τ may not release a student's education records without the written consent of the student or parent to any individual, agency, or organization, except in accordance with and as permitted by the FERPA. Education records released by an agency, as defined in s. 1002.22(1)(a), or by a public school, center, institution, or other entity that is part of Florida's education

Page 1 of 3

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2014 SB 648

system under s. 1000.04(1), (3), or (4), to the Auditor General or the Office of Program Policy Analysis and Government Accountability, which are necessary for such agencies to perform their official duties and responsibilities, shall be used and maintained by the Auditor General and the Office of Program Policy Analysis and Government Accountability in accordance with the FERPA.

2014648

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(b) In accordance with FERPA and the federal regulations issued pursuant to FERPA, an agency, as defined in s. 1002.22, or a public school, center, institution, or other entity that is part of Florida's education system under s. 1000.04(1), (3), or (4) may release a student's education records without written consent of the student or parent to parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies. The purpose of such an agreement and information sharing is to reduce juvenile crime, especially motor vehicle theft, by promoting cooperation and collaboration and the sharing of appropriate information in a joint effort to improve school safety, to reduce truancy and in-school and out-of-school suspensions, and to support alternatives to in-school and outof-school suspensions and expulsions, which provide structured and well-supervised educational programs supplemented by a coordinated overlay of other appropriate services designed to correct behaviors that lead to truancy, suspensions, and expulsions and that support students in successfully completing their education. Information provided in furtherance of an interagency agreement is intended solely for use in determining the appropriate programs and services for each juvenile or the

Page 2 of 3

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

juvenile's family, or for coordinating the delivery of the programs and services, and as such is inadmissible in any court proceeding before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of the juvenile.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. This act shall take effect October 1, 2014.

3-00325A-14

Page 3 of 3

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ are additions.

THE FLORIDA SENATE



Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, Chair
Appropriations Subcommittee on Education, Vice Chair
Education, Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:

Select Committee on Indian River Lagoon and Lake Okeechobee Basin, Vice Chair

SENATOR BILL MONTFORD

Democratic Policy Chair 3rd District

March 11, 2014

Senator Jeremy Ring, Chair Senate Committee on Governmental Oversight & Accountability 525 Knott Building Tallahassee, Florida 32399-1100

Dear Chairman Ring;

I respectfully request that the following bill be scheduled for a hearing before the Senate Committee on Governmental Oversight & Accountability:

SB 646 OGSR/Education and Applicant Records

SB 648 OGSR/Education Records/Family Educational Rights and Privacy Act

SB 656 OGSR/Active Investigations of Allegations/Testing Impropriety

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

William "Bill" Montford State Senator, District 3

Cc: Joe McVaney, Staff Director

WM/md

REPLY TO:

☐ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003

☐ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656

☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

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.)

Prepar	ed By: The P	rofessional	Staff of the Comr	mittee on Governme	ental Oversight and Accountability
BILL:	CS/SB 65	6			
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Montford				
SUBJECT:	OGSR/Active Investigations of Allegations/Testing Impropriety				
DATE:	March 20,	2014	REVISED:		
ANAL	YST	STAF	F DIRECTOR	REFERENCE	ACTION
Letarte		Kleba	cha	ED	Favorable
. McVaney		McVa	ney	GO	Fav/CS
				RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 656 continues the current public records exemption for the identity of a school or postsecondary educational institution, personally identifying information of personnel, and specific allegations of misconduct until an investigation conducted by the Department of Education is concluded or inactive by removing the repeal date. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.¹

The bill takes effect on October 1, 2014.

II. Present Situation:

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very 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

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¹ Section 1008.52(4)(b), F.S.

with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.²

Under Florida law, "[e]very 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."³

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility. ⁴ Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose. ⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSRA) provides a review process for public records exemptions. GOSRA requires that a new exemption or substantial amendment of an existing exemption be set to repeal on October 2nd of the fifth year after enactment, unless reenacted by the Legislature.

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is substantially amended but not necessary if the exemption is reenacted without expansion. A substantial amendment exists if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

Responses to these questions from the Florida Department of Education and the State University System of Florida Board of Governors are on file with the Senate Committee on Education.

² Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term "public records" as "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(12), F.S.

³ Section 119.07(1)(a), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ *Id*.

⁶ Section 119.15, F.S. The statute provides specific questions to be considered during the review process. Section 119.15(6)(a), F.S. The questions are:

[•] What specific records or meetings are affected by the exemption?

[•] Whom does the exemption uniquely affect, as opposed to the general public?

[•] What is the identifiable public purpose or goal of the exemption?

[•] Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Is the record or meeting protected by another exemption?

