

Tab 1	CS/SB 196 by TR, Hutson; (Similar to H 0267) Public Records/State-funded Infrastructure Bank					
519336	D	S	RCS	GO, Latvala	Delete everything after	01/11 06:14 PM
Tab 2	SB 716 by Sobel (CO-INTRODUCERS) Sachs, Simpson; (Identical to H 0513) Florida Holocaust Memorial					
Tab 3	SB 7002 by CA; (Identical to H 7037) OGSR/Audit Report and Certain Records/Local Government					
Tab 4	SB 7004 by CA; (Similar to H 7033) OGSR/Emergency Notification Information					
901406	A	S	RCS	GO, Hays	Delete L.19 - 21:	01/11 06:14 PM
Tab 5	SB 7020 by HP; OGSR/Florida Health Choices Program/Florida Health Choices, Inc.					
Tab 6	SB 7024 by HP; (Similar to H 7041) OGSR/Information Held by the Florida Center for Brain Tumor Research					
374734	A	S	RCS	GO, Hays	Delete L.17:	01/11 06:14 PM
Tab 7	SB 7032 by BI; (Identical to H 7035) OGSR/Office of Financial Regulation					
Tab 8	SB 438 by Bullard; (Identical to H 0211) Small Business Participation in State Contracting					
355758	A	S	RCS	GO, Bullard	Delete L.96:	01/11 06:14 PM
583094	A	S		GO, Bullard	Delete L.100:	01/08 03:55 PM
Tab 9	CS/SB 516 by CA, Ring, Gaetz; (Similar to H 0745) Special Districts					
575920	A	S	WD	GO, Ring	Delete L.72 - 74:	01/11 06:14 PM
Tab 10	CS/SB 142 by JU, Ring (CO-INTRODUCERS) Joyner; (Similar to H 0923) Student Loans					
687272	A	S	WD	GO, Ring	Delete L.69:	01/11 06:14 PM
Tab 11	SB 582 by Gaetz; (Compare to H 0593) Public Corruption					
401016	D	S	FAV	GO, Ring	Delete everything after	01/12 02:48 PM
Tab 12	SPB 7042 by GO; State-administered Retirement Systems					
319448	A	S	FAV	GO, Ring	Before L.14:	01/11 06:14 PM
Tab 13	SPB 7044 by GO; Retirement Benefits for Certain Judges					

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

MEETING DATE: Monday, January 11, 2016

TIME: 4:00—6:00 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
1	CS/SB 196 Transportation / Hutson (Similar H 267)	Public Records/State-funded Infrastructure Bank; Providing an exemption from public records requirements for any financial statement or other financial information of a private entity applicant that the Department of Transportation requires as part of an application process for assistance from the state- funded infrastructure bank; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. TR 11/04/2015 Fav/CS GO 12/01/2015 Not Considered GO 01/11/2016 RC	
2	SB 716 Sobel (Similar H 405, Identical H 513)	Florida Holocaust Memorial; Establishing the Florida Holocaust Memorial; providing for administration by the Department of Management Services; prohibiting the department from constructing and placing the memorial until certain conditions are met, etc. GO 01/11/2016 AGG FP	
3	SB 7002 Community Affairs (Identical H 7037)	OGSR/Audit Report and Certain Records/Local Government; Amending a provision which provides a public records exemption for the audit report of an internal auditor and certain records relating to investigations in the custody of an inspector general of a local government; removing the scheduled repeal of the exemption, etc. GO 01/11/2016 RC	
4	SB 7004 Community Affairs (Similar H 7033)	OGSR/Emergency Notification Information; Amending a provision which provides an exemption from public records requirements for information furnished by a person to an agency for the purpose of being provided an emergency notification by the agency, etc. GO 01/11/2016 RC	

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, January 11, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 7020 Health Policy	OGSR/Florida Health Choices Program/Florida Health Choices, Inc.; Amending provisions relating to an exemption from public records requirements for personal identifying information of an enrollee or participant in the Florida Health Choices Program, for client and customer lists of a buyer's representative held by the Florida Health Choices, Inc., and for proprietary confidential business information held by the corporation, and relating to a penalty for unlawful disclosure of confidential and exempt information; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 01/11/2016 RC	
6	SB 7024 Health Policy (Similar H 7041)	OGSR/Information Held by the Florida Center for Brain Tumor Research; Amending provisions which provide an exemption from public records requirements for information held by the Florida Center for Brain Tumor Research; removing the scheduled repeal of the exemption, etc. GO 01/11/2016 RC	
7	SB 7032 Banking and Insurance (Identical H 7035)	OGSR/Office of Financial Regulation; Amending provisions relating to an exemption from public records requirements for confidential information received by the Office of Financial Regulation from certain state or federal agencies and information received or developed by the office in a joint or multiagency examination or investigation; removing the scheduled repeal of the exemption, etc. GO 01/11/2016 RC	
8	SB 438 Bullard (Identical H 211)	Small Business Participation in State Contracting; Defining the terms "contract bundling" and "small business"; directing that agencies avoid contract bundling under certain circumstances; requiring agencies to conduct market research and include written summaries and analyses of such research in solicitations for bundled contracts; requiring the rules ombudsman in the Executive Office of the Governor to establish a system for reporting small business participation in state contracting, etc. GO 11/02/2015 GO 12/01/2015 Not Considered GO 01/11/2016 AGG AP	

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, January 11, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 516 Community Affairs / Ring / Gaetz (Similar H 745, Compare CS/H 479, S 956)	Special Districts; Requiring each special district to operate an official website; requiring each special district's official website to include specified budget information; requiring certain independent special districts to be subject to ch. 120, F.S., etc. CA 11/17/2015 Fav/CS GO 01/11/2016 ATD FP	
10	CS/SB 142 Judiciary / Ring (Similar H 923, Compare H 291)	Student Loans; Creating the For the Greater Good Attorney Student Loan Repayment Program to increase employment and retention of attorneys in the public sector; providing eligibility requirements; specifying the loans that will be covered by the repayment program; requiring the Department of Education to make payments to eligible attorneys, etc. JU 12/01/2015 Fav/CS GO 01/11/2016 AED AP	
11	SB 582 Gaetz (Compare H 593, S 686)	Public Corruption; Deleting the definition of the term "corruptly" or "with corrupt intent"; redefining the term "bribery" to include knowing and intentional, rather than corrupt, acts; revising the prohibition against unlawful compensation or reward for official behavior to conform to changes made by the act; revising the prohibition against official misconduct to conform to changes made by the act; revising the prohibition against bid tampering to conform to changes made by the act, etc. GO 12/01/2015 Temporarily Postponed GO 01/11/2016 CJ RC	
Consideration of proposed bill:			
12	SPB 7042	State-administered Retirement Systems; Revising required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System, etc.	

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, January 11, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SPB 7044	Retirement Benefits for Certain Judges; Authorizing certain retired members of the Florida Retirement System subsequently serving in a specified judicial office covered by the Elected Officers' Class to transfer all or a portion of benefits and interest accrued during participation in the Deferred Retirement Option Program to the investment plan; requiring the State Board of Administration and the Department of Management Services to request a private letter ruling from the United States Internal Revenue Service, etc.	
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/CS/SB 196

INTRODUCER: Governmental Oversight and Accountability Committee, Transportation Committee and Senator Hutson

SUBJECT: Public Records/State-funded Infrastructure Bank

DATE: January 12, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Kim	McVaney	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 196 creates a new exemption from the public records inspection and access requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for financial information held by the Florida Department of Transportation (FDOT). Specifically, the bill exempts the financial information of a private entity submitted to FDOT as part of the application process for a loan or credit enhancement from the State-funded Infrastructure Bank (SIB). The exemption does not apply to records of a private applicant in default of a SIB loan.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

The bill goes into effect July 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 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

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 “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

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

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records 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 public records.¹⁵ 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.¹⁶ 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: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?

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 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 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. The OGSR process is currently being followed; however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ 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 otherwise provided for by law.¹⁹

State-funded Infrastructure Bank

The 2000 Legislature created the SIB within the FDOT to provide loans and credit enhancements for use in constructing and improving transportation facilities.²⁰ Government units and private entities may apply to the SIB for assistance. As outstanding obligations are repaid to the SIB, those repayments are made available for future lending on other eligible SIB projects. All proceeds are invested by the State Treasurer in accordance with established investment guidelines.²¹

The SIB consists of two separate escrow accounts established with the Department of Financial Services, one federally-funded and one state-funded. Projects eligible for assistance from the former account include those meeting all of the requirements of Title 23, U.S.C.,²² capital projects defined in s. 5302 of Title 49, U.S.C.,²³ and any other projects relating to surface transportation that the U.S.D.O.T. Secretary determines to be appropriate.²⁴

For assistance from the state-funded account, a project must:

- Be on the State Highway System;
- Provide for increased mobility on the state's transportation system; or
- Provide intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals for the movement of people and goods.²⁵

Additionally, projects identified under the Transportation Regional Incentive Program are eligible for assistance from the state-funded account. The FDOT is authorized to match up to 50% of the cost for projects that, at a minimum:

- Serve national, statewide, or regional functions and function as part of an integrated regional transportation system;
- Are identified in the capital improvements element of a comprehensive plan and are in compliance with local government plan policies relative to corridor management;
- Are consistent with the Strategic Intermodal System Plan developed under s. 339.64, F.S.; and

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ Section 339.55, F.S.

²¹ See the FDOT's website for further information describing the SIB, its history, and its capitalization: <http://www.dot.state.fl.us/officeofcomptroller/PFO/sibintro.shtm>.

