

Tab 4	CS/SB 180 by CM, Richter ; (Identical to CS/H 0055) Trade Secrets						
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Tab 11	SB 390 by Simpson ; (Compare to H 0273) Public Records/Public Agency Contract for Services						
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754342	A	S	RCS	GO, Hays	Delete L.431:	11/17 03:52 PM	
Tab 7	SB 326 by Brandes ; State-owned Motor Vehicles						
781088	A	S	RCS	GO, Hays	Delete L.51 - 52:	11/18 11:29 AM	
Tab 2	SPB 7028 by GO ; State Board of Administration						
Tab 3	SPB 7030 by GO ; OGSR/Competitive Solicitation or Negotiation Strategies						
Tab 10	CS/SB 378 by HP, Bean ; (Similar to H 0617) Pediatric Cardiac Advisory Council						
280400	A	S	RCS	GO, Hays	Delete L.52 - 159:	11/17 03:52 PM	

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

MEETING DATE: Tuesday, November 17, 2015

TIME: 1:00—3:00 p.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bullard, Latvala, and Legg

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Presentation and Discussion relating to the Florida State Employees' Charitable Campaign.			Presented
Consideration of proposed bill:			
1	SPB 7026	School District Purchasing; Requiring each district school board to evaluate certain agreements and contracts before purchasing nonacademic commodities and contractual services, etc.	Not Considered
Consideration of proposed bill:			
2	SPB 7028	State Board of Administration; Redefining the term "public fund"; requiring the board, rather than the public fund, to maintain a list of certain scrutinized companies rather than assembling the list by a certain time; deleting a condition that may no longer be used by the board in scrutinizing companies, relating to a specified declaration, etc.	Submitted as Committee Bill Yeas 5 Nays 0
Consideration of proposed bill:			
3	SPB 7030	OGSR/Competitive Solicitation or Negotiation Strategies; Amending provisions which provide an exemption from public records requirements for bids, proposals, or replies submitted to an agency in response to a competitive solicitation; amending provisions which provide an exemption from public meetings requirements for portions of meetings in which a vendor participates in a negotiation, makes an oral presentation, or answers questions as part of a competitive solicitation or in which negotiation strategies are discussed, and which provides an exemption from public records requirements for the recording of, and any records presented at, exempt portions of such meetings; removing the scheduled repeal of the exemptions, etc.	Submitted as Committee Bill Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, November 17, 2015, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 180 Commerce and Tourism / Richter (Identical CS/H 55, Compare CS/H 57, Linked CS/S 182)	Trade Secrets; Including financial information in provisions prohibiting the theft, embezzlement, or unlawful copying of trade secrets; providing criminal penalties, etc. CM 10/05/2015 Fav/CS GO 11/02/2015 GO 11/17/2015 Favorable RC	Favorable Yeas 5 Nays 0
5	CS/SB 182 Commerce and Tourism / Richter (Similar CS/H 57, Compare CS/H 55, Linked CS/S 180)	Public Records and Meetings/Trade Secrets; Expanding public records exemptions for certain data processing software obtained by an agency, certain information held by a county tourism promotion agency, information related to trade secrets held by specified entities, and specified data, programs, or supporting documentation held by an agency; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CM 10/05/2015 Fav/CS GO 11/02/2015 GO 11/17/2015 Fav/CS RC	Fav/CS Yeas 5 Nays 0
6	SB 320 Richter (Similar H 391)	Public Records/Medical Technicians or Paramedics Personal Identifying Information; Creating an exemption from public records requirements for certain identifying and location information of current or former emergency medical technicians or paramedics certified under ch. 401, F.S., and the spouses and children of such emergency medical technicians or paramedics, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 10/20/2015 Favorable GO 11/17/2015 Favorable RC	Favorable Yeas 5 Nays 0
7	SB 326 Brandes	State-owned Motor Vehicles; Requiring the Department of Management Services to prepare a plan regarding the centralized management of state-owned motor vehicles; requiring the department to submit the plan to the Governor and the Legislature by a specified date; prescribing requirements for the plan; requiring the department to conduct certain evaluations while developing the plan, etc. GO 11/02/2015 GO 11/17/2015 Fav/CS AGG AP	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, November 17, 2015, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 350 Montford (Compare H 305)	Online Procurement; Revising the powers and duties of the district school board to authorize the adoption of rules regarding procurement practices; authorizing a district school board to use online procurement for certain services and purchases; authorizing each district school board, Florida College System board of trustees, and university board of trustees to make purchases through an online procurement system, etc. GO 11/02/2015 GO 11/17/2015 Favorable AED AP	Favorable Yeas 5 Nays 0
9	SB 374 Montford (Identical H 425)	State-leased Space; Revising requirements for Department of Management Services rules relating to terms and conditions included in lease agreements in which the state is the lessee, etc. GO 11/02/2015 GO 11/17/2015 Favorable AGG AP	Favorable Yeas 5 Nays 0
10	CS/SB 378 Health Policy / Bean (Similar H 617)	Pediatric Cardiac Advisory Council; Creating the Pediatric Cardiac Advisory Council; determining the chair of the advisory council; setting the minimum qualifications for the designation of a facility as a Pediatric and Congenital Cardiovascular Center of Excellence; requiring the Department of Health to develop rules relating to pediatric cardiac facilities; authorizing the department to adopt rules relating to the council and the designation of facilities as Pediatric and Congenital Cardiovascular Centers of Excellence, etc. HP 10/20/2015 Fav/CS GO 11/17/2015 Fav/CS AP	Fav/CS Yeas 4 Nays 1
11	SB 390 Simpson (Compare H 273)	Public Records/Public Agency Contract for Services; Requiring that a public agency contract for services include a statement providing the contact information of the public agency's custodian of records; revising required provisions in a public agency contract for services regarding a contractor's compliance with public records laws, etc. GO 11/17/2015 Favorable JU FP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, November 17, 2015, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 310 Legg (Similar CS/H 141)	National Statuary Hall; Providing for replacement of the statue of General Edmund Kirby Smith in the National Statuary Hall Collection at the United States Capitol; providing for the gathering of necessary funds to carry out replacement of the statue; providing for submission of the state's request to the United States Joint Committee on the Library of Congress for approval to replace the statue, etc. GO 11/17/2015 Favorable FP RC	Favorable Yeas 4 Nays 1

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 180

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Trade Secrets

DATE: November 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

An individual who steals, copies without authorization, or misappropriates financial information which meets the criteria as a trade secret is guilty of a third degree felony under s. 812.081, F.S.

The committee substitute also reenacts relevant statutes for the purpose of incorporating the expanded definition of “trade secret.”

The bill takes effect on October 1, 2016.

II. Present Situation:

Trade Secret

Section 812.081, F.S., defines a “trade secret” as information¹ used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, and adopted by Florida

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

courts,² requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret's owner to have access thereto, and be:

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

Penalties

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

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

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

Related Definitions and Law

The federal Freedom of Information Act exempts "trade secrets and commercial or financial information" from public disclosure.⁸ In order to withhold financial or commercial information from public review, it must be shown that the release of the information is likely to (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm

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

³ Section 812.081(1)(c), F.S.

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

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

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

⁷ Sections 721.071 and 812.035, F.S.

⁸ 5 USC s. 552(b)(4).

to the competitive position of the person from whom the information was obtained.⁹ “Substantial harm” may manifest as the disclosure of a company’s assets, profits, losses, and market shares.¹⁰

Florida law also defines “trade secret” in the Florida Uniform Trade Secrets Act¹¹ as a “formula, pattern, compilation, program, device, method, technique, or process” that derives actual or potential economic independent economic value from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use when it is the subject of reasonable efforts under the circumstances to maintain its secrecy.

III. Effect of Proposed Changes:

Section 1 adds financial information to protected information classified as a trade secret in s. 812.081, F.S., in the penal code. This bill makes theft of trade secret financial information a third degree felony.

Section 2 reenacts s. 581.199, F.S., which makes it unlawful for any authorized representative of the Department of Agriculture and Consumer Services, Division of Plant Industry, to use a trade secret, as defined by s. 812.081, F.S., obtained under the provisions of ch. 581, F.S., for personal gain. This reenactment incorporates the expansion of the definition of trade secret made in section 1.

Section 3 reenacts s. 721.071(1), F.S., which provides methods for developers to establish that materials filed with the Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, are trade secrets, as defined by s. 812.081, F.S. This reenactment incorporates the expansion of the definition of trade secret made in section 1.

Section 4 reenacts s. 812.035(1), (2), (5), (7), (8), (10), and (11), F.S., which relate to civil and criminal remedies available for violations of s. 812.081, F.S. This reenactment incorporates the expansion of the definition of trade secret made in section 1.

Section 5 reenacts s. 815.04, F.S., which establishes a criminal offense for the willful disclosure of a trade secret, as defined by s. 812.081, F.S., which are located on a computer system or electronic devise. This reenactment incorporates the expansion of the definition of trade secret made in section 1.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a city or county to expend funds to comply with its terms, the provisions of Article VII, section 18(a) of the Florida Constitution, may apply.

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

¹⁰ *Id.*

¹¹ Section 688.002(4), F.S.

However, Article VII, section 18(d) of the Florida Constitution exempts bills relating to criminal laws from the mandates requirements. This bill makes theft of trade secret financial information a third degree felony.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

On October 28, 2015, the Criminal Justice Impact Conference estimated that this bill will result in an insignificant increase in costs to the criminal justice system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

VIII. Statutes Affected:

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

This bill reenacts the following sections of the Florida Statutes: 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4).

IX. Additional Information:

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

CS by Commerce and Tourism on October 5, 2015:

The Committee Substitute reenacts sections 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), Florida Statutes, to incorporate the expanded definition of “trade secret” into the application of each section.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Richter

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1 A bill to be entitled
 2 An act relating to trade secrets; amending s. 812.081,
 3 F.S.; including financial information in provisions
 4 prohibiting the theft, embezzlement, or unlawful
 5 copying of trade secrets; providing criminal
 6 penalties; reenacting ss. 581.199, 721.071(1),
 7 812.035(1), (2), (5), (7), (8), (10), and (11), and
 8 815.04(4), F.S., relating to confidential business
 9 information, trade secret information filed with the
 10 Division of Florida Condominiums, Timeshares, and
 11 Mobile Homes within the Department of Business and
 12 Professional Regulation, civil remedies, and offenses
 13 against intellectual property, respectively, to
 14 incorporate changes made by this act to the definition
 15 of the term "trade secret" in s. 812.081, F.S., in
 16 references thereto; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Section 812.081, Florida Statutes, is amended to
 21 read:
 22 812.081 Trade secrets; theft, embezzlement; unlawful
 23 copying; definitions; penalty.—
 24 (1) As used in this section, the term:
 25 (a) "Article" means any object, device, machine, material,
 26 substance, or composition of matter, or any mixture or copy
 27 thereof, whether in whole or in part, including any complete or
 28 partial writing, record, recording, drawing, sample, specimen,
 29 prototype model, photograph, microorganism, blueprint, map, or

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30 copy thereof.
 31 (b) "Representing" means completely or partially
 32 describing, depicting, embodying, containing, constituting,
 33 reflecting, or recording.
 34 (c) "Trade secret" means the whole or any portion or phase
 35 of any formula, pattern, device, combination of devices, or
 36 compilation of information which is for use, or is used, in the
 37 operation of a business and which provides the business an
 38 advantage, or an opportunity to obtain an advantage, over those
 39 who do not know or use it. The term ~~"Trade secret"~~ includes any
 40 scientific, technical, or commercial information, including
 41 financial information, and includes any design, process,
 42 procedure, list of suppliers, list of customers, business code,
 43 or improvement thereof. Irrespective of novelty, invention,
 44 patentability, the state of the prior art, and the level of
 45 skill in the business, art, or field to which the subject matter
 46 pertains, a trade secret is considered to be:
 47 1. Secret;
 48 2. Of value;
 49 3. For use or in use by the business; and
 50 4. Of advantage to the business, or providing an
 51 opportunity to obtain an advantage, over those who do not know
 52 or use it
 53
 54 when the owner thereof takes measures to prevent it from
 55 becoming available to persons other than those selected by the
 56 owner to have access thereto for limited purposes.
 57 (d) "Copy" means any facsimile, replica, photograph, or
 58 other reproduction in whole or in part of an article and any

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59 note, drawing, or sketch made of or from an article or part or
60 portion thereof.

61 (2) Any person who, with intent to deprive or withhold from
62 the owner thereof the control of a trade secret, or with an
63 intent to appropriate a trade secret to his or her own use or to
64 the use of another, steals or embezzles an article representing
65 a trade secret or without authority makes or causes to be made a
66 copy of an article representing a trade secret commits is guilty
67 ~~of~~ a felony of the third degree, punishable as provided in s.
68 775.082 or s. 775.083.

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

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

77 581.199 Confidential business information.—It is unlawful
78 for any authorized representative who in an official capacity
79 obtains under the provisions of this chapter any information
80 entitled to protection as a trade secret, as defined in s.
81 812.081, to use that information for personal gain or to reveal
82 it to any unauthorized person.

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

87 721.071 Trade secrets.—

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88 (1) If a developer or any other person filing material with
89 the division pursuant to this chapter expects the division to
90 keep the material confidential on grounds that the material
91 constitutes a trade secret, as that term is defined in s.
92 812.081, the developer or other person shall file the material
93 together with an affidavit of confidentiality. "Filed material"
94 for purposes of this section shall mean material that is filed
95 with the division with the expectation that the material will be
96 kept confidential and that is accompanied by an affidavit of
97 confidentiality. Filed material that is trade secret information
98 includes, but is not limited to, service contracts relating to
99 the operation of reservation systems and those items and matters
100 described in s. 815.04(3).

101 Section 4. For the purpose of incorporating the amendment
102 made by this act to section 812.081, Florida Statutes, in
103 references thereto, subsections (1), (2), (5), (7), (8), (10),
104 and (11) of section 812.035, Florida Statutes, are reenacted to
105 read:

106 812.035 Civil remedies; limitation on civil and criminal
107 actions.—

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

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

114 (b) Imposing reasonable restrictions upon the future
115 activities or investments of any defendant, including, but not
116 limited to, prohibiting any defendant from engaging in the same

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117 type of endeavor as the enterprise in which he or she was
118 engaged in violation of the provisions of ss. 812.012-812.037 or
119 s. 812.081.

120 (c) Ordering the dissolution or reorganization of any
121 enterprise.

122 (d) Ordering the suspension or revocation of any license,
123 permit, or prior approval granted to any enterprise by any
124 department or agency of the state.

125 (e) Ordering the forfeiture of the charter of a corporation
126 organized under the laws of the state or the revocation of a
127 certificate authorizing a foreign corporation to conduct
128 business within the state, upon finding that the board of
129 directors or a managerial agent acting on behalf of the
130 corporation, in conducting the affairs of the corporation, has
131 authorized or engaged in conduct in violation of ss. 812.012-
132 812.037 or s. 812.081 and that, for the prevention of future
133 criminal activity, the public interest requires the charter of
134 the corporation forfeited and the corporation dissolved or the
135 certificate revoked.

136 (2) All property, real or personal, including money, used
137 in the course of, intended for use in the course of, derived
138 from, or realized through conduct in violation of a provision of
139 ss. 812.012-812.037 or s. 812.081 is subject to civil forfeiture
140 to the state. The state shall dispose of all forfeited property
141 as soon as commercially feasible. If property is not exercisable
142 or transferable for value by the state, it shall expire. All
143 forfeitures or dispositions under this section shall be made
144 with due provision for the rights of innocent persons.

145 (5) The Department of Legal Affairs, any state attorney, or

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146 any state agency having jurisdiction over conduct in violation
147 of a provision of ss. 812.012-812.037 or s. 812.081 may
148 institute civil proceedings under this section. In any action
149 brought under this section, the circuit court shall proceed as
150 soon as practicable to the hearing and determination. Pending
151 final determination, the circuit court may at any time enter
152 such injunctions, prohibitions, or restraining orders, or take
153 such actions, including the acceptance of satisfactory
154 performance bonds, as the court may deem proper.

155 (7) The state, including any of its agencies,
156 instrumentalities, subdivisions, or municipalities, if it proves
157 by clear and convincing evidence that it has been injured in any
158 fashion by reason of any violation of the provisions of ss.
159 812.012-812.037 or s. 812.081, has a cause of action for
160 threefold the actual damages sustained and, in any such action,
161 is entitled to minimum damages in the amount of \$200 and shall
162 also recover court costs and reasonable attorney's fees in the
163 trial and appellate courts. In no event shall punitive damages
164 be awarded under this section. The defendant shall be entitled
165 to recover reasonable attorney's fees and court costs in the
166 trial and appellate courts upon a finding that the claimant
167 raised a claim which was without substantial fact or legal
168 support.

169 (8) A final judgment or decree rendered in favor of the
170 state in any criminal proceeding under ss. 812.012-812.037 or s.
171 812.081 shall estop the defendant in any subsequent civil action
172 or proceeding as to all matters as to which such judgment or
173 decree would be an estoppel as between the parties.

174 (10) Notwithstanding any other provision of law, a criminal

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175 or civil action or proceeding under ss. 812.012-812.037 or s.
 176 812.081 may be commenced at any time within 5 years after the
 177 cause of action accrues; however, in a criminal proceeding under
 178 ss. 812.012-812.037 or s. 812.081, the period of limitation does
 179 not run during any time when the defendant is continuously
 180 absent from the state or is without a reasonably ascertainable
 181 place of abode or work within the state, but in no case shall
 182 this extend the period of limitation otherwise applicable by
 183 more than 1 year. If a criminal prosecution or civil action or
 184 other proceeding is brought, or intervened in, to punish,
 185 prevent, or restrain any violation of the provisions of ss.
 186 812.012-812.037 or s. 812.081, the running of the period of
 187 limitations prescribed by this section with respect to any cause
 188 of action arising under subsection (6) or subsection (7) which
 189 is based in whole or in part upon any matter complained of in
 190 any such prosecution, action, or proceeding shall be suspended
 191 during the pendency of such prosecution, action, or proceeding
 192 and for 2 years following its termination.

193 (11) The application of one civil remedy under any
 194 provision of ss. 812.012-812.037 or s. 812.081 shall not
 195 preclude the application of any other remedy, civil or criminal,
 196 under ss. 812.012-812.037 or s. 812.081 or any other section of
 197 the Florida Statutes.

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

202 815.04 Offenses against intellectual property; public
 203 records exemption.-

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204 (4) A person who willfully, knowingly, and without
 205 authorization discloses or takes data, programs, or supporting
 206 documentation that is a trade secret as defined in s. 812.081 or
 207 is confidential as provided by law residing or existing internal
 208 or external to a computer, computer system, computer network, or
 209 electronic device commits an offense against intellectual
 210 property.

211 Section 6. This act shall take effect October 1, 2016.

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The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: October 7, 2015

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

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

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

Senator Garrett Richter
Florida Senate, District 23



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
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Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

November 16, 2015

The Honorable Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Ring:

Senate Bills 180 and 182, relating to trade secrets and public records and meetings/ trade secrets are scheduled to be heard in the Committee on Governmental Oversight and Accountability this upcoming Tuesday, November 17th. Due to conflicts in my committee schedule, I will be sending my Legislative Assistant, Michael Nacheff, as a representative to present the bill for your committee's consideration.

Sincerely,

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

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

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ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/17
Meeting Date

180
Bill Number (if applicable)

Topic Trade Secrets

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title _____

Address 108 E Jefferson St #1A

Phone 800 559 0855

Street Tallahassee FL 32301

Email Cynthia.henderson@me.com

Speaking: For Against Information

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

Representing Cynthia Henderson

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 350

INTRODUCER: Senator Montford

SUBJECT: Online Procurement

DATE: November 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Favorable
2.	_____	_____	AED	_____
3.	_____	_____	AP	_____

I. Summary:

SB 350 authorizes district school boards to adopt rules regarding the efficient and effective procurement of materials, supplies, and services, including the use of online procurement. The bill also authorizes district school boards, Florida College System institution board of trustees and university board of trustees to make purchases through an online procurement system.

The bill has an indeterminate fiscal impact. Online procurement may result in costs savings for district school boards, Florida College System institution board of trustees and university board of trustees; however, the extent of those potential cost savings is not known.

The bill is effective July 1, 2016.

II. Present Situation:

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services.² Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;

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

² Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

- "Invitations to bid (ITB)," 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.³

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁴ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.⁵

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.⁶

Online Procurement of Commodities and Contractual Services

Pursuant to s. 287.057(22), F.S., the DMS is required to maintain a program for online procurement of commodities and contractual services in consultation with the Chief Financial Officer (Department of Financial Services) and the Agency for State Technology (AST). The DMS has authority to contract for equipment and services to develop and implement online procurement in consultation with the AST and in compliance with standards of AST.⁷ The DMS is required to adopt rules for the administration of the program for online procurement.⁸ The DMS may also impose and collect fees for use of the online procurement system.⁹

The DMS's online procurement program is MyFloridaMarketPlace (MFMP). MFMP is used by the Division of State Purchasing for formal solicitations (ITB, RFP, and ITN) and by state agencies for informal quotes and electronic invoicing.¹⁰ MFMP has been in operation for more than ten years.¹¹

³ See ss. 287.012(6) and 287.057, F.S.

⁴ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁵ See s. 287.057(3)(e), F.S.

⁶ See ss. 287.042(2)(c) and 120.57(3), F.S.

⁷ Section 287.057(22)(a), F.S. Also, see s. 282.0051(4), F.S. (AST has responsibility to perform project oversight on all state agency information technology project costs of \$10 million or more that are funded in the General Appropriations Act or other law.)

⁸ Section 287.057(22)(b), F.S. See Rules 60A-1.030-1.033, F.A.C.

⁹ Section 287.057(22)(c), F.S.

¹⁰ Analysis from the DMS dated February 3, 2015, on file with the Committee on Governmental Oversight and Accountability.

¹¹ See http://www.dms.myflorida.com/business_operations/state_purchasing.

III. Effect of Proposed Changes:

Section 1 amends s. 287.012, F.S., to define the terms “online procurement” or “electronic procurement” as a competitive bid process that uses a vendor bid system, an electronic auction service, or other types of procurement that use a web-based system developed by a governmental entity or a third-party software, and that conforms to the procurement process specified in s. 287.057 or by rules adopted by the State Board of Education, school districts, or other state agencies.

This section appears to create another type of ‘online procurement’ for DMS; MFMP was created under the authority of s. 287.057(22), F.S., as an online procurement system.

This section also appears to authorize the State Board of Education, school districts and other state agencies to adopt procurement rules that could conflict with DMS’s rulemaking authority for online procurement contained in s. 287.057(22)(b), F.S., and the online procurement rules already promulgated by DMS in Rules 60A-1.030-1.033, F.A.C.

Additionally, creating another definition of ‘online procurement’ and allowing other agencies to promulgate procurement rules conflicts with the legislative intent of ch. 287, F.S., that “there be a system of uniform procedures to be utilized by state agencies in managing and procuring commodities and contractual services”.¹²

Section 2 amends s. 1001.42(12), F.S., to authorize district school boards to adopt rules to facilitate the efficient and effective procurement of materials, supplies, and services, including the use of online procurement as defined in s. 287.012, F.S.

Section 3 amends s. 1006.27(1), F.S., to authorize district school boards to use online procurement as defined by s. 287.012, F.S., for purchasing buses, equipment and supplies.

Section 4 amends s. 1010.04(2), F.S., to authorize district school boards, Florida College System institution board of trustees and university board of trustees to make purchases through an online procurement system that includes electronic auction services or other efficient procurement tools.

Section 5 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

¹² Section 287.001, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate fiscal impact on the private sector.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on the government sector. Online procurement may result in costs savings for district school boards, Florida College System institutions and universities, but the extent of those potential cost savings is not known.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 287.012, 1001.42(12), 1006.27(1) and 1010.04(2) 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.

By Senator Montford

3-00261-16

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A bill to be entitled

An act relating to online procurement; amending s. 287.012, F.S.; defining the term "online procurement"; amending s. 1001.42, F.S.; revising the powers and duties of the district school board to authorize the adoption of rules regarding procurement practices; amending s. 1006.27, F.S.; authorizing a district school board to use online procurement for certain services and purchases; amending s. 1010.04, F.S.; authorizing each district school board, Florida College System board of trustees, and university board of trustees to make purchases through an online procurement system; providing an effective date.

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

Section 1. Present subsections (20) through (29) of section 287.012, Florida Statutes, are redesignated as subsections (21) through (30), respectively, and a new subsection (20) is added to that section, to read:

287.012 Definitions.—As used in this part, the term:

(20) "Online procurement" or "electronic procurement" means a competitive bid process that uses a vendor bid system, an electronic auction service, or other types of procurement that use a web-based system developed by a governmental entity or a third-party software, and that conforms to the procurement process specified in s. 287.057 or by rules adopted by the State Board of Education, school districts, or other state agencies.

Section 2. Paragraph (i) of subsection (12) of section

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1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The district school board, acting as a board, shall exercise all powers and perform all duties listed below:

(12) FINANCE.—Take steps to assure students adequate educational facilities through the financial procedure authorized in chapters 1010 and 1011 and as prescribed below:

(i) *Contracts for materials, supplies, and services.*—Contract for materials, supplies, and services needed for the district school system. No contract for supplying these needs shall be made with any member of the district school board, with the district school superintendent, or with any business organization in which any district school board member or the district school superintendent has any financial interest whatsoever. The district school board may adopt rules to facilitate the efficient and effective procurement of materials, supplies, and services, including the use of online procurement as defined in s. 287.012.

Section 3. Subsection (1) of section 1006.27, Florida Statutes, is amended to read:

1006.27 Pooling of school buses and related purchases by district school boards; transportation services contracts.—

(1) The department shall assist district school boards in securing school buses, contractual needs, equipment, and supplies at as reasonable prices as possible by providing a plan under which district school boards may voluntarily pool their bids for such purchases. The department shall prepare bid forms and specifications, obtain quotations of prices and make such information available to district school boards in order to

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59 facilitate this service and may use online procurement, as
60 defined in s. 287.012. District school boards from time to time,
61 as prescribed by State Board of Education rule, shall furnish
62 the department with information concerning the prices paid for
63 such items and the department shall furnish to district school
64 boards periodic information concerning the lowest prices at
65 which school buses, equipment, and related supplies are
66 available based upon comparable specifications.

67 Section 4. Subsection (2) of section 1010.04, Florida
68 Statutes, is amended to read:

69 1010.04 Purchasing.—

70 (2) Each district school board and Florida College System
71 institution board of trustees shall adopt rules, and each
72 university board of trustees shall adopt regulations, to be
73 followed in making purchases. Purchases may be made through an
74 online procurement system that includes electronic auction
75 services or through other efficient procurement tools.

76 Section 5. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date

11/17

Bill Number (if applicable)

350

Amendment Barcode (if applicable)

Topic Systemic Procurements

Name Erinna Henderson

Job Title _____

Address 108 E Jefferson

Street

Alhambra

City

State

FL 32301

Zip

Phone 850 559 0858

Email erinnahenderson@gmail.com

Speaking: For Against Information

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

Representing Obama

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 374

INTRODUCER: Senator Montford

SUBJECT: State-leased Space

DATE: November 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 374 eliminates the requirement that the Department of Management Services adopt a rule requiring that any lease agreement for private property must contain a clause allowing the lessee state agency to terminate the lease agreement if state-owned property becomes available to the lessee state agency and the state agency gives 6 months' advance written notice of termination. Under current law, this requirement may not be amended, supplemented, or waived by contract.

DMS retains the authority to promulgate or maintain the same or similar rule if DMS deems it to be an acceptable term and condition for lease agreements.

SB 374 provides that the bill does not impair or restrict the terms and conditions of lease agreements entered into by a state agency before July 1, 2016.

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

II. Present Situation:

Leasing and Department of Management Services Authority

The Department of Management Services (DMS) Facilities Program, also called the Division of Real Estate Development and Management (REDM), is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures DMS has been given responsibility to manage.¹ The State of Florida owns 20,199 facilities, including facilities owned by state agencies, the Florida College System, the State University System of Florida, and water

¹ See http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on October 28, 2015).

management districts.² DMS manages 109 facilities in the Florida Facilities Pool, and five federal surplus property facilities.³ DMS also contracts for 7 private correctional facilities and 11 Division of Telecommunications equipment buildings.⁴ The Bureau of Leasing within the Division administers public and private leasing and ensures that leases are in the best interests of the state.⁵

As of June 30, 2015:

Lease Type	Lease Count	Square Footage (SF)	Percent of Total Lease Space (SF)	Annual Rent
Government	324	961,828	7%	\$4,448,295.35
Private	794	6,466,501	48%	\$125,176,825.89
Public	302	6,070,907	45%	\$99,032,316.70
Grand Total	1,420	13,499,236	100%	\$228,657,437.94

According to the DMS 2015 Master Leasing Report,⁶ the state leases approximately 13.5 million square feet with an annual rent of \$228 million, of which 6.4 million square feet is in 794 private sector leases, with an annual rent of \$125 million.

Chapter 255, F.S., provides the statutory authority for DMS to manage and operate the Florida Facilities Pool and specifies the oversight role DMS has in the leasing of privately owned space. Except as provided in ss. 255.249⁷ and 255.2501,⁸ F.S., a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and the need for the lease is first obtained from DMS.⁹

DMS has the authority to approve leases of greater than 5,000 square feet that cover more than 12 consecutive months, if such lease is, in the judgment of the DMS, in the best interests of the state.¹⁰ Except as provided for emergency space needs,¹¹ no state agency may enter into a lease

² DMS Master Leasing Report 2015, *available at* http://www.dms.myflorida.com/content/download/118552/650855/2015_Master_Leasing_reportpdf.pdf (last visited on October 28, 2015).

³ *Id.*

⁴ *Id.*

⁵ See http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on October 28, 2015).

⁶ DMS Master Leasing Report 2015, *available at* http://www.dms.myflorida.com/content/download/118552/650855/2015_Master_Leasing_reportpdf.pdf (last visited on October 28, 2015).

⁷ Section 255.249(5), F.S. DMS may direct a state agency to occupy, or relocate to, space in any state-owned office building, including all state-owned space identified in the Florida State-Owned Lands and Record Information System managed by the Department of Environmental Protection.

⁸ Section 255.2501, F.S. Lease of space financed with local government obligations under specified conditions.

⁹ Section 255.25(2), F.S.

¹⁰ Section 225.25(3)(b), F.S.

¹¹ Section 255.25(10), F.S., provides that the DMS may approve emergency acquisition of space without competitive bids if existing state-owned or state-leased space is destroyed or rendered uninhabitable by an act of God, fire, malicious destruction, structural failure, or by legal action, if the chief administrator of the state agency or designated representative certifies that no other agency-controlled space is available to meet this emergency need, but in no case shall the lease for such space exceed 11 months.

as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.¹²

Section 255.249(9)(b), F.S., requires the DMS to promulgate rules to provide procedures for: soliciting and accepting competitive proposals for leased space of 5,000 square feet or more in privately owned buildings; evaluating the proposals received; exempting from competitive bidding requirements any lease the purpose of which is the provision of care and living space for persons or emergency space needs as provided in s. 255.25(10), F.S.; and the securing of at least three documented quotes for a lease that is not required to be competitively bid.

For the lease of less than 5,000 square feet of space, including space lease for nominal or no consideration, a state agency must notify DMS at least 90 days before the execution of the lease.¹³ DMS must review the lease and determine whether suitable space is available in a state-owned or state-leased building located in the same geographic region.¹⁴ If space is not available, DMS must determine whether the proposed lease is in the best interests of the state.¹⁵ If DMS determines that the lease is not in the best interests of the state, DMS must notify the agency proposing the lease, the Governor, the President of the Senate, and the Speaker of the House of Representatives of such finding in writing.¹⁶

Section 255.249(9)(j), F.S., requires DMS to promulgate rules for a leased of less than 5,000 square feet; a method for certification by the agency head or the agency head's designated representative that all criteria for leasing have been fully complied with and for filing a copy of such lease with all supporting documents with DMS for its review and approval as to technical sufficiency and whether such lease is in the best interest of the state.

Section 255.249(11), F.S., authorizes DMS to contract for a tenant broker or real estate consultant to assist with carrying out its responsibilities.¹⁷ DMS is required to annually publish a master leasing report that includes its required strategic leasing plan and to submit this report to the Governor and the Legislature by October 1st of each year.¹⁸ The report must contain analyses and other information on the status of state-owned facilities and private sector leased space.¹⁹ To assist the DMS in preparing the report, state agencies are required to provide their projected requirements for leased space based on active and planned full-time employee data, lease-expiration schedules for each geographic region of the state, and opportunities for consolidating operations, as well as costs relating to occupancy and relocation.²⁰

¹² Section 225.25(3)(a), F.S. The size at which a leased space must be competitively bid was raised in 1990 from 2,000 square feet to 3,000 square feet by ch. 90-224, s. 3, Laws of Fla., and raised in 1999 to 5,000 square feet by ch. 99-399, s. 22, Laws of Fla.

¹³ Section 255.25(2)(a), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Also, see* s. 225.25(3)(h), F.S.

¹⁸ Section 255.249(7), F.S.

¹⁹ *Id.*

²⁰ Section 255.249(8), F.S.