[•] Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁷ Section 119.15(3), F.S.

⁸ See Section 119.15(4), F.S.

⁹ Section 119.15(4)(b), F.S.

Florida Public Records Exemption for Information in Active Investigations Conducted by the Florida Department of Education: Section 1008.24, F.S., Test Administration and Security

Florida law requires school district and public postsecondary educational administrators to cooperate with the Commissioner of the Florida Department of Education (DOE) during any investigation regarding the administration of tests required by state statute or rule. ¹⁰ Certain information is classified as confidential and exempt from public records requirements until an investigation by DOE regarding allegations of testing impropriety is concluded or inactive. ¹¹

In 2009, the Legislature made the identity of a school or public postsecondary educational institution, personally identifiable information of personnel, and specific allegations related to alleged testing impropriety confidential and exempt from public records requirements until an investigation was concluded or inactive. The public necessity identified for making such information confidential and exempt was that "[t]he release of information before an investigation is concluded may reveal sensitive or personal information that could cause unwarranted damage to the names or reputations of the individuals involved" in the alleged misconduct. 13

¹⁰ Section 1008.24(4)(a), F.S.

¹¹ Section 1008.24(4)(b), F.S. An investigation is considered concluded if there is "a finding that no impropriety has occurred, upon the conclusion of any resulting preliminary investigation pursuant to s. 1012.796[,F.S.],upon the completion of any resulting investigation by a law enforcement agency, or upon the referral of the matter to an employer who has the authority to take disciplinary action against an individual who is suspected of a testing impropriety." *Id.* Additionally, an investigation is active "so long as it is ongoing and there is a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future." *Id.*

¹² Section 1, ch. 2009-143, L.O.F. Personnel records maintained for the purpose of investigating employee misconduct are exempted from public records requirements in sections 1012.31, 1012.81, and 1012.91, of the Florida Statutes. However, the exemption for personnel records of a public school employee are only protected through the completion of a preliminary investigation as opposed to being exempted until the completion or inactivity of the investigation under section 1008.24, Florida Statutes. Additionally, the exemption under section 1008.24, Florida Statutes, exempts the identity of a school or institution and any specific allegations of misconduct until the completion or inactivity of an investigation while the exemptions for personnel records do not. See ss. 1012.31(3)(a)1., 1012.81(1)(b), 1012.91(1)(b), and 1008.24(4)(b), F.S.; Florida Department of Education, Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security (Jan. 13, 2014) (on file with Senate Committee on Education).

¹³ *Id.* s. 2. The release of information prior to the conclusion of an investigation may also compromise the integrity of the investigation. Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 13, 2014) (on file with Senate Committee on Education). To the extent that information obtained or reported in an investigation involves student education records or personally identifiable information, those records would be confidential and exempt pursuant to other statutes. *See* ss. 1002.221, 1006.52, F.S.; Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 13, 2014) (on file with Senate Committee on Education) (providing that education records, as defined in the Federal Educational Rights and Privacy Act (FERPA) and its regulations, and personally identifiably information therein, is confidential and exempt from public records requirements).

The exemption in s. 1008.24, F.S., which makes the identity of a school or public postsecondary educational institution, personally identifiable information of personnel, and specific allegations related to alleged testing impropriety from public records requirements until the conclusion or inactivity of an investigation confidential and exempt from public records disclosure requirements, is set to repeal on October 2, 2014 unless reviewed and saved through reenactment by the Legislature.¹⁴

III. Effect of Proposed Changes:

CS/SB 656 continues the current public records exemption for the identity of a school or public postsecondary educational institution, personally identifiable information of personnel, and specific allegations related to alleged testing impropriety from public records requirements until the conclusion or inactivity of an investigation. This bill does not require a public necessity statement or a two-thirds vote for passage because the bill does not create a new exemption or substantially amend an existing exemption.

The bill takes effect on October 1, 2014.

IV. Constitutional Issues:

A.	Municipality/County	Mandates	Restrictions:
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None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁴ Section 1008.24(4)(b), F.S.

¹⁵ See s. 1008.24(4), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1008.24 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS integrates technical changes.

B. Amendments:

None.