²² See 23 U.S.C. s. 119 (2014). Generally, projects on the National Highway System.

²³ Generally, public transportation projects.

²⁴ 23 U.S.C. s. 610 (2012).

²⁵ Section 339.55(2)(a), F.S.

- Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.²⁶

Emergency loans for damages incurred to public-use seaports, airports, and other transit and intermodal facilities with an area that is part of an official state declaration of emergency are also authorized under specified conditions.²⁷

Applicants for assistance from either account must submit first to the FDOT a Letter of Interest (LOI) to ensure a potential SIB project meets eligibility, financial, and production criteria. Once the FDOT determines a given LOI is acceptable, the FDOT determines an interest rate for the application based on current market conditions, financial strength of the borrower, term, and risk of the loan. Only then is an applicant invited to complete an application form.²⁸

As examples, some of the financial information items required in an LOI are a proposed financial plan, including details of the plan of finance sufficient in detail to assist in an assessment of creditworthiness (financial statements, operating revenues, and financial projections), details of the sources and uses of all funds, and a description of revenue sources pledged to repay the SIB loan.

Examples of financial information items required in a SIB loan application include funding sources, information regarding any anticipated bond issue or other debt instrument, loan term and amount, and primary and secondary repayment sources.

III. Effect of Proposed Changes:

Section 1 creates subsection (10) of s. 339.55, F.S., to make financial information submitted to the FDOT SIB as part of the application process for loans or credit enhancements exempt from public inspection and disclosure. The term “financial information” means any:

- Business plan;
- Pro forma statement;²⁹
- Account balance;
- Operating income or revenue;
- Asset value; or
- Debt.

This exemption would only apply to private entities and the exemption ceases if the private entity goes into default.³⁰

²⁶ Section 339.55(2)(b) and see s. 339.2819, F.S.

²⁷ Section 339.55(2)(c), F.S.

²⁸ See the FDOT’s website for the LOI and application forms: <http://www.dot.state.fl.us/officeofcomptroller/PFO/sib-loi%20application%20and%20awards.shtm>.

²⁹ Pro forma statements are financial statement that estimates a firms future financial position based on trends and assumptions and are used to prepare future scenarios, business plans or estimates of required cash for financing proposals. The Law Dictionary, Featuring Black’s Law Dictionary Free Online Legal Dictionary 2nd Ed. <http://thelawdictionary.org/pro-forma-statement/> (Last visited Jan. 8, 2016).

³⁰ The right of the public to inspect or copy the financial information of a government-unit applicant for a SIB loan is unchanged by the bill.

The bill provides, as required by the State Constitution, a statement of public necessity which states that disclosure of the specified information:

- Could harm a private entity by giving the private entity's competitors insights into its financial status and business plan, putting the private entity at a competitive disadvantage.
- Could create the opportunity for theft, fraud, and other illegal activity, jeopardizing the financial security of the private entity and placing it at risk for substantial financial harm.
- Could expose a private person who is required to provide his or her personal financial information to FDOT to identity theft or other criminal activity.

The bill further states:

- Private entities may be unwilling to submit an application to the SIB for a loan without the exemption, which unwillingness could limit the FDOT's opportunities for cost-effective or strategic solutions for constructing and improving transportation facilities.
- The public benefit derived from having more private entities apply for SIB assistance outweighs the public benefit derived from accessing a private entity's financial information.

The exemption is subject to the OGSR Act and will stand repealed on October 2, 2021, unless reviewed and reenacted by the Legislature.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. This bill creates a public record exemption for financial information held by FDOT as part of the application process for a loan or credit enhancement from the SIB; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. This bill creates a new public record exemption and includes a public necessity statement that supports the exemption. The exemption is no broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The specified private entity financial information is exempt from public disclosure, unless the private entity goes into default.

C. Government Sector Impact:

The FDOT may experience insignificant administrative expenses in implementing the exemption, which expenses are expected to be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The value of providing public access to the financial information only after a private entity recipient goes into default is unclear.

VIII. Statutes Affected:

This bill substantially amends section 339.55 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/CS by Governmental Oversight and Accountability on January 11, 2016:

- Removes “financial statement” and defines financial information in order to narrow the exemption and define a key term;
- Removes the word “confidential;”
- Replaces the word “assistance” with “loan or credit enhancement” for consistency with the rest of the section; and
- Amends the public necessity statement to clarify that both businesses and individuals may submit information to FDOT for SIB assistance. The public necessity statement clarifies that an individual may be subject to identity theft or other crimes if his or her financial information is publically available.

CS by Transportation on November 4, 2015:

The CS makes a technical change to reference the “application process,” rather than the “application,” as relevant financial information is required in the LOI as part of the application process.

B. Amendments:

None.



519336

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
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The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (10) is added to section 339.55,
Florida Statutes, to read:

339.55 State-funded infrastructure bank.—

(10) (a) Financial information of a private entity applicant
which the department requires as part of the application process
for loans or credit enhancements from the state-funded



519336

infrastructure bank is exempt from s. 119.07(1) and s. 24(a),
Art. I of the State Constitution. This exemption does not apply
to records of an applicant who is in default of a loan issued
under this section. As used in this subsection, the term
"financial information" means any business plan, pro forma
statement, account balance, operating income or revenue, asset
value, or debt of the applicant.

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

Section 2. (1) The Legislature finds that it is a public
necessity that financial information of a private entity that
the Department of Transportation requires as part of the
application process for a loan or credit enhancement from the
state-funded infrastructure bank be protected from disclosure.
Financial information means any business plan, pro forma
statement, account balance, operating income or revenue, asset
value, or debt of the applicant.

(2) The disclosure of such information could harm a private
entity in the marketplace by giving the private entity's
competitors insights into its financial status and business
plan, thereby putting the private entity at a competitive
disadvantage. Additionally, the disclosure of sensitive
financial information regarding a private entity could create
the opportunity for theft, fraud, and other illegal activity,
thereby jeopardizing the financial security of the private
entity and placing it at risk for substantial financial harm. If
an individual is required to provide his or her personal



519336

financial information to the department as part of the
application process for his or her business, the individual
could be subject to identity theft and other criminal activity.
Without an exemption from public records requirements under s.
119.07(1), Florida Statutes, and s. 24(a), Article I of the
State Constitution, some private entities might be unwilling to
submit an application to the state-funded infrastructure bank.
This unwillingness to submit applications could, in turn, limit
opportunities the department might otherwise have for providing
loans or credit enhancements to private entities who could
propose cost-effective or strategic solutions for constructing
and improving transportation facilities. The Legislature finds
that the benefit to the public of more private entities applying
for loans or credit enhancements outweighs any public benefit
that may be derived from the disclosure of the financial
information of a private entity. For this reason, the
Legislature declares that financial information that the
department requires as part of an application process for loans
or credit enhancements from the state-funded infrastructure bank
is exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
Article I of the State Constitution.

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

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public records; amending s. 339.55,



519336

69 F.S.; providing an exemption from public records
70 requirements for financial information of a private
71 entity applicant which the Department of
72 Transportation requires as part of an application
73 process for loans or credit enhancements from the
74 state-funded infrastructure bank; providing an
75 exception to the exemption; defining the term
76 "financial information"; providing for future
77 legislative review and repeal of the exemption;
78 providing a statement of public necessity; providing
79 an effective date.

By the Committee on Transportation; and Senator Hutson

596-01091-16

2016196c1

A bill to be entitled

An act relating to public records; amending s. 339.55, F.S.; providing an exemption from public records requirements for any financial statement or other financial information of a private entity applicant that the Department of Transportation requires as part of an application process for assistance from the state-funded infrastructure bank; providing an exception to the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (10) is added to section 339.55, Florida Statutes, to read:

339.55 State-funded infrastructure bank.—

(10)(a) Any financial statement or other financial information of a private entity applicant that the department requires as part of an application process for assistance from the state-funded infrastructure bank is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption does not apply to records of an applicant who is in default of a loan issued under this section.

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

Page 1 of 2

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596-01091-16

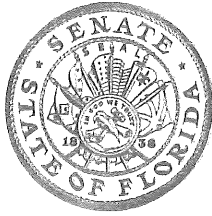
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Section 2. The Legislature finds that it is a public necessity that any financial statement or other financial information of a private entity that the Department of Transportation requires as part of an application to the state-funded infrastructure bank be protected from disclosure. The disclosure of such information could harm a private entity in the marketplace by giving the private entity's competitors insights into its financial status and business plan, thereby putting the private entity at a competitive disadvantage. Additionally, the disclosure of sensitive financial information regarding a private entity could create the opportunity for theft, identity theft, fraud, and other illegal activity, thereby jeopardizing the financial security of the private entity and placing it at risk for substantial financial harm. Without this exemption, private entities might be unwilling to submit an application to the state-funded infrastructure bank. This unwillingness to submit applications could, in turn, limit opportunities the department might otherwise have for finding cost-effective or strategic solutions for constructing and improving transportation facilities. The Legislature also finds that the harm to a private entity in disclosing confidential financial information significantly outweighs any public benefit derived from the disclosure of such information. For these reasons, the Legislature declares that any financial statement or other financial information that the department requires as part of an application to the state-funded infrastructure bank is exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice
Children, Families, and Elder Affairs
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Environmental Preservation and Conservation

SENATOR TRAVIS HUTSON

6th District

November 4, 2015

The Honorable Jeremy Ring
Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Ring:

I would like to respectfully request that my bill, SB 196 – Public Records/State-Funded Infrastructure Banks – be placed on the Committee on Governmental Oversight and Accountability's agenda.