According to the 2015 Lease Renegotiation Report released by DMS, renegotiations between fiscal years 2013-14 and 2014-15 have resulted in a decrease of 43,367 square feet, or -0.71 percent; however, lease costs increased by \$903,820.16, or 0.76 percent over the same time period.²¹

Section 39 of ch. 2015-222, Laws of Florida, requires DMS, with the cooperation of the agencies having existing private lease contracts for office or storage space in excess of 2,000 square feet, to use tenant broker services to renegotiate or reprocure all private lease agreements expiring between July 1, 2016, and June 30, 2018, in order to reduce costs in future years.

State Lease Agreements

Section 255.249(6), F.S., requires DMS to develop and implement a strategic leasing plan which must forecast space needs for all state agencies and identify opportunities for reducing costs through consolidation, relocation, reconfiguration, capital investment, and the renovation, building, or acquisition of state-owned space.

Section 255.2502, F.S., requires any contract on behalf of the state which binds the state or its executive agencies to the lease, rental, lease-purchase, purchase, or sale-leaseback of office space, real property or improvements to real property for a period in excess of 1 fiscal year, including any and all renewal periods and including all leases which constitute a series of leases, to contain a contingency statement that the state's obligation and performance under such contract is contingent upon an annual appropriation by the Legislature. Any contract not containing the required contingency statement is null and void.

Section 255.249(9)(e), F.S., requires DMS to adopt rules providing acceptable terms and conditions for inclusion in lease agreements. At a minimum, lease terms and conditions must include the following clauses, which may not be amended, supplemented, or waived:

1. As provided in s. 255.2502, "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."
2. "The lessee has the right to terminate this lease, without penalty, if a state-owned building becomes available to the lessee for occupancy and the lessee has given 6 months' advance written notice to the lessor by certified mail, return receipt requested."

To comply with this requirement, DMS has adopted Rule 60H-1.003, F.A.C., which sets out the form of the lease agreement and includes the required termination clause.

Section 255.2503, F.S., prohibits an executive agency or department from entering into any lease on behalf of the state that requires the state agency to refrain from making legislative budget or fixed capital outlay requests for alternative space other than that in the lease agreement.²² Any

²¹ DMS 2015 Lease Renegotiation Report, *available at* http://www.dms.myflorida.com/content/download/118819/652055/Complete_Report2.pdf (last visited November 3, 2015).

²² This section does not apply to any facility financed under the Florida Building and Facilities Act.

contract containing such a term is null and void.²³ Any person who willfully violates this section is guilty of a misdemeanor of the first degree.

Unless specifically authorized by law, no agency or branch of state government can contract to spend or enter into any agreement to spend, any moneys, in excess of the amount appropriated to such agency or branch.²⁴ Any such contract is null and void.²⁵

To best manage leasing costs, DMS must ensure that available and suitable state-owned space takes precedence over approving an agency's request to lease private-sector space, and whenever possible, backfill public office space, to ensure that debt service and operations and maintenance revenue projections are met.²⁶

Inventory of State-owned and State-leased Facilities

Pursuant to s. 216.0152(1), F.S., DMS must develop and maintain an automated inventory of all facilities²⁷ owned, leased, rented, or otherwise occupied or maintained by any agency of the state, the judicial branch, or the water management districts. DMS must use this data for determining maintenance needs and conducting strategic analyses.²⁸

Inventory of State-owned Real Property

DMS and the Department of Environmental Protection (DEP) must publish, by October 1st of each year, a complete report detailing the inventory of all state-owned facilities, including the inventories of the Board of Governors of the State University System, the Department of Education, and the Department of Transportation, excluding transportation facilities of the state transportation system.²⁹

In 2010, the Legislature mandated the creation of a database to identify surplus property and dispose of such property owned by the state that is unnecessary to achieving the state's responsibilities.³⁰ Pursuant to s. 216.0153, F.S., DEP must create, administer, and maintain a comprehensive system for all state lands and real property leased, owned, rented, and otherwise occupied or maintained by any state agency, by the judicial branch, and by any water management district. The comprehensive state-owned real property system must contain a database that includes an accurate inventory of all real property that is leased, owned, rented, occupied, or managed by the state, the judicial branch, or the water management districts.³¹ The

²³ Section 255.2503, F.S.

²⁴ Section 216.311(1), F.S.

²⁵ Section 216.311(2), F.S.

²⁶ DMS Legislative Bill Analysis dated October 20, 2015 (copy on file with the Governmental Oversight and Accountability Committee).

²⁷ The term "facility" means buildings, structures, and building systems, but does not include transportation facilities of the state transportation system.

²⁸ Section 216.0152(1), F.S.

²⁹ Section 216.0152(2), F.S. Also, the annual report of state-owned real property recommended for disposition required under s. 216.0153 must be included in the report.

³⁰ Chapter 2010-280, s. 5, Laws of Fla.

³¹ Section 216.0153(1)(a), F.S.

Division of State Lands in DEP is the statewide custodian of the real property information and is accountable for its accuracy.³²

The Division of State Lands in DEP must annually submit a report by October 1st, to the Governor, the President of the Senate, and the Speaker of the House of Representatives that lists the state-owned real property recommended for disposition, including a report by DMS of surplus buildings recommended for disposition.³³ The report must include specific information that documents the valuation and analysis process used to identify the specific state-owned real property recommended for disposition.

The DEP and DMS are now implementing the Florida State Owned Lands and Records Information System (FL-SOLARIS), designed with two main components:³⁴

- Facility Information Tracking System (FITS) – available since April 2012; and
- Lands Information Tracking System (LITS) – available since February 2013.

Both components are designed to give agencies an online interface to record data on their state-owned facilities, as well as provide the mechanism for agencies' annual identification and reporting of properties that are candidates for disposition.³⁵ Facility leases are not entered via FITS.³⁶

Energy Performance and Reporting

The “Florida Energy Conservation and Sustainable Buildings Act” in ss. 255.251 - 255.2575, F.S., creates duties for agencies and the DMS concerning energy efficiency in buildings leased and owned by the state.

Section 255.254, F.S., requires agencies to seek from the DMS an evaluation of life-cycle costs based on sustainable building ratings for all leased or newly constructed facilities.

Section 255.257, F.S., requires all agencies to collect energy consumption and cost data for all state-owned and metered state-leased facilities, and report the data annually to DMS.

III. Effect of Proposed Changes:

Section 1 amends s. 255.249(9), F.S., to eliminate a requirement on DMS to adopt a rule that each lease agreement include a clause to allow a lessee state agency to terminate a lease, without penalty, when a state-owned building becomes available for occupancy and the lessee has provided a 6 month advanced written notice to the lessor by certified mail, return receipt requested. DMS retains the authority to promulgate or retain the same or similar rule if DMS deems the provision to be an acceptable term and condition of a lease agreement.

³² Section 216.0153(1)(b), F.S.

³³ Section 216.0153(3), F.S.

³⁴ See DEP website located at

http://www.dms.myflorida.com/business_operations/real_estate_development_and_management/facilities_management/florida_state_owned_land_and_records_information_system_fl_solaris (last visited on October 29, 2015).

³⁵ *Id.*

³⁶ *Id.*

Currently, some agencies are in private leases that are not fully utilized. The clause in s. 255.249, F.S., allows agencies to move/realign to under-utilized state-owned space to reduce costs. By eliminating this required clause, the state's ability to negotiate reductions in square footage and continue to backfill vacant public space may be limited.

Section 2 provides that the bill does not impair or restrict the terms and conditions of a lease agreement entered into by a state agency pursuant to s. 255.249, F.S., before July 1, 2016.

Section 3 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with 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:

Indeterminate. The owners of private property leased to the state argue that they bear additional financing costs when the lessee (the state) has the option to terminate the lease based on the availability of other state-owned property. If the lease agreement did not contain the current requirement allowing for termination, the owners of the private property may "save" money when refinancing their properties to the extent the institutional lenders deem the lease agreements to be of a higher value or quality without the termination clause.

C. Government Sector Impact:

Indeterminate. The state may lose a portion of its flexibility to terminate private property lease agreements when state-owned property becomes available. However, the Legislature retains its authority to underfund the lease agreement and potentially terminate the lease agreement or a portion thereof.

The costs of financing the private property may be reduced if institutional lenders deem the lease agreements to be of a higher value or quality without the termination clause. The state may realize some cost savings if the landlord passes such financing savings on to the state. On the other hand, the lease agreements are competitively procured, and the state should be entering into lease agreements based on the best value to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 255.249 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.

By Senator Montford

3-00218-16

2016374__

1 A bill to be entitled
 2 An act relating to state-leased space; amending s.
 3 255.249, F.S.; revising requirements for Department of
 4 Management Services rules relating to terms and
 5 conditions included in lease agreements in which the
 6 state is the lessee; providing for applicability;
 7 providing an effective date.
 8

9 Be It Enacted by the Legislature of the State of Florida:
 10

11 Section 1. Paragraph (e) of subsection (9) of section
 12 255.249, Florida Statutes, is amended to read:

13 255.249 Department of Management Services; responsibility;
 14 department rules.-

15 (9) The department shall adopt rules providing:

16 (e) Acceptable terms and conditions for inclusion in lease
 17 agreements. At a minimum, the such terms and conditions must
 18 include the statement required by s. 255.2502 ~~following clauses,~~
 19 which may not be amended, supplemented, or waived.+
 20

21 ~~1. As provided in s. 255.2502, "The State of Florida's~~
~~performance and obligation to pay under this contract is~~
~~contingent upon an annual appropriation by the Legislature."~~
 22

23 ~~2. "The lessee has the right to terminate this lease,~~
~~without penalty, if a state-owned building becomes available to~~
~~the lessee for occupancy and the lessee has given 6 months'~~
~~advance written notice to the lessor by certified mail, return~~
~~receipt requested."~~
 24
 25
 26
 27

28 Section 2. This act does not impair or restrict the terms
 29 and conditions of a lease agreement entered into by a state

Page 1 of 2

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

3-00218-16

2016374__

30 agency pursuant to s. 255.249, Florida Statutes, before July 1,
 31 2016.

32 Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date Nov. 17

Bill Number (if applicable) 374

Topic State leaves

Amendment Barcode (if applicable)

Name Doug Mynheimer

Job Title Attorney

Address 215 S. Monroe St Suite 400

Phone 850-681-6810

City _____ State _____ Zip _____

Email dmyneimer@broadandcassel.com

Speaking: For Against Information

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

Representing Hall Investments/Koger Center

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11/17/2015

Bill Number (if applicable) SB 374

Topic STATE LEASING

Amendment Barcode (if applicable)

Name MIKE HUSBY

Job Title _____

Address 301 S. BREWERTH

Phone 850/577-9090

Street _____
City TEH State FL Zip 32501

Email _____

Speaking: For Against Information

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

Representing WILKINSON COMPLEX & BREWERTH CENTERS

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7026

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: School District Purchasing

DATE: November 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		Pre-meeting
2.				
3.				

I. Summary:

SPB 7026 requires each district school board to evaluate purchasing agreements and state term contracts available through the Department of Management Services pursuant to s. 287.056, F.S., before purchasing nonacademic commodities and contractual services.

The bill may result in an indeterminate decrease in expenditures by district school boards.

II. Present Situation:

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services.² Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "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;

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

² Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.³

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁴ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.⁵

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the Department of Management Services (DMS), a water management district, or state agencies.⁶

State Contracts and Purchasing Agreements

DMS's Division of State Purchasing procures state term contracts and establishes purchasing agreements for selected products and services.⁷ Section 287.056(1), F.S., requires state agencies to purchase commodities and contractual services from purchasing agreements and state term contracts in accordance with s. 287.057, F.S. Other eligible users of state term contracts and purchasing agreements include any local government, school board or other special district, authority, or government entity and any independent, nonprofit college or university located within the state and accredited by the Southern Association of Colleges and Schools.⁸ Statewide contracts and purchasing agreements enable eligible users to pool their buying power to lower total costs and reduce administrative burden in the purchase of products and services.

District School Boards

Purchases and leases by school districts must comply with requirements of law and rules of the State Board of Education.⁹ Each school district is required to establish purchasing rules.¹⁰ Section 1010.04(3), F.S., permits the district school board to purchase from current county contracts if such contracts are to the economic advantage of these entities and the county purchasing agent is authorized by law to make purchases for the benefit of other governmental agencies within the county.

³ See ss. 287.012(6) and 287.057, F.S.

⁴ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁵ See s. 287.057(3)(e), F.S.

⁶ See ss. 287.042(2)(c) and 120.57(3), F.S.

⁷ Section 287.042(1)(a) and (2)(a), F.S.

⁸ See s. 287.056(1), F.S., and Rule 60A-1.005, F.A.C.

⁹ Section 1010.04(1)(a), F.S. See also s. 1001.42(12)(j), F.S.

¹⁰ Section 1010.04(2), F.S. See also Rule 6A-1.012, F.A.C.

Section 1001.451, F.S., authorizes school districts with 20,000 or fewer unweighted full-time equivalent students to enter into cooperative agreements to form regional consortium service organizations to provide purchasing.

Section 1006.27, F.S., requires the Department of Education to assist district school boards with procuring school buses, contractual needs, equipment, and supplies at reasonable prices by providing a plan under which district school boards may voluntarily pool their bids for such purchases.

Section 1006.283, F.S., authorizes a consortium of school districts to implement an instructional materials program that includes purchase of instructional materials.

III. Effect of Proposed Changes:

Section 1 amends s. 1010.04, F.S., to require each district school board to evaluate whether it is to the economic advantage of the district school board to use the purchasing agreements and state term contracts available under s. 287.056, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with 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:

The bill may shift some contracting dollars towards businesses that have entered into purchasing agreements with the DMS and vendors who hold state term contracts.

C. Government Sector Impact:

District school boards may realize some cost savings to the extent goods and services are available at lower costs through the state term contracts and purchasing agreements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1010.04 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.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00828-16

20167026pb

1 A bill to be entitled
2 An act relating to school district purchasing;
3 amending s. 1010.04, F.S.; requiring each district
4 school board to evaluate certain agreements and
5 contracts before purchasing nonacademic commodities
6 and contractual services; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (1) of section 1010.04, Florida
11 Statutes, is amended to read:
12 1010.04 Purchasing.—
13 (1) (a) Purchases and leases by school districts and Florida
14 College System institutions shall comply with the requirements
15 of law and rules of the State Board of Education.
16 (b) Before purchasing nonacademic commodities and
17 contractual services, each district school board must evaluate
18 whether it is to the economic advantage of the district school
19 board to use the purchasing agreements and state term contracts
20 available under s. 287.056.
21 ~~(c) (b)~~ Purchases and leases by state universities shall
22 comply with the requirements of law and regulations of the Board
23 of Governors.
24 Section 2. This act shall take effect July 1, 2016.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 310

INTRODUCER: Senator Legg

SUBJECT: National Statuary Hall

DATE: November 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	Favorable
2.			FP	
3.			RC	

I. Summary:

The bill provides that the Great Floridians Program within the Department of State will select a prominent Florida citizen to be commemorated in the National Statuary Hall. The Florida Council on Arts and Culture will select a sculptor to design a statue for replacement of the statue of General Edmund Kirby Smith. The Florida Council on Arts and Culture is also required to collect funds for the replacement.

The bill anticipates that the Legislature will pass at a later time a memorial requesting the replacement of the statue of Gen. Kirby Smith. If the Governor agrees with the request, the memorial will be submitted to the United States Joint Committee on the Library of Congress for consideration.

The bill takes effect upon becoming a law.

II. Present Situation:

National Statuary Hall

In 1864, Congress created the National Statuary Hall, which permits the display of two statues from each state within the Capitol of the United States.¹ Originally located in the Old Hall of the House of Representatives, the placement of statues has expanded throughout the corridors of the Capitol.² Each state is permitted to provide statutes of a deceased citizen of that state who were “illustrious for their historic renown or for distinguished civic or military services, such as each State may deem to be worthy of this national commemoration”³ Under normal circumstances an

¹ 2 U.S.C. s. 2131 (2014).

² *About the National Statuary Hall Collection* available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/about-national-statuary-hall-collection> (last visited November 4, 2015).

³ 2 U.S.C. s. 2131 (2014).

individual must have been deceased for 10 years before his or her statue may be displayed in the National Statuary Hall.⁴

Replacement of Statues

A statue must have been on display for at least a decade before it may be replaced.⁵ Like all current statues, a replacement statue must be made of marble or bronze and depict a distinguished, deceased citizen of the donating state.⁶

A state may request that the United States Joint Committee on the Library of Congress (Joint Committee) approve the replacement of its statutes by a resolution from the state's Legislature and the consent of the Governor.⁷ The state is responsible for costs related to the replacement, including the "construction, transportation, placement of the new statue and removal and transportation of the statue being replaced, and any unveiling ceremony."⁸ The replacement of a statue becomes a matter of agreement between the Architect of the Capitol and the state, but final approval lies with the Joint Committee.⁹

After the Joint Committee has approved the request, ownership of the replaced statue transfers to the state, and the replaced statue may only be returned to the Capitol by federal law.¹⁰ A duly authorized state official must inform the Architect of the Capitol where the replaced statue will be displayed after it is removed from the Capitol.¹¹

Florida's Statues

Florida's representatives in the National Statuary Hall are Dr. John Gorrie and Gen. Kirby Smith. Florida provided a statue of Dr. Gorrie to the National Statuary Hall in 1914. Dr. Gorrie (1802-1855) was a physician in Apalachicola, Florida who advocated draining swamps and the use of mosquito netting to prevent disease.¹² He also cooled sickrooms in order to reduce fever.¹³ Dr. Gorrie was granted a patent for a machine to make ice and is credited with being the father of refrigeration and air-conditioning.¹⁴

In 1922, Florida donated a statue of Gen. Kirby Smith to the National Statuary Hall. Gen. Kirby Smith (1824-1893) was a soldier and educator who served in the Mexican War and taught mathematics at the United States Military Academy (West Point). He resigned from the United

⁴ 2 U.S.C. s. 2131a.(a) (2014).

⁵ 2 U.S.C. s. 2132(a)(2)(B) (2014). The Joint Committee on the Library of Congress may grant a waiver of this requirement.

⁶ 2 U.S.C. s. 2132(b) (2014).

⁷ 2 U.S.C. s. 2132(a) (2014).

⁸ 2 U.S.C. s. 2132(b) (2014).

⁹ *Procedure and Guidelines for Replacement of Statues in the National Statuary Hall Collection*, Architect of the Capitol, Office of the Curator, Dated January 2014, http://www.aoc.gov/sites/default/files/statue_replacement_guidelines_2014.pdf (last viewed November 4, 2015).

¹⁰ 2 U.S.C. s. 2132(d) (2014).

¹¹ *Procedure and Guidelines for Replacement of Statues in the National Statuary Hall Collection*, Architect of the Capitol, Office of the Curator, Dated January 2014, http://www.aoc.gov/sites/default/files/statue_replacement_guidelines_2014.pdf (last viewed November 4, 2015).

¹² John Gorrie <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/john-gorrie> (last viewed November 4, 2015).

¹³ *Id.*

¹⁴ *Id.*

States Army in 1861 and joined the Confederate States of America. He rose to the rank of general. After the Civil War, he moved to Tennessee where he pursued an academic career and served as Chancellor of the University of Nashville.

Great Floridians Program

The Great Floridians Program (Program) is “designed to recognize and record the achievements of Floridians, living and deceased, who have made major contributions to the progress and welfare of the state.”¹⁵ The Division of Historical Resources of the Department of State (Division) nominates present or former Florida citizens who made major contributions to the progress of the country or the state.¹⁶ In making the nominations, the Division is required seek the advice of people who are experienced in informing the public about Florida’s history.¹⁷ The Division must convene an ad hoc committee composed of representatives of government officials and the committee must nominate at least two individuals annually.¹⁸ The Secretary of State selects two individuals who will be honored as ‘Great Floridians.’¹⁹ The Secretary of State is then required to educate the public about the Great Floridian, and the Department of State acts as the repository for materials its produces.²⁰

The Florida Council on Arts and Culture

The Florida Council on Arts and Culture (Council) is an advisory body within the Department of State consisting of 15 members who have substantial history of community service in the performing or visual arts, science, history or children’s museums.²¹ The Council promotes the arts and culture throughout the state.²² The Council also advises the Secretary of the Department of State regarding the administration of grants pertaining to arts and culture, and reviews applications for grants related to cultural facilities.²³ The members of the Council are appointed by the Governor and the Speaker of the House of Representatives and the President of the Senate.²⁴

III. Effect of Proposed Changes:

The bill provides that the ad hoc committee of the Program within in the Department of State will select a prominent Florida citizen to be commemorated in the National Statutory Hall. The guidelines for the selection will be set by the Division.

¹⁵ Section 267.0731, F.S.

¹⁶ Section 267.0731(1), F.S.

¹⁷ Section 267.0731(1)(a), F.S.

¹⁸ Section 267.0731(1)(b), F.S.

¹⁹ Section 267.0731(1), F.S.

²⁰ Section 267.0731(2), F.S.

²¹ Section 265.285(1)(a), F.S.

²² Section 265.285(2), F.S.

²³ Section 265.285(1)(f) and (h), F.S.

²⁴ Section 265.285(1)(a), F.S.

The Council will select a sculptor to design a statue for replacement of the statue of Gen. Kirby Smith according to the guidelines prescribed by the Department of State. The Council will also be tasked with collecting funds necessary to effectuate the replacement.

After the selection of a Florida citizen and a sculptor has been made, the Legislature may pass a memorial requesting that the Joint Committee approve the replacement of the statue of Gen. Kirby Smith. Upon the approval by the Governor of the request to replace the statue, the memorial will be submitted to the Joint Committee.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with 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:

The bill appears to require the Florida Council of Arts and Culture to “gather” funds from private donations.

C. Government Sector Impact:

The fiscal impact on the government is unknown at this time. The Program is administered by the Department of State, and staff time and expenses will be incurred. Council members are reimbursed for travel and expenses, but are not otherwise compensated.²⁵

²⁵ Section 265.285(1)(c), F.S.

VI. Technical Deficiencies:

It is unclear what types of guidelines the Program and the Council will be using to make their decisions. The Department of State currently has no applicable rules or guidelines for the Program or the Council.²⁶

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an unnumbered section of law. Most likely it will not be codified in the Florida Statutes because the application is time-limited.

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.

²⁶ Email from Eddie Philips, Florida Department of State, Office of Legislative Affairs dated November 6, 2015. On file with the Senate Committee on Governmental Oversight and Accountability.

By Senator Legg

17-00249A-16

2016310__

1 A bill to be entitled
 2 An act relating to the National Statuary Hall;
 3 providing for replacement of the statue of General
 4 Edmund Kirby Smith in the National Statuary Hall
 5 Collection at the United States Capitol; providing for
 6 selection of a prominent Florida citizen to be
 7 commemorated in the National Statuary Hall Collection;
 8 providing for selection of a sculptor to design the
 9 statue; providing for the gathering of necessary funds
 10 to carry out replacement of the statue; providing for
 11 submission of the state's request to the United States
 12 Joint Committee on the Library of Congress for
 13 approval to replace the statue; providing an effective
 14 date.

15
 16 WHEREAS, pursuant to 2 U.S.C. s. 2131, each state is
 17 permitted to provide and furnish to the United States Capitol
 18 two statues, in marble or bronze, of deceased persons who have
 19 been prominent citizens of the state for placement in the
 20 National Statuary Hall Collection, and

21 WHEREAS, currently, Florida has two statues, of Dr. John
 22 Gorrie and of General Edmund Kirby Smith, in the National
 23 Statuary Hall Collection, and

24 WHEREAS, pursuant to 2 U.S.C. s. 2132, a state may request
 25 that the Joint Committee on the Library of Congress approve the
 26 replacement of any statue the state has provided for display in
 27 the National Statuary Hall Collection at the United States
 28 Capitol, NOW, THEREFORE,
 29

Page 1 of 3

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

17-00249A-16

2016310__

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

31
 32 Section 1. (1) At its first annual meeting following the
 33 effective date of this act, the ad hoc committee of the Great
 34 Floridians Program within the Division of Historical Resources
 35 of the Department of State, as established under s.
 36 267.0731(1)(b), Florida Statutes, shall select, according to
 37 guidelines prescribed by the division, a prominent Florida
 38 citizen to be commemorated in the National Statuary Hall
 39 Collection at the United States Capitol.

40 (2) At its first meeting following the effective date of
 41 this act, the Florida Council on Arts and Culture, as
 42 established under s. 265.285, Florida Statutes, shall select,
 43 according to guidelines prescribed by the Department of State, a
 44 sculptor to design a statue of the prominent Florida citizen
 45 selected pursuant to subsection (1) for replacement of the
 46 statue of General Edmund Kirby Smith in the National Statuary
 47 Hall Collection and shall gather necessary funds to carry out
 48 the replacement of the statue.

49 (3) In accordance with 2 U.S.C. s. 2132, upon the selection
 50 of a prominent Florida citizen under subsection (1) and a
 51 sculptor under subsection (2), the Legislature shall request by
 52 memorial that the United States Joint Committee on the Library
 53 of Congress approve the request to replace the statue of General
 54 Edmund Kirby Smith and that the Architect of the Capitol carry
 55 out the request. Upon adoption of the memorial by the
 56 Legislature and approval of the request in writing by the
 57 Governor, the memorial shall be submitted to the United States
 58 Joint Committee on the Library of Congress.

Page 2 of 3

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

17-00249A-16

2016310__

59

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

Duplicate

11/17/2015

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

310

Meeting Date

Bill Number (if applicable)

Topic National Statuary Hall

Amendment Barcode (if applicable)

Name Seber Newsome III

Job Title retired

Address 86110 Fieldstone Drive

Phone 904-225-5591

Street Yulee

FI

32097

Email seberiii@comcast.net

City

State

Zip

Speaking: For Against

Information

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

Representing General Edmund Kirby Smith

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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 320

INTRODUCER: Senator Richter

SUBJECT: Public Records/Medical Technicians or Paramedics Personal Identifying Information

DATE: November 16, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 320 amends s. 119.071, F.S., to exempt certain personal identifying information of any current or former emergency medical technician (EMT) or paramedic certified under ch. 401, F.S., and of his or her spouse and children. The bill requires that the EMT or paramedic must make a reasonable effort to protect such information from being accessible through other public means for such information to qualify for the exemption.

The bill states that it is a public necessity to protect such information as EMTs and paramedics are public safety officers who often deal with violent, angry, or mentally unstable individuals and the release of the exempted information could place an EMT or paramedic in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to his or her encounter with the EMT or paramedic.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2021, unless reenacted by the Legislature.

A two-thirds vote of each house is required for the passage of the bill.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

EMTs and Paramedics

According to the United States Department of Labor Bureau of Labor Statistics, EMTs and paramedics take care of sick or injured patients in an emergency medical setting.¹⁵ EMTs and paramedics often work closely with police and firefighters during an emergency situation. The typical duties of an EMT or paramedic include:

- Responding to 911 calls for emergency medical assistance;
- Assessing a patient’s condition and determining a course of treatment;
- Following guidelines learned in training or received from physicians who oversee their work;
- Using backboards and restraints to keep patients still and safe in an ambulance during transport;
- Helping transfer patients to the emergency department of a healthcare facility and report their observations and treatment to the staff;
- Creating a patient care report, documenting the medical care given to the patient; and
- Replacing used supplies and checking or cleaning equipment after use.¹⁶

In Florida EMTs and paramedics are certified by the Department of Health (DOH).¹⁷

Threats to EMTs and Paramedics

In their line of work, EMTs and paramedics are often first responders to the scenes of an emergency which may put them in contact with people who are distraught or mentally unstable. Also, although EMTs and paramedics often save patients’ lives, they cannot always guarantee a good outcome for the patient. Bad outcomes can lead to anger and blame being directed toward the EMT or paramedic who treated the patient. For example, a paramedic in Naples was threatened by an anonymous caller after the family of such a patient obtained the paramedic’s personal cell phone number through a public records request.¹⁸ Additionally, EMTs and paramedics may be subject to threats which are not related to an emergency situation. For example, an emergency medical services instructor at Daytona State College received threats

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ U.S. Bureau of Labor Statistics, EMTs and Paramedics, <http://www.bls.gov/ooh/Healthcare/EMTs-and-paramedics.htm#tab-2> (last visited November 6, 2015).

¹⁶ *Id.*

¹⁷ EMT and Paramedic certification criteria are established in ch. 401, F.S.

¹⁸ Email conversation with Walter Kopka, Chief of Collier County Emergency Medical Services. On file with the Senate Committee on Health Policy.

from students on multiple occasions which referenced her home address that was obtained from the DOH's Medical Quality Assurance license verification website.¹⁹

III. Effect of Proposed Changes:

SB 320 amends s. 119.071, F.S., to exempt the home address, telephone number, and date of birth of any current or former emergency medical technician (EMT) or paramedic certified under ch. 401, F.S., and of his or her spouse and children. The bill also exempts the EMT's or paramedic's photograph, his or her spouse's and children's places of employment, and the names and locations of any schools or day care facilities attended by his or her children. The bill requires that the EMT or paramedic must have made a reasonable effort to protect such information from being accessible through other public means for such information to qualify for the exemption.

The bill states that it is a public necessity to protect such information as EMTs and paramedics are public safety officers who often deal with violent, angry, or mentally unstable individuals and the release of the exempted information could place an EMT or paramedic in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to his or her encounter with the EMT or paramedic.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2021, unless reenacted by the Legislature.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

¹⁹ Email conversation with Patricia Maher, Associate Professor and Assistant Chair of EMS with Daytona State College. On file with the Senate Committee on Health Policy.

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill creates a new public records exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Governmental entities will have to redact identifying information if an EMT or paramedic asserts this exemption. The costs associated with these redactions will be absorbed by the respective governmental entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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.

By Senator Richter

23-00371-16

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; creating an exemption from public
 4 records requirements for certain identifying and
 5 location information of current or former emergency
 6 medical technicians or paramedics certified under ch.
 7 401, F.S., and the spouses and children of such
 8 emergency medical technicians or paramedics, under
 9 specified circumstances; providing for future
 10 legislative review and repeal of the exemption under
 11 the Open Government Sunset Review Act; providing a
 12 statement of public necessity; providing an effective
 13 date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Paragraph (d) of subsection (4) of section
 18 119.071, Florida Statutes, is amended to read:
 19 119.071 General exemptions from inspection or copying of
 20 public records.—
 21 (4) AGENCY PERSONNEL INFORMATION.—
 22 (d)1. For purposes of this paragraph, the term “telephone
 23 numbers” includes home telephone numbers, personal cellular
 24 telephone numbers, personal pager telephone numbers, and
 25 telephone numbers associated with personal communications
 26 devices.
 27 2.a.(I) The home addresses, telephone numbers, social
 28 security numbers, dates of birth, and photographs of active or
 29 former sworn or civilian law enforcement personnel, including

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30 correctional and correctional probation officers, personnel of
 31 the Department of Children and Families whose duties include the
 32 investigation of abuse, neglect, exploitation, fraud, theft, or
 33 other criminal activities, personnel of the Department of Health
 34 whose duties are to support the investigation of child abuse or
 35 neglect, and personnel of the Department of Revenue or local
 36 governments whose responsibilities include revenue collection
 37 and enforcement or child support enforcement; the home
 38 addresses, telephone numbers, social security numbers,
 39 photographs, dates of birth, and places of employment of the
 40 spouses and children of such personnel; and the names and
 41 locations of schools and day care facilities attended by the
 42 children of such personnel are exempt from s. 119.07(1).
 43 (II) The names of the spouses and children of active or
 44 former sworn or civilian law enforcement personnel and the other
 45 specified agency personnel identified in sub-sub-subparagraph
 46 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 47 State Constitution.
 48 (III) Sub-sub-subparagraph (II) is subject to the Open
 49 Government Sunset Review Act in accordance with s. 119.15, and
 50 shall stand repealed on October 2, 2018, unless reviewed and
 51 saved from repeal through reenactment by the Legislature.
 52 b. The home addresses, telephone numbers, dates of birth,
 53 and photographs of firefighters certified in compliance with s.
 54 633.408; the home addresses, telephone numbers, photographs,
 55 dates of birth, and places of employment of the spouses and
 56 children of such firefighters; and the names and locations of
 57 schools and day care facilities attended by the children of such
 58 firefighters are exempt from s. 119.07(1).

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59 c. The home addresses, dates of birth, and telephone
60 numbers of current or former justices of the Supreme Court,
61 district court of appeal judges, circuit court judges, and
62 county court judges; the home addresses, telephone numbers,
63 dates of birth, and places of employment of the spouses and
64 children of current or former justices and judges; and the names
65 and locations of schools and day care facilities attended by the
66 children of current or former justices and judges are exempt
67 from s. 119.07(1).

68 d.(I) The home addresses, telephone numbers, social
69 security numbers, dates of birth, and photographs of current or
70 former state attorneys, assistant state attorneys, statewide
71 prosecutors, or assistant statewide prosecutors; the home
72 addresses, telephone numbers, social security numbers,
73 photographs, dates of birth, and places of employment of the
74 spouses and children of current or former state attorneys,
75 assistant state attorneys, statewide prosecutors, or assistant
76 statewide prosecutors; and the names and locations of schools
77 and day care facilities attended by the children of current or
78 former state attorneys, assistant state attorneys, statewide
79 prosecutors, or assistant statewide prosecutors are exempt from
80 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

81 (II) The names of the spouses and children of current or
82 former state attorneys, assistant state attorneys, statewide
83 prosecutors, or assistant statewide prosecutors are exempt from
84 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

85 (III) Sub-sub-subparagraph (II) is subject to the Open
86 Government Sunset Review Act in accordance with s. 119.15, and
87 shall stand repealed on October 2, 2018, unless reviewed and

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88 saved from repeal through reenactment by the Legislature.