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

	LEGISLATIVE ACTION	
Senate		House
Comm: RCS		
03/20/2014		
	-	

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

Senate Amendment (with title amendment)

3 Delete everything after the enacting clause 4 and insert:

Section 1. Paragraph (b) of subsection (4) of section 1008.24, Florida Statutes, is amended to read:

1008.24 Test administration and security; public records exemption.-

(4)

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(b) The identity of a school or postsecondary educational



11 institution, personal identifying the personally identifiable 12 information of any personnel of any school district or 13 postsecondary educational institution, or any specific 14 allegations of misconduct obtained or reported pursuant to an investigation conducted by the Department of Education of a 15 16 testing impropriety are confidential and exempt from s. 17 119.07(1) and s. 24(a), Art. I of the State Constitution until 18 the conclusion of the investigation or until such time as the 19 investigation ceases to be active. For the purpose of this paragraph, an investigation is shall be deemed concluded upon a 20 21 finding that no impropriety has occurred, upon the conclusion of 22 any resulting preliminary investigation pursuant to s. 1012.796, 23 upon the completion of any resulting investigation by a law 24 enforcement agency, or upon the referral of the matter to an 25 employer who has the authority to take disciplinary action 26 against an individual who is suspected of a testing impropriety. 27 For the purpose of this paragraph, an investigation is shall be 28 considered active so long as it is ongoing and there is a 29 reasonable, good faith anticipation that an administrative 30 finding will be made in the foreseeable future. This paragraph 31 is subject to the Open Government Sunset Review Act in 32 accordance with s. 119.15 and shall stand repealed on October 2, 33 2014, unless reviewed and saved from repeal through reenactment 34 by the Legislature. Section 2. This act shall take effect October 1, 2014. 35 36 37 ======== T I T L E A M E N D M E N T ==========

Page 2 of 3

Delete everything before the enacting clause

And the title is amended as follows:

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48 49 A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1008.24, F.S., relating to an exemption from public records requirements for certain information held by the Department of Education during active investigations of allegations of testing impropriety; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

Florida Senate - 2014 SB 656

By Senator Montford

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3-00327A-14 2014656

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1008.24, F.S., which provides an exemption from public records requirements for certain information held by the Department of Education during active investigations of allegations of testing impropriety; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Subsection (4) of section 1008.24, Florida Statutes, is amended to read:

1008.24 Test administration and security.-

- (4) (a) A district school superintendent, a president of a public postsecondary educational institution, or a president of a nonpublic postsecondary educational institution shall cooperate with the Commissioner of Education in any investigation concerning the administration of a test administered pursuant to state statute or rule.
- (b) The identity of a school or postsecondary educational institution, the personally identifiable information of any personnel of any school district or postsecondary educational institution, or any specific allegations of misconduct obtained or reported pursuant to an investigation conducted by the Department of Education of a testing impropriety are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the conclusion of the

Page 1 of 2

 ${\bf CODING:}$ Words ${\bf stricken}$ are deletions; words ${\bf \underline{underlined}}$ are additions.

Florida Senate - 2014 SB 656

2014656

investigation or until such time as the investigation ceases to 31 be active. For the purpose of this paragraph, an investigation 32 shall be deemed concluded upon a finding that no impropriety has 33 occurred, upon the conclusion of any resulting preliminary investigation pursuant to s. 1012.796, upon the completion of any resulting investigation by a law enforcement agency, or upon 35 the referral of the matter to an employer who has the authority to take disciplinary action against an individual who is 38 suspected of a testing impropriety. For the purpose of this 39 paragraph, an investigation shall be considered active so long as it is ongoing and there is a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future. This paragraph is subject to the Open 42 4.3 Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and 45 saved from repeal through reenactment by the Legislature. 46 Section 2. This act shall take effect October 1, 2014.

3-00327A-14

Page 2 of 2

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THE FLORIDA SENATE



Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, Chair
Appropriations Subcommittee on Education, Vice Chair
Education, Vice Chair
Appropriations
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Gaming
Governmental Oversight and Accountability
Rules

SELECT COMMITTEE:

Select Committee on Indian River Lagoon and Lake Okeechobee Basin, Vice Chair

SENATOR BILL MONTFORD

Democratic Policy Chair 3rd District

March 11, 2014

Senator Jeremy Ring, Chair Senate Committee on Governmental Oversight & Accountability 525 Knott Building Tallahassee, Florida 32399-1100

Dear Chairman Ring;

I respectfully request that the following bill be scheduled for a hearing before the Senate Committee on Governmental Oversight & Accountability:

SB 646 OGSR/Education and Applicant Records

SB 648 OGSR/Education Records/Family Educational Rights and Privacy Act

SB 656 OGSR/Active Investigations of Allegations/Testing Impropriety

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

William "Bill" Montford State Senator, District 3

Cc: Joe McVaney, Staff Director

WM/md

REPLY TO:

☐ 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003

☐ 58 Market Street, Apalachicola, Florida 32320 (850) 653-2656

☐ 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

The Florida Senate BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability					
SB 816					
Senator Bradley and others					
Collective Bargaining for Certain Public Employees					
March 19, 2	014	REVISED:			
YST	STAF	DIRECTOR	REFERENCE	ACTION	
. McVaney		ney	GO	Pre-meeting	
			CA		
			AP		
	SB 816 Senator Bra Collective E	SB 816 Senator Bradley and Collective Bargainin March 19, 2014	SB 816 Senator Bradley and others Collective Bargaining for Certain F March 19, 2014 REVISED:	SB 816 Senator Bradley and others Collective Bargaining for Certain Public Employees March 19, 2014 REVISED: YST STAFF DIRECTOR REFERENCE McVaney GO CA	

I. Summary:

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution. Statewide regulations for collective bargaining amongst public employees are addressed in the Florida Statutes. Current law requires any matter addressing a public employee's wages, hours, and terms and conditions of employment to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Current law provides a definition for "legislative body" that contains two different classes: specifically named entities, and unnamed entities. For an unnamed entity to be classified as a "legislative body," it must have authority to appropriate funds, have authority to establish policy governing the entity's terms and conditions of employment, and be the appropriate legislative body for the bargaining unit.

SB 816 amends the definition of "legislative body" to specify that the following constitutional officers are deemed a "legislative body" for purposes of collective bargaining:

- The sheriff:
- The tax collector;
- The property appraiser;
- The supervisor of elections; and
- The clerk of the circuit court.

The bill authorizes the constitutional officer to provide the final resolution on all collective bargaining impasse issues amongst his or her respective employees except for wages. Wage issues (defined as base salary and adjustments to base salary) must be resolved by the board of county commissioners. If the county commission resolves the wage issues different from the constitutional officers' final offers, the commission is required to provide funding sufficient to fund the resolution as well as maintain the staffing at the previous fiscal year level. If the

commission fails to provide sufficient funding, the constitutional officer may seek redress in the circuit court.

The bill has an effective date of July 1, 2014.

II. Present Situation:

Background

Collective Bargaining

Employees have the right to collectively bargain under Article I, section 6 of the Florida Constitution.¹ Statewide regulations for collective bargaining amongst public employees are addressed in part II of chapter 447, F.S.² Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Collective bargaining pursuant to chapter 447, F.S., consists of a series of negotiations between a public employer's chief executive officer³ and the selected bargaining agent⁴ for an employee organization regarding the terms and conditions of employment.⁵ The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.⁶

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.⁷

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to The Public Employees Relations Commission (Commission).⁸

¹ FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "*[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

² See s. 447.201, F.S., The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s. 6, Art. I of the State Constitution.

³ Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer".

⁴ The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employees Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S, or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the Public Employer Relations Commission, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization; that is approved by the commission to be appropriate for the purposes of collective bargaining. ⁵ Section 447.203(14), F.S.

⁶ Section 447.201, F.S., See also, Public Employees Relations Commission, A Practical Handbook on Florida's Public Employment Collective Bargaining Law, at 6 (2d ed. 2004).

⁷ Section 447.309(5), F.S. ("Any collective bargaining agreement shall not provide for a term of existence of more than 3 years...").

⁸ The Pubic Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.

Impasse Resolution Process

The procedural guidelines to resolve a collective bargaining impasse between the parties are outlined in s. 447.403, F.S. Once an impasse has been declared, the parties may appoint a mediator to resolve the dispute. If mediation does not resolve the impasse or if the parties choose not to appoint a mediator, the Commission will appoint and submit the unresolved disputes to a Special Magistrate selected by both parties, or by the Commission if the parties cannot agree.⁹

The appointed Special Magistrate conducts a series of hearings and renders a recommended decision within 15 days after the final hearing. Upon receiving the special magistrate's recommended decision, the parties have 20 days to accept or reject each recommended item or it is considered to be approved by both parties. If either party rejects all or part of the recommendations, the employer's chief executive officer is required to direct the dispute to the appropriate "legislative body" for a final disposition. 11

The "legislative body" holds a public hearing where each party is given an opportunity to present their argument before the legislative body issues a final resolution pursuant to "the public interest [and] the interest of the public employees involved."¹²

Legislative Body

Section 447.203(10), F.S., defines "legislative body" as:

... the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and, which as the case may be, is the appropriate legislative body for the bargaining unit. For purposes of s. 447.403, the Board of Governors of the State University System, or the board's designee, shall be deemed to be the legislative body with respect to all employees of each constituent state university. For purposes of s. 447.403 the board of trustees of a community college shall be deemed to be the legislative body with respect to all employees of a community college.¹³

This statutory definition contains two different classes: specifically named entities, and unnamed entities. For an unnamed entity to be classified as a "legislative body," it must meet all three of the following elements outlined in s. 447.203(10), F.S.:

- It must have authority to appropriate funds;
- It must have authority to establish policy governing the entity's terms and conditions of
- employment; and

⁹ This section does not apply if the public employer is the Governor; in that case, the parties may proceed directly to the Legislature for resolution. See s. 447.403(2)(b), F.S.