SB 196 exempts the financial information of private applicants to the state-funded infrastructure bank. This exemption seeks to protect private entities from publicly disclosing financial information that could potentially lead to a competitive disadvantage in the marketplace, or criminal activity with regard to the of applicants financial security.

Thank you in advance for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in dark ink, appearing to read "Travis Hutson", with a long horizontal flourish extending to the right.

Senator Travis Hutson
District 6

REPLY TO:

- ☐ 4875 Palm Coast Parkway, NW, Suite 5, Palm Coast, Florida 32137 (386) 446-7610 FAX: (888) 263-3475
- ☐ 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

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)

1/11/16
Meeting Date

CS/SB 196
Bill Number (if applicable)

Topic State Infrastructure Bank

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney - Hopping Green & Sams

Address 119 S Monroe St. Suite 300
Street
Tallahassee FL 32301
City State Zip

Phone 850-222-7500

Email garyh@hgsllaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Association of Florida Community Developers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/11/16

Meeting Date

SB 196

Bill Number (if applicable)

Topic Public Records/State Infrastructure Bank

Amendment Barcode (if applicable)

Name Brewster Benvis

Job Title Senior VP

Address 516 N Adams St

Street

Phone 284-7123

Tallahassee

FL

32301

City

State

Zip

Email bhenvis@afl.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 716

INTRODUCER: Senators Sobel and Sachs

SUBJECT: Florida Holocaust Memorial

DATE: January 8, 2016

REVISED: _____

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

I. Summary:

SB 716 establishes the Florida Holocaust Memorial to recognize and commemorate the millions of people, including six million Jews, murdered by the Nazis and their collaborators before and during World War II in Europe and to honor the survivors of the Holocaust.

The bill requires the Department of Management Services (DMS) to administer the memorial and to designate an appropriate public area for the memorial on the premises of the Capitol Complex. Also, DMS shall construct the memorial after considering the recommendations of the Florida Historical Commission and coordinate with the Division of Historical Resources of the Department of State in regards to the memorial's design and placement.

The bill shall take effect on July 1, 2016.

II. Present Situation:

The Holocaust

The Holocaust was the systematic, bureaucratic, state-sponsored persecution and murder of millions of people, including six million Jews, by the Nazi regime and its collaborators during World War II.¹ The Nazi regime also targeted other groups, including the Romani people, the disabled, some Slavic peoples (Poles, Russians, and others), Communists, Socialists, Jehovah's Witnesses, and homosexuals.²

¹ See <http://www.ushmm.org/wlc/en/article.php?ModuleId=10005143> (last visited on December 8, 2015).

² *Id.*

Holocaust Memorials and Museums in Florida

There are numerous Holocaust memorials, monuments and museums worldwide, of which five are located throughout Florida. These memorials and museums include: a memorial on the Temple B’Nai Israel property in Clearwater, Florida,³ the Florida Holocaust Museum⁴ in St. Petersburg, FL, the Holocaust Memorial Resource and Education Center of Florida in Maitland, FL,⁵ a memorial in Miami Beach, FL,⁶ and the Holocaust Museum and Education Center of Southwest Florida in Naples, Florida.⁷

Managing Agency for the Capitol Center

Chapter 272, F.S., provides that the Capitol Center⁸ is under the general control and supervision of the DMS,⁹ which includes the management and maintenance of both the grounds and buildings.¹⁰ Additionally, DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.¹¹ This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.¹² After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.¹³

Capitol Complex

Section 281.01, F.S., defines the term “Capitol Complex” as:

[T]hat portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.

³ See http://www.waymarking.com/waymarks/WM7JP0_Holocaust_Memorial_Clearwater_FL (last visited on December 8, 2015).

⁴ See <https://www.flholocaustmuseum.org/about/fhm-history/> (last visited on December 8, 2015). This is one of the largest Holocaust museums in the country and played a role in shaping legislation that requires Holocaust education in public schools. See s. 10003.42(2)(g), F.S.

⁵ See http://www.holocaustedu.org/about_us (last visited on December 8, 2015).

⁶ See <http://holocaustmemorialmiamibeach.org/about/history/> (last visited on December 8, 2015).

⁷ See <http://www.holocaustmuseumsfwl.org/our-mission/> (last visited on December 8, 2015).

⁸ Section 272.12, F.S., describes the Tallahassee area bounded by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.

⁹ Section 272.03, F.S.

¹⁰ Section 272.09, F.S.

¹¹ Section 272.07, F.S.

¹² Department of Management Services, Senate Bill 608 Analysis (February 19, 2014) (copy on file with the Governmental Oversight and Accountability Committee).

¹³ *Id.*

Capitol Complex Monuments

The construction and placement of a monument¹⁴ on the premises of the Capitol Complex is prohibited unless authorized by general law and unless the design and placement of the monument is approved by DMS after considering the recommendations of the Florida Historical Commission.¹⁵ Additionally, DMS must coordinate with the Division of Historical Resources of the Department of State regarding a monument's design and placement.¹⁶ DMS, in consultation with the Florida Historical Commission, is required to set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments.¹⁷

Division of Historical Resources

The Division of Historical Resources is established within the Department of State¹⁸ and is charged with encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of, and public access to, information about Florida's historic sites, properties and objects related to Florida's history and culture.¹⁹ This includes cooperating with, advising and assisting federal and state agencies and local governments in carrying out their historic preservation responsibilities.

Florida Historical Commission

The Florida Historical Commission (Commission) was established by the Legislature in 2001 to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties.²⁰ The Commission is created within the Department of State and is tasked with advising and assisting the Division of Historical Resources in carrying out its programs, duties and responsibilities.²¹

The Commission is composed of 11 members. Seven members of the Commission are appointed by the Governor in consultation with the Secretary of State, two by the President of the Senate and two by the Speaker of the House of Representatives.²² The Commission must include:

- A licensed architect with expertise in historic preservation and architectural history;
- A professional historian in the field of American history;
- A professional architectural historian;
- An archaeologist specializing in the field of prehistory;
- An archaeologist specializing in the historic period; and

¹⁴ Section 265.111(1), F.S., defines the term "monument" to mean a permanent structure such as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of significant person or event in Florida history. The term does not include any "Official Florida Historical Marker" as defined in s. 267.021, F.S.

¹⁵ Section 265.111(2), F.S.

¹⁶ *Id.*

¹⁷ Section 265.111(3), F.S.

¹⁸ Section 20.10(2)(b), F.S.

¹⁹ Section 267.031, F.S. *Also, see* <http://dos.myflorida.com/historical/about/program-areas/> (last visited on December 8, 2015).

²⁰ Chapter 2001-199, L.O.F.

²¹ Section 267.0612, F.S.

²² Section 267.0612(1)(a)1., F.S.

- Representatives of the general public with demonstrated interest in the preservation of Florida's historical and archaeological heritage.²³

The Commission is statutorily required to provide assistance, advice, and recommendations to the Division of Historical Resources in:

- Establishing priorities for the identification, acquisition, protection, and preservation of historic and archaeological sites and properties;
- Establishing criteria for use in assessing the significance of historic and archaeological sites and properties;
- Evaluating proposals for awards of special category historic preservation grants-in-aid administered by the Division of Historical Resources;
- Providing an active outreach program to encourage public understanding of and involvement in the preservation of the state's historic and archaeological sites and properties;
- Identifying and expressing public goals for historic preservation and gathering public ideas necessary for the formulation of alternative policies; and
- Recommending rules relating to the historic preservation programs administered by the Division of Historical Resources.²⁴

Section 267.0612(9), F.S., also requires the Commission to provide recommendations to DMS on the design and placement of monuments authorized by general law to be placed on the premises of the Capitol Complex pursuant to s. 265.111, F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 265.005, F.S., establishes the Florida Holocaust Memorial, and provides legislative intent. DMS is required to administer the memorial and set aside an appropriate public area for the memorial on the premises of the Capitol Complex, as defined in s. 281.101, F.S., but not including the State Capitol Circle Office Complex.

The bill requires DMS to construct and place the memorial after it has considered the recommendations of the Florida Historical Commission pursuant to ss. 265.111 and 267.0612(9), F.S., and to coordinate with the Division of Historical Resources of the Department of State regarding the memorial's design and placement.

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 a state tax shares with counties and municipalities.

²³ *Id.* Also, at least one member of the Commission must be a resident of a county that has a population of 75,000 or fewer.

²⁴ Section 267.0612(6)(a)-(f), F.S.

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:

Indeterminate. The bill does not include an appropriation for the creation and placement of the memorial.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 265.005 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 Sobel

33-00615B-16

2016716__

A bill to be entitled

An act relating to the Florida Holocaust Memorial; creating s. 265.005, F.S.; providing legislative intent; establishing the Florida Holocaust Memorial; providing for administration by the Department of Management Services; prohibiting the department from constructing and placing the memorial until certain conditions are met; providing an effective date.

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

Section 1. Section 265.005, Florida Statutes, is created to read:

265.005 Florida Holocaust Memorial.—

(1) It is the intent of the Legislature to recognize and commemorate the millions of people, including six million Jews, murdered by the Nazis and their collaborators before and during World War II in Europe and to honor the survivors of the Holocaust through the establishment of the Florida Holocaust Memorial.

(2) There is established the Florida Holocaust Memorial.

(a) The memorial is administered by the Department of Management Services.

(b) The Department of Management Services shall set aside an appropriate public area for the memorial on the premises of the Capitol Complex, as defined in s. 281.01, but not including the State Capital Circle Office Complex. The department shall construct and place the Florida Holocaust Memorial after it has considered the recommendations of the Florida Historical

Page 1 of 2

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

33-00615B-16

2016716__

Commission as required pursuant to ss. 265.111 and 267.0612(9) and coordinated with the Division of Historical Resources of the Department of State regarding the memorial's design and placement.