89 e. The home addresses, dates of birth, and telephone
90 numbers of general magistrates, special magistrates, judges of
91 compensation claims, administrative law judges of the Division
92 of Administrative Hearings, and child support enforcement
93 hearing officers; the home addresses, telephone numbers, dates
94 of birth, and places of employment of the spouses and children
95 of general magistrates, special magistrates, judges of
96 compensation claims, administrative law judges of the Division
97 of Administrative Hearings, and child support enforcement
98 hearing officers; and the names and locations of schools and day
99 care facilities attended by the children of general magistrates,
100 special magistrates, judges of compensation claims,
101 administrative law judges of the Division of Administrative
102 Hearings, and child support enforcement hearing officers are
103 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
104 Constitution if the general magistrate, special magistrate,
105 judge of compensation claims, administrative law judge of the
106 Division of Administrative Hearings, or child support hearing
107 officer provides a written statement that the general
108 magistrate, special magistrate, judge of compensation claims,
109 administrative law judge of the Division of Administrative
110 Hearings, or child support hearing officer has made reasonable
111 efforts to protect such information from being accessible
112 through other means available to the public.

113 f. The home addresses, telephone numbers, dates of birth,
114 and photographs of current or former human resource, labor
115 relations, or employee relations directors, assistant directors,
116 managers, or assistant managers of any local government agency

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117 or water management district whose duties include hiring and
 118 firing employees, labor contract negotiation, administration, or
 119 other personnel-related duties; the names, home addresses,
 120 telephone numbers, dates of birth, and places of employment of
 121 the spouses and children of such personnel; and the names and
 122 locations of schools and day care facilities attended by the
 123 children of such personnel are exempt from s. 119.07(1) and s.
 124 24(a), Art. I of the State Constitution.

125 g. The home addresses, telephone numbers, dates of birth,
 126 and photographs of current or former code enforcement officers;
 127 the names, home addresses, telephone numbers, dates of birth,
 128 and places of employment of the spouses and children of such
 129 personnel; and the names and locations of schools and day care
 130 facilities attended by the children of such personnel are exempt
 131 from s. 119.07(1) and s. 24(a), Art. I of the State
 132 Constitution.

133 h. The home addresses, telephone numbers, places of
 134 employment, dates of birth, and photographs of current or former
 135 guardians ad litem, as defined in s. 39.820; the names, home
 136 addresses, telephone numbers, dates of birth, and places of
 137 employment of the spouses and children of such persons; and the
 138 names and locations of schools and day care facilities attended
 139 by the children of such persons are exempt from s. 119.07(1) and
 140 s. 24(a), Art. I of the State Constitution, if the guardian ad
 141 litem provides a written statement that the guardian ad litem
 142 has made reasonable efforts to protect such information from
 143 being accessible through other means available to the public.

144 i. The home addresses, telephone numbers, dates of birth,
 145 and photographs of current or former juvenile probation

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146 officers, juvenile probation supervisors, detention
 147 superintendents, assistant detention superintendents, juvenile
 148 justice detention officers I and II, juvenile justice detention
 149 officer supervisors, juvenile justice residential officers,
 150 juvenile justice residential officer supervisors I and II,
 151 juvenile justice counselors, juvenile justice counselor
 152 supervisors, human services counselor administrators, senior
 153 human services counselor administrators, rehabilitation
 154 therapists, and social services counselors of the Department of
 155 Juvenile Justice; the names, home addresses, telephone numbers,
 156 dates of birth, and places of employment of spouses and children
 157 of such personnel; and the names and locations of schools and
 158 day care facilities attended by the children of such personnel
 159 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 160 Constitution.

161 j.(I) The home addresses, telephone numbers, dates of
 162 birth, and photographs of current or former public defenders,
 163 assistant public defenders, criminal conflict and civil regional
 164 counsel, and assistant criminal conflict and civil regional
 165 counsel; the home addresses, telephone numbers, dates of birth,
 166 and places of employment of the spouses and children of such
 167 defenders or counsel; and the names and locations of schools and
 168 day care facilities attended by the children of such defenders
 169 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 170 the State Constitution.

171 (II) The names of the spouses and children of the specified
 172 agency personnel identified in sub-sub-subparagraph (I) are
 173 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 174 Constitution. This sub-sub-subparagraph is subject to the Open

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175 Government Sunset Review Act in accordance with s. 119.15 and
 176 shall stand repealed on October 2, 2019, unless reviewed and
 177 saved from repeal through reenactment by the Legislature.

178 k. The home addresses, telephone numbers, and photographs
 179 of current or former investigators or inspectors of the
 180 Department of Business and Professional Regulation; the names,
 181 home addresses, telephone numbers, and places of employment of
 182 the spouses and children of such current or former investigators
 183 and inspectors; and the names and locations of schools and day
 184 care facilities attended by the children of such current or
 185 former investigators and inspectors are exempt from s. 119.07(1)
 186 and s. 24(a), Art. I of the State Constitution if the
 187 investigator or inspector has made reasonable efforts to protect
 188 such information from being accessible through other means
 189 available to the public. This sub-subparagraph is subject to the
 190 Open Government Sunset Review Act in accordance with s. 119.15
 191 and shall stand repealed on October 2, 2017, unless reviewed and
 192 saved from repeal through reenactment by the Legislature.

193 1. The home addresses and telephone numbers of county tax
 194 collectors; the names, home addresses, telephone numbers, and
 195 places of employment of the spouses and children of such tax
 196 collectors; and the names and locations of schools and day care
 197 facilities attended by the children of such tax collectors are
 198 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 199 Constitution if the county tax collector has made reasonable
 200 efforts to protect such information from being accessible
 201 through other means available to the public. This sub-
 202 subparagraph is subject to the Open Government Sunset Review Act
 203 in accordance with s. 119.15 and shall stand repealed on October

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204 2, 2017, unless reviewed and saved from repeal through
 205 reenactment by the Legislature.

206 m. The home addresses, telephone numbers, dates of birth,
 207 and photographs of current or former personnel of the Department
 208 of Health whose duties include, or result in, the determination
 209 or adjudication of eligibility for social security disability
 210 benefits, the investigation or prosecution of complaints filed
 211 against health care practitioners, or the inspection of health
 212 care practitioners or health care facilities licensed by the
 213 Department of Health; the names, home addresses, telephone
 214 numbers, dates of birth, and places of employment of the spouses
 215 and children of such personnel; and the names and locations of
 216 schools and day care facilities attended by the children of such
 217 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 218 the State Constitution if the personnel have made reasonable
 219 efforts to protect such information from being accessible
 220 through other means available to the public. This sub-
 221 subparagraph is subject to the Open Government Sunset Review Act
 222 in accordance with s. 119.15 and shall stand repealed on October
 223 2, 2019, unless reviewed and saved from repeal through
 224 reenactment by the Legislature.

225 n. The home addresses, telephone numbers, dates of birth,
 226 and photographs of current or former impaired practitioner
 227 consultants who are retained by an agency or current or former
 228 employees of an impaired practitioner consultant whose duties
 229 result in a determination of a person's skill and safety to
 230 practice a licensed profession; the names, home addresses,
 231 telephone numbers, dates of birth, and places of employment of
 232 the spouses and children of such consultants or their employees;

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233 and the names and locations of schools and day care facilities
 234 attended by the children of such consultants or employees are
 235 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 236 Constitution if a consultant or employee has made reasonable
 237 efforts to protect such information from being accessible
 238 through other means available to the public. This sub-
 239 subparagraph is subject to the Open Government Sunset Review Act
 240 in accordance with s. 119.15 and shall stand repealed on October
 241 2, 2020, unless reviewed and saved from repeal through
 242 reenactment by the Legislature.

243 o. The home addresses, telephone numbers, dates of birth,
 244 and photographs of current or former emergency medical
 245 technicians or paramedics certified under chapter 401; the
 246 names, home addresses, telephone numbers, dates of birth, and
 247 places of employment of the spouses and children of such
 248 emergency medical technicians or paramedics; and the names and
 249 locations of schools and day care facilities attended by the
 250 children of such emergency medical technicians or paramedics are
 251 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 252 Constitution if the emergency medical technicians or paramedics
 253 have made reasonable efforts to protect such information from
 254 being accessible through other means available to the public.
 255 This sub-subparagraph is subject to the Open Government Sunset
 256 Review Act in accordance with s. 119.15 and shall stand repealed
 257 on October 2, 2021, unless reviewed and saved from repeal
 258 through reenactment by the Legislature.

259 3. An agency that is the custodian of the information
 260 specified in subparagraph 2. and that is not the employer of the
 261 officer, employee, justice, judge, or other person specified in

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262 subparagraph 2. shall maintain the exempt status of that
 263 information only if the officer, employee, justice, judge, other
 264 person, or employing agency of the designated employee submits a
 265 written request for maintenance of the exemption to the
 266 custodial agency.

267 4. The exemptions in this paragraph apply to information
 268 held by an agency before, on, or after the effective date of the
 269 exemption.

270 5. Except as otherwise expressly provided in this
 271 paragraph, this paragraph is subject to the Open Government
 272 Sunset Review Act in accordance with s. 119.15, and shall stand
 273 repealed on October 2, 2017, unless reviewed and saved from
 274 repeal through reenactment by the Legislature.

275 Section 2. The Legislature finds that it is a public
 276 necessity that the home addresses, telephone numbers, dates of
 277 birth, and photographs of current or former emergency medical
 278 technicians or paramedics certified under chapter 401, Florida
 279 Statutes; that the names, home addresses, telephone numbers, and
 280 places of employment of the spouses and children of such
 281 emergency medical technicians or paramedics; and that the names
 282 and locations of schools and day care facilities attended by the
 283 children of such emergency medical technicians or paramedics be
 284 exempt from public records requirements if the emergency medical
 285 technicians or paramedics have made reasonable efforts to
 286 protect such information from being accessible through other
 287 means available to the public. Emergency medical technicians or
 288 paramedics are public safety officers whose duties as first
 289 responders to accidents and life-threatening events often place
 290 them in traumatic circumstances in which loss of life and severe

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291 bodily injuries have occurred. They often deal with violent,
292 angry, or mentally unstable individuals. As a result, the
293 Legislature finds that release of identifying and location
294 information of emergency medical technicians or paramedics
295 certified under chapter 401, Florida Statutes, or the spouses
296 and children of such emergency medical technicians or
297 paramedics, could place them in danger of being physically or
298 emotionally harmed or stalked by a person who has a hostile
299 reaction to his or her encounter with such emergency medical
300 technicians or paramedics. The Legislature further finds that
301 the harm that may result from the release of such identifying
302 and location information outweighs any public benefit that may
303 be derived from the disclosure of the information.

304 Section 3. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

October 20, 2015

The Honorable Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

Senate Bill 320 relating to Public Records/Medical Technicians or Paramedics, has been referred to your committee. I would appreciate your consideration to place this bill on your committee's agenda at the earliest opportunity.

Sincerely,

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

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

November 12, 2015

The Honorable Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

Senate Bill 320 relating to Public Records/Medical Technicians or Paramedics, is on your committee agenda for Tuesday, November 17, 2015. I need to be in Banking and Insurance to present a bill and also to take the chair for Sen. Benacquisto. Please allow Becky Kokkinos to present this bill in my absence should I not be able to attend the meeting.

Thank you for your consideration.

Sincerely,

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

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

Nov 17, 2015

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

320

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic EMT Public Records Exemption

Name Burt Saunders

Job Title Attorney

Address 8889 Pelican Bay Blvd.

Street Norfolk City VA State VA Zip 24108

Phone _____

Email _____

Speaking: For Against Information

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

Representing Stafford County and Lee County

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 390

INTRODUCER: Senator Simpson

SUBJECT: Public Records/Public Agency Contract for Services

DATE: November 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	Favorable
2.			JU	
3.			FP	

I. Summary:

SB 390 amends s. 119.0701, F.S., to revise procedures for obtaining records relating to a public agency's contract for services with a private contractor. Specifically, the bill:

- Requires all public records requests regarding contracts for services be made directly to the agency rather than to the contractor;
- Requires each public agency contract for services include the contact information of the agency's public records custodian and provisions requiring the contractor to comply with public records laws after the contract is completed; and
- Limits the liability of contractors acting as records custodians for costs and attorney fees in certain instances. The party requesting the public records must send written notice that its public records request has not been honored prior to filing an enforcement lawsuit if the party wishes to recover costs and attorney fees from the contractor.

The fiscal impact of the bill is indeterminate.

II. Present Situation:

Public Records and Open Meetings Requirements

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 This includes the records of the legislative, executive, and judicial branches.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 taken or at which public business of such body is to

¹ Article I, s. 24(a), FLA. CONST.

² *Id.*

be transacted or discussed, to be open and noticed to the public.³ Florida law specifies 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 the supervision of the public records custodian.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

An agency may not place any conditions upon responding to a public records request other than what is in law. For example, an agency may not require a person seeking a public record reveal his or her background.⁹ Nor may an agency require an individual to put his or her request in writing as a condition of production.¹⁰ A request must be honored whether it is made by phone, in writing, or in person.¹¹

Enforcing Public Records Laws and Attorney Fees

Article I, Section 24(c), Florida Constitution, authorizes the Legislature to enact laws governing the enforcement of public records requirements, including the "maintenance, control, destruction, disposal, and disposition of records."

Section 119.11, F.S., provides that if a public agency fails to provide a public record, the person making the public records request may sue for enforcement. Whenever an action is filed to enforce the provisions of ch. 119, F.S., the court must set an immediate hearing, giving the case priority over other pending cases.¹² If the court finds that the agency unlawfully refused access to a public record, the court will order the public agency to pay for the requestor's costs and attorney fees.¹³ A delay in turning over public records is considered an unlawful refusal, and a court will award attorney fees even if the delay was not willful or was due to incompetence.¹⁴

³ Article I, s. 24(b), FLA. CONST.

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 "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 Article III, s. 4(e) of the Florida Constitution.

⁹ *Bevan v. Wanichka*, 505 So. 2d 1116, 1118 (Fla. 2d DCA Fla. 1987).

¹⁰ *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 n.1 (Fla. 3d DCA 2001). Op. Att'y Gen. Informal Opinion dated December 16, 2003.

¹¹ Op. Att'y Gen. Fla. 80-57 (1980).

¹² Section 119.11(1), F.S.

¹³ Section 119.12, F.S.

¹⁴ *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014). *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.¹⁵ Once an enforcement action has been filed, court will require a public agency to pay the requestor's attorney fees even after the agency has produced the records.¹⁶

The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.¹⁷ In addition, granting attorney fees also makes it more likely that public agencies will comply with public records laws and deters improper denials of requests.¹⁸

Public Records and Private Contractors

Public agencies, including local and statewide governmental entities and municipal officers may hire contractors to provide services or act on behalf of the public agency.¹⁹ Contractors can be individuals or business entities.²⁰ Private contractors who act on behalf of a public agency are required by law and the terms of their contracts to comply with public records laws in the same manner as a public agency.²¹ These duties include keeping public records, providing the public an opportunity to inspect or copy a public record, and redacting exempt information.²² A public agency is required to enforce the terms of its contract if a contractor fails to abide by public records laws.²³ This may include unilateral cancellation of the contract by a state agency if a contractor refuses to allow public access to materials the contractor receives in conjunction with the contract.²⁴

Contracts must include language that upon completion of the contract, the contractor will transfer all public records to the public agency at no cost.²⁵ The contractor is not permitted to retain any public records that are confidential and exempt or exempt from public records disclosure.²⁶ Records that are stored electronically must be transferred to the public agency in a format that is compatible with the public agency's information technology systems.²⁷

¹⁵ *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002). *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014).

¹⁶ *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002). *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5th DCA 1996). *Althouse v. Palm Beach County Sheriff's Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012).

¹⁷ *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

¹⁸ *Id.*

¹⁹ Section 119.0701(1)(b), F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). Op. Att'y Gen. Fla. Informal Opinion dated December 31, 2014.

²⁰ Section 119.0701(1)(a), F.S.

²¹ Section 119.0701, F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

²² Section 119.0701(2), F.S.

²³ Section 119.0701(3), F.S.

²⁴ Section 287.058(1)(c), F.S., provides that state agency contracts which exceeding \$35,000.00 must include a provision that permits the state to unilaterally cancel the contract if the contractor refuses to permit access to public records. This does not apply to contracts related to certain state employee benefits. Section 287.058(1), F.S.

²⁵ Section 119.0701(2)(d), F.S.

²⁶ *Id.*

²⁷ *Id.*

Although certain contractors are obligated to abide by Florida's public records laws, some contractors fail to do so. At times, contractors unlawfully place conditions on the release of records, refuse to provide public records, or unlawfully delay in providing records.

If a contractor fails to comply with a public records request, the requestor may sue the contractor to enforce his or her rights to have access to the records.²⁸ If a court determines that the contractor unlawfully withheld public records, the court must order the contractor to pay for the cost of the enforcement lawsuit and the requestor's attorney fees in the same manner that a public agency would be liable.²⁹ Therefore, once a lawsuit is filed, a contractor may also be held liable for attorney fees even after providing the requested records. The fees provision, however, "was not intended to force private entities to comply with the inspection requirements of [the Public Records Act] by threatening to award attorney's fees against them."³⁰

When is a Private Contractor an Agency for Public Records Purposes?

Pursuant to s. 119.011(2), F.S., the definition of 'agency' in the Public Records Act includes a "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." In addition, s. 119.0701(1)(a), F.S., defines a contractor as an "individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency." It is not always clear, however, when a private contractor is 'acting on behalf of' an agency and is subject to public records laws.

On June 18, 2014, the Attorney General issued an opinion on whether a contractor who enters into a contract for services with an agency is automatically acting on behalf of the agency and subject to the public records law, or whether application of the public records law is determined by the nature and scope of the services provided by the contractor. The AGO concludes that a court must examine the nature and scope of services provided.³¹

To determine when a contractor is acting on behalf of a public agency, a totality of factors test may be applied.³² Some of the factors a court may consider include, but are not limited to:

- Whether the public agency created the contractor;
- How much public funding was involved;
- How much the public agency regulated the contractor;
- The comingling of decision making processes;
- Whether the contractor was performing a government function; and
- The goals of the contractor.³³

A contractor's uncertainty as to whether it is an agency for public records purposes is not necessarily considered an unlawful delay or an unlawful refusal. If a contractor fails comply with

²⁸ See ss. 119.011(2), 119.0701(1), and 119.11, F.S..

²⁹ See ss. 119.011(2) and 119.12, F.S. *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993).

³⁰ *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993).

³¹ Op. Att'y Gen. Fla. 2014-06 (2014).

³² *News and Sun-Sentinel Co. v. Schawb, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

³³ *Id.* at 1032.

public records laws because of its uncertainty, a court may not require the contractor to pay the requestor's costs and attorney fees.³⁴

Recent Litigation

On September 9, 2014, a circuit court judge in Palm Beach County denied attorney fees in a public records case in which the plaintiff requested to see a contractor's contract with the Department of Health. (The contractor processed claims for the Department of Health for underserved women aged 50-64 suffering from breast or cervical cancer.) The plaintiff already had a copy of the contract on his smart phone, which he showed the contractor, and asked to see the contractor's copy. In addition, the plaintiff also wished to inspect the contractor's proof of insurance. The contractor denied the request in part, because the documents were kept in a restricted area where confidential medical records were being worked on and also refused the request in part because the plaintiff made him feel uncomfortable. This was because the plaintiff showed up unannounced, dressed in shorts, with a camera around his neck and refused to identify himself. The plaintiff was recording the encounter but did not inform the contractor that he was doing so. The contractor asked the plaintiff to make a written request for the records.

The court ultimately found that the contractor was an agency for public records purposes, but noted that it was reasonable for the contractor "to have safety and security concerns in light of the secure nature of the facility and his responsibility to balance confidentiality concerns and the safety of his employees."³⁵ The court stated:

A person cannot just show up, demand to see public records of his random choosing, and if he experiences any delay then file suit. The facts of this case show clearly how the Statute can be misused.³⁶

The court denied the plaintiff's request for attorney fees based on his finding that the denial was reasonable. The parties ultimately settled the matter and the case was dismissed with prejudice.³⁷ The plaintiff filed an appeal then subsequently requested that his appeal be dismissed.³⁸

On December 1, 2014, a circuit court judge in Duval County denied relief to the same plaintiff in a lawsuit to enforce a public records request and to assess attorney fees.³⁹ According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The

³⁴ *New York Times Co. v. PHH Mental Health Services, Inc.* 616 So. 2d 27, 29 (Fla. 1993). *Stanfield v. Salvation Army*, 695 So. 2d 501, 502 (Fla. 5th DCA 1997).

³⁵ Order Denying Plaintiff's Complaint to Enforce Florida's Public Records Act and for Declaratory Injunctive and Monetary Relief and Denying Plaintiff's Request for Attorney Fees, *Jeff Gray v. United Group Programs, Inc.*, No 502014CA-004858 (Fla. 15th Cir. Ct. 2014).

³⁶ Order Denying Plaintiff's Complaint to Enforce Florida's Public Records Act and for Declaratory Injunctive and Monetary Relief and Denying Plaintiff's Request for Attorney Fees, *Jeff Gray v. United Group Programs, Inc.*, No 502014CA-004858 (Fla. 15th Cir. Ct. 2014).

³⁷ Order of Dismissal with Prejudice, *Jeff Gray v. United Group Programs, Inc.*, No 502014CA-004858 (Fla. 15th Cir. Ct. 2014).

³⁸ Order Granting Voluntary Dismissal, *Jeff Gray v. United Group Programs, Inc.*, Fourth District Court of Appeal case number 4D14-3700 (February 23, 2015).

³⁹ Final Order Denying Relief Under Public Records Act, *Jeffrey Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, No. 2014-CA-4647 (Fla. 4th Cir. Ct. 2014).

contract manager refused to provide a document because the contract manager believed that the document was not a public record. The court found that the manner in which the plaintiff (and his companions) made the request ensured that “they obtained exactly what they wanted, namely, an initial denial of an unreasonable and bogus request.”⁴⁰

The court found that the plaintiff’s method of requesting public records was an abuse of the public records laws and “nothing more than a scam.”⁴¹ The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”⁴² Generally, an attorney may not share his or her fees with someone who is not a lawyer.⁴³ The court noted that in 2014, the plaintiff had filed 18 public records lawsuits in Duval County, and the same attorney represented the plaintiff in approximately 13 of those cases.

The court further opined:

If a private entity must pay an attorney’s fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called “civil rights activists” or others who seek to abuse the Act for financial gain.⁴⁴

The case is currently on appeal.⁴⁵

These incidents do not appear to be unique to this individual plaintiff and his acquaintances. Two organizations and a law firm allegedly partnered to target business that were unaware of how public records laws applied to them. The public records requests were emailed during the weekend from “An Onama” and when the requests are not fulfilled, the firm filed a lawsuit and demanded a settlement in excess of costs and fees. The organizations had a quota of generating 25 new lawsuits per week. At one point, the group had filed over 140 law suits in 27 counties. Industry groups, such as the Florida Engineering Society sent out a warning to its members due to the frequency of the legal actions made against engineers.⁴⁶

III. Effect of Proposed Changes:

The bill requires all public records requests relating to a contract for services to be made directly to a public agency. The agency must notify the contractor if the agency does not have the records. The contractor, in turn, must provide the records to the agency or allow inspection and copying within a reasonable time. A contractor who fails to produce the records within a

⁴⁰ *Id* at 6.

⁴¹ *Id*.

⁴² *Id* at 4.

⁴³ R. Regulating Fla. Bar 4-5.4.

⁴⁴ Final Order Denying Relief Under Public Records Act, *Jeffrey Marcus Gray v. Lutheran Social Services of Northeast Florida, Inc.*, No. 2014-CA-4647 (Fla. 4th Cir. Ct. 2014)..

⁴⁵ A Notice of Appeal was filed with the First District Court of Appeal in Case Number 1D14-5793 (December 19, 2014). The last action on this case occurred on September 28, 2015, when the court denied oral arguments.

⁴⁶ Tristram Korten and Trevor Aaronson, *In Lawsuits Statewide, Questions of Profits and Public Records*, Florida Center for Investigative Reporting, <http://fcir.org/2014/11/09/in-lawsuits-statewide-questions-of-profits-and-public-records/> (last viewed November 12, 2015).

reasonable time is subject to penalties under s. 119.10, F.S. For example, the contractor may be subject to a first degree misdemeanor for failing to comply with a public records request within a reasonable time.

In addition, the bill requires each public agency contract for services to include:

- Contact information of the agency's public records custodian if the contractor has questions regarding the applicability of the public records law.
- A requirement that the contractor either provide the public agency a copy of the requested public records in the possession of the contractor or allow records to be inspected or copied within a reasonable time.
- A provision that allows the contractor the option of transferring all public records to the public agency upon completion of the contract or keeping the records. If the contractor chooses to keep the records, it must continue to comply with public records laws and provide records to the agency upon request.
- A provision that if public records that are exempt or confidential and exempt from disclosure, such records cannot be disclosed by the contractor for the duration of the contract term and after completion of the contract if the contractor keeps the records.

All agencies must revised their contracts to include these provisions by October 1, 2016.

The bill provides that a contractor may be sued for failing to respond to a public records request. For a court to award costs and attorney fees, the requestor must meet certain requirements. The requestor must send a written notice of the public records request which includes a statement reflecting the contractor's failure to comply. The requestor must have sent the notice at least eight (8) business days before filing suit. The notice must be sent in one of the following manners:

- Common carrier;
- Registered Global Express Guaranteed; or
- Certified mail.

Presumably, the notice and evidence of its delivery will be provided to the court with the lawsuit or the lawsuit will state that such steps have been taken.

The bill provides that agencies will continue to be liable for public records enforcement actions pursuant to current law.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

This bill substantially amends the public records law by shifting the burden to produce public records to the agency, even when records are not in the agency's possession.

The bill also makes it possible for former private contractors to be public records custodians even when the contractor is no longer acting on behalf of an agency.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The fiscal impact of the bill is indeterminate, but a fiscal impact may result from:

- The requirement that members of the public must send certified letters before filing suit if they intend to recover attorney fees in an enforcement action; and
- The costs incurred by a former contractor if the contractor retains public records after termination of a contract.

C. Government Sector Impact:

If the contractor retains public records upon termination of a contract, an agency may have to rely on the former contractor to provide records upon request. An agency may be liable for attorney fees because the contractor failed to produce records in a timely manner.

VI. Technical Deficiencies:

The bill requires a requestor to send a notice of the contractor's failure to produce public records but does not state whether the notice must be sent to the agency, the contractor, or both.

It is not clear whether the intent of providing notice of a failure to comply with a public records request is meant to cure further legal action. The current case law states that enforcement of a public records request and the request for attorney fees are legally independent. Even if a contractor or an agency responds to a public records request after receiving a notice, the lawsuit for costs and fees does not become moot.

There is no legal standard provided for when a court may grant attorney fees when a private contractor is sued for failure to comply with a public records request. This is in contrast to s. 119.12, F.S., provides that attorney fees must be granted if a "court determines that such agency unlawfully refused to permit a public record to be inspected or copied."

The bill provides that a contractor who fails to provide public records to a public agency within a reasonable time may be subject to criminal and civil penalties pursuant to s. 119.10, F.S. Section 119.10, F.S., provides civil and criminal penalties for violations of any provision of ch. 119, F.S. It is not clear from the language of this bill if the intent is to limit a contractor's liability under s. 119.10, F.S., to only those instances when the contractor fails to produce records. A records custodian is responsible for a variety of duties other than just the production of records. For example, a records custodian is responsible for how records are stored, when they may be destroyed and for redacting confidential information.⁴⁷

Although the bill permits a requester to sue a contractor for failure to produce records, it is not clear if a requestor is required to sue the contractor if the contractor fails to comply with a public records request. It is unclear if requestor may sue an agency, or the contractor, or both. Assuming the agency can be held liable for a contractor's failure to produce records, this bill appears to limit the agency's ability to recoup its losses unless its contract includes such a provision.

VII. Related Issues:

Under the bill, the service contractor is permitted to retain the public records after the completion of the contract. The bill is silent on what duties, if any, a terminated contractor has regarding those retained records if the contractor subsequently goes out of business. Most likely the public agencies can address this issue in the contract. However, the legislature may want to provide some direction to ensure public records remain available for inspection for an appropriate time period.

VIII. Statutes Affected:

This bill substantially amends section 119.0701 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.)

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.

⁴⁷ Section 119.021, F.S., titled Custodial requirements; maintenance, preservation, and retention of public records, outlines some of a records custodian's duties.

By Senator Simpson

18-00211A-16

2016390__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0701, F.S.; requiring that a public agency
 4 contract for services include a statement providing
 5 the contact information of the public agency's
 6 custodian of records; prescribing the form of the
 7 statement; revising required provisions in a public
 8 agency contract for services regarding a contractor's
 9 compliance with public records laws; requiring that a
 10 public records request relating to records for a
 11 public agency's contract for services be made directly
 12 to the public agency; requiring a contractor to
 13 provide requested records to the public agency or
 14 allow inspection or copying of requested records under
 15 specified circumstances; specifying applicable
 16 penalties for a contractor who fails to provide
 17 requested records; specifying circumstances under
 18 which a court must assess reasonable costs of
 19 enforcement against a contractor; specifying
 20 applicable law for determining the reasonable costs of
 21 enforcement assessed against a public agency;
 22 requiring a public agency to amend a contract for
 23 services by a time certain to comply with the act;
 24 providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Section 119.0701, Florida Statutes, is amended
 29 to read:

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30 119.0701 Contracts; public records.-
 31 (1) DEFINITIONS.—For purposes of this section, the term:
 32 (a) “Contractor” means an individual, partnership,
 33 corporation, or business entity that enters into a contract for
 34 services with a public agency and is acting on behalf of the
 35 public agency as provided under s. 119.011(2).
 36 (b) “Public agency” means a state, county, district,
 37 authority, or municipal officer, or department, division, board,
 38 bureau, commission, or other separate unit of government created
 39 or established by law.
 40 (2) CONTRACT REQUIREMENTS.—In addition to other contract
 41 requirements provided by law, each public agency contract for
 42 services must include:
 43 (a) The following statement, in substantially the following
 44 form, identifying the contact information of the public agency's
 45 custodian of public records in at least 14-point boldfaced type:
 46
 47 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF
 48 SECTION 119.0701, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO
 49 PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT
 50 ...(custodian of public records)... AT ...(telephone number, e-
 51 mail address, and mailing address)....
 52
 53 (b) A provision that requires the contractor to comply with
 54 public records laws, specifically to:
 55 1.(a) Keep and maintain public records that ordinarily and
 56 necessarily would be required by the public agency in order to
 57 perform the service.
 58 2.(b) Upon request from the public agency's custodian of

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59 public records, provide the public agency with a copy of the
 60 requested records or allow the access to public records to be
 61 inspected or copied within a reasonable time on the same terms
 62 and conditions that the public agency would provide the records
 63 ~~and~~ at a cost that does not exceed the cost provided in this
 64 chapter or as otherwise provided by law.

65 ~~3.(e)~~ Ensure that public records that are exempt or
 66 confidential and exempt from public records disclosure
 67 requirements are not disclosed except as authorized by law for
 68 the duration of the contract term and following completion of
 69 the contract if the contractor does not transfer the records to
 70 the public agency.

71 ~~4.(d)~~ Upon completion of the contract, Meet all
 72 requirements for retaining public records and transfer, at no
 73 cost, to the public agency all public records in possession of
 74 the contractor or keep and maintain public records required by
 75 the public agency to perform the service. If the contractor
 76 transfers all public records to the public agency upon
 77 completion of the contract, the contractor shall upon
 78 ~~termination of the contract and~~ destroy any duplicate public
 79 records that are exempt or confidential and exempt from public
 80 records disclosure requirements. If the contractor keeps and
 81 maintains public records upon completion of the contract, the
 82 contractor shall meet all applicable requirements for retaining
 83 public records and provide requested records to a public agency
 84 pursuant to the requirements of this section. All records stored
 85 electronically must be provided to the public agency, upon
 86 request from the public agency's custodian of public records, in
 87 a format that is compatible with the information technology

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88 systems of the public agency.

89 (3) REQUEST FOR RECORDS; NONCOMPLIANCE.-

90 (a) A request to inspect or copy public records relating to
 91 a public agency's contract for services must be made directly to
 92 the public agency. If the public agency does not possess the
 93 requested records, the public agency shall immediately notify
 94 the contractor of the request, and the contractor must provide
 95 the records to the public agency or allow the records to be
 96 inspected or copied within a reasonable time.

97 (b) If a contractor does not comply with the public
 98 agency's a public records request for records, the public agency
 99 shall enforce the contract provisions in accordance with the
 100 contract.

101 (c) A contractor who fails to provide the public records to
 102 the public agency within a reasonable time may be subject to
 103 penalties under s. 119.10.

104 (4) CIVIL ACTION.-

105 (a) If a civil action is filed to compel production of
 106 public records relating to the public agency's contract for
 107 services, the court shall assess and award against the
 108 contractor the reasonable costs of enforcement, including
 109 reasonable attorney fees, if the party filing the action
 110 provides written notice of the public records request, including
 111 a statement that the contractor has not complied with the
 112 request. The notice must be sent by common carrier delivery
 113 service or by registered, Global Express Guaranteed, or
 114 certified mail, with postage or shipping paid by the sender and
 115 with evidence of delivery, which may be in an electronic format.
 116 The notice must be sent by the plaintiff at least 8 business

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117 days before the plaintiff files the civil action.