¹⁰ Under s. 447.403(2)(a), F.S., both parties can waive the appointment of a special magistrate and proceed directly to the legislative body upon written agreement between the parties.

¹¹ See s. 447.403(3) and (4), F.S. (If a party rejects the recommendation, then the party must file a written notice of rejection with the Commission and to the other party that includes a statement of the cause for each rejection.)

¹² Section 447.403(4)(c)-(e), F.S.

¹³ Section 447.203(10), F.S.

• It must be the appropriate legislative body for the bargaining unit. 14

Of these three elements, courts have considered the power to appropriate funds to be an essential requirement for "legislative body" status. ¹⁵ The Commission has determined that an entity's ability to *disperse or transfer* funds already appropriated by the county or municipality does not suffice as having actual appropriation authority. ¹⁶

Constitutional Officers and their appointees and employees

Constitutional officers are elected governmental officials whose duties and responsibilities are established by the State Constitution rather than the Legislature. With the exception of certain charter counties, article VII, section 1 of the Florida Constitution directs each county to elect the following constitutional officers: a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court.

Since 1978, constitutional officers have been recognized as "public employers" under ch. 447, F.S. That means that the court recognized that the constitutional officers "possess the requisite control over the terms and conditions of employment of its personnel" and "are sufficiently distinct from other county offices to warrant . . . designation as a public employer." Appointees of constitutional officers, like deputy sheriffs, were given the right to collectively bargain in 2003.²¹

Under current law, the "legislative body" responsible for resolving impasses between a constitutional officer and their employees is generally the county commission or municipality not the constitutional officer.²² The First District Court of Appeal stated that "it is clear the Legislature defined "legislative body" in section 447.203(10), F.S., so as to ensure the entity

appropriated by the Pasco County Commission).

 ¹⁴ Fla. State Lodge, Fraternal Order of Police, Inc. (FOP) v. Sheriff of Pasco County, Case No. CA-2008-026 at *3-4(Fla. PERC May 22, 2009) (The Commission determined that the statutory use of the word "and" in s. 447.203, F.S., denotes a three prong conjunctive assessment. Prior to this decision, the Commission only considered the first and second prong).
 ¹⁵ Fla. Sch. for the Deaf and the Blind, v. Teachers United, FTP-NEA, 483 So.2d 58, 60 (Fla. 1st DCA 1986) (citing United Faculty of Fla., FEA/United, AFT, AFL-CIO v. Bd. of Regents, 365 So.2d 1073, 1075 (Fla. 1st DCA 1979)).
 ¹⁶ Id. (The Board's ability to transfer monies between categories of appropriations does not constitute appropriation authority.) See also Florida State Lodge, Fraternal Order of Police, Inc (FOP), Case No. CA-2008-026 at *4 (Sheriff of Pasco County did not have actual appropriations authority since he only had the power to disperse funds that were already

¹⁷ BLACK'S LAW DICTIONARY 312 (6th ed. 1990).

¹⁸ Demings v. Orange County Citizens Review Bd., 15 So.3d 604,606 (Fla. 5th DCA 2009) ("In charter counties, the electorate has an option of either maintaining these independent constitutional offices or abolishing them [all together] and transferring their responsibilities to the board of the charter county or to local offices created by the charter.").

¹⁹ FLA. CONST. art. III, § 1(g).

²⁰ *Murphy v. Mack*, 358 So.2d 822 (Fla. 1978) (deputy sheriffs were not "public employees" for collective bargaining purposes, but the sheriff was a "public employer" since the sheriff employed other persons such as typists, stenographers, bookkeepers, cooks, janitors and others that were "public employees").

²¹ Coastal Fla. Police Benevolent Assoc., Inc v. Williams, 838 So.2d 543 (Fla. 2003) (overturning long term precedent that deputy sheriffs were excluded from collective bargaining rights on the premises that those deputies were not considered "public employees" under ch. 447, F.S.). See Murphy v. Mack, 358 So.2d 882 (Fla. 1978) (deputy sheriffs are not public employees). See also Fla. Public Employees Council 79, AFSCME v. Martin County Prop. Appraiser, 521 So.2d 243 (Fla. 1st DCA 1988) (individuals employed by property appraisers are not public employees). See also Fed'n of Pub. Employees, Dist. No 1, Pacific Coast Dist., M.E.B.A., AFL-CIO v. Pub. Employees Relations Comm'n (Fla. 4th DCA 1985) (deputy clerks of circuit court are not public employees).