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

Page 2 of 2

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Chair*
Health Policy, *Vice Chair*
Agriculture
Education Pre-K-12
Appropriations Subcommittee on Health
and Human Services

SENATOR ELEANOR SOBEL

33rd District

December 15, 2015

Senator Jeremy Ring, Chair
Government Oversight and Accountability
405 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Ring,

This letter is to request that **SB 716** relating to Florida Holocaust Memorial be placed on the agenda of the next scheduled meeting of the Government Oversight and Accountability Committee.

This bill recognizes and commemorates the millions of people, including six million Jews, murdered by the Nazis and their collaborators before and during World War II in Europe and to honor the survivors of the Holocaust through the establishment of the Florida Holocaust Memorial. The bill provides for administration by the Department of Management Services and prohibits the department from constructing and placing the memorial until certain conditions are met.

Thank you for your consideration of this request.

With Best Regards,



Eleanor Sobel
State Senator, 33rd District

REPLY TO:

- ☐ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
- ☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

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)

1/11/16
Meeting Date

SB 716
Bill Number (if applicable)

Topic HOLOCAUST MEMORIAL

Amendment Barcode (if applicable)

Name Steve Ulfelder

Job Title Attorney

Address 519 E. ASH PARK AVE
Street

Phone 980-6435

TALLAHASSEE, FLA
City State Zip

Email Steve.Ulfelder@SUN.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7002

INTRODUCER: Community Affairs Committee

SUBJECT: OGSR/Audit Report and Certain Records/Local Government

DATE: January 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stearns	Yeatman		CA Submitted as Committee Bill
1.	Kim	McVaney	GO	Favorable
2.			RC	

I. Summary:

SB 7002 eliminates the scheduled repeal of the current public records exemption for workpapers related to local government audits by an internal auditor and investigations by an inspector general. As a result, the covered records will remain confidential and exempt from disclosure until the audit or investigation is complete or no longer active.

A simple majority vote is required for passage. This bill goes into 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 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

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 Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

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 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

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

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.

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).

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act.

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.¹⁵ 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.¹⁶ 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. Specific questions are enumerated for consideration under the review.¹⁷ The specified questions are:

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ 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 otherwise provided for by law.¹⁹

Local Government Internal Audit Reports and Inspectors General Reports

Section 119.0713(2), F.S., provides a public records exemption for workpapers related to an audit by an internal auditor and for information related to an investigation by an inspector general conducted for or on behalf of a unit of local government. According to survey responses from local governments obtained by the Senate Community Affairs Committee, such information may include notes and draft documents of the auditor, workpapers, background reports, investigatory plans, interview transcripts, and statements from witnesses and interested parties,

¹⁵ 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. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

among other documents. The exemption provides that such information becomes open to inspection and disclosure once the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

One hundred percent of those survey responses opining on the future status of the exemption recommended it be reenacted.

This exemption expires on October 2, 2016, pursuant to the OGSR, unless saved by the Legislature through reenactment.

III. Effect of Proposed Changes:

Section 1 amends s. 119.0713, F.S., to delete the scheduled repeal of the public records exemption. As a result, the covered records will remain confidential and exempt from disclosure until the audit or investigation is complete or no longer active.

Section 2 provides an effective date of October 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:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0713 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 the Committee on Community Affairs

578-00739-16

20167002__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0713, F.S., which provides a public records exemption for the audit report of an internal auditor and certain records relating to investigations in the custody of an inspector general of a local government; removing the scheduled repeal of the exemption; making editorial changes; providing an effective date.

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

Section 1. Subsection (2) of section 119.0713, Florida Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(2) (a) As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.

(b) The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. ~~As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized~~

Page 1 of 2

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

578-00739-16

20167002__

~~or created by general or special law.~~ An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

~~(b) Paragraph (a) 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. This act shall take effect October 1, 2016.

Page 2 of 2

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



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 5, 2015

Senator 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 7002 relating to OGSR/Audit Report and Certain Records/Local Government, on the next Committee on Governmental 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
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 7004

INTRODUCER: Governmental Oversight and Accountability Committee and Community Affairs Committee

SUBJECT: OGSR/Emergency Notification Information

DATE: January 12, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Present	Yeatman		CA Submitted as Committee Bill
1.	Kim	McVaney	GO	Fav/CS
2.			RC	

I. Summary:

CS/SB 7004 eliminates the scheduled repeal of the current public records exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. As a result, this information will continue to be exempt from public disclosure.

The bill requires a majority vote for passage. This bill goes into effect 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 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

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 Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

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 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

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

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.

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).

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act.

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.¹⁵ 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.¹⁶ 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. Specific questions are enumerated for consideration under the review.¹⁷ The specified questions are:

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ 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 otherwise provided for by law.¹⁹

Emergency Notification Systems

The Division of Emergency Management is tasked with maintaining a comprehensive emergency management system for the state, as well as coordinating efforts with the federal government, local governments, school boards and private agencies.²⁰ The Division of Emergency Management is also responsible for establishing a communication system with the

¹⁵ 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. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ Section 252.35(1), F.S.

public and emergency management agencies.²¹ The Division is currently trying to procure a statewide emergency alert and notification system.²²

A centralized statewide alert system for all emergencies, however, currently does not exist. Some agencies have statewide alert programs that are related to their specialization. For example, the Florida Department of Transportation provides traffic-related emails or text messages to the public through their My Florida 511 program.²³ The Department of Health keeps the public health community informed of public health emergencies using the Florida Health Alert Network (HAN).²⁴

Most local governmental entities have some type of emergency notification system for their communities. Sheriffs' offices, universities, public utilities and other entities throughout Florida have in place emergency notification systems. For example, the Sumter County Sheriff's Office uses the CodeRED Emergency Notification System. It is a high-speed telephone communication service for emergency notifications that works off of a database compiled from the phone database maintained for the Sheriff's office by the purveyors of the CodeRED system. "This system allows [the Sumter County Sheriff's Office] to telephone all or targeted areas of Sumter County in case of an emergency situation that requires immediate action (such as a boil-water notice, missing child or evacuation notices)."²⁵ Brevard County has in place a similar emergency alert notification system for natural disasters.²⁶ Florida State University has a comprehensive alert system that includes text messages, voice-mail messages, email messages, Facebook messages, indoor and outdoor sirens, a hotline and more.²⁷

A limited public records exemption already exists for persons requesting emergency assistance through E911. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.²⁸

²¹ Section 252.35(2)(a)6., F.S.

²² "Notice of Public Meeting Request for Proposal RFP-DEM-15-16-037 Florida Statewide Emergency Alert and Notification System, <http://www.floridadisaster.org/eoc/PressReleases/FAR%20Advertisement%20RFP-DEM-15-16-037.pdf> (last visited December 16, 2015).

²³ <http://www.fl511.com/> (last visited November 3, 2015).

²⁴ State Emergency Responders and <http://www.servfl.com/> (last visited November 3, 2015). Florida Dep't of Health, Health Alert Network Policy, available at <http://www.servfl.com/HomepageUploads/126HAN%20Policy%202015.pdf> (last visited September 22, 2015).

²⁵ Sumter County Sheriff's Office, <http://www.sumtercountysheriff.org/publicsvc/codered.php> (last visited September 22, 2015).

²⁶ Brevard County Emergency Management Office, <http://embrevard.com/> (last visited December 16, 2015).

²⁷ Florida State University ALERT, Emergency Notification System, <http://emergency.fsu.edu/services/FSUAlert> (last visited December 16, 2015). See generally, Florida Department of Law Enforcement, State Working Group On Domestic Preparedness Ad Hoc Committee on University and College Emergency Notification Systems, <https://www.fdle.state.fl.us/Content/getdoc/c2c4f5df-1fa5-4b26-adad-4d3e23665c43/SWGUniversityCollegeEmergencyNotificationSystems.aspx>. (last visited December 16, 2015).

²⁸ Section 365.171(12), F.S.

OGSR Survey and Results

In June and July of 2015, Senate and House professional staff sent out a survey to cities, counties and state agencies to ascertain if s. 119.071(5)(j), F.S., remains necessary, pursuant to the OGSR.²⁹ The surveys revealed that governmental entities sent warnings to the public on a variety of topics, including but not limited to: boil water orders, severe weather, sexual predator notification, missing persons, hazardous materials, flood warning, evacuations, terrorist activities, mass shootings, utility outages, school closures and road closures.

Most governmental entities appeared to collect only contact information from the public, such as their name, address, phone number, email address or social media user names. Some governmental entities also request additional information, such as whether a notification address is a home, or a mobile or manufactured home, whether the home is the primary or secondary residence, as well as the geolocation of the home on the property. In addition to the phone number, one governmental entity asks if the number is a telecommunications device for the deaf or a telephone typewriter, teletype device (TTD/TDY).

A majority of governmental entities stated that the public records exemption should be continued. Several governmental entities asserted that people would be less likely to sign up for warnings if they thought that their information was open to disclosure. A lack of public participation would defeat the purpose of having public warning systems and place more people in danger according to some survey responses.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to delete the scheduled repeal of the public records exemption. As a result, the covered records will continue to be exempt from disclosure.

Section 2 provides an effective date of October 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:

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an 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

²⁹ The surveys are on file with the Senate Committee on Community Affairs.

required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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.)

CS by Governmental Oversight and Accountability on January 11, 2016:

The CS removes the list of different types of information which are exempt. The list was superfluous because “any information” included all the items in the list.