118 (b) An award of the reasonable costs of enforcement against
119 a public agency must be in accordance with s. 119.12.

120 Section 2. A public agency has until October 1, 2016, to
121 amend a public agency contract for services, if needed, in order
122 to comply with the amendment made by this act to section
123 119.0701, Florida Statutes.

124 Section 3. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Environmental Preservation and Conservation,
Vice Chair
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON

18th District

October 12, 2015

Honorable Jeremy Ring
Committee on Governmental Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Ring,

Please place Senate Bill 390 relating to Public Records/Public Agency Contract for Services, on the next Committee on Government Oversight and Accountability agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
Senator, 18th District

CC: Joe McVaney, Staff Director

REPLY TO:

- 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

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Environmental Preservation and Conservation,
Vice Chair
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON

18th District

November 17, 2015

Senator Jeremy Ring
Committee on Governmental Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring,

I appreciate you including my legislation, SB 390, relating to Public Records/Public Agency Contract for Services, on the November 17th Governmental Oversight and Accountability agenda. As you are aware, I will be chairing the Committee on Community Affairs at that time. I respectfully request that you allow my Legislative Assistant Mary Kassabaum to present the bill on my behalf.

Please do not hesitate to contact me if you or your staff have any questions.

Regards,

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
State Senator, 18th District

cc: Joe McVaney, Staff Director

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
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President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/17/2015

SB 390

Meeting Date

Bill Number (if applicable)

Topic Public Records/Public Agency Contract for Services

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone 950-205-9000

Street

Tallahassee

FL

32302

City

State

Zip

Email whh@metzlaw.com

Speaking: For Against Information

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

Representing Fla. Associated General Contractors Council

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date Nov. 17th 2015

Bill Number (if applicable) 390

Topic Public Records Amendment Barcode (if applicable) _____

Name Erin Ballas

Job Title _____

Address 110 E. College Ave Phone 850 728 0387

Street Tallahassee City FL State FL Zip 32301

Email _____

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

Representing National Waste and Recycling Association

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 182

INTRODUCER: Governmental Oversight and Accountability Committee, Commerce and Tourism
Committee and Senator Richter

SUBJECT: Public Records and Meetings/Trade Secrets

DATE: November 18, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 182 reenacts several public records exemptions of trade secret information to conform to the definition of trade secret proposed in CS/SB 180, which expressly includes financial information in the definition of “trade secret” in s. 812.081, F.S. This exemption protects financial information deemed to be a trade secret from public disclosure.

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

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

The bill takes effect on October 1, 2016, contingent upon CS/SB 180 or similar legislation becoming a law.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access governmental meetings and to inspect or copy government records. The public may inspect or copy any records made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government, counties, municipalities, school districts, or special districts at which public business is transacted or discussed.² The Legislature's meetings must be open and noticed to the public, unless there is an exception provided by the constitution.³

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

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

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

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

⁴ Section 119.01(1), F.S.

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

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

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

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

The Legislature may, by two-thirds votes of the House and the Senate,¹⁰ create an exemption to public records or open meetings requirements.¹¹ An exemption must explicitly state the public necessity of the exemption¹² and must be tailored to accomplish the stated purpose of the law.¹³ A statutory exemption which does not meet these two criteria may be found unconstitutional, and efforts may not be made by the court to preserve the exemption.¹⁴

Open Government Sunset Review Act

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

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

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

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

¹⁰ FLA. CONST., art. I, s. 24(c).

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

¹² FLA. CONST., art. I, s. 24(c).

¹³ FLA. CONST., art. I, s. 24(c).

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

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

¹⁶ Section 119.15(3), F.S.

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

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

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

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

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

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

Trade Secrets

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

any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of

¹⁷ Section 119.15(6)(a), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² Section 119.15(6)(b), F.S.

²³ FLA. CONST., art. I, s. 24(c).

²⁴ Section 119.15(7), F.S.

the prior art, and the level of skill in the business, art, or field to which the subject matter pertains.

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

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.²⁵

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

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

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida);
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt;²⁷
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;

²⁵ Section 812.081(1)(c), F.S.

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

²⁷ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.;
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.;
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt;
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt;
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt;
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt;
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt;
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- Section 815.04(3), F.S., makes trade secret information that is held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.
- Section 815.045, F.S., is the public necessity statement for s. 815.04(3), F.S., which has been interpreted by the First District Court of Appeals as a general public records exemption for trade secrets “whether or not they are stored on or transmitted by computers.”²⁸

Currently, financial information is expressly protected from public disclosure in certain instances. Examples of public records exemptions which protect financial information include:

- Trade secrets and commercial or financial information, as defined under federal law, held by a county tourism promotion agency, pursuant to s. 125.0104(9)(d)2.c., F.S.

²⁸ *Sepero Corp. v. Florida Dept. Of Environmental Protection*, 839 So. 2d 781, 785 (Fla. 1st DCA 2003). For a more extensive discussion, please see *The Florida Senate Issue Brief 2009-325*, October 2008 by the Committee on Governmental Operations.

- Private corporations or businesses who request that “information concerning plans, intentions or interests... to relocate or expand” that is held by an economic development agency pursuant to s. 288.075(2), F.S.²⁹ or proprietary business information pursuant to s. 288.075(3), F.S.
- Sealed bids, proposals or replies provided to an agency during a competitive solicitation, pursuant to s. 119.071(1)(b), F.S.
- Financial statements required to prequalify to bid on a public works project held by any governmental agency pursuant to s. 119.071(1)(c), F.S.

III. Effect of Proposed Changes:

The bill reenacts various statutory provisions that make trade secrets exempt or confidential and exempt to conform to the expanded definition of trade secret in CS/SB 180 which adds “financial information” to the current definition.

By adding “financial information” to the definition of trade secrets, all the public records exemptions which cite to s. 812.081, F.S., are also affected. Some trade secret exemptions were enacted before the Florida Constitution was amended in 1992. The constitutional amendment made the records of all three branches of state government public record but still preserved any public records exemption which existed before the constitutional amendment was enacted.³⁰ This bill amends the older statutes to make them exempt from the public records requirements of the Florida Constitution.

This bill expands the public meetings exemption for Space Florida, if those meetings include discussions about trade secrets, because the definition of trade secret is expanded to include financial information.³¹

The bill subjects most public records and meetings exemptions which relate to trade secrets defined in s. 812.081, F.S., to review and repeal on October 2, 2021, unless the Legislature continues the exemptions, pursuant to the OGSR Act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a city or county to expend funds to comply with its terms, the provisions of Article VII, section 18(a) of the Florida Constitution, may apply. However, Article VII, section 18(d) of the Florida Constitution exempts bills having an insignificant fiscal impact on cities and counties from the mandates provisions.

This bill makes certain financial information submitted to cities and counties confidential and exempt from public disclosure. As a result, cities and counties holding such

²⁹ Attorney General Opinion 2004-19 states “[d]evelopment plans, financial records, financial commitment letters and draft memoranda of understanding between the city and a developer regarding a redevelopment project appear to come within the scope of this exemption.”

³⁰ FLA. CONST. art. 1, s. 24.

³¹ Section 286.011, F.S. and FLA. CONST. art. 1, s. 24(b).

information may incur costs associated with redacting such information before providing related documents to the public. However, the costs incurred by the cities and counties are anticipated to be insignificant.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Section 24(c) of Article I of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records or public-meetings exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption.

This public necessity statement provides that disclosure of financial information comprising a trade secret would be detrimental to businesses because that information could be disclosed to competitors and adversely affect the businesses in the marketplace.

Breadth of Exemption

Section 24(c) of Article I of the Florida Constitution requires a public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

CS/SB 180 expands public record exemptions to include financial information in the definition of trade secret, however, CS/SB 180 does not define ‘financial information.’ The public necessity statement in this bill does not address the scope of what financial information entails for public records and meetings purposes.

Generally, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Businesses required to submit financial information that falls within the “trade secret” definition contained in s. 812.081, F.S., (as modified by CS/SB 180) to public entities will have greater protection of that information from disclosure to competing businesses. This may result in more private sector businesses competing for public sector contracts.

C. Government Sector Impact:

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

State agencies must balance this exemption against the general policy that “all state, county, and municipal records shall be open for personal inspection by any person.”³² This may prove difficult because what constitutes “financial information” under the bill may entail a highly fact-specific determination based on the business’ treatment of the information as secret and the value of the information to the business. This may result in the same type of information being classified as trade secret for one business but not another. At the same time, by expressly including financial information in the definition of a trade secret, agencies and private entities may have more certainty that financial information will be protected if the private entity claims a trade secret exemption.

In addition to the definition of trade secrets located in ch. 812, F.S., the Uniform Trade Secrets Act, ch. 688, F.S., also contains a statutory definition of trade secrets. Under current law the two definitions are very similar but differ in that ch. 812, F.S., is a criminal statute and ch. 688, F.S., is a civil statute. Section 688.002(4), F.S. provides:

“Trade secret” means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

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

³² Section 119.01(1), F.S.

Thirty-two public records or meetings exemptions use the trade secrets definition located in s. 688.002, F.S.,³³ while 21 public records or meetings exemptions use the definition found in s. 812.081, F.S. This bill may inadvertently create two classes of public records exemptions if a court finds that financial information does not constitute a trade secret under s. 688.002, F.S., for public records purposes. This could occur if a court reasons that the Legislature chose to expressly include financial information in its definition of trade secret in s. 812.081, F.S., but deliberately did not make the same change in s. 688.002, F.S. for the purposes of a public records or meetings exemption.

Finally, the bill does not reenact the trade secret exemption in s. 815.045, F.S., which has been interpreted by certain courts to be a general public records exemption for trade secrets.

VIII. Statutes Affected:

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

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on November 17, 2015:

The bill divided s. 499.051(7), F.S., into two paragraphs in order to subject trade secret exempt information to an OGSR. The committee substitute makes a technical change to reduce ambiguity created by the restructuring of s. 499.051(7), F.S.

CS by Commerce and Tourism on October 5, 2015:

The committee substitute:

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

- B. **Amendments:**

None.

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

³³ The number of exemptions may differ depending on how they are counted. For the purposes of this bill analysis, the following sections were used to arrive at 32: ss. 73.0155, 215.4401, 288.075, 288.9626, 288.9627, 334.049, 377.24075, 395.3035, 408.185, 408.910, 409.91196, 440.108, 494.00125, 497.172, 501.171, 517.2015, 520.9965, 548.062, 556.113, 559.5558, 560.129, 569.215, 607.0505, 617.0503, 624.4212, 626.84195, 626.884, 627.0628, 665.057, 1004.30, 1004.43, and 1004.447, F.S.



754342

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 431
and insert:
as defined in s. 812.081, contained in the complaint or

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

And the title is amended as follows:

Delete lines 21 - 22
and insert:



754342

11
12

Regulation pursuant to specified provisions of the
Florida Drug and Cosmetic

By the Committee on Commerce and Tourism; and Senator Richter

577-00710-16

2016182c1

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 amending ss. 119.071, 125.0104, 288.1226, 331.326,
 4 365.174, 381.83, 403.7046, 403.73, 499.012, 499.0121,
 5 499.051, 499.931, 502.222, 570.48, 573.123, 601.10,
 6 601.15, 601.152, 601.76, and 815.04, F.S.; expanding
 7 public records exemptions for certain data processing
 8 software obtained by an agency, certain information
 9 held by a county tourism promotion agency, information
 10 related to trade secrets held by the Florida Tourism
 11 Industry Marketing Corporation, information related to
 12 trade secrets held by Space Florida, proprietary
 13 confidential business information submitted to the
 14 E911 Board, the Technology Program within the
 15 Department of Management Services, and the Department
 16 of Revenue, trade secret information held by the
 17 Department of Health, trade secret information
 18 reported or submitted to the Department of
 19 Environmental Protection, trade secret information
 20 held by the Department of Business and Professional
 21 Regulation through the complaint and investigation of
 22 a permit holder under the Florida Drug and Cosmetic
 23 Act, trade secret information of a dairy industry
 24 business held by the Department of Agriculture and
 25 Consumer Services, trade secret information held by
 26 the Division of Fruits and Vegetables of the
 27 Department of Agriculture and Consumer Services, trade
 28 secret information of a person subject to a marketing
 29 order held by the Department of Agriculture and

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30 Consumer Services, trade secret information provided
 31 to the Department of Citrus, trade secret information
 32 of noncommodity advertising and promotional program
 33 participants held by the Department of Citrus, trade
 34 secret information of a person subject to a marketing
 35 order held by the Department of Citrus, a
 36 manufacturer's formula filed with the Department of
 37 Agriculture and Consumer Services, and specified data,
 38 programs, or supporting documentation held by an
 39 agency, respectively, to incorporate changes made to
 40 the definition of the term "trade secret" in s.
 41 812.081, F.S., by SB 180; expanding a public meeting
 42 exemption for any meeting or portion of a meeting of
 43 Space Florida's board at which trade secrets are
 44 discussed to incorporate changes made to the
 45 definition of the term "trade secret" in s. 812.081,
 46 F.S., by SB 180; providing for future legislative
 47 review and repeal of the exemptions; providing a
 48 statement of public necessity; providing a contingent
 49 effective date.

50
 51 Be It Enacted by the Legislature of the State of Florida:

52
 53 Section 1. Paragraph (f) of subsection (1) of section
 54 119.071, Florida Statutes, is amended to read:
 55 119.071 General exemptions from inspection or copying of
 56 public records.—
 57 (1) AGENCY ADMINISTRATION.—
 58 (f) Data processing software obtained by an agency under a

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59 licensing agreement that prohibits its disclosure and which
60 software is a trade secret, as defined in s. 812.081, and
61 agency-produced data processing software that is sensitive are
62 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
63 Constitution. The designation of agency-produced software as
64 sensitive ~~does shall~~ not prohibit an agency head from sharing or
65 exchanging such software with another public agency. This
66 paragraph is subject to the Open Government Sunset Review Act in
67 accordance with s. 119.15 and shall stand repealed on October 2,
68 2021, unless reviewed and saved from repeal through reenactment
69 by the Legislature.

70 Section 2. Paragraph (d) of subsection (9) of section
71 125.0104, Florida Statutes, is amended to read:

72 125.0104 Tourist development tax; procedure for levying;
73 authorized uses; referendum; enforcement.—

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

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

82 1. Information given to a county tourism promotion agency
83 which, if released, would reveal the identity of persons or
84 entities who provide data or other information as a response to
85 a sales promotion effort, an advertisement, or a research
86 project or whose names, addresses, meeting or convention plan
87 information or accommodations or other visitation needs become

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88 booking or reservation list data, is exempt from s. 119.07(1)
89 and ~~from~~ s. 24(a), Art. I of the State Constitution.

90 2. The following information, when held by a county tourism
91 promotion agency, is exempt from s. 119.07(1) and ~~from~~ s. 24(a),
92 Art. I of the State Constitution:

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

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

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

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

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

108 288.1226 Florida Tourism Industry Marketing Corporation;
109 use of property; board of directors; duties; audit.—

110 (8) PUBLIC RECORDS EXEMPTION.—The identity of any person
111 who responds to a marketing project or advertising research
112 project conducted by the corporation in the performance of its
113 duties on behalf of Enterprise Florida, Inc., or trade secrets
114 as defined by s. 812.081 obtained pursuant to such activities,
115 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
116 Constitution. This subsection is subject to the Open Government

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117 Sunset Review Act in accordance with s. 119.15 and shall stand
 118 repealed on October 2, 2021, unless reviewed and saved from
 119 repeal through reenactment by the Legislature.

120 Section 4. Section 331.326, Florida Statutes, is amended to
 121 read:

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

145 Section 5. Section 365.174, Florida Statutes, is amended to

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146 read:

147 365.174 Proprietary confidential business information.—

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

152 (b) Statistical abstracts of information collected by the
 153 board or the office may be released or published, but only in a
 154 manner that does not identify or allow identification of
 155 subscribers or their service numbers or of revenues attributable
 156 to any provider.

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

161 (b) The Department of Revenue may provide information
 162 relative to s. 365.172(9) to the Secretary of Management
 163 Services, or his or her authorized agent, or to the E911 Board
 164 established in s. 365.172(5) for use in the conduct of the
 165 official business of the Department of Management Services or
 166 the E911 Board.

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

171 (3) As used in this section, the term "proprietary
 172 confidential business information" means customer lists,
 173 customer numbers, individual or aggregate customer data by
 174 location, usage and capacity data, network facilities used to

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175 serve subscribers, technology descriptions, technical
 176 information, or trade secrets, including trade secrets as
 177 defined in s. 812.081, and the actual or developmental costs of
 178 E911 systems that are developed, produced, or received
 179 internally by a provider or by a provider's employees,
 180 directors, officers, or agents.

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

185 Section 6. Section 381.83, Florida Statutes, is amended to
 186 read:

187 381.83 Trade secrets; confidentiality.—

188 (1) Records, reports, or information obtained from any
 189 person under this chapter, unless otherwise provided by law,
 190 must shall be available to the public, except upon a showing
 191 satisfactory to the department by the person from whom the
 192 records, reports, or information is obtained that such records,
 193 reports, or information, or a particular part thereof, contains
 194 trade secrets as defined in s. 812.081 ~~812.081(1)(e)~~. Such trade
 195 secrets are shall be confidential and are exempt from the
 196 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 197 Constitution. The person submitting such trade secret
 198 information to the department must request that it be kept
 199 confidential and must inform the department of the basis for the
 200 claim of trade secret. The department shall, subject to notice
 201 and opportunity for hearing, determine whether the information,
 202 or portions thereof, claimed to be a trade secret is or is not a
 203 trade secret. Such trade secrets may be disclosed, however, to

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204 authorized representatives of the department or, pursuant to
 205 request, to other governmental entities in order for them to
 206 properly perform their duties, or when relevant in any
 207 proceeding under this chapter. Authorized representatives and
 208 other governmental entities receiving such trade secret
 209 information shall retain its confidentiality. Those involved in
 210 any proceeding under this chapter, including a hearing officer
 211 or judge or justice, shall retain the confidentiality of any
 212 trade secret information revealed at such proceeding.

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

217 Section 7. Subsection (2) and paragraph (b) of subsection
 218 (3) of section 403.7046, Florida Statutes, are amended to read:
 219 403.7046 Regulation of recovered materials.—

220 (2) Information reported pursuant to ~~the requirements of~~
 221 this section or any rule adopted pursuant to this section which,
 222 if disclosed, would reveal a trade secret, as defined in s.
 223 812.081 ~~812.081(1)(e)~~, is confidential and exempt from the
 224 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 225 Constitution. For reporting or information purposes, however,
 226 the department may provide this information in such form that
 227 the names of the persons reporting such information and the
 228 specific information reported are not revealed. This subsection
 229 is subject to the Open Government Sunset Review Act in
 230 accordance with s. 119.15 and shall stand repealed on October 2,
 231 2021, unless reviewed and saved from repeal through reenactment
 232 by the Legislature.

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233 (3) Except as otherwise provided in this section or
 234 pursuant to a special act in effect on or before January 1,
 235 1993, a local government may not require a commercial
 236 establishment that generates source-separated recovered
 237 materials to sell or otherwise convey its recovered materials to
 238 the local government or to a facility designated by the local
 239 government, nor may the local government restrict such a
 240 generator's right to sell or otherwise convey such recovered
 241 materials to any properly certified recovered materials dealer
 242 who has satisfied the requirements of this section. A local
 243 government may not enact any ordinance that prevents such a
 244 dealer from entering into a contract with a commercial
 245 establishment to purchase, collect, transport, process, or
 246 receive source-separated recovered materials.

247 (b) 1. Before engaging in business within the jurisdiction
 248 of the local government, a recovered materials dealer must
 249 provide the local government with a copy of the certification
 250 provided for in this section. In addition, the local government
 251 may establish a registration process whereby a recovered
 252 materials dealer must register with the local government before
 253 engaging in business within the jurisdiction of the local
 254 government. Such registration process is limited to requiring
 255 the dealer to register its name, including the owner or operator
 256 of the dealer, and, if the dealer is a business entity, its
 257 general or limited partners, its corporate officers and
 258 directors, its permanent place of business, evidence of its
 259 certification under this section, and a certification that the
 260 recovered materials will be processed at a recovered materials
 261 processing facility satisfying the requirements of this section.

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262 The local government may not use the information provided in the
 263 registration application to compete unfairly with the recovered
 264 materials dealer until 90 days after receipt of the application.
 265 All counties, and municipalities whose population exceeds 35,000
 266 according to the population estimates determined pursuant to s.
 267 186.901, may establish a reporting process that must ~~which shall~~
 268 be limited to the regulations, reporting format, and reporting
 269 frequency established by the department pursuant to this
 270 section, which must ~~shall~~, at a minimum, include requiring the
 271 dealer to identify the types and approximate amount of recovered
 272 materials collected, recycled, or reused during the reporting
 273 period; the approximate percentage of recovered materials
 274 reused, stored, or delivered to a recovered materials processing
 275 facility or disposed of in a solid waste disposal facility; and
 276 the locations where any recovered materials were disposed of as
 277 solid waste. ~~Information reported under this subsection which,
 278 if disclosed, would reveal a trade secret, as defined in s.
 279 812.081(1)(c), is confidential and exempt from the provisions of
 280 s. 24(a), Art. I of the State Constitution and s. 119.07(1).~~ The
 281 local government may charge the dealer a registration fee
 282 commensurate with and no greater than the cost incurred by the
 283 local government in operating its registration program.
 284 Registration program costs are limited to those costs associated
 285 with the activities described in this ~~subparagraph~~ paragraph.
 286 Any reporting or registration process established by a local
 287 government with regard to recovered materials is ~~shall be~~
 288 governed by ~~the provisions of~~ this section and department rules
 289 adopted pursuant thereto.

290 2. Information reported under this subsection which, if

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291 disclosed, would reveal a trade secret, as defined in s.
 292 812.081, is confidential and exempt from s. 119.07(1) and s.
 293 24(a), Art. I of the State Constitution. This subparagraph is
 294 subject to the Open Government Sunset Review Act in accordance
 295 with s. 119.15 and shall stand repealed on October 2, 2021,
 296 unless reviewed and saved from repeal through reenactment by the
 297 Legislature.

298 Section 8. Section 403.73, Florida Statutes, is amended to
 299 read:

300 403.73 Trade secrets; confidentiality.—

301 (1) Records, reports, or information obtained from any
 302 person under this part, unless otherwise provided by law, must
 303 ~~shall~~ be available to the public, except upon a showing
 304 satisfactory to the department by the person from whom the
 305 records, reports, or information is obtained that such records,
 306 reports, or information, or a particular part thereof, contains
 307 trade secrets as defined in s. 812.081 ~~812.081(1)(e)~~. Such trade
 308 secrets ~~are shall be~~ confidential and ~~are~~ exempt from the
 309 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 310 Constitution. The person submitting such trade secret
 311 information to the department must request that it be kept
 312 confidential and must inform the department of the basis for the
 313 claim of trade secret. The department shall, subject to notice
 314 and opportunity for hearing, determine whether the information,
 315 or portions thereof, claimed to be a trade secret is or is not a
 316 trade secret. Such trade secrets may be disclosed, however, to
 317 authorized representatives of the department or, pursuant to
 318 request, to other governmental entities in order for them to
 319 properly perform their duties, or when relevant in any

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320 proceeding under this part. Authorized representatives and other
 321 governmental entities receiving such trade secret information
 322 shall retain its confidentiality. Those involved in any
 323 proceeding under this part, including an administrative law
 324 judge, a hearing officer, or a judge or justice, shall retain
 325 the confidentiality of any trade secret information revealed at
 326 such proceeding.

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

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

333 499.012 Permit application requirements.—

334 (8) An application for a permit or to renew a permit for a
 335 prescription drug wholesale distributor or an out-of-state
 336 prescription drug wholesale distributor submitted to the
 337 department must include:

338 (g)1. For an application for a new permit, the estimated
 339 annual dollar volume of prescription drug sales of the
 340 applicant, the estimated annual percentage of the applicant's
 341 total company sales that are prescription drugs, the applicant's
 342 estimated annual total dollar volume of purchases of
 343 prescription drugs, and the applicant's estimated annual total
 344 dollar volume of prescription drug purchases directly from
 345 manufacturers.

346 2. For an application to renew a permit, the total dollar
 347 volume of prescription drug sales in the previous year, the
 348 total dollar volume of prescription drug sales made in the

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349 previous 6 months, the percentage of total company sales that
 350 were prescription drugs in the previous year, the total dollar
 351 volume of purchases of prescription drugs in the previous year,
 352 and the total dollar volume of prescription drug purchases
 353 directly from manufacturers in the previous year.

354 3. Such portions of the information required pursuant to
 355 this paragraph which are a trade secret, as defined in s.
 356 812.081, shall be maintained by the department as trade secret
 357 information is required to be maintained under s. 499.051. This
 358 subparagraph is subject to the Open Government Sunset Review Act
 359 in accordance with s. 119.15 and shall stand repealed on October
 360 2, 2021, unless reviewed and saved from repeal through
 361 reenactment by the Legislature.

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

364 1. A personal background information statement containing
 365 the background information and fingerprints required pursuant to
 366 subsection (9) for each person named in the applicant's response
 367 to paragraphs (k) and (l) and for each affiliated party of the
 368 applicant.

369 2. If any of the five largest shareholders of the
 370 corporation seeking the permit is a corporation, the name,
 371 address, and title of each corporate officer and director of
 372 each such corporation; the name and address of such corporation;
 373 the name of such corporation's resident agent, such
 374 corporation's resident agent's address, and such corporation's
 375 state of its incorporation; and the name and address of each
 376 shareholder of such corporation who ~~that~~ owns 5 percent or more
 377 of the stock of such corporation.

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

383 b. The portions of the information required pursuant to
 384 this subparagraph which are a trade secret, as defined in s.
 385 812.081, shall be maintained by the department as trade secret
 386 information is required to be maintained under s. 499.051. This
 387 sub-subparagraph is subject to the Open Government Sunset Review
 388 Act in accordance with s. 119.15 and shall stand repealed on
 389 October 2, 2021, unless reviewed and saved from repeal through
 390 reenactment by the Legislature.

391 4. The sources of all funds and the amounts of such funds
 392 used to purchase or finance purchases of prescription drugs or
 393 to finance the premises on which the establishment is to be
 394 located.

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

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

400 499.0121 Storage and handling of prescription drugs;
 401 recordkeeping.—The department shall adopt rules to implement
 402 this section as necessary to protect the public health, safety,
 403 and welfare. Such rules shall include, but not be limited to,
 404 requirements for the storage and handling of prescription drugs
 405 and for the establishment and maintenance of prescription drug
 406 distribution records.

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407 (7) PRESCRIPTION DRUG PURCHASE LIST.—

408 (a) Each wholesale distributor, except for a manufacturer,
409 shall annually provide the department with a written list of all
410 wholesale distributors and manufacturers from whom the wholesale
411 distributor purchases prescription drugs. A wholesale
412 distributor, except a manufacturer, shall notify the department
413 not later than 10 days after any change to either list.

414 (b) Such portions of the information required pursuant to
415 this subsection which are a trade secret, as defined in s.
416 812.081, shall be maintained by the department as trade secret
417 information is required to be maintained under s. 499.051. This
418 paragraph is subject to the Open Government Sunset Review Act in
419 accordance with s. 119.15 and shall stand repealed on October 2,
420 2021, unless reviewed and saved from repeal through reenactment
421 by the Legislature.

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

424 499.051 Inspections and investigations.—

425 (7) (a) The complaint and all information obtained pursuant
426 to the investigation by the department are confidential and
427 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
428 Constitution until the investigation and the enforcement action
429 are completed.

430 (b) Information that constitutes a ~~However,~~ trade secret,
431 as defined in s. 812.081, contained in the complaint and
432 obtained by the department pursuant to the investigation must
433 information contained therein as defined by s. 812.081(1)(c)
434 shall remain confidential and exempt from the provisions of s.
435 119.07(1) and s. 24(a), Art. I of the State Constitution, as

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436 long as the information is held by ~~retained~~ by the department.
437 This paragraph is subject to the Open Government Sunset Review
438 Act in accordance with s. 119.15 and shall stand repealed on
439 October 2, 2021, unless reviewed and saved from repeal through
440 reenactment by the Legislature.

441 (c) This subsection does not prohibit the department from
442 using such information for regulatory or enforcement proceedings
443 under this chapter or from providing such information to any law
444 enforcement agency or any other regulatory agency. However, the
445 receiving agency shall keep such records confidential and exempt
446 as provided in this subsection. In addition, this subsection is
447 not intended to prevent compliance with ~~the provisions of~~ s.
448 499.01212, and the pedigree papers required in that section are
449 shall not be deemed a trade secret.

450 Section 12. Section 499.931, Florida Statutes, is amended
451 to read:

452 499.931 Trade secret information.—Information required to
453 be submitted under this part which is a trade secret as defined
454 in s. 812.081 ~~812.081(1)(c)~~ and designated as a trade secret by
455 an applicant or permitholder must be maintained as required
456 under s. 499.051. This section is subject to the Open Government
457 Sunset Review Act in accordance with s. 119.15 and shall stand
458 repealed on October 2, 2021, unless reviewed and saved from
459 repeal through reenactment by the Legislature.

460 Section 13. Section 502.222, Florida Statutes, is amended
461 to read:

462 502.222 Information relating to trade secrets
463 confidential.—The records of the department regarding matters
464 encompassed by this chapter are public records, subject to ~~the~~

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465 ~~provisions of~~ chapter 119, except that any information that
 466 ~~which~~ would reveal a trade secret, as defined in s. 812.081, of
 467 a dairy industry business is confidential and exempt from ~~the~~
 468 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 469 Constitution. If the department determines that any information
 470 requested by the public will reveal a trade secret, it shall, in
 471 writing, inform the person making the request of that
 472 determination. The determination is a final order as defined in
 473 s. 120.52. This section is subject to the Open Government Sunset
 474 Review Act in accordance with s. 119.15 and shall stand repealed
 475 on October 2, 2021, unless reviewed and saved from repeal
 476 through reenactment by the Legislature.

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

479 570.48 Division of Fruit and Vegetables; powers and duties;
 480 records.—The duties of the Division of Fruit and Vegetables
 481 include, but are not limited to:

482 (3) Maintaining the records of the division. The records of
 483 the division are public records; however, trade secrets as
 484 defined in s. 812.081 are confidential and exempt from ~~the~~
 485 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State
 486 Constitution. This subsection is subject to the Open Government
 487 Sunset Review Act in accordance with s. 119.15 and shall stand
 488 repealed on October 2, 2021, unless reviewed and saved from
 489 repeal through reenactment by the Legislature. This section ~~may~~
 490 ~~shall~~ not be construed to prohibit:

- 491 (a) A disclosure necessary to enforcement procedures.
 492 (b) The department from releasing information to other
 493 governmental agencies. Other governmental agencies that receive

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494 confidential information from the department under this
 495 subsection shall maintain the confidentiality of that
 496 information.

497 (c) The department or other agencies from compiling and
 498 publishing appropriate data regarding procedures, yield,
 499 recovery, quality, and related matters, provided such released
 500 data do not reveal by whom the activity to which the data relate
 501 was conducted.

502 Section 15. Subsection (2) of section 573.123, Florida
 503 Statutes, is amended to read:

504 573.123 Maintenance and production of records.—

505 (2) Information that, if disclosed, would reveal a trade
 506 secret, as defined in s. 812.081, of any person subject to a
 507 marketing order is confidential and exempt from ~~the provisions~~
 508 ~~of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 509 and may shall not be disclosed except to an attorney who
 510 provides legal advice to the division about enforcing a
 511 marketing market order or by court order. A person who receives
 512 confidential information under this subsection shall maintain
 513 the confidentiality of that information. This subsection is
 514 subject to the Open Government Sunset Review Act in accordance
 515 with s. 119.15 and shall stand repealed on October 2, 2021,
 516 unless reviewed and saved from repeal through reenactment by the
 517 Legislature.

518 Section 16. Subsection (8) of section 601.10, Florida
 519 Statutes, is amended to read:

520 601.10 Powers of the Department of Citrus.—The department
 521 shall have and shall exercise such general and specific powers
 522 as are delegated to it by this chapter and other statutes of the

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523 state, which powers shall include, but are not limited to, the
524 following:

525 (8) (a) To prepare and disseminate information of importance
526 to citrus growers, handlers, shippers, processors, and industry-
527 related and interested persons and organizations relating to
528 department activities and the production, handling, shipping,
529 processing, and marketing of citrus fruit and processed citrus
530 products. ~~Any information that constitutes a trade secret as~~
531 ~~defined in s. 812.081(1)(c) is confidential and exempt from s.~~
532 ~~119.07(1) and shall not be disclosed.~~ For referendum and other
533 notice and informational purposes, the department may prepare
534 and maintain, from the best available sources, a citrus grower
535 mailing list. Such list shall be a public record available as
536 other public records, but is it shall not be subject to the
537 purging provisions of s. 283.55.

538 (b) Any information provided to the department which
539 constitutes a trade secret as defined in s. 812.081 is
540 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
541 of the State Constitution. This paragraph is subject to the Open
542 Government Sunset Review Act in accordance with s. 119.15 and
543 shall stand repealed on October 2, 2021, unless reviewed and
544 saved from repeal through reenactment by the Legislature.