²² Sheriff of Pasco County v. Florida State Lodge (FOP), 53 So.3d 1073 (Fla. 1st DCA 2011).

resolving collective bargaining impasse issues is the entity with authority to fund the resulting collective bargaining agreement."²³

III. Effect of Proposed Changes:

Section 1 amends s. 447.203, F.S., to modify the definition of "legislative body" under s. 447.203(10), F.S., to specify that the following constitutional officers are deemed a "legislative body" for purposes of collective bargaining:

- The sheriff;
- The tax collector:
- The property appraiser;
- The supervisor of elections; and
- The clerk of the circuit court.

The bill authorizes the constitutional officer to provide the final resolution on all collective bargaining impasse issues amongst his or her respective employees except for disputed impasse issues over wages. These issues over wages, defined as base salary or base salary adjustments, continue to be within the authority of the board of county commissioners to be resolved.

Section 2 amends s. 447.403, F.S., to specify when the board of county commissioners must provide supplemental funds. In the first instance, if the board of county commissioners resolves a wage issue through an increase over the constitutional officer's final offer at impasse and after the beginning of the fiscal year, the board must provide supplemental funds sufficient to fund the wages that exceed the final offer.

In the second instance, if the resolution of the wage issue impacts an upcoming year, the board is required to provide funds necessary to maintain the same staffing levels as the previous fiscal year.

If the board of county commissioners fails to provide the necessary funds, the constitutional officer may apply to the circuit court for an order requiring the board to appropriate the funding necessary to the constitutional officer.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

If this bill requires the county commission to spend funds on the constitutional offices that the county commission would not otherwise be required to allocate, the

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²³ *Id.* at 1074.

constitutional restrictions may apply. This bill does not contain a legislative determination that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

No direct impact, but see VII. Related Issues below.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill allows certain constitutional officers to resolve collective bargaining impasses amongst their employees instead of the county commission. As such, the constitutional officer, who does not appropriate funds, could commit a county to expend funds for issues such officer has resolved as part of a collective bargaining impasse.

VI. Technical Deficiencies:

None.

VII. Related Issues:

By defining the constitutional officer as the legislative body to resolve issues at impasse other than wages, this bill allows the constitutional officer to resolve significant economic issues that may impact county budgets. These economic issues include staffing, vacation, leave, overtime, retirement benefits, health insurance benefits, deferred compensation benefits, and other compensation issues not related to base salary and adjustments to base salary. It is unclear whether the county commission is required to provide funding for each of these issues consistent with the constitutional officer's offers. See IV. A. Municipality/County Mandates Restrictions above.

By defining the county commission's authority to include "base salary and base salary adjustments," it appears that the county commission has the authority to set the minimum salary levels for the various jobs covered by the bargaining unit.

The provision requiring the county commission to provide funds necessary to maintain the same staffing levels as the previous fiscal year appears to negatively impact the commission's ability

to develop and implement budgets when county revenues have decreased from the prior year's revenues. If the commission must fund each of the constitutional offices at the same staffing level as the previous year, the commission's authority and flexibility to determine its remaining budget is limited. The county may have to reduce other government services significantly or increase revenues to maintain those other services.

VIII. Statutes Affected:

This bill substantially amends sections 447.203 and 447.403 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

Florida Senate - 2014 SB 816

By Senator Bradley

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7-00663B-14 2014816

A bill to be entitled An act relating to collective bargaining for certain public employees; amending s. 447.203, F.S.; redefining the term "legislative body"; specifying that, for purposes of resolving an impasse issue unrelated to wages, the sheriff, tax collector, property appraiser, supervisor of elections, or clerk of the circuit court is the legislative body for his or her respective employees; providing an exception; providing that, in a county that abolishes the office of sheriff, tax collector, property appraiser, supervisor of elections, or clerk of the circuit court by vote of the electors and transfers his or her duties to another officer, such officer is the legislative body for resolving an impasse issue unrelated to wages unless such transfer is inconsistent with general law or a special law approved by a vote of the electors of such county; defining the term "wages"; amending s. 447.403, F.S.; requiring the board of county commissioners to provide supplemental funds to a county constitutional officer if resolution of a disputed impasse issue over wages exceeds the officer's final offer; authorizing the county constitutional officer to apply to the circuit court if the board of county commissioners fails to provide such funds; providing construction; providing an effective date.

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

Page 1 of 4

 ${\tt CODING:}$ Words ${\tt stricken}$ are deletions; words ${\tt \underline{underlined}}$ are additions.