B. Amendments:

None.



901406

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 19 - 21
and insert:
the agency, ~~including the person's name, address, telephone
number, e-mail address, or other electronic communication
address,~~ is exempt from s. 119.07(1) and s. 24(a), Art. I of the

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

And the title is amended as follows:



901406

11 Delete line 7
12 and insert:
13 notification by the agency; removing superfluous
14 language; removing the scheduled

By the Committee on Community Affairs

578-00737-16

20167004__

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.071, F.S., which
4 provides an exemption from public records requirements
5 for information furnished by a person to an agency for
6 the purpose of being provided an emergency
7 notification by the agency; removing the scheduled
8 repeal of the exemption; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Paragraph (j) of subsection (5) of section
13 119.071, Florida Statutes, is amended to read:
14 119.071 General exemptions from inspection or copying of
15 public records.—
16 (5) OTHER PERSONAL INFORMATION.—
17 (j)~~1~~ Any information furnished by a person to an agency
18 for the purpose of being provided with emergency notification by
19 the agency, including the person's name, address, telephone
20 number, e-mail address, or other electronic communication
21 address, is exempt from s. 119.07(1) and s. 24(a), Art. I of the
22 State Constitution. This exemption applies to information held
23 by an agency before, on, or after the effective date of this
24 exemption.
25 ~~2. This paragraph is subject to the Open Government Sunset~~
26 ~~Review Act in accordance with s. 119.15, and shall stand~~
27 ~~repealed on October 2, 2016, unless reviewed and saved from~~
28 ~~repeal through reenactment by the Legislature.~~
29 Section 2. This act shall take effect October 1, 2016.



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 5, 2015

Senator 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 7004 relating to OGSR/Emergency Notification Information, on the next Committee on Governmental 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
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 7020

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Florida Health Choices Program/Florida Health Choices, Inc.

DATE: January 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Lloyd	Stovall		HP Submitted as Committee Bill
1.	Kim	McVane	GO	Favorable
2.			RC	

I. Summary:

SB 7020 eliminates the scheduled repeal of the current public records exemptions for the Florida Health Choices Program. As a result, the following information continues to be confidential and exempt from disclosure:

- Personal, identifying information of an enrollee or participant who has applied for or participates in the Florida Health Choices Program;
- Client and customer lists of a buyer's representative held by the Florida Health Choices Corporation (corporation); and
- Proprietary confidential business information of a vendor held by the corporation.

The bill also continues the retroactive application of the exemption to protect information held by the corporation prior to initial enactment of the exemption.

A simple majority vote is sufficient for passage.

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

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

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.

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).

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 Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records 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 public records.¹⁵ 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.¹⁶ 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: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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ 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 otherwise provided for by law.¹⁹

Florida Health Choices Corporation, Inc.

In 2008, the Legislature created the Florida Health Choices Program to address the issue of Florida’s uninsured.²⁰ The Legislature created the Florida Health Choices Corporation

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 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. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

¹⁸ FLA. CONST. art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ See Chapter 2008-32 Laws of Fla.

(corporation) to administer the program as a private, non-profit, corporation under s. 408.910, F.S. The corporation is to operate in compliance with part III of chapter 112 (Public Officers and Employees) and chapters 119 (Public Records), 286 (Public Business), and 617 (Corporations Not for Profit), F.S.²¹

The corporation is led by a 15-member board of directors, three of whom are ex-officio, non-voting board members:

- The Governor, President of the Senate, and Speaker of the House of Representatives each appoints four members.
- The three non-voting ex-officio members include:
 - The Secretary of Health Care Administration (AHCA) or a designee with expertise in health care services;
 - The Secretary of the Department of Management Services or a designee with expertise in health care services; and
 - The Commissioner of the Office of Insurance Regulation or a designee with expertise in insurance regulation.

Board members may not include insurers, health insurance agents or brokers, health care providers, health maintenance organizations (HMOs), prepaid service providers, or any other entity or affiliate or subsidiary of eligible vendors. Conflict of interest provisions govern board member participation.

The program is designed as a single, centralized marketplace for the purchase of health products, including, but not limited to, health insurance plans, HMO plans, prepaid services, and flexible spending accounts. Policies sold as part of the program are exempt from regulation under the Insurance Code and laws governing HMOs. The following entities are authorized to be eligible vendors:

- Insurers authorized under ch. 624, of the Insurance Code, such as self-insurers, indemnity plans, life and health insurers, church benefit plans, disability, and multi-employer welfare arrangements, and the Florida Healthy Kids Corporation;
- HMOs authorized under part I of ch. 641, F.S., relating to Health Service Programs, including health maintenance organization contracts, limited benefit policies, and other risk bearing coverage, benefits, and products;
- Prepaid limited health service organizations and discount medical plans under ch. 636, F.S.;
- Prepaid health clinics licensed under ch. 641, part II, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, licensed health care professionals, and other licensed health care providers;
- Provider organizations, including service networks, group practices, and professional associations; and
- Corporate entities providing specific health services.

The corporation's Florida Health Insurance Marketplace (marketplace) currently includes individual health plans, discount plans, and limited benefit plans.

²¹ Section 408.910(11), F.S.

The corporation is authorized to collect premiums and other payments from employers. The law further specifies who may participate as either an employer or an individual. Employers eligible to enroll include employers that meet criteria established by the corporation and their individual employees and other individuals meeting criteria established by the corporation.²²

Information Collected by the Florida Health Choices Program

In the administration of the program the corporation may collect personal, identifying information about applicants and participants. Insurance agents and employers also provide personal as well as financial and business information. More specifically, this information might include a participating insurance agent's client list; an employer's business, accounting, or human resource records; or other proprietary business or personal identification information.²³

Exemption from the Public Records Act

The implementing legislation for the Florida Health Choices Program in 2008 did not include a public records exemption. The exemptions were added in 2011²⁴ and applied retroactively to protect personal, identifying information of an enrollee or a participant in the program; client and customer lists of a buyer's representatives; and proprietary confidential business information²⁵ of a vendor.

Two distinct public necessity statements supported the exemptions. The first public necessity statement pertained to any information identifying an enrollee or participant in the program and provided that the information must remain confidential and exempt because the harm in releasing such personal and sensitive information outweighs any public benefit in releasing it. Further, if such information were not held confidential, the administration of the program could be significantly impaired because businesses and individuals would be less inclined to apply, participate, or enroll.²⁶

The second public necessity statement addressed proprietary confidential business information and the harm to the marketplace that may come from the disclosure of confidential business information or a customer or client list of a program buyer's representative. Disclosure of this information may provide competitors with detailed insights into confidential business information, strategies, or methodologies that is not otherwise accessible, thereby diminishing the advantage that a program vendor or buyer's representative may have in the marketplace. This, in turn, may deter private-sector vendors or buyer's representatives from participating in

²² Section 408.910(4)(a), F.S.

²³ Section 408.910(14), F.S.

²⁴ Chapter 2011-197, Laws of Fla. (effective October 1, 2011).

²⁵ Proprietary confidential business information is defined in 408.910(14)(a)4., F.S. to mean information, regardless of form or characteristics, that is owned or controlled by a vendor requesting confidentiality under this section; that is intended to be and is treated by the vendor as private in that the disclosure of the information would cause harm to the business operations of the vendor; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning: business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, client and customer lists, potentially patentable materials, [or] a trade secret as defined in s. 688.002, F.S.

²⁶ Chapter 2011-197, s. 2, Laws of Fla. (effective October 1, 2011).

the program thereby harming the effective administration of the program and its ability to offer affordable health care coverage.²⁷

Exceptions permit disclosure of protected information to:

- Another governmental entity in the performance of its official duties and responsibilities;
- Any person who has the written consent of the program's applicant;
- The Florida Kidcare program for the purpose of administering its program;²⁸ and
- A participant's legal guardian.

Penalty for Unauthorized Disclosure

A person who knowingly and willfully discloses inappropriately information that is made confidential and exempt under this law commits a misdemeanor of the second degree.²⁹

OGSR of the Public Records Exemption

Professional staff of the Legislature met with representatives of the Florida Health Choices Program on August 12, 2015, to discuss the Program and the necessity of continuing the public records exemption. Florida Health Choices Program explained that the exemption was working appropriately and did not recommend alterations to the exemption. Professional staff recommends that the exemption be continued as is in its current form.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal date of October 2, 2016, for the public records exemptions in s. 408.910(14), F.S. The public records exemptions apply to personal identifying information of enrollees and participants who have applied to the corporation, client and customer lists of buyer's representatives, and proprietary confidential business information held by the corporation. This information will remain both confidential and exempt from disclosure to the public under the public records laws.

Current law pertaining to retroactive application of the exemptions, conditions for authorized release, and the penalty for improper release of the protected information are likewise continued.

The effective date of the bill is October 1, 2016.

²⁷ Chapter 2011-197, s. 3, Laws of Fla. (effective October 1, 2011).

²⁸ Under certain circumstances in federal law, health insurance exchanges similar to the marketplace created under the FHC program, could be required to exchange information with the state Medicaid program. In Florida, the state Medicaid program also exchanges data with the Florida Kidcare program. The current exception permits the FHC program to exchange information with those programs as necessary,

²⁹ Section 408.910(14)(e), F.S.

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 renews an existing public records exemption for the Florida Health Choices Corporation. Therefore, a simple majority vote of the members present in each house of the Legislature is required for passage.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill continues a provision that permits a public-records exemption to apply to any information identifying an applicant or participant in the Florida Health Choices Program *before*, on, or after the effective date of the exemption.