545 ~~(c)(b)~~ Any nonpublished reports or data related to studies
546 or research conducted, caused to be conducted, or funded by the
547 department under s. 601.13 is confidential and exempt from s.
548 119.07(1) and s. 24(a), Art. I of the State Constitution. This
549 paragraph is subject to the Open Government Sunset Review Act in
550 accordance with s. 119.15 and shall stand repealed on October 2,
551 2017, unless reviewed and saved from repeal through reenactment

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552 by the Legislature.

553 Section 17. Paragraph (d) of subsection (7) of section
554 601.15, Florida Statutes, is amended to read:

555 601.15 Advertising campaign; methods of conducting;
556 assessments; emergency reserve fund; citrus research.-

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

563 (d) 1. The pro rata portion of moneys allocated to each type
564 of citrus product in noncommodity programs shall be used by the
565 department to encourage substantial increases in the
566 effectiveness, frequency, and volume of noncommodity
567 advertising, merchandising, publicity, and sales promotion of
568 such citrus products through rebates and incentive payments to
569 handlers and trade customers for these activities. The
570 department shall adopt rules providing for the use of such
571 moneys. The rules shall establish alternate incentive programs,
572 including at least one incentive program for product sold under
573 advertised brands, one incentive program for product sold under
574 private label brands, and one incentive program for product sold
575 in bulk. For each incentive program, the rules must shall
576 establish eligibility and performance requirements and must
577 shall provide appropriate limitations on amounts payable to a
578 handler or trade customer for a particular season. Such
579 limitations may relate to the amount of citrus assessments
580 levied and collected on the citrus product handled by such

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581 handler or trade customer during a 12-month representative
582 period.

583 2. The department may require from participants in
584 noncommodity advertising and promotional programs commercial
585 information necessary to determine eligibility for and
586 performance in such programs. Any information ~~se~~ required which
587 ~~that~~ constitutes a "trade secret" as defined in s. 812.081 is
588 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
589 of the State Constitution. This subparagraph is subject to the
590 Open Government Sunset Review Act in accordance with s. 119.15
591 and shall stand repealed on October 2, 2021, unless reviewed and
592 saved from repeal through reenactment by the Legislature.

593 Section 18. Paragraph (c) of subsection (8) of section
594 601.152, Florida Statutes, is amended to read:

595 601.152 Special marketing orders.—
596 (8)

597 (c)1. Every handler shall, at such times as the department
598 may require, file with the department a return, not under oath,
599 on forms to be prescribed and furnished by the department,
600 certified as true and correct, stating the quantity of the type,
601 variety, and form of citrus fruit or citrus product specified in
602 the marketing order first handled in the primary channels of
603 trade in the state by such handler during the period of time
604 specified in the marketing order. Such returns must ~~shall~~
605 contain any further information deemed by the department to be
606 reasonably necessary to properly administer or enforce this
607 section or any marketing order implemented under this section.

608 2. Information that, if disclosed, would reveal a trade
609 secret, as defined in s. 812.081, of any person subject to a

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610 marketing order is confidential and exempt from s. 119.07(1) and
611 s. 24(a), Art. I of the State Constitution. This subparagraph is
612 subject to the Open Government Sunset Review Act in accordance
613 with s. 119.15 and shall stand repealed on October 2, 2021,
614 unless reviewed and saved from repeal through reenactment by the
615 Legislature.

616 Section 19. Section 601.76, Florida Statutes, is amended to
617 read:

618 601.76 Manufacturer to furnish formula and other
619 information.—Any formula required to be filed with the
620 Department of Agriculture shall be deemed a trade secret as
621 defined in s. 812.081, is confidential and exempt from s.
622 119.07(1) and s. 24(a), Art. I of the State Constitution, and
623 may shall only be divulged only to the Department of Agriculture
624 or to its duly authorized representatives or upon court order
625 ~~orders of a court of competent jurisdiction~~ when necessary in
626 the enforcement of this law. A person who receives such a
627 formula from the Department of Agriculture under this section
628 shall maintain the confidentiality of the formula. This section
629 is subject to the Open Government Sunset Review Act in
630 accordance with s. 119.15 and shall stand repealed on October 2,
631 2021, unless reviewed and saved from repeal through reenactment
632 by the Legislature.

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

635 815.04 Offenses against intellectual property; public
636 records exemption.—

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

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

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

651 Section 21. The Legislature finds that it is a public
 652 necessity that financial information comprising a trade secret
 653 as defined in s. 812.081, Florida Statutes, be made exempt or
 654 confidential and exempt from s. 119.07(1), Florida Statutes, and
 655 s. 24(a), Article I of the State Constitution. The Legislature
 656 also finds that it is a public necessity that any portion of a
 657 meeting in which a trade secret as defined in s. 812.081,
 658 Florida Statutes, is discussed be made exempt from s. 286.011,
 659 Florida Statutes, and s. 24(b), Article I of the State
 660 Constitution. The Legislature recognizes that, in many
 661 instances, businesses are required to provide financial
 662 information for regulatory or other purposes to public entities
 663 and that disclosure of such information to competitors of those
 664 businesses would be detrimental to the businesses. The
 665 Legislature's intent is to protect trade secret information of a
 666 confidential nature which includes, but is not limited to, a
 667 formula, a pattern, a device, a combination of devices, or a

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668 compilation of information used to protect or further a business
 669 advantage over those who do not know or use the information, the
 670 disclosure of which would injure the affected business in the
 671 marketplace. Therefore, the Legislature finds that the need to
 672 protect trade secret financial information is sufficiently
 673 compelling to override this state's public policy of open
 674 government and that the protection of such information cannot be
 675 accomplished without these exemptions.

676 Section 22. This act shall take effect on the same date
 677 that SB 180 or similar legislation relating to trade secrets
 678 takes effect, if such legislation is adopted in the same
 679 legislative session or an extension thereof and becomes a law.

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The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: October 7, 2015

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

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

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

Senator Garrett Richter
Florida Senate, District 23



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

November 16, 2015

The Honorable Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Ring:

Senate Bills 180 and 182, relating to trade secrets and public records and meetings/ trade secrets are scheduled to be heard in the Committee on Governmental Oversight and Accountability this upcoming Tuesday, November 17th. Due to conflicts in my committee schedule, I will be sending my Legislative Assistant, Michael Nacheff, as a representative to present the bill for your committee's consideration.

Sincerely,

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

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11/17

Bill Number (if applicable) 182

Topic TOTAL SPENDING

Amendment Barcode (if applicable)

Name Cynthia Henderson

Job Title _____

Address 108 E. Jefferson St. #10

Phone 850 559 0855

Street Tallahassee City FL State 32301 Zip

Email Cynthia.Henderson@revenue.com

Speaking: For Against Information

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

Representing Livestock

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 326

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: State-owned Motor Vehicles

DATE: November 18, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 326 requires the Department of Management Services (DMS) to prepare a plan regarding the centralized management of state-owned motor vehicles. The bill requires DMS to submit the plan to the Governor, the President of the Senate and the Speaker of the House of Representatives by November 1, 2016.

DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

The bill takes effect upon becoming a law.

II. Present Situation:

Department of Management Services

One of the duties of DMS is to obtain the most effective and efficient use of motor vehicles, watercraft, and aircraft for state purposes.¹ Chapter 287, F.S., Part II: Means of Transport (ss. 287.14 – 297.20) governs the purchase or lease of motor vehicles.² Chapter 287, F.S., Part II,

¹ Section 287.16, F.S.

² Section 287.14(2), F.S., defines the term “motor vehicle” as any automobile or light truck. Motor vehicle also includes any airplane or other vehicle designed primarily for transporting persons.

applies to motor vehicles, watercraft, and aircraft owned leased, or acquired in any manner by any state agency, or the judicial branch.³ It is unlawful for a state officer or employee to authorize the purchase or continuous lease of any motor vehicle to be paid out of state funds or any agency funds unless such funds have been appropriated by the Legislature.⁴ All motor vehicles purchased or leased must be in the subcompact class, with exceptions for law enforcement, towing, transportation of more than three adults or bulk material, and vehicles operated on unpaved roads.⁵ Motor vehicles needed for an emergency or to meet unforeseen or emergency situations are allowed, if approved by the Executive Office of the Governor after consulting with the legislative appropriations committee.⁶ Vehicles for which replacement funds have been appropriated may not be retained in service unless an emergency or major unforeseen need exists.⁷ Any motor vehicle retained for this purpose must be reported to the Legislature in subsequent agency budget request documents that detail the specific justification for retention of each vehicle.⁸ Motor vehicles may not be acquired on a deferred payment contract that requires payment of interest or its equivalent except when specifically approved by the Governor's Office in consultation with the legislative appropriations committee.⁹

A state agency must obtain prior approval from DMS for purchasing, leasing, or acquiring any motor vehicle, watercraft, or aircraft of any type.¹⁰ DMS approval is not required for casual (short-term) lease of motor vehicles by state agencies.¹¹ Funding in the General Appropriations Act is not allowed for purchases of vehicles in excess of prices negotiated by DMS.¹² Also, with DMS approval, special authorization is given to the Department of Children and Families, the Agency for Persons with Disabilities, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections to secure automobiles, trucks, tractors, and other automotive equipment for use at institutions, centers, residential facilities and county health departments under their respective jurisdictions.¹³

Use of state-owned or leased vehicles or aircraft is limited to travel necessary to carry out employee job assignments, official state business, security and emergency activity.¹⁴ State employees whose duties are those of law enforcement¹⁵ have more latitude in their use of state

³ Section 287.20, F.S.

⁴ Section 287.14(3), F.S.

⁵ Section 287.151(1), F.S.

⁶ Section 287.14(3), F.S.

⁷ Section 287.14(4), F.S.

⁸ *Id.*

⁹ Section 287.14(5), F.S.

¹⁰ Section 287.15, F.S.

¹¹ *Id.*

¹² Section 287.151(2), F.S.

¹³ Section 287.155, F.S.

¹⁴ Section 287.17(2)(a)-(d), F.S.

¹⁵ Section 943.10(1), F.S., defines the term "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

owned or leased motor vehicles for official state business.¹⁶ Use of a state owned or leased motor vehicle for commuting is prohibited unless special assignment is authorized as a prerequisite by DMS, the vehicle is required after hours to perform position duties, or an employee's home is his or her official base of operations.¹⁷ A state agency head may assign a motor vehicle to a state officer or employee only if the officer or employee is projected to drive the motor vehicle a minimum of 10,000 miles annually on state business, unless the agency head provides written justification for the need of the assignment of the motor vehicle.¹⁸ Priority for vehicle assignment is given to those state employees who drive over 15,000 miles annually on state business.¹⁹

Bureau of Fleet Management

The Bureau of Fleet Management and Federal Property Assistance within DMS provide oversight responsibility for the state's fleet of motor vehicles and mobile equipment, along with the federal surplus property program.²⁰ The Bureau of Fleet Management manages the purchase, operation, maintenance and disposal of the state's fleet of motor vehicles and watercraft.²¹ The state's fleet includes approximately 25,000 units, consisting of automobiles and light trucks, medium and heavy trucks, aircraft, construction and industrial equipment, marine equipment (e.g., boats, airboats, boat engines, etc.), trailers, tractors and mowers, small utility, motorcycles and all-terrain vehicles. The Division of Fleet Management determines the motor vehicles and watercraft included on state contracts, develops technical bid specifications and assists in evaluating contracts.

The Division of Fleet Management operates the Florida Equipment Electronic Tracking (FLEET) system, which provides the management, reporting and cost information required to effectively and efficiently manage the state's fleet and to account for equipment use and expenditures. The FLEET Online System:²²

- Requires agencies to keep records and make reports regarding the effective and efficient use, operation, maintenance, repair and replacement of automobiles, light trucks, small and large (greater than 1 ton) vehicles and equipment designed primarily for transporting people and legal to operate on public roads, watercraft and aircraft; and
- Assures the efficient and safe use of motor vehicles and that they are used only for official state business.

The goals of the Division of Fleet Management are to:²³

¹⁶ Section 287.17(3)(b), F.S., provides that the term "official state business" shall be construed to permit the use of the vehicle during normal duty hours to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business, if such use is at the direction of or with the permission of the agency head.

¹⁷ Section 287.17(3)(a), F.S.

¹⁸ Section 287.17(4)(a), F.S.

¹⁹ *Id.*

²⁰ See http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance (last visited on Oct. 26, 2015).

²¹ See http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management (last visited on Oct. 26, 2015). Also, see Chapters 60B-1(Motor Vehicles and Watercraft Acquisition, Assignment and Use) and 60B-3(Disposal of Motor Vehicles, Watercraft, and Aircraft), F.A.C.

²² *Id.*

²³ *Id.*

- Ensure the state purchases quality and energy efficient motor vehicles, equipment and watercraft;
- Achieve maximum feasible return from disposal of used and surplus equipment;
- Return surplus equipment to governmental service when practical;
- Restrict use of state equipment to official state business;
- Provide management reports and data required to properly manage state fleet; and
- Provide reports to assure accountability of equipment expenditures and use.

Climate-Friendly Public Business Provisions

Section 286.29, F.S., outlines climate-friendly public business provisions required by state agencies. Some of these practices include requiring all state agencies to ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption.²⁴ Each agency must measure and report compliance to DMS through the Equipment Management Information System database.²⁵ Also, state agencies, universities, community colleges, and local governments that purchase motor vehicles under a state purchasing plan are required to define the intended purpose of vehicle and use class for which vehicle is being procured.²⁶ Additionally, all state agencies must use ethanol and biodiesel blended fuels when available.²⁷ State agencies with central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.²⁸

State Agency Fleets

Table 1 shows the various fleets of state agencies. Some state agencies report heavy equipment in the FLEET system, but DMS cannot state definitively that this data accurately reflects all heavy equipment owned or leased by state agencies.²⁹ The list of aircraft in Table 1 also is not complete as some agencies with aircraft do not document this data in the FLEET system.³⁰ DMS is in the process of requiring all state agencies to report their inventory of aircraft in the FLEET system.³¹ Table 2 shows the funds appropriated to the various agencies for the purchase of vehicles during the last five fiscal years.

Table 1. Agency Fleets

Agency	Vehicles	Aircraft	Water-craft	Heavy Equipment	Other*
First District Court of Appeals	1	-	-	-	-
Agriculture and Consumer Services	2,694	26	32	539	1,121
Agency for Health Care Administration	1	-	-	-	-

²⁴ Section 286.26(3), F.S.

²⁵ *Id.*

²⁶ Section 286.29(4), F.S.

²⁷ Section 286.29(5), F.S.

²⁸ *Id.*

²⁹ E-mail from Ricky Moulton, Deputy Director of Legislative Affairs, DMS, dated November 5, 2015 (copy of e-mail on file with the Governmental and Accountability Committee).

³⁰ *Id.*

³¹ *Id.*

Agency	Vehicles	Aircraft	Water-craft	Heavy Equipment	Other*
Agency for Persons with Disabilities	333	-	1	-	-
Business and Professional Regulation	510	-	-	-	-
Citrus Commission	1	-	-	-	-
Children and Families	511	-	-	-	-
Economic Opportunities	5	-	-	-	-
Environmental Protection	1,148	-	84	10	256
Financial Services	522	-	-	7	55
Juvenile Justice	557	-	-	-	14
Law Enforcement	662	3	-	-	-
Military Affairs	110	-	-	-	-
Management Services	74	-	-	-	3
Education	43	-	-	-	-
Health	379	-	-	-	-
Lottery	204	-	-	2	-
Revenue	15	-	-	2	-
State	24	-	3	-	-
Transportation	3,249	1	51	888	712
Veterans' Affairs	19	-	-	-	-
Executive Office of the Governor	26	-	-	-	-
Florida Commission on Offender Review	2	-	-	-	-
Corrections	2,932	-	-	22	158
Fish and Wildlife Conservation Commission	1,821	-	827	43	158
Highway Safety and Motor Vehicles	2,921	9	-	29	129
Justice Administration Commission	604	-	-	-	-
Northwood State Resource Center	1	-	-	-	-
Office of the Attorney General	135	-	-	-	-
Public Service Commission	25	-	-	-	-
School for the Deaf and Blind	45	-	-	-	-
TOTALS	19,574	39	998	1,542	2,606
*Other includes tractors, trailers, mowers, all-terrain vehicles, etc.					

Table 2. Five year history of appropriations relating to vehicle acquisition and replacement.

Agency	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
First District Court of Appeals	-	-	-	-	-
Agriculture and Consumer Services	100,000	606,500	1,042,758	1,521,286	2,791,165

Agency	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16
Agency for Health Care Administration	-	-	-	-	-
Agency for Persons with Disabilities	-	-	-	-	-
Business and Professional Regulation	892,346	990,346	1,011,346	917,346	1,373,768
Citrus Commission	-	-	-	-	-
Children and Families	20,000	20,000	20,000	20,000	20,000
Economic Opportunities	-	-	-	21,000	-
Environmental Protection	141,135	141,135	301,135	141,135	515,288
Financial Services	790,217	869,417	790,217	1,833,523	1,240,217
Juvenile Justice	459,285	459,285	459,285	459,285	459,285
Law Enforcement	973,173	973,173	973,173	1,120,173	1,569,369
Military Affairs	253,678	849,678	897,178	743,809	363,678
Management Services	-	-	-	-	-
Education	100,000	100,000	100,000	100,000	100,000
Health	3,033,109	3,033,109	3,033,109	2,077,641	2,041,109
Lottery	177,070	340,000	340,000	1,205,000	340,000
Revenue	-	-	-	57,988	-
State	-	-	-	21,000	56,132
Transportation	4,210,602	4,270,602	4,210,602	4,210,602	4,245,602
Veterans' Affairs	-	-	391,299	-	23,750
Executive Office of the Governor	73,648	175,000	120,000	65,000	65,000
Florida Commission on Offender Review	-	-	-	-	-
Corrections	4,653	454,653	504,653	504,653	2,254,653
Fish and Wildlife Conservation Commission	12,500	600,177	438,707	12,500	12,500
Highway Safety and Motor Vehicles	9,400,130	11,136,314	12,487,111	10,959,291	12,228,311
Justice Administration Commission	440,733	3,138,258	1,833,586	1,784,242	1,546,578
Northwood State Resource Center	-	-	-	-	-
Office of the Attorney General	257,478	257,478	257,478	257,478	300,000
Public Service Commission	72,055	72,055	-	50,538	-
School for the Deaf and Blind	-	-	-	-	-
TOTALS	21,411,812	28,487,180	29,211,637	28,083,490	31,546,405

III. Effect of Proposed Changes:

Section 1 requires DMS to prepare a plan for the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. DMS must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016.

The plan must provide a method for:

- Using break-even mileage³² in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees;
- Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools;
- Developing a motor vehicle replacement plan and budget, which must take into account operating and maintenance costs of the centralized fleet;
- Purchasing motor vehicles necessary for the operation of the centralized fleet;
- Repairing and maintaining motor vehicles;
- Monitoring the use of motor vehicles and enforcing regulations regarding proper use;
- Maintaining records related to the operation and maintenance of motor vehicles and the administration of the fleet;
- Disposing of motor vehicles that are no longer needed or the use of which is not cost effective;
- Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles;
- Implementing a fuel management program and a standardized methodology for reporting fuel data;
- Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle;
- Determining when it would be cost-efficient to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use; and
- Equipping fleet motor vehicles with real-time locational monitoring systems.

DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

Section 2 provides that the bill shall take effect upon becoming law.

³² A breakeven analysis identifies the mileage at which vehicles should be purchased as opposed to the state agency reimbursing employees for work mileage in their personal vehicles. *See* http://www.dms.myflorida.com/content/download/98763/571269/Fleet_Management_Business_Case_Final.pdf (last visited Oct. 26, 2015). *Also, see* Office of Program Policy Analysis & Governmental Accountability, The Florida Legislature, *Centralizing Vehicle Fleet Operations and Implementing Cost-Saving Strategies Could Reduce State Spending, Report No. 11-16* (April 2011) (copy on file with the Governmental Oversight and Accountability Committee). DMS calculated that the breakeven point for assignment of a state-owned vehicle at 7,448 miles driven for a 2010 Ford Fusion, the type of vehicle most state employees require.

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with 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:

Indeterminate.

C. Government Sector Impact:

None. DMS has not indicated the need for additional funds to complete the study.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates a new section of law that most likely will not be codified in the Florida Statutes because of its time-limited application.

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 November 17, 2015:

CS/SB 326 differs from SB 326 in the following way:

- The DMS centralized fleet management plan must provide methods for determining when it would be cost effective to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use rather than providing methods for determining when it would be cost effective to use alternative fuels or to lease or purchase alternative energy motor vehicles for fleet use.

B. Amendments:

None.



781088

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/18/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 51 - 52
and insert:
alternative fuel vehicles, electric vehicles, or extended-range
electric vehicles or to lease or purchase such vehicles for
fleet use.

By Senator Brandes

22-00485-16

2016326__

A bill to be entitled

An act relating to state-owned motor vehicles; requiring the Department of Management Services to prepare a plan regarding the centralized management of state-owned motor vehicles; requiring the department to submit the plan to the Governor and the Legislature by a specified date; prescribing requirements for the plan; requiring the department to conduct certain evaluations while developing the plan; providing an effective date.

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

Section 1. Centralized fleet management plan.—

(1) The Department of Management Services shall prepare a plan regarding the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. By November 1, 2016, the department shall submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(2) The plan for centralizing all state-owned motor vehicles must provide a method for:

(a) Using break-even mileage in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees.

(b) Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools.

(c) Developing a motor vehicle replacement plan and budget,

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

22-00485-16

2016326__

which must take into account operating and maintenance costs of the centralized fleet.

(d) Purchasing motor vehicles necessary for the operation of the centralized fleet.

(e) Repairing and maintaining motor vehicles.

(f) Monitoring the use of motor vehicles and enforcing regulations regarding proper use.

(g) Maintaining records related to the operation and maintenance of motor vehicles and the administration of the fleet.

(h) Disposing of motor vehicles that are no longer needed or the use of which is not cost effective.

(i) Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles.

(j) Implementing a fuel management program and a standardized methodology for reporting fuel data.

(k) Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle.

(l) Determining when it would be cost-efficient to use alternative fuels or to lease or purchase alternative energy motor vehicles for fleet use.

(m) Equipping fleet motor vehicles with real-time locational monitoring systems.

(3) In developing the plan, the department shall evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the

Page 2 of 3

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

22-00485-16

2016326__

59 operation and maintenance of a centralized motor vehicle fleet.

60 Section 2. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: October 6, 2015

I respectfully request that **Senate Bill #326**, relating to **State-owned Motor Vehicles**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

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.)

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

BILL: SB 7028

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: State Board of Administration

DATE: November 18, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		GO Submitted as Committee Bill
2.				
3.				

I. Summary:

SB 7028 deletes one of the conditions that trigger the expiration of the State Board of Administration’s (SBA) duty to scrutinize companies and to assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. The SBA will no longer be required to consider declarations from the United States Congress or the President via legislation, executive order, or written certification from the President to Congress, that mandatory divestment of companies with scrutinized business operations in Iran interfere with the conduct of U.S. foreign policy. The State Board of Administration must monitor certain events and report occurrence of these events to its trustees.

The bill clarifies the duties of the State Board of Administration relating to:

- The creation and maintenance of the various lists of scrutinized companies;
- The divestment of certain investments relating to those scrutinized companies; and
- The reporting of the various lists of scrutinized companies and specified criteria of the Florida Retirement System.

The fiscal impact on state government is indeterminate. The bill takes effect on July 1, 2016.

II. Present Situation:

State Board of Administration Investing Duties

The State Board of Administration (SBA) was created by Article IV, section 4(e) of the Florida Constitution. Its members are the Governor, the Chief Financial Officer, and the Attorney General. The board derives its powers to oversee state funds from Article XII, section 9 of the Florida Constitution and ch. 215, F.S.

The SBA has oversight over the Florida Retirement System (FRS) pension plan and the FRS investment plan, which represent approximately \$157.14 billion, or 87.3 percent, of the \$180 billion in assets managed by the SBA, as of June 30, 2015.¹ The pension plan is a defined benefit plan, and the investment plan is a defined contribution plan that employees may choose in lieu of the pension plan. The SBA also manages over 30 other investment portfolios, with combined assets of \$22.86 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Prepaid College Plan, and various debt-service accounts for state bond issues.²

State Sponsors of Terrorism

The United States Department of State maintains a list of countries determined to have repeatedly provided support for acts of international terrorism.³ The countries are designated "terrorist nations" under requirements in three federal laws: the Export Administration Act⁴; the Arms Export Control Act⁵; and the Foreign Assistance Act⁶. Taken together, the four main categories of sanctions resulting from designation under these authorities include restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions.⁷

Currently, the State Department designates three countries under these authorities: Iran, Sudan and Syria.⁸ The chart below shows the date each country was designated a terrorist nation.

Country	Designation Date
Iran	January 19, 1984
Sudan	August 12, 1993
Syria	December 29, 1979

Cuba had been designated as a State Sponsor of Terrorism on March 1, 1982. In December 2014, President Obama requested the Secretary of State to review Cuba's designation as a state sponsor of terrorism, and to provide him a report within six months in regards to Cuba's support for international terrorism.⁹ On April 8, 2015, the Secretary of State completed his review and recommended to the President that Cuba no longer be designated as a state sponsor of terrorism.¹⁰

On April 14, 2015, the President submitted this report to Congress indicating the administration's intent to rescind Cuba's state sponsor of terrorism designation, including the certification that Cuba has not provided any support for international terrorism during the

¹ State Board of Administration "Performance Report to the Trustees" dated June 30, 2015, and issued on August 12, 2015.

² *Id.*

³ U.S. Department of State, Diplomacy in Action can be found online at <http://www.state.gov/j/ct/list/c14151.htm> (last visited Sept. 9, 2015).

⁴ 50 U.S.C. App 2405(j)

⁵ 22 U.S.C. s. 2780

⁶ 22 U.S.C. s. 2371

⁷ See <http://www.state.gov/s/ct/c14151.htm>.

⁸ *Id.*

⁹ U.S. Department of State, Diplomacy in Action, Recession of Cuba as a State Sponsor of Terrorism, at <http://www.state.gov/r/pa/prs/ps/2015/05/242986.htm> (last visited on Sept. 15, 2015).

¹⁰ *Id.*

previous six months and that Cuba has provided assurances that it will not support acts of international terrorism in the future.¹¹

After the 45-day Congressional pre-notification period expired, Cuba was officially removed from the list on May 29, 2015.¹²

Protecting Florida Investments Act

In 2007, the Legislature enacted the Protecting Florida's Investments Act (PFIA).¹³ The PFIA requires the SBA, acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of "Scrutinized Companies" that have prohibited business operations in Sudan and Iran. Once placed on the list of Scrutinized Companies, the SBA and its investment managers are prohibited from acquiring those companies' securities¹⁴ and are required to divest those securities if the companies¹⁵ do not cease the prohibited activities or take certain compensating actions. The implementation of the PFIA by the SBA does not affect any FRSTF investments in U.S. companies; the PFIA affects foreign companies with certain business operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The definition of "company" for purposes of the PFIA includes all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations.

The term "public fund" is defined as "all funds, assets, trustee, and other designates under the State Board of Administration pursuant to chapter 121."¹⁶ This means those assets of the Florida Retirement System - both the pension plan as well as the investment plan.

According to staff of the SBA, the PFIA imposes the following reporting, engagement, and investment requirements on the SBA:

- Quarterly reporting to the Board of Trustees of every equity security in which the SBA has invested for the quarter, along with its industry category. This report is posted on the SBA website.
- Quarterly presentation to the Trustees of a "Scrutinized Companies" list for both Sudan and Iran for their approval. Scrutinized Company lists are available on the SBA's website¹⁷, along with information on the FRSTF direct and indirect holdings of Scrutinized Companies.
- Written notice to external investment managers of all PFIA requirements. Letters request that the managers of actively managed commingled vehicles (i.e., those with FRSTF and other clients' assets) consider removing Scrutinized Companies from the product or create a

¹¹ *Id.*

¹² *Id.*

¹³ Chapter 2007-88, Laws of Florida; *also, see* Senate Bill 2142 (reg. session 2007).

¹⁴ Section 215.473(3)(c), F.S.

¹⁵ Section 215.473(3)(b), F.S.

¹⁶ Section 215.473(1)(r), F.S.

¹⁷ The quarterly reports are available at

<http://www.sbafla.com/fsb/Portals/Internet/PFIA/CurrentProhibitedCompaniesList.pdf>

similar actively managed product that excludes such companies. Similar written requests must be provided to relevant investment managers within the Investment Plan.

- Written notice to any company with inactive business operations in Sudan or Iran, informing the company of the PFIA and encouraging it to continue to refrain from reinitiating active business operations.¹⁸ Such correspondence continues semiannually.¹⁹
- Written notice to any Scrutinized Company with active business operations, informing the company of its Scrutinized Company status and that it may become subject to divestment.²⁰ The written notice must inform the company of the opportunity to clarify its Sudan-related or Iran-related activities and encourage the company, within 90 days, to cease its scrutinized business operations or convert such operations to inactive status.²¹
- A prohibition on further investment on behalf of the FRSTF in any Scrutinized Company once the Sudan and Iran scrutinized lists have been approved by the Trustees. All publicly traded securities of Scrutinized Companies must be divested within 12 months after the company's initial (and continued) appearance on the Scrutinized Companies list. Divestment does not apply to indirect holdings in actively managed commingled investment funds—i.e., where the SBA is not the sole investor in the fund. Private equity funds are considered to be actively managed.
- Reporting to each member of the Board of Trustees, President of the Senate, and the Speaker of the House of Representatives of Scrutinized Company lists within 30 days of creation, and public disclosure of each list.²²
- Quarterly reporting to each member of the Board of Trustees, the President of the Senate, the Speaker of the House of Representatives, the United States Presidential Special Envoy to Sudan, and the United States Presidential Special Envoy to Iran.²³ The report must include the following:²⁴
 - A summary of correspondence with engaged companies;
 - A listing of all investments sold, redeemed, divested, or withdrawn;
 - A listing of all prohibited investments;
 - A description of any progress related to external managers offering PFIA compliant funds; and
 - A list of all publicly traded securities held directly by the state.
- Adoption and incorporation into the FRSTF Investment Policy Statement (IPS) of SBA actions taken in accordance with the PFIA. Changes to the IPS are reviewed by the Investment Advisory Council (IAC) and approved by the Trustees.
- Relevant Sudan or Iran portions of the PFIA are discontinued if the Congress or President of the United States passes legislation, executive order, or other written certification that:
 - Darfur genocide has been halted for at least 12 months;²⁵
 - Sanctions imposed against the Government of Sudan are revoked;²⁶

¹⁸ Section 215.473(3)(a)2., F.S.

¹⁹ *Id.*

²⁰ Section 215.473(3)(a)3., F.S.

²¹ *Id.*

²² Section 215.473(4)(a), F.S.

²³ Section 215.473(4)(b), F.S.

²⁴ Section 215.473(4)(b)1.-5., F.S.

²⁵ Section 215.473(5)(a)1., F.S.

²⁶ Section 215.473(5)(a)2., F.S.

- Government of Sudan honors its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons;²⁷
- Government of Iran has ceased to acquire weapons of mass destruction and support international terrorism;²⁸
- Sanctions imposed against the government of Iran are revoked;²⁹ or
- Mandatory divestment of the type provided for by the PFIA interferes with the conduct of U.S. foreign policy.³⁰
- Cessation of divestment and/or reinvestment into previously divested companies may occur if the value of all FRSTF assets under management decreases by 50 basis points (0.5 percent) or more as a result of divestment.³¹ If cessation of divestment is triggered, the SBA is required to provide a written report to each member of the Board of Trustees, the President of the Senate, and the Speaker of the House of Representatives prior to initial reinvestment.³² Such condition is required to be updated semiannually.³³

Prohibition Against Contracting with Scrutinized Companies and Companies Engaged in Business Operations in Cuba or Syria

Section 287.135(2), F.S., prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency³⁴ or local governmental entity for goods or services of \$1 million or more. “Local governmental entity,” for the purposes of s. 287.135, F.S., means a county, municipality, special district, or other political subdivision of the state.

Section 287.135(3)(b), F.S., provides that any contract with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed on or after July 1, 2012, must contain a provision that allows for the termination of such contract at the option of the awarding body if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or have been engaged in business operations in Cuba or Syria.

Section 287.135(4)(a)1., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company on the Scrutinized Companies with Activities in

²⁷ Section 215.473(5)(a)3., F.S.

²⁸ Section 215.473(5)(b)1., F.S.

²⁹ Section 215.473(5)(b)2., F.S.

³⁰ Section 215.473(5)(b)3., F.S.

³¹ Section 215.473(7), F.S.

³² *Id.*

³³ *Id.*

³⁴ Agency is defined in s. 287.012(1), F.S., as 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. Also, see s. 287.135(1), F.S. Definitions contained in ss. 287.012 and 215.473, F.S. are incorporated into s. 287.135, F.S.

Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List if:

- The scrutinized business operations³⁵ were made before July 1, 2011;
- The scrutinized business operations have not been expanded or renewed after July 1, 2011;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations; *and*
- *One of the following occurs:*
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

Section 287.135(4)(a)2., F.S., allows an agency or local governmental entity to make a case-by-case exception to the prohibition for a company engaged in business operations in Cuba or Syria if:

- The business operations were made before July 1, 2012;
- The business operations have not been expanded or renewed after July 1, 2012;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company;
- The company has adopted, has publicized, and is implementing a formal plan to cease business operations and to refrain from engaging in any new business operations; *and*
- *One of the following occurs:*
 - The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
 - For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exemption, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of \$1 million or more to certify, at the time a bid or proposal is submitted or before a contract is executed or renewed, that the company is not on the

³⁵ Section 215.473(1)(t), F.S., defines “scrutinized business operations” to mean business operations that result in a company becoming a scrutinized company.

Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operation in Cuba or Syria.³⁶

If an agency or local governmental entity determines that a company has submitted a false certification, it shall provide the company with written notice, and the company will have 90 days to respond in writing to such determination.³⁷ If the company fails to demonstrate that the determination of false certification was made in error, then the awarding body *must* bring a civil action against the company.³⁸ If a civil action is brought and the court determines that the company submitted a false certification, the company shall pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification).³⁹ Also, a civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted shall be imposed.⁴⁰ The company is ineligible to bid on any contract with an agency or local governmental entity for 3 years after the date the agency or local governmental entity determined that the company submitted a false certification.⁴¹ A civil action to collect the penalties must commence within 3 years after the date the false certification is made.⁴²

Section 287.135(6), F.S., specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.

Section 287.135(7), F.S., specifies that this section preempts any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

Section 287.135 (8), F.S., provides that this provision becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in this section.

Fiduciary Standards

The fiduciary standards for the SBA are specified out as follows in s. 215.47(10), F.S.:

Investments made by the State Board of Administration shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve an appropriate diversification of the portfolio. The board shall discharge its duties with respect to a plan solely in the interest of its participants and beneficiaries. The board in performing the

³⁶ Section 287.135(5), F.S.

³⁷ Section 287.135(5)(a), F.S.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Section 287.135(5)(a)1., F.S.

⁴¹ Section 287.135(5)(a)2., F.S.

⁴² Section 287.135(5)(b), F.S.

above investment duties shall comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. s. 1104(a)(1)(A) through (C). In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this subsection shall prevail.

The ERISA standard at 29 U.S.C. s. 1104(a)(1)(A) - (C) provides for the “prudent man standard of care,” requiring a fiduciary to:

discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

- (i) providing benefits to participants and their beneficiaries; and
- (ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so;

III. Effect of Proposed Changes:

Section 1 amends s. 215.473, F.S., to define the term “board” as the State Board of Administration. The definition of “public fund” is revised to mean all assets of the Florida Retirement System (FRS) held by the SBA in its capacity as a fiduciary pursuant to chapter 121.

Also, this section clarifies that the SBA must identify all scrutinized companies that have prohibited business operations in Sudan and Iran in which the FRS has direct and indirect holdings or could possibly have such holdings in the future.

Additionally, the bill clarifies that the SBA must maintain a list of Scrutinized Companies with Activities in Sudan and a list of Scrutinized Companies with Activities in the Iran Petroleum Energy Sector.

Further, the bill deletes one of the conditions that trigger the expiration of the SBA’s duty to scrutinize companies and to assemble the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. The SBA will no longer be required to consider declarations from Congress or the President via legislation, executive order, or written certification from the President to Congress, that mandatory divestment of companies with scrutinized business operations in Iran interfere with the conduct of U.S. foreign policy. The bill requires the SBA, acting as a fiduciary pursuant to s. 215.47(10), F.S., to monitor events relating to expiration provisions of s. 215.473, F.S., and to report the occurrence and status of such conditions at quarterly meetings of its trustees.

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

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with 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:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 215.473 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.)

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.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00812C-16

20167028pb

A bill to be entitled

An act relating to the State Board of Administration; amending s. 215.473, F.S.; redefining the term "public fund"; defining the term "board"; requiring the board, rather than the public fund, to maintain a list of certain scrutinized companies rather than assembling the list by a certain time; clarifying provisions; deleting a condition that may no longer be used by the board in scrutinizing companies, relating to a specified declaration; requiring the board to monitor certain events and make specified reports at certain meetings of trustees; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Present paragraphs (b) through (x) of subsection (1) of section 215.473, Florida Statutes, are redesignated as paragraphs (c) through (y), respectively, present paragraph (r) of that subsection is amended, a new paragraph (b) is added to that subsection, and subsections (2) through (7) of that section are amended, to read:

215.473 Divestiture by the State Board of Administration; Sudan; Iran.—

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

(b) "Board" means the State Board of Administration.

~~(s)-(x)~~ "Public fund" means all ~~funds~~, assets of the Florida Retirement System held by, trustee, and other designates under the State Board of Administration in its capacity as a fiduciary

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

585-00812C-16

20167028pb

pursuant to chapter 121.

(2) IDENTIFICATION OF COMPANIES.—

(a) ~~Within 90 days after June 8, 2007,~~ The ~~board public fund~~ shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future. Such efforts include:

1. Reviewing and relying, as appropriate in the board's public fund's judgment, on publicly available information regarding companies having business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

2. Contacting asset managers contracted by the board public fund which invest in companies having business operations in Sudan;

3. Contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan; or

4. Reviewing the laws of the United States regarding the levels of business activity that would cause application of sanctions for companies conducting business or investing in countries that are designated state sponsors of terror.

(b) ~~By the first meeting of the public fund following the 90-day period described in paragraph (a),~~ The ~~board public fund~~ shall maintain a list of ~~assemble~~ all scrutinized companies that fit criteria specified in subparagraphs (1)(v)1., 2., and 3. ~~labeled the (1)(u)1., 2., and 3. into a "Scrutinized Companies with Activities in Sudan List" and a list of all scrutinized~~

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

585-00812C-16

20167028pb

59 companies that fit criteria specified in subparagraph (1)(v)4.
 60 ~~labeled the (1)(u)4. into a~~ "Scrutinized Companies with
 61 Activities in the Iran Petroleum Energy Sector List."

62 (c) The ~~board public fund~~ shall update and make publicly
 63 available quarterly the Scrutinized Companies with Activities in
 64 Sudan List and the Scrutinized Companies with Activities in the
 65 Iran Petroleum Energy Sector List based on evolving information
 66 from, among other sources, those listed in paragraph (a).

67 (d) Notwithstanding ~~the provisions of~~ this section, a
 68 social-development company that is not complicit in the Darfur
 69 genocide is not considered a scrutinized company under
 70 subparagraph (1)(v)1. ~~(1)(u)1.,~~ subparagraph (1)(v)2. ~~(1)(u)2.,~~
 71 or subparagraph (1)(v)3. ~~(1)(u)3.~~

72 (3) REQUIRED ACTIONS.—The ~~board public fund~~ shall adhere to
 73 the following procedure for assembling companies on the
 74 Scrutinized Companies with Activities in Sudan List and the
 75 Scrutinized Companies with Activities in the Iran Petroleum
 76 Energy Sector List:

77 (a) *Engagement.*—

78 1. The ~~board public fund~~ shall immediately determine the
 79 companies on the Scrutinized Companies with Activities in Sudan
 80 List and the Scrutinized Companies with Activities in the Iran
 81 Petroleum Energy Sector List in which the public fund owns
 82 direct or indirect holdings.

83 2. For each company identified in this paragraph that has
 84 only inactive business operations, the ~~board public fund~~ shall
 85 send a written notice informing the company of this act and
 86 encouraging it to continue to refrain from initiating active
 87 business operations in Sudan or Iran until it is able to avoid

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88 scrutinized business operations. The ~~board public fund~~ shall
 89 continue such correspondence semiannually.

90 3. For each company newly identified under this paragraph
 91 ~~which that~~ has active business operations, the ~~board public fund~~
 92 shall send a written notice informing the company of its
 93 scrutinized company status and that it may become subject to
 94 divestment by the public fund. The notice must inform the
 95 company of the opportunity to clarify its Sudan-related or Iran-
 96 related activities and encourage the company, ~~within 90 days,~~ to
 97 cease its scrutinized business operations or convert such
 98 operations to inactive business operations within 90 days in
 99 order to avoid qualifying for divestment by the public fund.

100 4. If, within 90 days after the ~~board's public fund's~~ first
 101 engagement with a company pursuant to this paragraph, that
 102 company ceases scrutinized business operations, the company
 103 shall be removed from the Scrutinized Companies with Activities
 104 in Sudan List and the Scrutinized Companies with Activities in
 105 the Iran Petroleum Energy Sector List, and the provisions of
 106 this act shall cease to apply to that company unless that
 107 company resumes scrutinized business operations. If, within 90
 108 days after the ~~board's public fund's~~ first engagement, the
 109 company converts its scrutinized active business operations to
 110 inactive business operations, the company is subject to all
 111 provisions relating to inactive business operations. A company
 112 may be removed from one list but remain on the other list, in
 113 which case the company shall be subject to the provisions
 114 applicable to the list on which the company remains.

115 (b) *Divestment.*—

116 1. If, after 90 days following the ~~board's public fund's~~

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117 first engagement with a company pursuant to paragraph (a), the
 118 company continues to have scrutinized active business
 119 operations, and only while such company continues to have
 120 scrutinized active business operations, the ~~board public fund~~
 121 shall sell, redeem, divest, or withdraw all publicly traded
 122 securities of the company, except as provided in paragraph (d),
 123 from the public ~~fund fund's assets under management~~ within 12
 124 months after the company's most recent appearance on the
 125 Scrutinized Companies with Activities in Sudan List or on the
 126 Scrutinized Companies with Activities in the Iran Petroleum
 127 Energy Sector List.

128 2. If a company that ceased scrutinized active business
 129 operations following engagement pursuant to paragraph (a)
 130 resumes such operations, this paragraph immediately applies, and
 131 the ~~board public fund~~ shall send a written notice to the
 132 company. The company shall also be immediately reintroduced onto
 133 the Scrutinized Companies with Activities in Sudan List or on
 134 the Scrutinized Companies with Activities in the Iran Petroleum
 135 Energy Sector List, as applicable.

136 (c) *Prohibition.*—The ~~board public fund~~ may not acquire, on
 137 behalf of the public fund, securities of companies on the
 138 Scrutinized Companies with Activities in Sudan List or the
 139 Scrutinized Companies with Activities in the Iran Petroleum
 140 Energy Sector List that have active business operations, except
 141 as provided in paragraph (d).

142 (d) *Exemption.*—A company that the United States Government
 143 affirmatively declares to be excluded from its present or any
 144 future federal sanctions regime relating to Sudan or Iran is not
 145 subject to divestment or the investment prohibition pursuant to

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146 paragraphs (b) and (c).

147 (e) *Excluded securities.*—

148 1. Notwithstanding ~~the provisions of~~ this section,
 149 paragraphs (b) and (c) do not apply to indirect holdings in
 150 actively managed investment funds. However, the ~~board public~~
 151 ~~fund~~ shall submit letters to the managers of such investment
 152 funds containing companies that have scrutinized active business
 153 operations requesting that they consider removing such companies
 154 from the fund or create a similar actively managed fund having
 155 indirect holdings devoid of such companies. If the manager
 156 creates a similar fund, the board, on behalf of the public fund,
 157 shall replace all applicable investments with investments in the
 158 similar fund in an expedited timeframe consistent with prudent
 159 investing standards. For the purposes of this section, a private
 160 equity fund is deemed to be an actively managed investment fund.

161 2. Notwithstanding ~~the provisions of~~ this section,
 162 paragraphs (b) and (c) do not apply to exchange-traded funds.

163 (f) *Further exclusions.*—Notwithstanding any other provision
 164 of this act, the ~~board public fund~~, when discharging its
 165 responsibility for operation of a defined contribution plan,
 166 shall engage the manager of the investment offerings in such
 167 plans requesting that they consider removing scrutinized
 168 companies from the investment offerings or create an alternative
 169 investment offering devoid of scrutinized companies. If the
 170 manager creates an alternative investment offering and the
 171 offering is deemed by the ~~board public fund~~ to be consistent
 172 with prudent investor standards, the ~~board public fund~~ shall
 173 consider including such investment offering in the plan.

174 (4) REPORTING.—

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175 (a) The ~~board public fund~~ shall file a report with each
 176 member of ~~its~~ the Board of Trustees ~~of the State Board of~~
 177 ~~Administration~~, the President of the Senate, and the Speaker of
 178 the House of Representatives ~~which that~~ includes the Scrutinized
 179 Companies with Activities in Sudan List and the Scrutinized
 180 Companies with Activities in the Iran Petroleum Energy Sector
 181 List within 30 days after the list is created. This report shall
 182 be made available to the public.

183 (b) At each quarterly meeting of the Board of Trustees
 184 thereafter, the ~~board public fund~~ shall file a report regarding
 185 the public fund, which shall be made available to the public and
 186 to each member of ~~its~~ the Board of Trustees ~~of the State Board~~
 187 ~~of Administration~~, the President of the Senate, and the Speaker
 188 of the House of Representatives, and send a copy of that report
 189 to the United States Presidential Special Envoy to Sudan and the
 190 United States Presidential Special Envoy to Iran, or an
 191 appropriate designee or successor, which includes:

192 1. A summary of correspondence with companies engaged by
 193 the board on behalf of the public fund under subparagraphs

194 (3) (a) 2. and 3.;

195 2. All investments sold, redeemed, divested, or withdrawn
 196 in compliance with paragraph (3) (b);

197 3. All prohibited investments under paragraph (3) (c);

198 4. Any progress made under paragraph (3) (e); and

199 5. A list of all publicly traded securities held directly
 200 by the public fund this state.

201 (5) EXPIRATION.—This section expires upon the occurrence of
 202 all of the following:

203 (a) If any of the following occurs ~~eeer~~, the board may

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204 ~~public fund shall~~ no longer scrutinize companies according to
 205 subparagraphs ~~(1) (v) 1. (1) (u) 1., 2., and 3. and may shall~~ no
 206 longer assemble the Scrutinized Companies with Activities in
 207 Sudan List, shall cease engagement and divestment of such
 208 companies, and may reinvest in such companies if such companies
 209 do not satisfy the criteria for inclusion in the Scrutinized
 210 Companies with Activities in the Iran Petroleum Energy Sector
 211 List:

212 1. The Congress or President of the United States,
 213 affirmatively and unambiguously states, by means including, but
 214 not limited to, legislation, executive order, or written
 215 certification from the President to Congress, that the Darfur
 216 genocide has been halted for at least 12 months;

217 2. The United States revokes all sanctions imposed against
 218 the government of Sudan;

219 3. The Congress or President of the United States
 220 affirmatively and unambiguously states, by means including, but
 221 not limited to, legislation, executive order, or written
 222 certification from the President to Congress, that the
 223 government of Sudan has honored its commitments to cease attacks
 224 on civilians, demobilize and demilitarize the Janjaweed and
 225 associated militias, grant free and unfettered access for
 226 deliveries of humanitarian assistance, and allow for the safe
 227 and voluntary return of refugees and internally displaced
 228 persons; or

229 4. The Congress or President of the United States
 230 affirmatively and unambiguously states, by means including, but
 231 not limited to, legislation, executive order, or written
 232 certification from the President to Congress, that mandatory

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233 divestment of the type provided for in this section interferes
234 with the conduct of United States foreign policy.

235 (b) If ~~either any~~ of the following ~~occurs occur~~, the board
236 ~~may public fund shall~~ no longer scrutinize companies according
237 to subparagraph ~~(1)(v)4., may (1)(u)4. and shall~~ no longer
238 assemble the Scrutinized Companies with Activities in the Iran
239 Petroleum Energy Sector List, and shall cease engagement,
240 investment prohibitions, and divestment: ~~The public fund may~~
241 ~~reinvest in such companies if such companies do not satisfy the~~
242 ~~criteria for inclusion in the Scrutinized Companies with~~
243 ~~Activities in Sudan List.~~

244 1. The Congress or President of the United States
245 affirmatively and unambiguously states, by means including, but
246 not limited to, legislation, executive order, or written
247 certification from the President to Congress, that the
248 government of Iran has ceased to acquire weapons of mass
249 destruction and support international terrorism; or

250 2. The United States revokes all sanctions imposed against
251 the government of Iran; ~~or~~

252 ~~3. The Congress or President of the United States~~
253 ~~affirmatively and unambiguously declares, by means including,~~
254 ~~but not limited to, legislation, executive order, or written~~
255 ~~certification from the President to Congress, that mandatory~~
256 ~~divestment of the type provided for in this section interferes~~
257 ~~with the conduct of United States foreign policy.~~

258
259 The board, on behalf of the public fund, may reinvest in such
260 companies if such companies do not satisfy the criteria for
261 inclusion in the Scrutinized Companies with Activities in Sudan

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262 List. The board, acting as a fiduciary in accordance with s.
263 215.47(10), shall monitor events relating to subparagraphs 1.
264 and 2., and, upon finding that the conditions in subparagraph 1.
265 or subparagraph 2. have occurred, the board shall report such
266 finding at a quarterly meeting of its trustees. At each
267 quarterly meeting of the trustees, the board shall report on the
268 status of events relating to subparagraphs 1. and 2.

269 (6) INVESTMENT POLICY STATEMENT OBLIGATIONS.—The board's
270 ~~public fund's~~ actions taken in compliance with this act,
271 including all good faith determinations regarding companies as
272 required by this act, shall be adopted and incorporated into the
273 public fund's investment policy statement ~~(the IPS)~~ as provided
274 ~~set forth~~ in s. 215.475.

275 (7) REINVESTMENT IN CERTAIN COMPANIES HAVING SCRUTINIZED
276 ACTIVE BUSINESS OPERATIONS.—Notwithstanding any other provision
277 of this act to the contrary, the public fund may cease divesting
278 from certain scrutinized companies pursuant to paragraph (3) (b)
279 or reinvest in certain scrutinized companies from which it
280 divested pursuant to paragraph (3) (b) if clear and convincing
281 evidence shows that the value of all assets of under management
282 ~~by~~ the public fund becomes equal to or less than 99.50 percent,
283 or 50 basis points, of the hypothetical value of all assets of
284 ~~under management by~~ the public fund assuming no divestment for
285 any company had occurred under paragraph (3) (b). Cessation of
286 divestment, reinvestment, or any subsequent ongoing investment
287 authorized by this act is limited to the minimum steps necessary
288 to avoid the contingency set forth in this subsection or that no
289 divestment of any company is required for less than fair value.
290 For any cessation of divestment, reinvestment, or subsequent

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291 ongoing investment authorized by this act, the board ~~public fund~~
292 shall provide a written report to each member of its ~~the~~ Board
293 of Trustees ~~of the State Board of Administration~~, the President
294 of the Senate, and the Speaker of the House of Representatives
295 in advance of initial reinvestment, updated semiannually
296 thereafter as applicable, setting forth the reasons and
297 justification, supported by clear and convincing evidence, for
298 its decisions to cease divestment, reinvest, or remain invested
299 in companies having scrutinized active business operations. This
300 act does not apply to reinvestment in companies on the grounds
301 that they have ceased to have scrutinized active business
302 operations.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11/17

Bill Number (if applicable) SB 7028

Topic SB 7028 - SBA

Amendment Barcode (if applicable) _____

Name BS Murphy

Job Title Deputy Legislative Affairs Director

Address _____
Street _____

Phone _____

City _____ State _____ Zip _____

Email _____

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

Representing CFO Jeff Atwater

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7030

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Competitive Solicitation of Negotiation Strategies

DATE: November 18, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney		GO Submitted as Committee Bill
2.				
3.				

I. Summary:

SB 7030 continues the public records and public meetings exemptions for competitive solicitations used by governmental entities by removing the October 2, 2016, repeal date in each law.

Currently, section 119.071(1)(b), F.S., provides that sealed responses to a competitive solicitation are exempt from public inspection until an intended agency decision is noticed or 30 days after the responses are unsealed. Sealed responses to a competitive solicitation may be exempt under certain circumstances if a competitive solicitation is withdrawn and reissued; however, such records remain exempt for no longer than 12 months after the governmental entity rejected the responses to the initial competitive solicitation.

Currently, a governmental entity's negotiation team's strategy meetings and its team meetings with vendors may be closed to the public, pursuant to section 286.0113(2), F.S. Transcripts of these meetings and any records presented during such meetings are exempt from public inspection. All meeting records become public when the governmental entity notices its intended decision or 30 days after the governmental entity unseals the vendors' responses. If a competitive solicitation is withdrawn and reissued, the meeting records remain exempt under certain circumstances; however, the exemption expires 12 months after the governmental entity rejects the vendors' responses to the initial competitive solicitation.

Both the public records and meetings exemptions are currently scheduled to repeal on October 2, 2016.

Since the bill does not expand or create an exemption to the public records or public meetings laws, the bill requires a majority vote of each chamber for passage.

The bill takes effect on October 1, 2016.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

An exemption may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁵ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁶ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁷

The Florida Statutes also provide that governmental meetings must be open to the public. Section 286.011, F.S., which is also known as the ‘Government in the Sunshine Law,’¹⁸ or the ‘Sunshine Law’¹⁹ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²⁰ The board or commission must provide the public reasonable notice of such meetings.²¹ A failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.²² The minutes of a board or commission meeting also must be made available to the public.²³ A public

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.
13

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004). A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ FLA. CONST., art. I, s. 24(b).

¹⁶ FLA. CONST., art. I, s. 24(b).

¹⁷ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁸ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁹ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²⁰ Section 286.011(1)-(2), F.S.

²¹ Section 268.011(1), F.S.

²² Section 286.011(1), F.S.

²³ Section 286.011(2), F.S.

officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements.²⁵ An exemption must pass by a two-thirds vote of the House and the Senate.²⁶ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.²⁷ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁸

Open Government Sunset Review Act

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

The OGSR prescribes a legislative review process for newly created or substantially amended exemption.²⁹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.³⁰ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:³¹

- 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?

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²⁹ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. Section 286.0111, F.S., and s. 119.15, F.S., provide that the OGSR provisions found in s. 119.15, F.S., apply to the open meetings requirements located in s. 286.011, F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

³⁰ Section 119.15(3), F.S.

³¹ Section 119.15(6)(a), F.S.

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.³² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt public records will remain exempt unless otherwise provided for by law.³³

Exemption Under Review: Competitive Solicitations Public Records and Public Meetings Exemptions

A state or local government (governmental entity) may procure goods or services through competitive solicitations. A competitive solicitation is the process of requesting and receiving sealed bids, proposals or replies in a competitive manner.³⁴ A governmental entity may issue different types of competitive solicitations, depending upon whether it is subject to state procurement laws or local ordinances. For example, a state level agency will issue an invitation to bid, a requests for proposals or an invitations to negotiate depending on the type of procurement.³⁵ Vendors may respond to the competitive solicitation by sending the state agency a sealed bid, proposal or reply. Depending on the type of competitive solicitation and the nature of the procurement, a lengthy process of evaluating responses and negotiations may ensue.

Competitive Solicitation Public Records Exemption

Public records exemptions related to competitive solicitations date back to 1985, and have been expanded or revised since then.³⁶ Currently, a vendor's sealed bids, proposals and replies are exempt from public records until the governmental entity provides a notice of its intended decision. An intended decision may include a situation when a team makes a determination of what constitutes the best vendor response, but the final decision is made by another entity, such as a board or an agency head, or when a final decision made at a later date.

The public records exemption also is in effect until 30 days after the governmental entity opens a vendor's final, sealed bid, proposal or reply. This scenario may include a situation when a governmental entity has opened the vendors' responses and the governmental entity evaluates the responses and makes an award. Negotiations can also continue to go forward after a governmental entity reviews the final sealed responses.

³² FLA. CONST., art. I, s. 24(c).

³³ Section 119.15(7), F.S.

³⁴ Section 119.071(1)(b)1., F.S. and s. 286.0113(2)(a), F.S.

³⁵ Section 284.012(16), F.S. provides that an invitation to bid is "a written or electronically posted solicitation for competitive sealed bids." A request for proposals is "a written or electronically posted solicitation for competitive sealed proposals," pursuant to s. 287.012(23), F.S. Section 284.012(17), F.S., provides that an invitation to negotiate is a "written or electronically posted solicitation for competitive sealed replies to select one or more vendors with which to commence negotiations for the procurement of commodities or contractual services."

³⁶ Ch.1985-44, Laws of Fla.

In either case, the exemption ceases the earlier of when the notice of intended decision is published or when 30 days have lapsed since the response was unsealed.³⁷

After issuing a competitive solicitation and reviewing all the final responses, a governmental entity may also decide to reject all responses and reissue the solicitation. In that case, the sealed responses received during the initial competitive solicitation continue to remain exempt until one of the following events occur:

- The governmental entity provides a notice of intended decisions on the reissued competitive solicitation;
- The governmental entity withdraws the reissued competitive solicitation; or
- 12 months have lapsed since the governmental entity rejected all responses to its initial competitive solicitation.³⁸

Competitive Solicitations Public Meetings Exemption

The public meetings exemption for competitive solicitations was first enacted by Ch. 2006-284, Laws of Florida. Currently, the public meetings exemption provides that portions of competitive solicitation meetings are exempt under the following circumstances: during negotiations, when a vendor gives an oral presentation, or when a vendor answers a question.³⁹

In addition, any portion of a team meeting during which the governmental entity discusses its negotiation strategies are closed to the public.⁴⁰ A team is a group of people established by an agency for the purpose of negotiating for the agency during a competitive solicitation.⁴¹

In any of the above situations, the meeting must be recorded and no portion of the meeting may be off the record.⁴² Records presented at an exempt meeting and the recording of the meeting itself are exempt until the agency notices the intended decision or until 30 days after unsealing the final responses, whichever is earlier.⁴³

In the event that a governmental entity rejects all of the responses and reissues a competitive solicitation, the recording of the meeting and any records presented at an exempt meeting will continue to remain exempt. The exemption expires when any of the following events occur:

- A notice of intended decision for the reissued competitive solicitation is published;
- The agency withdraws the reissued competitive solicitation; or
- 12 months has passed since the initial competitive solicitation was issued.⁴⁴

Both the public records and meetings exemptions will sunset on October 2, 2016.

³⁷ Section 119.071(1)(b)2., F.S.

³⁸ Section 119.071(1)(b)2., F.S.

³⁹ Section 286.0113(2)(b)1., F.S.

⁴⁰ Section 286.0113(2)(b)2., F.S.

⁴¹ Section 286.0113(2)(a)2., F.S.

⁴² Section 287.0113(2)(c)1., F.S.

⁴³ Section 286.0113(2)(c)1., and 2., F.S.

⁴⁴ Section 286.0113(2)(c)3., F.S.

Review Findings and Recommendations

Senate and House professional staff met with state agencies, local government representatives and some vendors in accordance with the OGSR of the two exemptions.⁴⁵ State agencies, local government representatives, and some vendors agreed that the exemptions were necessary and beneficial for competitive solicitations and that the exemptions should be continued. Public records and meeting exemptions are beneficial for several reasons, some of which are:

- A vendor's competitors are not privy to a vendor's proposals,
- The exemptions result in more competition during negotiations, and thus a better value resulting from the procurement for the governmental entity,
- A governmental entity may require time to coordinate its responses especially when team members come from different agencies, and
- When clarification of terms or finalization of necessary documentation is still in progress.

Some agencies were concerned that the exemption periods were not long enough because information became public before negotiations were finalized. This may occur when there are a large number of vendor responses or the responses are highly technical and voluminous. Agencies also differed on what triggers the 30-day window before records are subject to public inspection.

Senate Governmental Operations and Accountability professional staff sent an email to state agencies requesting recommendations for amendments, but none were received.⁴⁶ The Florida Department of Law Enforcement and the Department of Agriculture and Consumer Services (DACS) affirmatively recommended that the exemptions be continued. DACS included the following explanation in its response:

The advantage of these exemptions to the state occurs when agencies are allowed to keep information that could benefit the state in negotiations confidential, including competitor's offers and responses, during the evaluation and negotiation process. This process puts the state's contract and project managers as well as the certified negotiators on a level playing field with vendors and their competitors. It also creates a level playing in the competitive solicitation process among the vendors and helps prevent

⁴⁵ Senate and House staff met with the following agencies and organizations during the OGSR review process: Department of Transportation (July 17, 2015); Department of Environmental Protection (July 17, 2015); Department of Management Services (July 23, 2015); Department of Financial Services (August 13, 2015); Florida Transportation Builders Association (September 9, 2015); Southern Strategies and IBM (September 15, 2015); and the Florida League of Cities and Florida Association of Counties (September 21, 2015).

⁴⁶ The letter, dated September 28, 2015, was emailed to the following agencies: Department of Business and Professional Regulation; Department of Children and Families; Department of Citrus; Department of Corrections; Department of Economic Opportunity; Department of Education; Department of Elder Affairs; Department of Environmental Protection; Fish and Wildlife Conservation Commission; Department of Health; Department of Juvenile Justice; Department of Management Services; Department of Military Affairs; Department of State; Department of Transportation; Agency for Health Care Administration; Agency for Persons with Disabilities; Office of the Attorney General Department of Legal Affairs; Chief Financial Officer; Department of Agriculture and Consumer Services; Department of Motor Vehicles; Department of Law Enforcement; Department of Revenue; Department of Veterans' Affairs; State Board of Administration; and Commission on Offender Review. The letter is on file with the Senate Committee on Governmental Oversight and Accountability.

vendors from gaining unfair advantages over other competitors... There is no harm to the general public with the exemptions contained in these statutes.⁴⁷

III. Effect of Proposed Changes:

The bill removes the scheduled repeal date of October 2, 2016, in both the public records exemption law and the public meetings exemption law. Effectively, the bill permits the public records and public meetings exemptions relating to agency competitive solicitations to continue as they currently exist.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

The bill does not expand the current exemptions, and therefore public necessity statements are not required. Since there is no expansion of the exemption, a simple majority vote is sufficient for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Currently, agencies use the exemptions, and it is unlikely that the continuation of the exemptions will alter the private sector's business operations.

C. Government Sector Impact:

Indeterminate. Currently, agencies use the exemptions, and it is unlikely that the continuation of the exemptions will alter the agencies' operations.

⁴⁷ The email from Grace P. Lovett, Director of Legal Affairs, DACS, dated October 8, 2015, is on file with the Senate Committee on Governmental Oversight and Accountability.

D. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071(1)(b) and 286.0113(2).

VIII. 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.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00809-16

20167030pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides an exemption from public records requirements for bids, proposals, or replies submitted to an agency in response to a competitive solicitation; removing the scheduled repeal of the exemption; amending s. 286.0113, F.S., which provides an exemption from public meetings requirements for portions of meetings in which a vendor participates in a negotiation, makes an oral presentation, or answers questions as part of a competitive solicitation or in which negotiation strategies are discussed, and which provides an exemption from public records requirements for the recording of, and any records presented at, exempt portions of such meetings; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(b)1. For purposes of this paragraph, “competitive solicitation” means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of

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procurement.

2. Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.

3. If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.

~~4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (2) of section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—

(2) (a) For purposes of this subsection:

1. “Competitive solicitation” means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless

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59 of the method of procurement.

60 2. "Team" means a group of members established by an agency
61 for the purpose of conducting negotiations as part of a
62 competitive solicitation.

63 (b)1. Any portion of a meeting at which a negotiation with
64 a vendor is conducted pursuant to a competitive solicitation, at
65 which a vendor makes an oral presentation as part of a
66 competitive solicitation, or at which a vendor answers questions
67 as part of a competitive solicitation is exempt from s. 286.011
68 and s. 24(b), Art. I of the State Constitution.

69 2. Any portion of a team meeting at which negotiation
70 strategies are discussed is exempt from s. 286.011 and s. 24(b),
71 Art. I of the State Constitution.

72 (c)1. A complete recording shall be made of any portion of
73 an exempt meeting. No portion of the exempt meeting may be held
74 off the record.

75 2. The recording of, and any records presented at, the
76 exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I
77 of the State Constitution until such time as the agency provides
78 notice of an intended decision or until 30 days after opening
79 the bids, proposals, or final replies, whichever occurs earlier.

80 3. If the agency rejects all bids, proposals, or replies
81 and concurrently provides notice of its intent to reissue a
82 competitive solicitation, the recording and any records
83 presented at the exempt meeting remain exempt from s. 119.07(1)
84 and s. 24(a), Art. I of the State Constitution until such time
85 as the agency provides notice of an intended decision concerning
86 the reissued competitive solicitation or until the agency
87 withdraws the reissued competitive solicitation. A recording and

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88 any records presented at an exempt meeting are not exempt for
89 longer than 12 months after the initial agency notice rejecting
90 all bids, proposals, or replies.

91 ~~(d) This subsection is subject to the Open Government~~
92 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
93 ~~repealed on October 2, 2016, unless reviewed and saved from~~
94 ~~repeal through reenactment by the Legislature.~~

95 Section 3. This act shall take effect October 1, 2016.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 378

INTRODUCER: Governmental Oversight and Accountability Committee, Health Policy Committee and Senator Bean

SUBJECT: Pediatric Cardiac Advisory Council

DATE: November 18, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 378 creates the Pediatric Cardiac Advisory Council within the Department of Health (department) for the purpose of advising the department on the delivery of cardiac services to children. The bill specifies the duties and composition of the Pediatric Cardiac Advisory Council.

The bill also authorizes the department, in coordination with the Agency for Health Administration (AHCA), to develop rules related to pediatric cardiac facilities participating in the Children’s Medical Services Network. The bill creates the “Pediatric and Congenital Centers of Excellence” designation for facilities that meet standards established by the council and approved by the Director of Children’s Medical Services and the State Surgeon General utilizing state and national professional standards.