Florida Senate - 2014 SB 816

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Section 1. Subsection (10) of section 447.203, Florida Statutes, is amended to read:

447.203 Definitions.—As used in this part:

- (10) "Legislative body" means the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and which, as the case may be, is the appropriate legislative body for the bargaining unit.
- (a) For purposes of s. 447.403, the Board of Governors of the State University System, or the board's designee, is shall be deemed to be the legislative body with respect to the all employees of each constituent state university.
- (b) For purposes of s. 447.403, the board of trustees of a Florida College System institution is community college shall be deemed to be the legislative body with respect to all employees of the Florida College System institution community college.
- (c) For purposes of s. 447.403, and as constitutional officers under s. 1(d), Art. VIII of the State Constitution, the sheriff, tax collector, property appraiser, supervisor of elections, or clerk of the circuit court is the legislative body for his or her respective employees except that the board of county commissioners is the legislative body with respect to disputed impasse issues over wages. If a county charter approved by a vote of the electors of the county has expressly abolished the office of sheriff, tax collector, property appraiser, supervisor of elections, or clerk of the circuit court and

Page 2 of 4

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Florida Senate - 2014 SB 816

expressly transferred the abolished officer's duties to another

2014816

officer, such officer shall be the legislative body with respect to disputed impasse issues other than those over wages unless the charter is inconsistent with general law or a special law approved by a vote of the electors of such county. For purposes of this section and s. 447.403, the term "wages" means the base salary or base salary adjustments of employees who are members

Section 2. Present subsection (5) of section 447.403, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section, to read:

447.403 Resolution of impasses.-

7-00663B-14

of a bargaining unit.

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(5) If the resolution of a disputed impasse issue over wages by the board of county commissioners provides for an increase over the county constitutional officer's final offer at impasse and is resolved after the beginning of the fiscal year, the board of county commissioners shall provide supplemental funds to the county constitutional officer sufficient to fund the wages that exceed the county constitutional officer's final offer at impasse. If the resolution of a disputed impasse issue over wages impacts an upcoming fiscal year, the board of county commissioners shall provide the funds necessary for the county constitutional officer to maintain the same staffing levels as the previous fiscal year. If the board of county commissioners fails to provide such funds, the county constitutional officer may apply to the circuit court for an order requiring the board of county commissioners to appropriate the necessary funding to the county constitutional officer. Notwithstanding this subsection, the county constitutional officer and his or her

Page 3 of 4

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Florida Senate - 2014 SB 816

ú	7-00003B-14 2014010_
88	respective employees who are members of the bargaining unit are
89	the parties required to approve a collective bargaining
90	agreement pursuant to s. 447.309. This subsection may not be
91	interpreted to impair or limit the ability of a county
92	constitutional officer to appeal his or her budget as otherwise
93	provided by law.
94	Section 3. This act shall take effect July 1, 2014.

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Page 4 of 4

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



The Florida Senate

Committee Agenda Request

10:		Committee on Governmental Oversight and Accountability			
Subje	ct:	Committee Agenda Request			
Date:		February 7, 2014			
1	-	request that Senate Bill #816 , relating to Collective Bargaining for Certain Public e placed on the:			
		committee agenda at your earliest possible convenience.			
		next committee agenda.			

Senator Rob Bradley Florida Senate, District 7

SENATOR DAVID SIMMONS 10th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, Chair
Appropriations Subcommittee on Education
Appropriations Subcommittee on Finance and Tax
Criminal Justice Governmental Oversight and Accountability

SELECT COMMITTEE: Select Committee on Patient Protection and Affordable Care Act

March 20, 2014

Senator Jeremy Ring 405 Senate Office Building 404 South Monroe Street Tallahassee, FL 32399-1100

Dear Senator Ring:

I would like to respectfully request to be excused from the Thursday, March 20, 2014 meeting of Governmental Oversight and Accountability Committee. I was helping present a bill in the Environmental Preservation and Conservation Committee.