Retroactive operation is disfavored by courts and generally “statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction.”³⁰ The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

- Is the statute procedural or substantive?
- Was there an unambiguous legislative intent for retroactive application?
- Was [a person’s] right vested or inchoate?
- Is the application of [the statute] to these facts unconstitutionally retroactive?³¹

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.³²

Additionally, the initial enactment and this reenactment make it clear that it is the Legislature’s intent to apply the law retroactively. “Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision

³⁰ Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

³¹ *Weingrad v. Miles*, 2010 WL 711801, *2 (Fla. 3d DCA 2010) (internal citations omitted).

³² See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).

retroactively.”³³ A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.³⁴

Generally, retroactive application is appropriate when the exemption is remedial in nature. In the context of public records exemption, the remedy lies in mitigating the provisions of the Florida Public Records Act.³⁵ Access to public records is not a vested right because the right to access public records is subject to divestment by the Legislature and the Public Rights Act grants public rights, not private ones.³⁶ If a public records exemption is remedial in nature, “it can and should be retroactively applied in order to serve its intended purposes.”³⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The corporation will continue to redact confidential information from any records that are disclosed to the public.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 408.910 of the Florida Statutes.

³³ *Weingrad*, 2010 WL 711801 at *3.

³⁴ *Id.* at *4.

³⁵ *Campus Communications Inc., v. Earnhardt*, 821 So. 2d 388, 396-397 (Fla. 5th DCA 2002). The court quotes *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1029 (Fla 1986).

³⁶ *Campus Communications Inc.*, 821 So. 2d at 398.

³⁷ *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986).

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.

By the Committee on Health Policy

588-00912-16

20167020__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 408.910, F.S., relating to an exemption from public records requirements for personal identifying information of an enrollee or participant in the Florida Health Choices Program, for client and customer lists of a buyer's representative held by the Florida Health Choices, Inc., and for proprietary confidential business information held by the corporation, and relating to a penalty for unlawful disclosure of confidential and exempt information; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Subsection (14) of section 408.910, Florida Statutes, is amended to read:

408.910 Florida Health Choices Program.—

(14) EXEMPTION FROM PUBLIC RECORDS REQUIREMENTS.—

(a) *Definitions*.—For purposes of this subsection, the term:

1. "Buyer's representative" means a participating insurance agent as described in paragraph (4)(g).

2. "Enrollee" means an employer who is eligible to enroll in the program pursuant to paragraph (4)(a).

3. "Participant" means an individual who is eligible to participate in the program pursuant to paragraph (4)(b).

4. "Proprietary confidential business information" means

Page 1 of 3

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

588-00912-16

20167020__

information, regardless of form or characteristics, that is owned or controlled by a vendor requesting confidentiality under this section; that is intended to be and is treated by the vendor as private in that the disclosure of the information would cause harm to the business operations of the vendor; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

a. Business plans.

b. Internal auditing controls and reports of internal auditors.

c. Reports of external auditors for privately held companies.

d. Client and customer lists.

e. Potentially patentable material.

f. A trade secret as defined in s. 688.002.

5. "Vendor" means a participating insurer or other provider of services as described in paragraph (4)(d).

(b) *Public record exemptions*.—

1. Personal identifying information of an enrollee or participant who has applied for or participates in the Florida Health Choices Program is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

3. Proprietary confidential business information held by the corporation is confidential and exempt from s. 119.07(1) and

Page 2 of 3

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

588-00912-16

20167020__

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

(c) *Retroactive application.*—The public record exemptions provided for in paragraph (b) apply to information held by the corporation before, on, or after the effective date of this exemption.

(d) *Authorized release.*—

1. Upon request, information made confidential and exempt pursuant to this subsection shall be disclosed to:

a. Another governmental entity in the performance of its official duties and responsibilities.

b. Any person who has the written consent of the program applicant.

c. The Florida Kidcare program for the purpose of administering the program authorized in ss. 409.810-409.821.

2. Paragraph (b) does not prohibit a participant's legal guardian from obtaining confirmation of coverage, dates of coverage, the name of the participant's health plan, and the amount of premium being paid.

(e) *Penalty.*—A person who knowingly and willfully violates this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

~~(f) *Review and repeal.*—This subsection 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. This act shall take effect October 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: CS/SB 7024

INTRODUCER: Governmental Oversight and Accountability Committee and Health Policy Committee

SUBJECT: OGSR/Information Held by the Florida Center for Brain Tumor Research

DATE: January 12, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Looke	Stovall		HP Submitted as Committee Bill
1.	Kim	McVaney	GO	Fav/CS
2.			RC	

I. Summary:

CS/SB 7024 eliminates the scheduled repeal of the current public records exemption for personal identifying information held by the Florida Center for Brain Tumor Research. As a result, this information continues to be confidential and exempt from public disclosure.

A simple majority vote is required for passage. The bill goes into effect on July 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 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:

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.

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

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

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.

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).

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject a 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 public records.¹⁵ The OGSR provides that an exemption automatically repeals on October 2 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 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: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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ 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 otherwise provided for by law.¹⁹

The Florida Center for Brain Tumor Research

Section 381.853, F.S., creates the Florida Center for Brain Tumor Research (Center). The Center is established within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida (Institute) and is intended to establish a coordinated effort among the state's public and private universities and hospitals and the biomedical industry to discover brain tumor cures and develop brain tumor treatment modalities. The Institute is required to develop and maintain a brain tumor registry that is an automated, electronic, and centralized database of individuals with

¹⁵ 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. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

¹⁸ FLA. CONST. art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

brain tumors. The registry is a central repository for brain tumor biopsies from individuals throughout the state.²⁰

Additionally, in furthering its goal of finding cures for brain tumors, the Center is required to:

- Award funds appropriated by the Legislature in a competitive grant process;
- Hold an annual brain tumor biomedical technology summit;
- Encourage clinical trials on research that holds the promise of curing brain tumors; and
- Facilitate the formation of partnerships between researchers, physicians, clinicians, and hospitals for the purpose of sharing new techniques, sharing new research findings, and coordinating the voluntary donation of brain tumor biopsies.

Section 381.853, F.S., requires that the Center be funded through private, state, and federal sources and also establishes a scientific advisory council within the Center which includes biomedical researchers, physicians, clinicians, and representatives from public universities, private universities, and hospitals.

The Registry

The Center maintains a collaborative, statewide registry of banked cancerous and non-cancerous brain tumor specimens, matched samples of DNA, plasma, serum and cerebrospinal fluid, clinical and demographic information, and quality-of-life assessments obtained from patients. Patients are asked to participate in the Center's bio-repository and registry, which has been approved by an Institutional Review Board, to provide valuable specimens and data for future research. The banked materials are made available to researchers in Florida and beyond who are investigating improved treatments and cures for brain tumors. A web-based database stores demographic, clinical and quality-of-life data, creates a registry of participants, and bar-codes and tracks the samples. This clinical database contains information available (in unidentifiable format) to researchers who study brain tumors.²¹

Information Protected from Disclosure

Section 381.8531, F.S., makes confidential and exempt from Florida's public records laws any personal and identifying information held by the Center which relates to donors to either the central repository for brain tumor biopsies or registrants on the brain tumor registry.

Additionally, the exemption protects any information received by the Center from an individual from another state or nation, or from the Federal Government, if that information is confidential or exempt pursuant to the laws of the state or nation from which the information is transmitted. The only exception to the confidentiality of the protected information is for persons who are engaged in bona fide research and who agree to submit a research plan to the Center, sign a

²⁰ The individual, or the parent or guardian of the individual if the individual is a minor, may refuse to participate in the brain tumor registry by signing a form obtained from the Department of Health or from the health care practitioner or entity that provides brain tumor care or treatment which indicates that the individual does not wish to be included in the registry. The decision to not participate in the registry must be noted in the registry. Section 381.853(2), F.S.

²¹ Florida Center for Brain Tumor Research, Annual Report for 2014-2015, Jan. 15, 2015, pp. 16-17 (on file with the Senate Committee on Health Policy.)

confidentiality agreement, maintain the confidentiality of the information received, and destroy any confidential information received after the research is completed.²²

As of August 12, 2015, the Center has not received any requests for records protected under s. 381.8531, F.S., nor has the public records exemption been the subject of litigation.²³ The Center has received requests for information from other states but has only sent limited Health Insurance Portability and Accountability (HIPAA) compliant data sets. Although other state and federal laws may protect the information made confidential and exempt²⁴ under s. 381.8531, F.S., the Center relies on the public records exemption as it is “clearly applicable to the data contained in the [Center’s] database.”²⁵

III. Effect of Proposed Changes:

CS/SB 7024 saves from repeal the public records exemption in s. 381.8531, F.S., which makes confidential and exempt from s. 119.07(1), F.S., and s. 24, Art. I, of the State Constitution information held by the Florida Center for Brain Tumor Research which is:

- Personal identifying information of donors to the central repository for brain tumor biopsies;
- Personal identifying information of registrants on the brain tumor registry; or
- Any information that is received by the Center from an individual from another state or nation, or from the Federal Government, if that information is confidential or exempt pursuant to the laws of the state or nation from which the information is transmitted.

The effective date of the bill is 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.

²² This public records exemption was amended in 2011 with the following changes: added personal identifying information, provided disclosure mechanisms and a retroactivity clause. The exemption was also subject to a new OGSR, which provided the current sunset date. Ch. 2011-203, Laws of Fla.

²³ See survey response by Barbara Frentzen, Administrator for the Florida Center for Brain Tumor Research, August 12, 2015, (on file with the Senate Committee on Health Policy staff.)