Additionally, the bill provides that rules relating to pediatric cardiac services and facilities in effect on October 1, 2015, are authorized and remain in effect until amended.

The bill further requires the council to submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Surgeon General summarizing the council’s activities for the preceding fiscal year, including specified data and performance measures of cardiac facilities participating in the Children’s Medical Services Network, and recommending policy and procedural changes.

CS/CS/SB 378 has a minimal annual fiscal impact.

The bill takes effect upon becoming law.

II. Present Situation:

Children's Medical Services

Children's Medical Services (CMS) is a group of programs that serve children with special health care needs under the supervision of the department. Within CMS, individual services or programs are designed to address specific conditions or family needs such as the newborn screening program, early intervention screenings, or its managed medical assistance plan. CMS is created under Chapter 391 of the Florida Statutes and divided into three parts: Part I (General Provisions), Part II (Children's Medical Services Councils and Panels), and Part III (Developmental Evaluation and Intervention Programs).

Statewide Children's Medical Services Network Advisory Council

The State Surgeon General has the discretion under s. 391.221, F.S., to appoint a 12-member Statewide Children's Medical Services Network Advisory Council to serve as an advisory body to the department. The council's duties shall include, but are not limited to:

- Recommending standards and credentialing requirements for health care providers in the CMS Network;
- Making recommendations to the director of CMS concerning the selection of CMS providers;
- Providing input to the CMS program on the policies governing the CMS Network;
- Reviewing the financial reports and financial status of the network and making recommendations concerning the methods of payment and costs controls for the network;
- Reviewing and recommending the scope of benefits for the network; and
- Reviewing network performance measures and outcomes and making recommendations for improvements to the network and its maintenance and collection of data and information.

Council members represent the private health care provider sector, families of children with special health care needs, AHCA, the Chief Financial Officer, the Florida Chapter of the American Academy of Pediatrics, an academic pediatric program, and the health insurance industry.¹ The four-year terms were initially staggered and no member can be appointed for more than two consecutive terms. Members do not receive any compensation for their appointment except they are reimbursed for per diem and travel in accordance with s. 112.061, F.S.²

The department does not currently have an appointed Statewide Children's Medical Services Advisory Council.

¹ Section 391.221(2), F.S.

² Section 391.221 (3), F.S.

Cardiac Technical Advisory Panel

The State Surgeon General also has general authority under s. 391.223, F.S., to establish technical advisory panels to assist with the development of specific policies and procedures for the Children's Medical Services program. On October 21, 2013, State Surgeon General John Armstrong created the Children's Medical Services Cardiac Technical Advisory Panel (CTAP) to provide both programmatic and technical advice to the department and its CMS program.³ The enabling document provides several charges to the panel:

- Developing recommended standards for personnel and facilities rendering pediatric congenital cardiac services as well as heart disease;
- Developing recommendations for legislative initiatives, including appropriation items, related to the cardiac program and developing rules;
- Developing recommendations for statewide cardiac initiatives, including identifying panel members who will collaborate with other department councils or committees or state agencies;
- Assisting AHCA, or as requested by individual hospitals, or as outlined in their individual contract with CMS, with the ongoing evaluation and development of congenital cardiovascular programs;
- Making a priority weight control programs and their implementation in all pediatric cardiovascular centers and clinics; and
- Developing recommendations to the department and AHCA for congenital heart disease quality improvement to improve patient care and health and decrease the cost of care.⁴

The CTAP membership is appointed by the State Surgeon General, in consultation with the Deputy Secretary of Children's Medical Services and the Director of the Division of Children's Medical Services. Eleven members are designated in the creation document. They represent pediatric cardiologists or cardiovascular surgeons from specific pediatric cardiovascular children's hospitals across the state and include two at-large physicians and a community physician who are not affiliated with one of the named facilities. Non-voting advisory members may also be named by the State Surgeon General who may deliberate, but not vote, with the panel. Alternate members for each representative of the cardiovascular children's hospitals must also be named.

Under the creation document, CTAP members select their Chairperson and Vice Chairperson through majority vote every two years. Meetings of the CMS CTAP are upon the call of the Chairperson, at the request of the State Surgeon General, the Deputy Secretary of CMS, the Director of the Division of CMS, or the majority of the voting members.⁵

Members are reimbursed for per diem and travel expenses for required attendance at in-person or video conference committee meetings or CMS site visits in accordance with s. 112.061, F.S.⁶

³ Florida Dep't of Health, *Creation of the Children's Medical Services Cardiac Technical Advisory Panel*, (October 2013) <http://www.cmsctap.com/files/documents/CTAP-Creation.pdf> (Last visited Oct. 6, 2015).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Department of Health’s Proposed Repeal of Rule 64C-4.003, F.A.C.

Rule 64C-4.003, F.A.C., establishes and incorporates by reference quality assurance standards and criteria for the approval and operation of CMS pediatric cardiac facilities.

On October 12, 2015, the department held a rule hearing regarding the proposed repeal of the standards for pediatric cardiac facilities, Rule 64C-4.003, F.A.C., as the department determined there was no statutory authority for it to establish standards, inspect facilities, or prepare inspection reports for the technical advisory panel to review.⁷ A Petition for Determination of Invalidity of Proposed Rule regarding the proposed repeal of Rule 64C-4.003, F.A.C., has been filed with the Division of Administrative Hearings (DOAH), and a hearing is scheduled for November 20 and 23, 2015, before an administrative law judge.⁸

Cardiac Advisory Council

Prior to the 2001 Regular Session, a Cardiac Advisory Council in the Division of Children’s Medical Services existed.⁹ The council was appointed by the secretary of the department and included eight members with technical expertise in cardiac medicine who were charged with:

- Recommending standards for personnel and facilities rendering cardiac services;
- Receiving reports of the periodic review of cardiac personnel and facilities to determine if established standards for cardiac care are met;
- Making recommendations to the director as to the approval or disapproval of reviewed personnel and facilities; and
- Providing input on all aspects of the Children’s Medical Services cardiac program, including the rulemaking process.¹⁰

The statute was repealed effective June 30, 2001, as part of an exhaustive review of more than three dozen boards, committees, commissions, and councils to determine whether to continue or abolish each entity.¹¹ The department recommended the repeal of the council and indicated it would absorb the functions of the council in 2001.¹²

Statutory Organization: Advisory Councils

Chapter 20, F.S., authorizes the creation of a number of different types of entities to assist state government in the efficient performance of its duties and functions. Under s. 20.03(7), F.S., a “council” or “advisory council” is defined as:

⁷ Fla. Department of Health, *2016 Agency Bill Analysis - SB 378*, p. 2, (Sept. 29, 2015) (on file with the Senate Health Policy Committee)

⁸ W.D., C.V., K.E., and K.M. v. Dep’t of Health, Case No. 15-600RP (DOAH 2015); *Also, see* DOAH Docket at <https://www.doah.state.fl.us/ALJ/searchDOAH/docket.asp?T=11/12/2015 5:09:16 PM> (last visited on November 12, 2015).

⁹ *See* s. 391.222, F.S. (2000).

¹⁰ *Id.*

¹¹ Chapter 2001-89, s. 27, Laws of Fla.

¹² Senate Committee on Governmental Oversight and Productivity, *CS/SB 1410 Staff Analysis and Economic Impact Statement* (March 28, 2001) p. 9, <http://archive.flsenate.gov/data/session/2001/Senate/bills/analysis/pdf/2001s1410.go.pdf> (Last visited Oct. 6, 2015).

an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Advisory bodies, commissions and boards may only be created by statute in furtherance of a public purpose¹³ and meet a statutorily defined purpose.¹⁴ Such advisory bodies, commissions and boards must be terminated by the Legislature once the body, commission or board notifies the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose.¹⁵ The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies, commissions and boards.¹⁶ Members of such bodies are appointed for staggered, four-year terms and unless otherwise provided in the State Constitution,¹⁷ serve without compensation, but are authorized to receive reimbursement for per diem and travel as provided in s. 112.061, F.S.¹⁸

Private citizen appointees to an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.¹⁹ Private citizen appointees to a board or commission that is adjunct to an executive agency must be appointed by the Governor, unless otherwise provided by law, confirmed by the Senate, and are subject to dual office holding provisions of s. 5(a), Art. II of the State Constitution.²⁰

Unless exempted, all meetings of advisory bodies, boards and commissions are subject to public meetings requirements under s. 286.011, F.S., and minutes must be maintained for all meetings.²¹

Technical advisory panels are not separately defined in statute.

Agency for Health Care Administration

AHCA is responsible for the licensure, certification, and regulation of 40 different types of health care providers, including hospitals, nursing homes, assisted living facilities, and home health agencies through its Division of Health Quality Assurance.²² Under its Bureau of Health Facility Regulation, AHCA reviews applications for new facilities and specialty services at hospitals through the certificate of need (CON) process.²³ Also, the Bureau of Health Facility Regulation conducts periodic and complaint-based inspections of hospitals.

¹³ Section 20.052(1), F.S.

¹⁴ Section 20.052(4)(a), F.S.

¹⁵ Section 20.052(2), F.S.

¹⁶ Section 20.052(3), F.S.

¹⁷ Section 20.052(4)(c), F.S.

¹⁸ Section 20.052(4)(d), F.S.

¹⁹ Section 20.052(5)(a), F.S.

²⁰ Section 20.052(5)(b), F.S.

²¹ Section 20.052(5)(c), F.S.

²² See <http://ahca.myflorida.com/MCHQ/index.shtml> (last visited on November 9, 2015).

²³ See http://ahca.myflorida.com/MCHQ/CON_FA/index.shtml (last visited on November 9, 2015). Also, see Agency for Health Care Administration, *Certificate of Need Publications*: http://ahca.myflorida.com/MCHQ/CON_FA/Publications/index.shtml (last visited on November 9, 2015).

Rulemaking

Rulemaking is required by Florida's Administrative Procedure Act (APA) whenever a government agency has express authority to make rules, and must resort to rulemaking in order to implement, interpret, or prescribe law, policy, or requirements,²⁴ including mandatory forms.²⁵ Rulemaking is not discretionary under the APA.²⁶

III. Effect of Proposed Changes:

Section 1 creates s. 391.224, F.S., and the Pediatric Cardiac Advisory Council (council) under the Department of Health (Department) for the purpose of coordinating pediatric cardiac care in this state and advising the department and the Agency for Health Care Administration (AHCA) on the delivery of cardiac services to children.

The advisory council shall be composed of no more than 13 voting members with expertise in cardiac medicine appointed by the State Surgeon General, and members will serve staggered four-year terms. Eight of the members who are either pediatric cardiologists or pediatric cardiovascular surgeons must be nominated by the chief executive officers of designated health care systems with pediatric cardiac certificates of need. A hospital with a certificate of need for a pediatric cardiac program that meets state and national standards as determined by the council following an on-site visit by a panel from the council shall have one of its pediatric cardiologists or pediatric cardiovascular surgeons who has been nominated by its chief executive officer and approved by the State Surgeon General appointed to the council as a new voting member.

The State Surgeon General is also authorized to select additional at-large members, with expertise in pediatric cardiology or adults with congenital heart disease who are not associated with one of the designated facilities. Additional advisory, non-voting members may also be appointed to the council by the State Surgeon General.

The voting privilege of a voting member of the advisory council must be suspended if the facility he or she represents no longer meets state and national standards as adopted by the council. Such individual may remain a member of the council in an advisory capacity but shall relinquish voting privileges until his or her facility meets required standards.

The bill requires the Council to meet at least quarterly. Meetings may also be called by the Chair, two or more voting members, or the State Surgeon General. An employee of the department or a contracted consultant paid by the department is not eligible to serve as a member or ex-officio member and no member may serve more than two consecutive terms.

Council members do not receive compensation; however, they are entitled to reimbursement in accordance with s. 112.061, F.S., for per diem and travel. Council meetings must be conducted via teleconference where that capability is available.

The council's duties include, but are not limited to:

²⁵ *Dep't of Bus. Reg., Div. of Alcoholic Bev. & Tobacco v. Martin County Liquors, Inc.*, 574 So.2d 170 (Fla. 1st DCA 1991).

²⁶ Section 120.54(1)(a), F.S.

- Recommending standards for personnel and facilities rendering cardiac services;
- Analyzing reports on the periodic review of cardiac personnel and facilities to determine if established standards for the cardiac services are met;
- Making recommendations to the Children's Medical Services Director as to the approval or disapproval of personnel and facilities. At the recommendation of the cardiac advisory council and Director's approval, the department's secretary shall designate facilities approved under this paragraph as "Pediatric and Congenital Cardiovascular Centers of Excellence." The designation is withdrawn automatically if a particular center no longer meets state and national professional standards of care for children with heart disease;
- Making recommendations as to the intervals for re-inspection of approved personnel and facilities;
- Reviewing and inspecting hospitals upon the request of the hospital, the department, or AHCA to determine if established state and national standards for cardiac services are met;
- Providing input on all aspects of the state's Children's Medical Services cardiac programs, including rulemaking;
- Addressing all components of the care of adults and children with congenital heart disease and children with acquired heart disease, as indicated and appropriate;
- Abiding by the recognized state and national professional standards of care for children with heart disease;
- Making recommendations to the State Surgeon General for legislation and appropriations for children's cardiac services; and
- Providing advisory opinions to AHCA before AHCA approves a certificate of need for children's cardiac services.

The bill also authorizes the creation of the "Pediatric and Congenital Centers of Excellence" designation. The designation may be awarded to facilities at the recommendation of the council with the approval of the Director of Children's Medical Services and the State Surgeon General utilizing state and national professional standards approved by the council. The designation shall be withdrawn automatically if a facility no longer meets those standards.

The council shall also develop and recommend to the State Surgeon General evaluation tools for measuring the goals and performance standards for the facilities seeking and receiving the designation.

The council must submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by each January 1 beginning in 2017. This report must summarize the council's activities for the preceding fiscal year and include data and performance measures for all pediatric cardiac facilities that participate in the Children's Medical Services Network relating to surgical morbidity and mortality. The annual report must also recommend any policy or procedural changes that would increase the council's effectiveness in monitoring pediatric cardiovascular programs in the state.

The department, in coordination with AHCA, shall develop rules related to pediatric cardiac facilities that participate in the Children's Medical Services Network. These rules may establish standards relating to the training and credentialing of medical and surgical personnel, facility and physician minimum case volumes, and data reporting requirements for monitoring and enhancing

quality assurance. Also, the department, in coordination with AHCA, is authorized to develop rules related to pediatric cardiac care facilities, the establishment, operations, and authority of the council, and the establishment, goals, performance standards, and evaluation tools for designating facilities as “Pediatric and Congenital Cardiovascular Centers of Excellence.”

The bill provides that rules relating to pediatric services and facilities in effect on October 1, 2015, are authorized and shall remain in effect until amended.

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues

This bill provides that it is remedial in nature, is intended to clarify existing law, and applies retroactively to rules already in existence without regard to the date such rules were adopted. Retroactive application of a statute is generally unconstitutional if the statute impairs vested rights, creates new obligations, or imposes new penalties.²⁷

To determine whether a statute should be retroactively applied, courts apply two interrelated inquiries. First, courts determine whether there is clear evidence of legislative intent to apply the statute retrospectively. If so, then courts determine whether retroactive application is constitutionally permissible.²⁸

The second prong looks to see if a vested right is impaired. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law. It must be an immediate, fixed right of present or future enjoyment.²⁹ This bill contains a finding that it is remedial. “Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not

²⁷ See *State Farm Mutual Automobile Insurance Company v. Laforet*, 658 So.2d 55, 61 (Fla. 1995).

²⁸ See *Florida Ins. Guar. Ass’n, Inc., v. Devon Neighborhood Ass’n, Inc.*, 67 So.3d 187, 194 (Fla. 2011); See, also *Metropolitan Dade County v. Chase Federal Housing Corp.*, 737 So.2d 494, 499 (Fla. 1999).

²⁹ See *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So.2d 1210, 1218 (Fla. 2d DCA 2004).

come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes.”³⁰

To the extent an existing rule sets forth standards for pediatric cardiac facilities, this law may be constitutionally permissible.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals from the private sector with expertise in cardiac medicine are eligible to serve as members of the council. Members are selected by the State Surgeon General to serve staggered terms of four years and will have an opportunity to provide input on all aspects of CMS’ cardiac programs, including rulemaking, address components of cardiac care for both adults and children, make recommendations for legislation and appropriations and provide advisory opinions before AHCA approves a certificate of need for children’s cardiac services.

Facilities will have the opportunity to earn a designation as a “Pediatric and Congenital Center of Excellence.” This designation may distinguish one facility over another in the marketplace for the quality of care in the delivery of cardiac services to children and may impact the number of services delivered in a particular facility.

C. Government Sector Impact:

The council is housed in the department and makes recommendations to the State Surgeon General and the Children’s Medical Services program. Since October 2013, the department has been supporting a similar technical advisory panel, the Children’s Medical Services Cardiac Technical Advisory Panel, and CS/SB 378 includes similar duties and responsibilities of that technical advisory panel. With passage of CS/SB 378, the technical advisory panel will no longer be necessary.

The department estimates minimal costs for the council for conference calls at \$336.00 annually. The estimate is based on four calls per year, 40 persons per call for one hour at 3.5 cents per minute.³¹

To the extent that CS/SB 378 seeks to enforce any standards on cardiac facilities, the department’s authority is limited to its ability to credential facilities and providers that participate in the Children’s Medical Services program.³² Enforcement of facility

³⁰ *City of Lakeland v. Catinella*, 129 So.2d 133, 136 (Fla. 1961).

³¹ *Supra*, note 7 at 4.

³² *Supra*, note 7, at 5.

standards related to licensure resides in AHCA which is directed to work in coordination with the council under the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 391.224 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 Committee on November 17, 2015:

- Expands the membership of the Pediatric Cardiac Advisory Council (council) from 11 members to 13 voting members with technical expertise in cardiac medicine;
- Provides that a hospital with a certificate of need for a pediatric cardiac program that meets state and national standards as determined by the council following an on-site visit by a panel from the council shall have one of its pediatric cardiologists or pediatric cardiovascular surgeons who has been nominated by its chief executive officer and approved by the State Surgeon General appointed to the council as a new voting member;
- Specifies that the voting privilege of a voting member of the council shall be suspended if the facility that he or she represents no longer meets state and national standards as adopted by the council. Such individual may remain a member of the council in an advisory role but must relinquish voting privileges until his or her facility meets required standards;
- In addition to the hospitals, and the Agency for Health Care Administration, the department may also request the council to review and inspect hospitals to determine if established state and national standards for cardiac services are met;
- The council must submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General by each January 1 beginning in 2017. This report must summarize the council's activities for the preceding fiscal year and include data and performance measures for all pediatric cardiac facilities that participate in the Children's Medical Services Network relating to surgical morbidity and mortality. The annual report must also recommend any policy or procedural changes that would increase the council's effectiveness in monitoring pediatric cardiovascular programs in the state.
- The department in coordination with AHCA, shall develop rules related to pediatric cardiac facilities that participate in the Children's Medical Services Network. These

rules may establish standards relating to the training and credentialing of medical and surgical personnel, facility and physician minimum case volumes, and date reporting requirements for monitoring and enhancing quality assurance; and

- Clarifies that rules relating to pediatric cardiac services and facilities in effect on October 1, 2015, are authorized and shall remain in effect until amended.
- Changes the effective date of the bill from July 1, 2016, to effective “upon becoming a law.”

CS by Health Policy Committee on October 20, 2015:

The CS:

- Adds legislative intent and findings for the Pediatric Cardiac Advisory Council;
- Specifies the State Surgeon General as the nominating official, not the department for the council;
- Establishes the process for the election of the council chair and the frequency of council meetings shall be at least quarterly;
- Eight of the 11 council members are specifically designated as pediatric cardiologists or pediatric cardiovascular surgeons nominated by specific facilities with pediatric certificates of need in addition to three other at large physicians with special expertise in dealing with children or adults with congenital heart disease;
- At the recommendation of the council and with the approval of the Director of Children’s Medical Services , the State Surgeon General shall designate facilities that meet state and national standards of care for children with heart disease as “Pediatric and Congenital Cardiovascular Centers of Excellence”;
- A Centers of Excellence designation may automatically be withdrawn if a facility no longer meets the established standards;
- The council is directed to develop and recommend to the State Surgeon General measurable performance standards, goals, and evaluation tools, for the designation;
- The Department in coordination with AHCA, shall develop rules related to pediatric cardiac facilities; the establishment operations, and authority of the council; and the establishment, goals, performance standards, and evaluation tools for the designation of facilities as Centers of Excellence; and
- Clarifies existing law, is remedial in nature, and shall apply retroactively to rules already in existence without regard to the date such rules were adopted.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 52 - 159
and insert:

(d) The council shall be composed of no more than 13 voting members with technical expertise in cardiac medicine. Members shall be appointed by the State Surgeon General for staggered terms of 4 years. An employee of the department or a contracted consultant paid by the department may not serve as an appointed member or ex officio member of the council. Council members



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11 shall include the following voting members:

12 1. Pediatric cardiologists or pediatric cardiovascular
13 surgeons who have been nominated by their respective chief
14 executive officers and approved by the State Surgeon General
15 from the following facilities for as long as such facilities
16 maintain their pediatric certificates of need:

17 a. All Children's Hospital in St. Petersburg;

18 b. Arnold Palmer Hospital for Children in Orlando;

19 c. Joe DiMaggio Children's Hospital in Hollywood;

20 d. Nicklaus Children's Hospital in Miami;

21 e. St. Joseph's Children's Hospital in Tampa;

22 f. University of Florida Health Shands Hospital in
23 Gainesville;

24 g. University of Miami Holtz Children's Hospital in Miami;

25 and

26 h. Wolfson Children's Hospital in Jacksonville.

27

28 A hospital with a certificate of need for a pediatric cardiac
29 program that meets state and national standards as determined by
30 the council following an onsite visit by a panel from the
31 council shall have one of its pediatric cardiologists or
32 pediatric cardiovascular surgeons who has been nominated by its
33 chief executive officer and approved by the State Surgeon
34 General appointed to the council as a new voting member. The
35 voting privilege of a voting member of the council appointed
36 pursuant to this subparagraph shall be suspended if the facility
37 he or she represents no longer meets state and national
38 standards as adopted by the council. Such individual may remain
39 a member of the council in an advisory capacity but shall



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40 relinquish voting privileges until his or her facility meets
41 such standards.

42 2. Two physicians at large, not associated with a facility
43 that has a representative appointed as a voting member of the
44 council, who are pediatric cardiologists or subspecialists with
45 special expertise or experience in dealing with children or
46 adults with congenital heart disease. These physicians shall be
47 selected by the State Surgeon General in consultation with the
48 Deputy Secretary for Children's Medical Services and the
49 Director of Children's Medical Services.

50 3. One community physician who has ongoing involvement with
51 and special interest in children with heart disease and who is
52 not associated with a facility represented in subparagraph 1. or
53 one community-based medical internist having experience with
54 adults with congenital heart disease. The community physician
55 shall be selected by the State Surgeon General in consultation
56 with the Deputy Secretary of Children's Medical Services and the
57 Director of the Division of Children's Medical Services.

58 (e) The State Surgeon General may appoint nonvoting
59 advisory members to the council in consultation with the Deputy
60 Secretary for Children's Medical Services and the Director of
61 Children's Medical Services. Such members may participate in
62 council discussions and subcommittees created by the council,
63 but may not vote.

64 (f) The duties of the council include, but are not limited
65 to:

66 1. Recommending standards for personnel, diagnoses,
67 clinics, and facilities rendering cardiac services to the
68 department and the Division of Children's Medical Services.



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69 2. Analyzing reports on the periodic review of cardiac
70 personnel, diagnoses, clinics, and facilities to determine if
71 established state and national standards for cardiac services
72 are met.

73 3. Making recommendations to the Director of Children's
74 Medical Services as to the approval or disapproval of reviewed
75 cardiac care personnel, diagnoses, clinics, and facilities.

76 4. Making recommendations as to the intervals for
77 reinspection of approved personnel, diagnoses, clinics, and
78 facilities for cardiac care.

79 5. Reviewing and inspecting hospitals upon the request of
80 the hospitals, the department, or the Agency for Health Care
81 Administration to determine if established state and national
82 standards for cardiac services are met.

83 6. Providing input on all aspects of the state's Children's
84 Medical Services cardiac programs, including rulemaking.

85 7. Addressing all components of the care of adults and
86 children with congenital heart disease and children with
87 acquired heart disease, as indicated and appropriate.

88 8. Abiding by the recognized state and national
89 professional standards of care for children with heart disease.

90 9. Making recommendations to the State Surgeon General for
91 legislation and appropriations for children's cardiac services.

92 10. Providing advisory opinions to the Agency for Health
93 Care Administration before the agency approves a certificate of
94 need for children's cardiac services.

95 (g) A council member shall serve without compensation, but
96 is entitled to reimbursement for per diem and travel expenses in
97 accordance with s. 112.061.



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98 (h) At the recommendation of the Pediatric Cardiac Advisory
99 Council and with the approval of the Director of Children's
100 Medical Services, the State Surgeon General shall designate
101 facilities meeting the council's approved state and national
102 professional standards of care for children with heart disease
103 as "Pediatric and Congenital Cardiovascular Centers of
104 Excellence." The designation is withdrawn automatically if a
105 particular center no longer meets such standards.

106 1. The council shall develop and recommend to the State
107 Surgeon General measurable performance standards and goals for
108 determining whether a facility meets the requirements for
109 designation as a "Pediatric and Congenital Cardiovascular Center
110 of Excellence."

111 2. The council shall develop and recommend to the State
112 Surgeon General evaluation tools for measuring the goals and
113 performance standards of the facilities seeking and receiving
114 the "Pediatric and Congenital Cardiovascular Center of
115 Excellence" designation.

116 (3) ANNUAL REPORT.—The council shall submit an annual
117 report to the Governor, the President of the Senate, the Speaker
118 of the House of Representatives, and the State Surgeon General
119 by January 1 of each year, beginning in 2017. The report must
120 summarize the council's activities for the preceding fiscal year
121 and include data and performance measures for all pediatric
122 cardiac facilities that participate in the Children's Medical
123 Services Network relating to surgical morbidity and mortality.
124 The report must also recommend any policy or procedural changes
125 that would increase the council's effectiveness in monitoring
126 the pediatric cardiovascular programs in the state.



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127 (4) RULEMAKING.—The department, in coordination with the
128 Agency for Health Care Administration, shall develop rules
129 related to pediatric cardiac facilities that participate in the
130 Children’s Medical Services Network. The rules may establish
131 standards relating to the training and credentialing of medical
132 and surgical personnel, facility and physician minimum case
133 volumes, and data reporting requirements for monitoring and
134 enhancing quality assurance. The department may adopt rules
135 relating to the establishment, operations, and authority of the
136 Pediatric Cardiac Advisory Council and the establishment, goals,
137 performance standards, and evaluation tools for designating
138 facilities as Pediatric and Congenital Cardiovascular Centers of
139 Excellence. The rules relating to pediatric cardiac services and
140 facilities in effect on October 1, 2015, are authorized pursuant
141 to this subsection and shall remain in effect until amended
142 pursuant to this subsection.

143 Section 2. This act shall take effect upon becoming a law.

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

146 And the title is amended as follows:

147 Delete lines 2 - 17

148 and insert:

149 An act relating to pediatric cardiac care in the
150 Children’s Medical Services Network; creating s.
151 391.224, F.S.; providing legislative findings and
152 intent; creating the Pediatric Cardiac Advisory
153 Council; determining the chair of the advisory
154 council; establishing the membership of the advisory
155 council; identifying the duties of the advisory



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156 council; setting the minimum qualifications for the
157 designation of a facility as a Pediatric and
158 Congenital Cardiovascular Center of Excellence;
159 requiring a report to the Governor, the Legislature,
160 and the State Surgeon General; requiring the
161 Department of Health to develop rules relating to
162 pediatric cardiac services and facilities in the
163 Children's Medical Services Network; authorizing the
164 department to adopt rules relating to the council and
165 the designation of facilities as Pediatric and
166 Congenital Cardiovascular Centers of Excellence;
167 authorizing and preserving until amended specified
168 rules relating to pediatric cardiac services and
169 facilities; providing an effective date.

By the Committee on Health Policy; and Senator Bean

588-00911-16

2016378c1

1 A bill to be entitled
 2 An act relating to the Pediatric Cardiac Advisory
 3 Council; creating s. 391.224, F.S.; providing
 4 legislative findings and intent; creating the
 5 Pediatric Cardiac Advisory Council; determining the
 6 chair of the advisory council; establishing the
 7 membership of the advisory council; identifying the
 8 duties of the advisory council; setting the minimum
 9 qualifications for the designation of a facility as a
 10 Pediatric and Congenital Cardiovascular Center of
 11 Excellence; requiring the Department of Health to
 12 develop rules relating to pediatric cardiac
 13 facilities; authorizing the department to adopt rules
 14 relating to the council and the designation of
 15 facilities as Pediatric and Congenital Cardiovascular
 16 Centers of Excellence; providing retroactive
 17 application of the act; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 391.224, Florida Statutes, is created to
 22 read:

23 391.224 Pediatric Cardiac Advisory Council.-

24 (1) LEGISLATIVE FINDINGS AND INTENT.-

25 (a) The Legislature finds significant benefits in the
 26 continued coordination of activities by several state agencies
 27 regarding access to pediatric cardiac care in this state. It is
 28 the intent of the Legislature that the Department of Health, the
 29 department's cardiac consultants, and the Agency for Health Care

Page 1 of 6

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

588-00911-16

2016378c1

30 Administration maintain their long-standing interagency teams
 31 and agreements for the development and adoption of guidelines,
 32 standards, and rules for those portions of the state cardiac
 33 care system within the statutory authority of each agency. This
 34 coordinated approach will continue to ensure the necessary
 35 continuum of care for the pediatric cardiac patient. The
 36 department has the leadership responsibility for this activity.
 37 (b) It is further the intent of the Legislature to
 38 establish the Pediatric Cardiac Advisory Council, a statewide,
 39 inclusive council within the department.
 40 (2) PEDIATRIC CARDIAC ADVISORY COUNCIL.-
 41 (a) The State Surgeon General shall appoint the Pediatric
 42 Cardiac Advisory Council for the purpose of advising the
 43 department on the delivery of cardiac services to children.
 44 (b) The chair of the council shall be elected from among
 45 the council members every 2 years and may not serve more than
 46 two consecutive terms.
 47 (c) The council shall meet upon the call of the chair or
 48 two or more voting members or upon the call of the State Surgeon
 49 General, but must meet at least quarterly. Council meetings must
 50 be conducted by teleconference or through other electronic means
 51 when feasible.
 52 (d) The council shall be composed of 11 members with
 53 technical expertise in cardiac medicine. Members shall be
 54 appointed by the State Surgeon General for staggered terms of 4
 55 years. An employee of the department or a contracted consultant
 56 paid by the department may not serve as an appointed member or
 57 ex officio member of the council. Council members shall include
 58 the following voting members:

Page 2 of 6

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59 1. Pediatric cardiologists or pediatric cardiovascular
 60 surgeons that have been nominated by their respective chief
 61 executive officers and approved by the State Surgeon General
 62 from the following facilities for as long as such facilities
 63 maintain their pediatric certificates of need:
 64 a. All Children's Hospital in St. Petersburg;
 65 b. Arnold Palmer Hospital for Children in Orlando;
 66 c. Joe DiMaggio Children's Hospital in Hollywood;
 67 d. Nicklaus Children's Hospital in Miami;
 68 e. St. Joseph's Children's Hospital in Tampa;
 69 f. University of Florida Health Shands Hospital in
 70 Gainesville;
 71 g. University of Miami Holtz Children's Hospital in Miami;
 72 and
 73 h. Wolfson Children's Hospital in Jacksonville.
 74 2. Two physicians at large, not associated with a facility
 75 represented in subparagraph 1., who are pediatric cardiologists
 76 or subspecialists with special expertise or experience in
 77 dealing with children or adults with congenital heart disease.
 78 These physicians shall be selected by the State Surgeon General
 79 in consultation with the Deputy Secretary for Children's Medical
 80 Services and the Director of Children's Medical Services.
 81 3. One community physician who has special interest and
 82 ongoing involvement in children with heart disease and who is
 83 not associated with a facility represented in subparagraph 1.,
 84 or one community-based medical internist having experience with
 85 adults with congenital heart disease. The community physician
 86 shall be selected by the State Surgeon General in consultation
 87 with the Deputy Secretary of Children's Medical Services and the

Page 3 of 6

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88 Director of the Division of Children's Medical Services.
 89 (e) The State Surgeon General may appoint nonvoting
 90 advisory members to the council in consultation with the Deputy
 91 Secretary for Children's Medical Services and the Director of
 92 Children's Medical Services. Such members may participate in
 93 council discussions and subcommittees created by the council,
 94 but may not vote.
 95 (f) The duties of the council include, but are not limited
 96 to:
 97 1. Recommending standards for personnel, diagnoses,
 98 clinics, and facilities rendering cardiac services to the
 99 department and the Division of Children's Medical Services.
 100 2. Analyzing reports on the periodic review of cardiac
 101 personnel, diagnoses, clinics, and facilities to determine if
 102 established state and national standards for cardiac services
 103 are met.
 104 3. Making recommendations to the Director of Children's
 105 Medical Services as to the approval or disapproval of reviewed
 106 cardiac care personnel, diagnoses, clinics, and facilities.
 107 4. Making recommendations as to the intervals for
 108 reinspection of approved personnel, diagnoses, clinics, and
 109 facilities for cardiac care.
 110 5. Reviewing and inspecting hospitals upon the request of
 111 the hospitals or the Agency for Health Care Administration to
 112 determine if established state and national standards for
 113 cardiac services are met.
 114 6. Providing input on all aspects of the state's Children's
 115 Medical Services cardiac programs, including rulemaking.
 116 7. Addressing all components of the care of adults and

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117 children with congenital heart disease and children with
 118 acquired heart disease, as indicated and appropriate.
 119 8. Abiding by the recognized state and national
 120 professional standards of care for children with heart disease.
 121 9. Making recommendations to the State Surgeon General for
 122 legislation and appropriations for children's cardiac services.
 123 10. Providing advisory opinions to the Agency for Health
 124 Care Administration before the agency approves a certificate of
 125 need for children's cardiac services.
 126 (g) A council member shall serve without compensation, but
 127 is entitled to reimbursement for per diem and travel expenses in
 128 accordance with s. 112.061.
 129 (h) At the recommendation of the Pediatric Cardiac Advisory
 130 Council and with the approval of the Director of Children's
 131 Medical Services, the State Surgeon General shall designate
 132 facilities meeting the council's approved state and national
 133 professional standards of care for children with heart disease
 134 as "Pediatric and Congenital Cardiovascular Centers of
 135 Excellence." The designation is withdrawn automatically if a
 136 particular center no longer meets such standards.
 137 1. The council shall develop and recommend to the State
 138 Surgeon General measurable performance standards and goals for
 139 determining whether a facility meets the requirements for
 140 designation as a "Pediatric and Congenital Cardiovascular Center
 141 of Excellence."
 142 2. The council shall develop and recommend to the State
 143 Surgeon General evaluation tools for measuring the goals and
 144 performance standards of the facilities seeking and receiving
 145 the "Pediatric and Congenital Cardiovascular Center of

Page 5 of 6

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

588-00911-16

2016378c1

146 Excellence" designation.
 147 (3) RULEMAKING.—The department, in coordination with the
 148 Agency for Health Care Administration, shall develop rules
 149 related to pediatric cardiac facilities. The department may
 150 adopt rules relating to the establishment, operations, and
 151 authority of the Pediatric Cardiac Advisory Council and the
 152 establishment, goals, performance standards, and evaluation
 153 tools for designating facilities as Pediatric and Congenital
 154 Cardiovascular Centers of Excellence.
 155 (4) APPLICABILITY.—This section is intended to clarify
 156 existing law, is remedial in nature, and shall apply
 157 retroactively to rules already in existence without regard to
 158 the date such rules were adopted.
 159 Section 2. This act shall take effect July 1, 2016.