Sincerely yours

David Simmons

ce: Joe McVaney, staff director for Governmental Oversight and Accountability Committee

☐ 251 Maitland Avenue, Suite 304, Altamonte Springs, Fl. 32701 (407) 262-7578

☐ 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: www.flsenate.gov

CourtSmart Tag Report

Room: KN 412 Case: Type: Caption: Senate Governmental Oversight and Accountability Committee Judge: Started: 3/20/2014 8:33:50 AM Ends: 3/20/2014 9:04:23 AM Length: 00:30:34 8:33:52 AM Meeting called to Order - Roll Call 8:34:39 AM Tab 2-SB 782 by Senator Brandes—Government Data Practices 8:34:42 AM Senator Brandes presents the bill 8:36:03 AM Amendment Barcode 450470 8:36:30 AM Amendment Barcode 133318 Roll Call 8:37:13 AM 8:37:36 AM CS/SB 782 reported favorably Tab 3-CS/SB 226 by Senator Brandes—Public Records/Automated License Plate Recognition Systems 8:37:47 AM Exemption 8:37:55 AM Senator Brandes explains the bill 8:38:38 AM Amendment Barcode 918076 Roll Call 8:39:03 AM 8:39:17 AM CS/CS/SB 226 reported favorably 8:39:38 AM Tab 4-SB 366 by Senator Brandes—Public Records/Trade Secrets/Computers 8:39:43 AM Senator Brandes explains the bill 8:39:50 AM Amendment Barcode 644500 8:39:57 AM Roll Call 8:40:17 AM CS/SB 366 reported favorably Tab 7-SB 996 by Commerce and Tourism—OGSR/Scripps Florida Funding Corporation 8:40:33 AM Senator Detert explains the bill 8:40:37 AM Roll Call 8:41:39 AM SB 996 reported favorably 8:41:54 AM 8:41:58 AM Tab 5-SB 516 by Senator Latvala—Public Records/Point-In-Time Count and Survey/Homeless Management Information System 8:42:20 AM Tracy Caddell, aide to Senator Latvala, presents the bill 8:42:47 AM Roll Call 8:43:59 AM SB 516 reported favorably 8:44:10 AM Tab 6-SB 538 by Senator Latvala—Public Records/Taxpayer's Email Address 8:44:11 AM Tracy Caddell, aide to Senator Latvala, explains the bill Roll Call 8:45:27 AM 8:45:34 AM SB 538 reported favorably 8:45:53 AM Rick Kendust, aide to Senator Altman, explains bill 8:46:04 AM Tab 8-SB 1290 by Senator Altman—Transportation Services Procurement Strike All Amendment Barcode 388444 8:46:21 AM 8:47:01 AM Roll Call 8:47:08 AM CS/SB 1290 reported favorably Tab 9-SB 776 by Senator Simpson—Business Entities 8:47:24 AM 8:47:27 AM Senator Simpson explains the bill 8:48:21 AM Individuals waive in support 8:48:27 AM Roll Call 8:48:39 AM SB 776 reported favorably 8:48:52 AM Tab 10-SB 646 by Senator Montford—OGSR/Education and Applicant Records/Public Postsecondary **Educational Institutions** Senator Montford explains the bill 8:48:55 AM 8:49:19 AM Strike All Amendment Barcode 376896 8:49:35 AM Roll Call 8:49:49 AM CS/SB 646 reported favorably 8:50:01 AM Tab 11-SB 648 by Senator Montford—OGSR/Education Records/Family Educational Rights and Privacy Act 8:50:02 AM Senator Montford explains the bill

8:50:16 AM

8:50:23 AM

Roll Call

Strike All Amendment Barcode 546208

8:50:42 AM	CS/SB 648 reported favorably
8:50:54 AM	Tab 12-SB 656 by Senator Montford—OGSR/Active Investigations of Allegations/Testing Impropriet
8:50:59 AM	Senator Montford explains the bill
8:51:22 AM	Strike All Amendment Barcode 326678
8:51:36 AM	Roll Call
8:51:53 AM	CS/SB 656 reported favorably
8:52:08 AM	Senator Hays takes the Chair
8:52:09 AM	Tab 1-SPB 7108 by Governmental Oversight and Accountability—Florida Retirement System
8:52:35 AM	Senator Ring presents the proposed committee bill
8:54:10 AM	Amendment Barcode 888268
8:54:37 AM	Amendment Barcode 235326
8:54:54 AM	Amendment Barcode 554386
8:55:10 AM	Back on the bill as amended
8:55:37 AM	David Murrell, Fla. Police Benevolent Assn, Tallahassee
8:57:15 AM	Senator Ring asks a question
8:57:20 AM	Mr. Murrell responds
8:57:45 AM	Kevin Watson, Florida Education Association, Tallahassee
8:59:30 AM	Kraig Conn, Florida League of Cities
9:00:46 AM	Senator Ring comments
9:02:30 AM	Roll Call
9:02:49 AM	SPB 7108 reported favorably to submit as committee bill
9:03:15 AM	Senator Hukill
9:03:17 AM	Senator Bean
9:03:25 AM	Senator Simmons' absence is excused
9:04:13 AM	Meeting Adjourned- Senator Smith moves we rise.