²⁴ Examples of such laws include the Federal HIPAA Pub. L. No. 104-191; s. 456.057, F.S.; and the Federal Genetic Information Nondiscrimination Act (Pub. L. No. 110-343) and s. 760.40, F.S. Survey response from the Florida Center for Brain Tumor Research at p. 4. Federal law forbidding disclosure, however, supersedes Florida’s open records laws only when there is an absolute conflict between the two. Office of the Attorney General, *Government-in-the-Sunshine Manual*, 2015 Edition, p. 153. The Legislature may wish to continue this public records exemption because federal law may change or a court may find that the federal protections do not apply to some aspect of this program. For example in *Wallace v. Guzman*, 687 So. 2d, 1341, 1353 (Fla. 3d DCA 1997), a court found that federal protection of documents held by federal agencies do not apply to state agencies that hold the same documents. See also *Housing Authority of the City of Daytona Beach v. Gommillion*, 639 So. 2d 117 (Fla. 5th DCA 1994).

²⁵ Survey response from the Florida Center for Brain Tumor Research at p. 5.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.8531 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on January 11, 2016:

The CS clarifies that the information is exempt from paragraph (a) of Article I, section 24 of the Florida Constitution.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 17
and insert:
confidential and exempt from s. 119.07(1) and s. 24(a) ~~s. 24~~,
Art. I of

By the Committee on Health Policy

588-01148-16

20167024__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 381.8531, F.S., which provides an exemption from public records requirements for information held by the Florida Center for Brain Tumor Research; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 381.8531, Florida Statutes, is amended to read:

381.8531 Florida Center for Brain Tumor Research; public records exemption.—

(1) The following information held by the Florida Center for Brain Tumor Research before, on, or after July 1, 2011, is confidential and exempt from s. 119.07(1) and s. 24, Art. I of the State Constitution:

(a) Personal identifying information of a donor to the central repository for brain tumor biopsies or the brain tumor registry.

(b) Any information received from an individual from another state or nation or the Federal Government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

(2) Such information may be disclosed to a person engaged in bona fide research if that person agrees to:

(a) Submit to the Florida Center for Brain Tumor Research a research plan that has been approved by an institutional review

Page 1 of 2

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board and that specifies the exact nature of the information requested, the intended use of the information, and the reason that the research could not practicably be conducted without the information;

(b) Sign a confidentiality agreement with the Florida Center for Brain Tumor Research;

(c) Maintain the confidentiality of the information received; and

(d) To the extent permitted by law and after the research has concluded, destroy any confidential information obtained.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

Page 2 of 2

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: SB 7032

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Office of Financial Regulation

DATE: January 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Johnson	Knudson		BI Submitted as Committee Bill
1.	Kim	McVane	GO	Favorable
2.			RC	

I. Summary:

SB 7032 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee professional staff of a public records exemption¹ that makes the following information held by the Office of Financial Regulation (OFR) before, on, or after July 1, 2011, confidential and exempt from public-records requirements:

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

The bill eliminates the scheduled repeal of the public record exemption. As a result, this information will continue to be confidential and exempt from public disclosure.

The bill does not appear to have a fiscal impact on state or local governments.

A simple majority vote is required for passage.

II. Present Situation:

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.² 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.³

¹ Section 119.0712(3), F.S.

² FLA. CONST., art. I, s. 24(a).

³ FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.⁴ Chapter 119, F.S., constitutes the main body of public records laws known as the Public Records Act.⁵ 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.⁶

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.⁷ 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.”⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may create an exemption to public records requirements.¹⁰ An exemption must pass by a two-thirds vote of the House and the Senate.¹¹ 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.¹² A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.¹³

⁴ 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.

⁵ Public records laws are found throughout the Florida Statutes.

⁶ Section 119.01(1), F.S.

⁷ 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.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² FLA. CONST., art. I, s. 24(c).

¹³ *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.”¹⁴ 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.¹⁵

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records 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 public records.¹⁶ The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁷ 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:¹⁸

- 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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ 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.

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).

¹⁵ 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).

¹⁶ 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. 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).

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(a), F.S.

¹⁹ FLA. CONST., art. I, s. 24(c); s. 119.15(4)(b), F.S.; and s. 119.15(6)(b), F.S.

Office of Financial Regulation

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, money services businesses, consumer finance companies, debt collectors, and other financial service entities. The OFR has licensing authority and the authority to conduct examinations and investigations.

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

- Financial Crimes Enforcement Network (FinCEN)
- Federal Trade Commission
- Florida Fusion Center (a collaboration of state and federal agencies led by the Florida Department of Law Enforcement)
- Commodities Futures Trading Commission
- Federal Deposit Insurance Corporation
- National Credit Union Association
- Securities Exchange Commission
- Internal Revenue Service

Exemption under Review

Section 119.0712(3), F.S., provides a public record exemption for the following information held by the OFR before, on, or after July 1, 2011:

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

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

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.

Professional staff communicated with OFR staff as part of the Open Government Sunset Review process. The OFR staff was asked whether OFR recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. OFR recommended reenactment of the public record exemption under review.

III. Effect of Proposed Changes:

The bill eliminates the scheduled repeal of the current public records exemption for specified information held by the OFR. The following information held by the OFR will remain confidential and exempt from the public records exemption:

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

The bill has an effective date of October 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:

Since this bill reenacts a current exemption and does not expand the scope of the exemption, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The continuation of this exemption will allow the OFR to obtain information that could assist it in pursuing violations of law under its jurisdiction and to participate in joint or multiagency investigations and examinations. Without this exemption, the effective and efficient administration of the regulatory programs administered by the Office of Financial Regulation would be significantly impaired.

Since the exemption is currently in place, there should be no increase in costs associated with redacting records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0712 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 the Committee on Banking and Insurance

597-01339-16

20167032__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0712, F.S., relating to an exemption from public records requirements for confidential information received by the Office of Financial Regulation from certain state or federal agencies and information received or developed by the office in a joint or multiagency examination or investigation; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (3) of section 119.0712, Florida Statutes, is amended to read:

119.0712 Executive branch agency-specific exemptions from inspection or copying of public records.—

(3) OFFICE OF FINANCIAL REGULATION.—

~~(a)~~ The following information held by the Office of Financial Regulation before, on, or after July 1, 2011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a)1- Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.

(b)2- Any information that is received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory,

Page 1 of 2

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administrative, or criminal justice agency. The office may obtain and use the information in accordance with the conditions imposed by the joint or multiagency agreement. This exemption does not apply to information obtained or developed by the office that would otherwise be available for public inspection if the office had conducted an independent examination or investigation under Florida law.

~~(b) This subsection 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. This act shall take effect October 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)

1/11/16

Meeting Date

SB 7032

Bill Number (if applicable)

Topic Waiving in Support of SB 7032 OGSR/Office of Financial Regulation

Amendment Barcode (if applicable)

Name Jamie Champion Mongiovi

Job Title Director, Communications & Govt. Affairs

Address Ofice of Financial Regulation 101 E Gaines Street

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Florida

32399

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City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 438

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bullard

SUBJECT: Small Business Participation in State Contracting

DATE: January 12, 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 438 requires each agency of the executive branch to award at least 35 percent of its annual contracting dollars to small businesses either directly or indirectly as subcontractors. The bill requires a vendor awarded a contract pursuant to s. 287.057, F.S., relating to the purchase of commodities or contractual services, to use small businesses as subcontractors or subvendors. Executive branch agencies must take reasonable measures to avoid unnecessary “contract bundling.” The bill provides relevant definitions, and creates reporting requirements.

The bill may result in an indeterminate increase in expenditures by state agencies relating to contracts for commodities and services.

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;
- "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

Existing Small Business Efforts

Part IV of Chapter 288, F.S., specifies a number of efforts directed towards helping the success of small businesses. The rules ombudsmen in the Executive Office of the Governor is tasked in s. 288.7015, F.S., with reviewing state agency administrative rules that disproportionately impact small and minority businesses.

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.

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.

Section 288.705, F.S., requires all state agencies to provide the Florida Small Business Development Center Procurement System with all formal solicitations for contractual services, supplies, and commodities. The Small Business Development Center must coordinate with Minority Business Development Centers to compile and distribute this information to small and minority businesses requesting such service for the period of time necessary to familiarize the business with the market represented by state agencies. Each year, the Small Business Development Center must report certain information to the Department of Economic Opportunity on the use of the statewide contracts register.

Section 287.0947, F.S., specifies that the Secretary of DMS may create the Florida Advisory Council on Small and Minority Business Development (Council) with the purpose of advising and assisting the secretary in carrying out the secretary's duties with respect to minority businesses and economic and business development. The Council must meet at the call of its chair, at the request of a majority of its membership, at the request of the commission or its executive administrator, or at such times as may be prescribed by rule, but not less than once a year, to offer its views on issues related to small and minority business development of concern to this state.⁷

The powers and duties of the Council include, but are not limited to: researching and reviewing the role of small and minority businesses in the state's economy; reviewing issues and emerging topics relating to small and minority business economic development; studying the ability of financial markets and institutions to meet small business credit needs and determining the impact of government demands on credit for small businesses; assessing the implementation of a state economic development comprehensive plan, as it relates to small and minority businesses; assessing the reasonableness and effectiveness of efforts by any state agency or by all state agencies collectively to assist minority business enterprises; and advising the Governor, the secretary, and the Legislature on matters relating to small and minority business development which are of importance to the international strategic planning and activities of this state.⁸

The Council must also present an annual report⁹ to the secretary that sets forth in appropriate detail the business transacted by the Council during the year and any recommendations to the secretary, including those to improve business opportunities for small and minority business enterprises.