Page 6 of 6

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The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: October 21, 2015

I respectfully request that **Senate Bill #378**, relating to Cardiac Advisory Council for Children's Services Councils, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11/17/15

Bill Number (if applicable) 378

Topic Pediatric Cardiac Advisory Council

Amendment Barcode (if applicable) _____

Name Ashley Boxer

Job Title Director, Government Relations

Address 3111 Stirling Road

Phone (305) 794-4801

Street Hollywood State FL Zip 33312

Email aboxer@mhj.net

Speaking: For Against Information

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

Representing Joe DiMaggio Children's Hospital (Hollywood, FL)

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11/17/15

Bill Number (if applicable) 378

Topic Pediatric Cardiac Advisory Council

Amendment Barcode (if applicable) _____

Name Michelle Streath

Job Title Director, Government Affairs

Address _____
Street _____

Phone (407) 694-9910

City _____ State _____ Zip _____

Email Michelle.streath@mandohaw.com

Speaking: For Against Information

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

Representing Arnold Palmer Children's Hospital

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11/17/15

Bill Number (if applicable) 378

Topic Pediatric ~~Advisory~~ ~~Council~~ ~~Panel~~ ~~Advisory~~ ~~Council~~

Amendment Barcode (if applicable)

Name Clint Showpp

Job Title State Govt Relations Manager

Address 2485 New St

Phone 727-514-1885

Street Cleavon City FL State FL Zip 33789

Email clint.showpp@bcscare.org

Speaking: For Against Information

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

Representing St. Joseph's Children's Hospital

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11-17-15

Bill Number (if applicable) OSRB-378

Amendment Barcode (if applicable) _____

Topic Pediatric Cardiac Advisory Council
Name Marnie George

Job Title Sr. Advisor - Budhansen Ingersoll's Room

Address 101 N. Monroe St Phone 850-510-8866

Street Tallahassee City FL State 32301 Zip marnie.george@bipec.com Email

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

Representing 2nd FL Chapter, Am Academy of Pediatrics

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11-17-15

Bill Number (if applicable) 0378

Topic Pediatric Cardiac Advisory Council

Amendment Barcode (if applicable) _____

Name Jodi Stevens

Job Title Lobbyist

Address 110 E. Jefferson

Phone 963-698-4982

Street

Tallahassee

State FL

Zip 32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing March of Dimes

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 11/17/13

Bill Number (if applicable) SB 378

Topic GABRIAC RULE

Amendment Barcode (if applicable)

Name LOUIS ST. PETERBY

Job Title FEDERAC CANDIDACY

Address 1132 LOST AVENUE

Phone 850-294-4309

Street TALUAKASSE City FL State FL Zip 32303

Email LSPTREBY@SMALL.COM

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

Representing FEDERAC CANDIDACY

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.

CourtSmart Tag Report

Room: SB 401 Case No.:
Caption: Senate Governmental Oversight and Accountability

Type:
Judge:

Started: 11/17/2015 1:02:46 PM
Ends: 11/17/2015 2:18:14 PM Length: 01:15:29

1:02:51 PM Senator Hays calls the meeting to order
1:03:01 PM roll call
1:03:02 PM quorum present
1:03:31 PM SB 180 by Senator Richter
1:03:44 PM Michael Nacheff presents the bill
1:04:18 PM Cynthia Henderson representing Linebarger waives in support
1:04:45 PM roll call on 180
1:04:55 PM Favorable
1:05:07 PM SB 182 by Senator Richter
1:05:12 PM Michael Nacheff presents the bill
1:05:24 PM Amendment 754342 by Senator Hays
1:05:33 PM Michael Nacheff presents the amendment
1:05:55 PM Amendment adopted
1:05:59 PM Amendment adopted
1:05:59 PM Back on the bill
1:06:04 PM Cynthia Henderson representing Linebarger waives in support
1:06:17 PM Michael Nacheff waives close
1:06:23 PM roll call
1:06:32 PM Favorable
1:06:43 PM SB 320 by Senator Richter
1:06:50 PM Becky Kokkinos presents the bill
1:07:21 PM Burt Saunders representing Collier and Lee County waives in support
1:07:32 PM Becky Kokkinos waives close
1:07:36 PM roll call
1:07:40 PM Favorable
1:08:04 PM SB 310 by Senator Legg
1:08:11 PM Senator Legg presents the bill
1:08:48 PM Seber Newsome speaks
1:15:14 PM Senator Bullard
1:17:15 PM Senator Legg closes on the bill
1:19:11 PM roll call
1:19:16 PM Favorable
1:19:34 PM SB 326 by Senator Brandes
1:19:43 PM Senator Brandes explains the bill
1:20:05 PM Amendment 781088 by Senator Hays
1:20:15 PM Senator Brandes explains the amendment
1:20:26 PM amendment adopted
1:20:36 PM Back on the bill
1:20:46 PM Senator Brandes waives close
1:20:51 PM roll call
1:20:56 PM Favorable
1:21:24 PM Senator Hays takes the chair
1:21:59 PM SPB 7028
1:22:14 PM Senator Ring explains the bill
1:23:51 PM BG Murphy with Jeff Atwater waives in support
1:24:06 PM Senator Ring waives support and submit as committee bill
1:24:19 PM roll call
1:24:22 PM Favorable as Committee Bill
1:24:34 PM SPB 7030 by Senator Ring
1:24:41 PM Senator Ring presents the bill
1:25:32 PM Senator Ring waives close and submit as committee bill
1:25:48 PM roll call
1:25:50 PM Favorable as Committee Bill
1:26:09 PM SB 350 by Senator Montford
1:26:29 PM Senator Montford presents the bill
1:27:10 PM Cynthia Henderson representing Crowne waives in support
1:27:19 PM Senator Montford waives close
1:27:26 PM roll call
1:27:29 PM Favorable
1:27:35 PM SB 374 by Senator Montford
1:27:41 PM Senator Montford presents bill
1:29:54 PM Senator Legg
1:30:02 PM Senator Montford
1:30:15 PM Doug Manheimer representing Hall Investments & Koger Center waives in support
1:30:29 PM Mike Huey of Winewood waives in support
1:30:42 PM Senator Montford waives close
1:30:47 PM roll call

1:30:53 PM Favorable
1:31:05 PM SB 390 by Simpson
1:31:11 PM Senator Simpson explains the bill
1:32:28 PM Erin Ballas representing National Waste and recycling assoc waives in support
1:32:36 PM Warren Husband of FI Assoc. General Contractors Council waives in support
1:32:47 PM Senator Bullard
1:33:11 PM Senator Simpson waives close
1:33:26 PM roll call
1:33:29 PM Favorable
1:33:58 PM Presentation and Discussion relating to the Florida State Employees Charitable Campaign
1:34:24 PM Senator Ring explains discussion
1:34:57 PM Mr. Chad Poppell DMS Secretary speaks
1:43:51 PM Senator Ring with a question
1:44:01 PM Mr. Poppell responds
1:45:10 PM Senator Hays with a question
1:45:47 PM Senator Ring responds
1:47:34 PM Senator Hays speaks
1:47:48 PM Senator Ring speaks
1:47:56 PM Mr. Poppell speaks
1:49:45 PM Senator Ring with a question
1:50:04 PM Mr. Poppell responds
1:50:43 PM Senator Ring with a question
1:50:51 PM Mr. Poppell responds
1:51:49 PM Senator Ring with a question
1:52:05 PM Mr. Poppell responds
1:52:53 PM Senator Bullard with a question
1:53:07 PM Mr. Poppell responds
1:53:43 PM Senator Montford with a question
1:53:51 PM Mr. Poppell responds
1:54:37 PM Senator Montford with a question
1:55:16 PM Mr. Poppell responds
1:57:00 PM Senator Montford with a question
1:57:17 PM Mr. Poppell responds
1:58:22 PM Senator Montford with a question
1:58:33 PM Mr. Poppell responds
1:59:57 PM Senator Hays with a question
2:00:43 PM Senator Ring with a question
2:01:43 PM Mr. Poppell responds
2:02:54 PM Senator Ring
2:03:39 PM Senator Montford
2:06:38 PM Senator Ring speaks
2:07:53 PM SB 378 by Senator Bean
2:08:01 PM Dee Alexander presents the bill
2:09:07 PM Amendment 280400 by Senator Hays
2:09:15 PM Dee Alexander explains the amendment
2:10:11 PM Amendment adopted
2:10:16 PM Dr. Louis St. Petery of Pedatric Cardiology waives in support
2:10:36 PM Jodi Stevens of March of Dimes waives in support
2:10:38 PM Marnie George of FI Chapter Am College of Cardiology waives in support
2:10:44 PM Clint Shoupe of St. Joseph's Children's Hospital waives in support
2:10:50 PM Senator Hays with a question
2:11:22 PM Dee Alexander responds
2:11:56 PM Senator Hays with a question
2:12:17 PM Dr. Louis St. Petery of Pediatric Cardiology responds
2:13:45 PM Senator Hays with a question
2:14:00 PM Dr. St. Petery responds
2:15:30 PM Senator Hays speaks
2:15:47 PM Senator Latvala with a question
2:15:58 PM Dr. St. Petery responds
2:16:19 PM Mitchell Strength representing Arnold Palmer Children's Hospital waives in support
2:16:29 PM Ashley Boxer of Joe DiMaggio Children's Hospital waives in support
2:16:43 PM Dee Alexander waives close on bill
2:16:49 PM roll call
2:16:51 PM Favorable
2:17:07 PM Senator Hays moves we rise

The Florida Senate

2015 Florida Statutes

<u>Title X</u> PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	<u>Chapter 110</u> STATE EMPLOYMENT <u>Entire Chapter</u>	SECTION 181 Florida State Employees' Charitable Campaign.
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110.181 Florida State Employees' Charitable Campaign. —

(1) CREATION AND ORGANIZATION OF CAMPAIGN. —

(a) The Department of Management Services shall establish and maintain, in coordination with the payroll system of the Department of Financial Services, an annual Florida State Employees' Charitable Campaign. Except as provided in subsection (5), this annual fundraising drive is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours, and for which the state will provide payroll deduction.

(b) State officers' and employees' contributions toward the Florida State Employees' Charitable Campaign must be entirely voluntary. State officers and employees shall designate a charitable organization to receive their contributions unless such contributions are collected as part of a campaign event.

(c) Participation in the annual Florida State Employees' Charitable Campaign is limited to any nonprofit charitable organization that has as its principal mission:

1. Public health and welfare;
2. Education;
3. Environmental restoration and conservation;
4. Civil and human rights; or
5. The relief of human suffering and poverty.

(d) The financial records of a nonprofit charitable organization participating in the Florida State Employees' Charitable Campaign must be audited annually by an independent public accountant whose examination conforms to generally accepted accounting principles.

(e) Organizations ineligible to participate in the Florida State Employees' Charitable Campaign include, but are not limited to, the following:

1. Organizations whose fundraising and administrative expenses exceed 25 percent, unless extraordinary circumstances can be demonstrated.
2. Organizations whose activities contain an element that is more than incidentally political in nature or whose activities are primarily political, religious, professional, or fraternal in nature.
3. Organizations that discriminate against any individual or group on account of race, color, religion, sex, national origin, age, handicap, or political affiliation.
4. Organizations not properly registered as a charitable organization as required by the Solicitation of Contributions Act, ss. ~~496.401-496.424~~.
5. Organizations that have not received tax-exempt status under s. 501(c)(3) of the Internal Revenue Code.

(2) SELECTION OF FISCAL AGENTS; COST. —

(a) The Department of Management Services shall select through the competitive procurement process a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations.

(b) The fiscal agent shall withhold the reasonable costs for conducting the campaign and for accounting and distribution to the participating organizations and shall reimburse the department the actual cost for coordinating the campaign in accordance with the rules of the department. In any fiscal year that the Legislature specifically appropriates to the department its total costs for coordinating the campaign from the General Revenue Fund, the fiscal

agent is not required to reimburse such costs to the department under this subsection. Otherwise, reimbursement will be the difference between actual costs and the amount appropriated.

(c) The fiscal agent shall furnish the department and participating charitable organizations a report of the accounting and distribution activities. Records relating to these activities must be open for inspection upon reasonable notice and request.

(d) The fiscal agent shall distribute undesignated funds to each participating organization in direct proportion to the percentage of designated funds pledged to the organization.

(3) RULEMAKING AUTHORITY; ADMINISTRATIVE REVIEW.—

(a) In accordance with the recommendations of the steering committee, the department shall adopt rules relating to the time and manner for charitable organizations' participation in the campaign, selection and responsibilities of the fiscal agent, determination of eligible expenses, and such other rules as may be necessary to administer the campaign.

(b) Department action which adversely affects the substantial interests of a party may be subject to a hearing. The proceeding shall be conducted in accordance with chapter 120, except that the time limits set forth in s. 496.405(7) shall prevail to the extent of any conflict.

(4) FLORIDA STATE EMPLOYEES' CHARITABLE CAMPAIGN STEERING COMMITTEE.—A Florida State Employees' Charitable Campaign steering committee shall be established with seven members appointed by members of the administration commission, and two members appointed by the secretary of the department from among applications submitted from other agencies or departments. The committee, whose members shall serve staggered terms, shall meet at the call of the secretary. Members shall serve without compensation, but shall be entitled to receive reimbursement for travel and per diem expenses as provided in s. 112.061.

(5) PARTICIPATION OF STATE UNIVERSITIES.—Each university may elect to participate in the Florida State Employees' Charitable Campaign, upon timely notice to the department. Each university may also conduct annual charitable fundraising drives for employees under the authority granted in s. 1001.706.

History.—s. 1, ch. 93-56; s. 7, ch. 99-399; s. 891, ch. 2002-387; s. 120, ch. 2003-261; s. 1, ch. 2006-221; s. 6, ch. 2007-217; s. 1, ch. 2010-78; s. 1, ch. 2012-141; s. 9, ch. 2012-215; s. 1, ch. 2015-61.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

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Transparent Solutions, Visible Results

Request for Proposal
RFQ #: 11/12-018

Management Consulting Services

State Term Contract Number: 973-001-06-1

August 27, 2012

Prepared for the

State of Florida Department of Management Services

Fiscal Agent Services for the
Florida State Employees'
Charitable Campaign





TAB E: PRICING

COST SUMMARY

To fully understand the significance of this best and final offer, it is important to keep in mind that costs should be evaluated based on the value of providing services and deliverables as requested in the ITN and how effectively this proposed solution fits the requirements and the Department's needs.

Costs for supporting the FSECC program have traditionally been expressed as a percentage of the contributions received during each annual campaign and based on historical data provided, costs have not changed significantly from year to year. Therefore, as the basis of contributions declines and the costs of providing core program services remain relatively stable, it is reasonable to expect that costs reflected as a percentage of contributions will increase. Table 1: Cost Benefit Comparison provides an illustration of the impact of the reported fiscal agent and DMS percentage fees applied to the FSECC contributions vs. our proposed fee. At 18.21%, our costs for equivalent levels of employee contributions are in line with historical costs and should be regarded as providing higher value when considering the additional services and deliverables included in our total fees.

Table 2: Changes in Service Provider Deliverables highlights a number of differences in services and responsibilities between the current solution and the solution requested in this current solicitation. These add additional expenses to the program. While the state may not see drastic reductions in the cost of administering this program given the additional requirements, the addition of automating processes, streamlined organizations, and implementing changes as governed by legislation will reduce the overall burden to the state by freeing up not only Department resources but also by reducing the overhead associated with a large number of state employees participating in the campaign.

Attachment D provides our summarized Best and Final Offer. This is supported by Attachment E which shows the detailed activities, assumptions, and costs that build up our estimated cost.

Our fees for supporting this program utilize standard labor rates as defined in our State Term Contract #973-001-06-1. These rates were established in 2006 and have not been increased in six years. Our practice in developing cost estimates focuses on doing our best to understand the work requested, and estimating the level and type of effort and expense required and applying our pre-negotiated labor categories and rates. Based on the rates we have used we estimate our profit margin potential to be less than 10% in the support of this work.

Things that will impact our actual profit include the level of support that may be required during the transition from the existing service provider as well as our assumptions of what the contribution basis will be. With a drop in contributions of over 40% in the last two years, our risk of recovering expenses using a percentage based contract is much greater than an expense reimbursement arrangement.

To provide some protection for ourselves as well as the State, we have recommended establishing a base contribution amount of \$3 million, with an option to reevaluate the service fee percentage if contributions vary in either direction by more than 10%. This proposed basis presumes that there will be a reversal in the trend of contributions over the last several years. By establishing a check point early in the year when the results of the Fall campaign is clearer, all parties will have a better understanding of how to make adjustments in costs or program expectations to support not only the needs of this program but provide the best possible solution for all stakeholders.

Table 1: Cost Benefit Comparison

	CURRENT SOLUTION	SOLIX SOLUTION	BENEFITS
COSTS	Average Fiscal Agent Charges \$518k/yr.	Anticipated Solix Costs \$546.5k/yr.	<ul style="list-style-type: none"> ■ Accountability and visibility of funds management
	Average DMS Charges \$122k/yr.	Program start-up costs amortized over anticipated 3 year contract	<ul style="list-style-type: none"> ■ Frequency and accuracy of financial reporting
	Total Costs \$640K/yr.		<ul style="list-style-type: none"> ■ Enhanced Support and Solutions lead to reduced overhead and costs associated with FSECC
COSTS AS A PERCENT OF CONTRIBUTIONS	Fiscal Agent Percent \$4.6M Basis = 11.26% \$3.0M Basis = 17.26%	Solix as FA Percent \$4.6M Basis = 11.88% \$3.0M Basis = 18.21%	<ul style="list-style-type: none"> ■ Solix costs account for all previous fiscal agent responsibilities and deliverables as well as relieve DMS of responsibilities
	DMS Percent \$4.6M Basis = 2.65% \$3.0M Basis = 4.06%	DMS Percent Unknown but as responsibilities will transition to Solix should be reduced.	<ul style="list-style-type: none"> ■ Establishing a Contribution Basis for Calculated Service Fee % provides for opportunities to renegotiate to either recover minimum expense of program operations and maximize charitable contributions
	Total Percent \$4.6M Basis = 13.91% \$3.0M Basis = 21.33%		



Table 2: Changes in Service Provider Deliverables

NEW OR CHANGED DELIVERABLES	CURRENT SOLUTION	SOLIX SOLUTION	BENEFITS
CHARITY APPLICATION PROCESSING	Performed by DMS not Fiscal Agent	Charity Application Processing Included utilizing DMS System	<ul style="list-style-type: none"> ■ Relieves DMS of responsibility ■ No conflict of interest concerns
ACCOUNTING & REMITTANCE	Quarterly Charitable Distributions	Monthly Charitable Distributions	<ul style="list-style-type: none"> ■ Charities receive funds quicker
	Annual Reconciliation	Monthly Reconciliation	<ul style="list-style-type: none"> ■ Improved accountability of funds and availability of information
	Annual Financial Reporting	Monthly Financial Reporting	<ul style="list-style-type: none"> ■ Improve accuracy of funds management and distributions
	Paper Pledge Processing	Automated Solutions for pledging and reconciliation processes	
STEERING COMMITTEE MANAGEMENT	Fiscal Agent Support for Local Steering Committees	Support for both Local and Statewide Steering Committees	<ul style="list-style-type: none"> ■ Centralized support and messaging for all Local Steering Committees
	DMS provided primary support for Statewide Steering Committees	Additional deliverables previously performed by DMS to be transferred to Solix	<ul style="list-style-type: none"> ■ Relieves DMS of responsibilities ■ Provides public record of all meetings
ADMINISTRATIVE & SUPPORT FUNCTIONS	Campaign managed by 26 Fiscal Agents	Centralized management limited to 7 regions	<ul style="list-style-type: none"> ■ Consistent messaging and availability of data
	Website managed by DMS	New Public FSECC website will tie together all campaign activities, pledging activities, charity information and public access information	<ul style="list-style-type: none"> ■ More flexibility to provide common messaging and single source for information and awareness

Attachment D

The required pricing sheet for RFQ #11/12-018 immediately follows this page.



ATTACHMENT "D"

Price Sheet RFQ NO.: 11/12-018

Fixed Rate Price (percentage of total funds raised in the campaign)

A. Accounting and Remittance Duties	7.95	%
B. Local Steering Committee Management	2.01	%
C. Application Processing	2.34	%
D. Administrative and Support Functions	5.84	%
E. Total Rate for All Services	18.21	%

Bidder Name and Address

Solix Inc., Grant Management Solutions

400 SW Longview Boulevard, Suite 290

Lee's Summit, MO 64081

Phone: (816) 347-0856

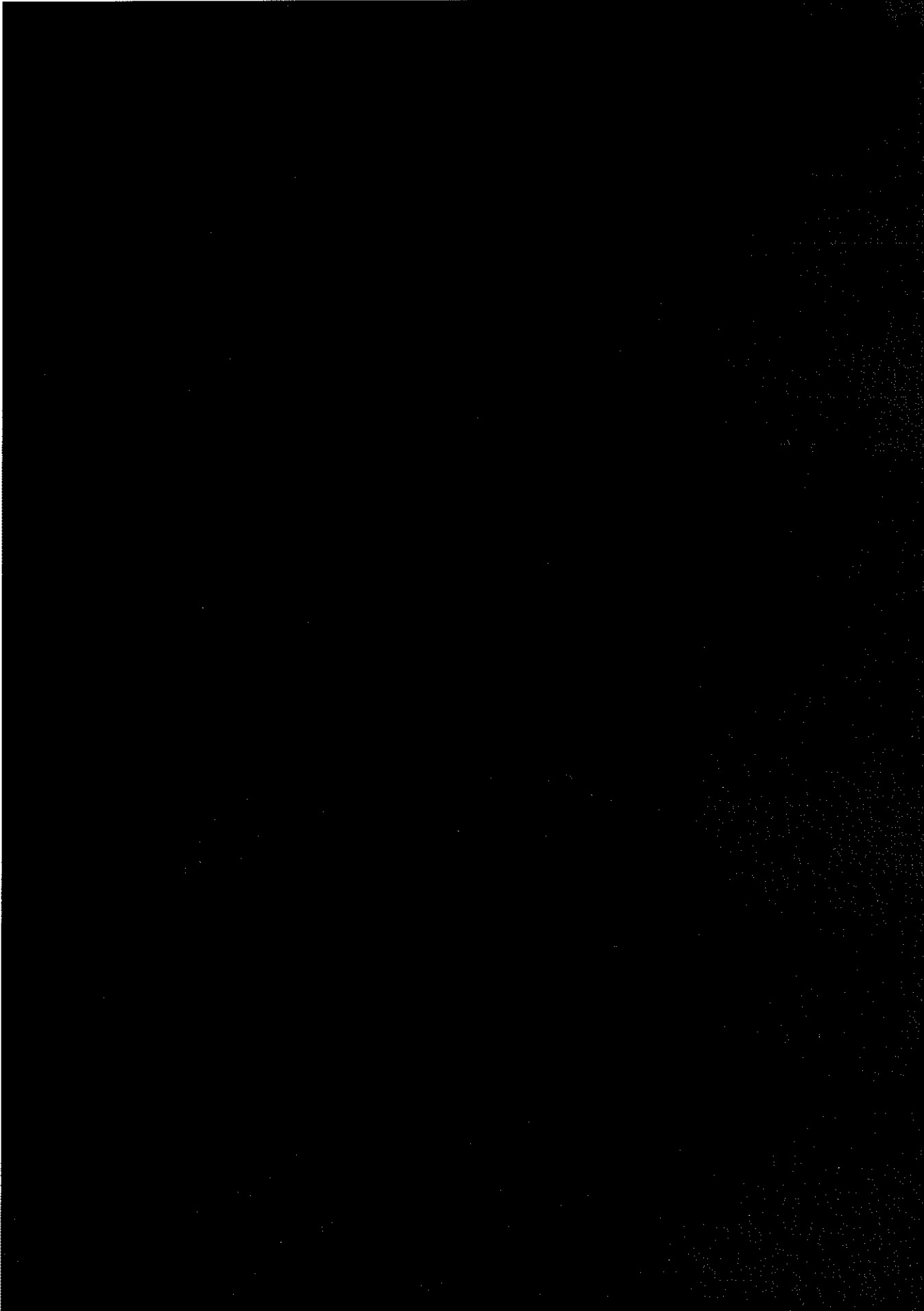

Digitized signature

August 23, 2012

Date

Attachment E

A detailed cost sheet for RFQ #11/12-018 immediately follows this page.





FLORIDA DEPARTMENT OF
management
SERVICES
We serve those who serve Florida

6050 Management Way
Tallahassee, Florida 32307-0000
Tel: 904.488.2784 | Fax: 904.499.6109

Mark Smith, Governor

Chris Spogli, Secretary

CONTRACT

FOR

FSECC FISCAL AGENT SERVICES

DMS-14/15-030

BETWEEN

THE STATE OF FLORIDA
DEPARTMENT OF MANAGEMENT SERVICES
AND

SOLIX, INC.

ATTACHMENT C - PRICE SHEET



4650 Espinosa Way
Tallahassee, Florida 32309-0980
Tel: 904.488.2222 | Fax: 904.488.2222

Mr. Scott Governor

Chief Fiscal Officer

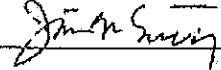
ATTACHMENT C - Price Sheet
RFP No.: DMS 14/15-030

Pursuant to Section 3.7, the Respondent shall complete this form (and include in Tab 2 by entering its fee in the spaces provided below. The value entered for each space shall be an annual fixed dollar amount.

	Year 1	Year 2	Year 3	Renewal Year 1	Renewal Year 2	Renewal Year 3
Fee for Services Related to Receiving, Accounting For, and Remitting Donations	\$207,408.18	\$212,431.75	\$218,677.83	\$225,178.75	\$231,834.50	\$238,803.93
Fee for Services Related to Processing Charitable Applications for Participation	\$43,888.03	\$45,218.14	\$46,811.33	\$48,068.18	\$49,535.45	\$51,118.30
Fee for Services Related to Administrative Support Functions	\$138,022.73	\$142,118.89	\$146,342.13	\$150,745.00	\$155,282.92	\$160,074.61
Total Fees	\$389,298.92	\$399,768.78	\$411,631.29	\$423,990.93	\$436,668.87	\$448,894.84

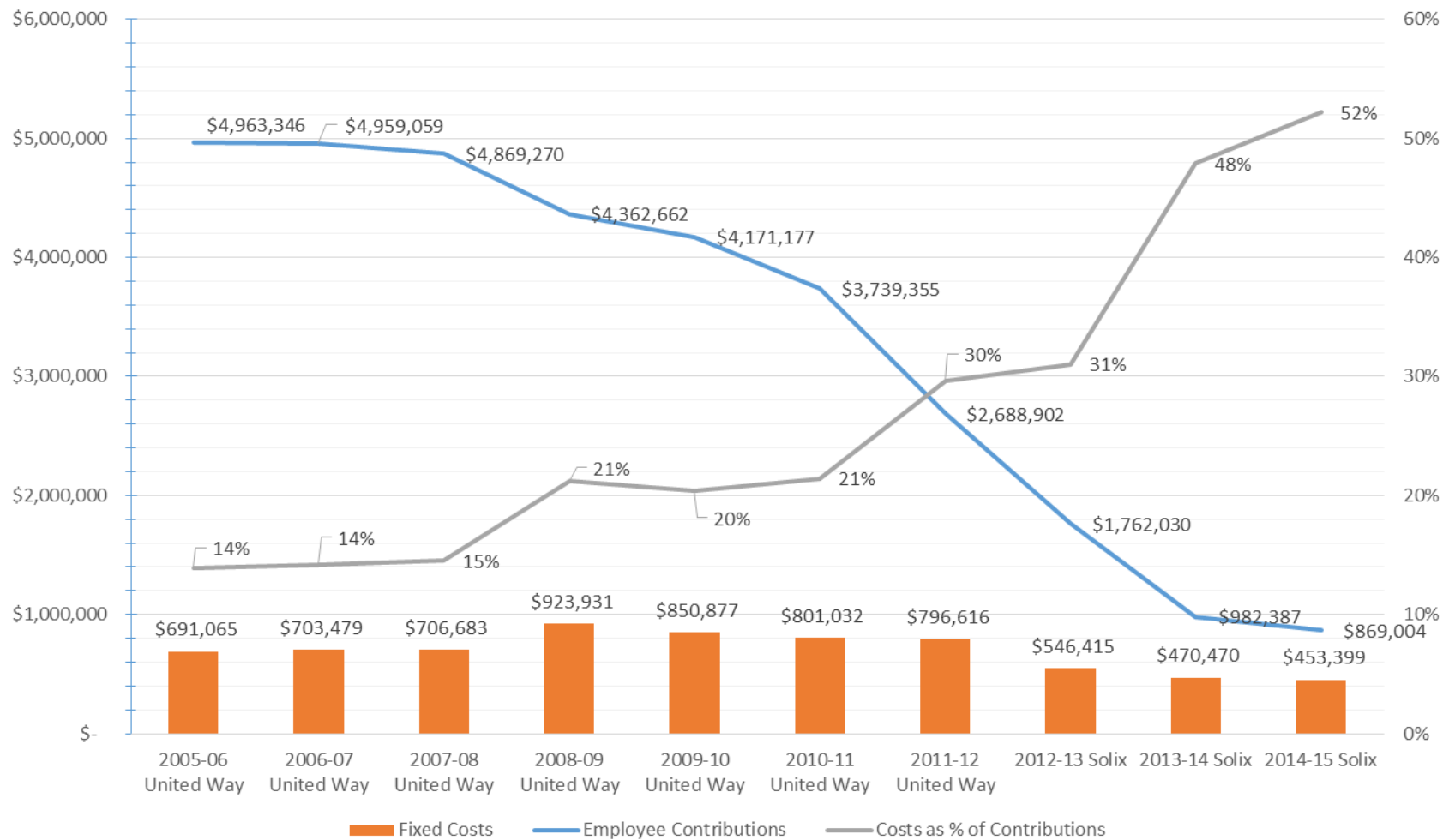
Respondent Name: Solix, Inc.

Respondent Title: Vice President, Sales and Marketing

Signature: 

Date: 3/18/15

FSECC Campaign History Amounts Raised and Amounts Withheld by Fiscal Agent



THE FLORIDA SENATE
APPEARANCE RECORD

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

11/17/15
Meeting Date

Bill Number (if applicable)

Topic Presentation relating to the FSECC

Amendment Barcode (if applicable)

Name Chad Poppell

Job Title DMS Secretary

Address 4050 Esplanade Way

Phone 850 - 414 - 1159

Tallahassee FL 32399 - 0950
City State Zip

Email Chad.poppell@DMS.myflorida.com

Speaking: For Against Information

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

Representing FL Dept. of Management Services

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.