Some of the duties of the Office of Supplier Diversity of DMS, established in s. 287.09451, F.S., include communicating on a monthly basis with the Small and Minority Business Advisory Council to keep the council informed on issues relating to minority enterprise procurement, serving as an advocate for minority business enterprises, and coordinating with the small and minority business ombudsman, as defined in s. 288.703, F.S.

⁷ Section 287.0947(4), F.S.

⁸ Section 287.0947(5), F.S.

⁹ The annual reports are available on the world-wide web at:

http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/small_and_minority_business_council/annual_report

Florida Small Minority Business Assistance Act

The Florida Minority Business Assistance Act¹⁰ provides a statewide contracts register¹¹ and the Florida Minority Business Loan Mobilization Program.¹²

The Florida Minority Business Assistance Act defines the term “small business” as “an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.”¹³

Section 288.7031, F.S., provides that the definition of the term “small business” contained herein applies to the state and all political subdivisions of the state.

Performance Bond Requirements

Section 255.05, F.S., requires that any person entering into a formal contract with the state or any county, city, or political subdivision thereof, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. The statute specifies some exceptions and the form for the bond.

Section 24.111(2)(i), F.S., specifies that the Department of the Lottery must require performance bonds for the duration of contracts with its vendors.

Section 153.10(4), F.S., specifies that counties must require a performance bond of 2.5 percent of the amount of bids for the construction of water system improvements or sewer improvements. Sewer system improvement contracts bid pursuant to s. 153.79, F.S., also require a performance bond.

Section 337.18, F.S., requires surety bonds from successful bidders for certain Department of Transportation contracts, though the department may waive the requirement for contracts under \$250,000, if certain conditions are met.

¹⁰ Sections 288.703-288.706, F.S., comprises the Florida Small and Minority Business Assistance Act. *See* s. 288.702, F.S.

¹¹ Section 288.705, F.S.

¹² Section 288.706, F.S.

¹³ Section 288.703(6), F.S.

Role of Rules Ombudsman in the Executive Office of the Governor

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman¹⁴ in the Executive Office of the Governor, for considering the impact of agency rules on the state's citizens and businesses. In carrying out duties as provided by law, the ombudsman must consult with Enterprise Florida, Inc., at which point this office may recommend to improve the regulatory environment of this state. The duties of the rules ombudsman are to:

- Carry out the responsibility related to rule adoption procedures with respect to small businesses;
- Review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and
- Make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to businesses.

Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

Prompt Payment of Invoices by Department of Financial Services

Section 215.422, F.S., governs the processing times of invoices submitted by a state agency or the judicial branch for payment to the Chief Financial Officer (CFO) with the Department of Financial Services (DFS). Invoices submitted by agencies are required to be filed with the CFO no later than 20 days after receipt of invoice and receipt, inspection, and approval of the goods or services.¹⁵ DFS must make prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.¹⁶ If a warrant in payment of an invoice is not made within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, the agency or judicial branch must pay the vendor interest¹⁷ on the unpaid balance until payment is issued to the vendor.¹⁸

III. Effect of Proposed Changes:

Section 1 creates s. 287.0577, F.S., to address small business participation in state contracting, contract bundling, set-asides for small businesses, and bonding and reporting requirements.

Definitions

The bill creates definitions for “contract bundling” and “small business.” The word “appropriate” contained within the definition of “contract bundling” is a subjective term that is not defined. The term “small business” means a business entity organized for profit that is

¹⁴ The ombudsman is defined in s. 288.703(5), F.S., as an office or individual whose responsibilities include coordinating with the Office of Supplier Diversity for the interests of and providing assistance to small and minority business enterprises in dealing with governmental agencies and in developing proposals for changes in state agency rules.

¹⁵ Section 215.422(1), F.S.

¹⁶ Section 215.422(2), F.S.

¹⁷ See Section 55.03(1), F.S.

¹⁸ Section 215.422(3)(b), F.S.

independently owned and operated, that is not dominant within the business entity's industry, and that:

- Currently is, and for at least the previous 3 years has been, domiciled in the state.
- Has a workforce of 50 or fewer permanent full-time positions, whether employees, independent contractors, or other contract personnel.
- Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:
 - For a contractor licensed under chapter 489, F.S., \$5 million per year.
 - For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, \$500,000 per year.
 - For any other business entity, \$1 million per year.
- Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed \$5 million. For a sole proprietorship, the net worth limit of \$5 million includes both personal and business investments but does not include the proprietor's primary residence.

The definition of the term "small business" contains some of the criteria used to qualify as a "small business" in s. 288.703(6), F.S., of the Florida Small and Minority Business Assistance Act. The definition of "small business" contained in the bill is more specific, and, in some respects, inconsistent with the criteria to qualify as a small business under the Florida Small and Minority Business Assistance Act. Section 288.7031, F.S., provides, in part, that the definitions of 'small business,' . . . provided in s. 288.703 apply to the state and all political subdivisions of the state." This may create confusion as to the applicability of the term "small business."

Bundling

Description of Statutory Change

The bill requires agencies, to the maximum extent practicable, to structure agency contracts to facilitate competition by Florida small businesses, taking steps to eliminate obstacles to their participation and avoiding unnecessary contract bundling that may preclude small businesses' participation as prime contractors. Before issuing a solicitation for a bundled contract, an agency must conduct market research to determine whether contract bundling is necessary. If the agency determines that contract bundling is necessary, the agency must include in the solicitation a written summary of the agency's market research and a written analysis of the research that explains why contract bundling is necessary.

Implication of Statutory Change

State agencies will be required to conduct market research to determine whether bundling is necessary and justified. More than likely, this market research will increase costs associated with the overall procurement process. In addition, it is not clear whether small businesses will have an opportunity to protest a procurement that includes bundling. If this new claim of protest is ripe under this legislation, then agency costs will increase to defend the procurement process.

Some phrases in the bill, such as "not appropriate for award to a small business" on lines 35-36, "prime contractor" on lines 36-37, and "not dominant within the business entity's industry" on lines 39-40, are not defined, which could lead to uncertainty in applying the definition of

“contract bundling.” The bill does not provide for a specific entity to determine if a business entity is dominant within that business’s industry.

It is unclear whether an agency determination on contract bundling might constitute an agency action that will give rise to administrative rights for those affected by that determination, either as a protest of a contract solicitation or award, or as a decision which affects the substantial interests of a party.

The phrase “to the maximum extent practicable” contained in the contract bundling requirement for a state agency may present unintended consequences. The term “practicable” is not always synonymous with the best choice for the situation. Florida’s Attorney General has noted that the term “practicable” means “that which is performable, feasible, possible.”¹⁹ Florida courts have noted the terms “practicable” and “practical” do not have the same meaning.²⁰ The Florida 1st District Court of Appeal stated that “*practicable* means capable of being effected or accomplished, and *practical* means adapted to actual conditions”.²¹

Set-asides

Description of Statutory Change

The bill requires each agency to annually award to small businesses, either directly or indirectly as subcontractors, at least 35 percent of the total dollar amount of contracts awarded. Each contract awarded under s. 287.057, F.S. relating to procurement of commodities or contractual services, must require the vendor to use small businesses as subcontractors or subvendors. The percentage of funds, in terms of gross contract amount and revenues that must be expended for subcontracting with small businesses must be determined by the agency before the solicitation for the contract is issued; however, the contract may not allow a vendor to expend less than 35 percent of the gross contract amount for subcontracting with small businesses.

Each contract must include specific requirements for the timely payment of subcontractors by the prime contractor and specific terms and conditions applicable if a prime contractor does not pay a subcontractor within the time limits specified in the contract. The bill also requires that prompt payment by an agency to the prime contractor be made within 12 calendar days after receipt of a proper pay application or invoice for payment. Payment by a prime contractor of a subcontractor, subvendor, or sub-consultant must be made within 2 calendar days after receipt of a proper pay application or invoice for payment. Additionally, all contracts must include twice a month billing. Each contract must conform to these requirements by no later than July 1, 2019.

Implication of Statutory Change

State agencies may be required to conduct more procurements or require contractors to engage small businesses as subcontractors. With an increase in the number of procurements, the state agencies will incur greater costs. If the set aside thresholds are met through subcontracting, the overall costs of the services procured may increase, along with the aggregated profits and administrative costs of the contractors. The bill also doesn’t provide for a single entity to confirm

¹⁹ Op. Att’y Gen. Fla. 81-69 (1981).

²⁰ *Hoffman v. Laffitte*, 564 So.2d 170, 171 (Fla. 1st DCA 1990).

²¹ *Id.* at 172.

whether small businesses meet the definition supplied in the bill. As a result, individual agencies will need to make the determinations of whether a small business qualifies for the required set-asides. The Legislature may wish to consider whether it would be more efficient for a single entity to determine whether a business qualifies under the provisions of the bill, in order to avoid duplication of effort by businesses and agencies.

It is unclear whether lines 83-84 require the use of subvendors on all contracts, or only those contracts which would already use subcontractors.

Prompt Payment

Description of Statutory Change

The bill requires payment by an agency to prime contractor within 12 calendar days, and payment by prime contractor of a subcontractor, subvendor, or sub-consultant within 2 calendar days after receipt of a proper pay application or invoice.

Implication of Statutory Change

Section 287.0585(1), F.S., however, requires a contractor to make payments to subcontractors and suppliers within 7 working days of receipt of payment from a state agency for contractual services. If timely payment is not made to the subcontractor, penalty provisions apply.²² This modification may place a substantial financial burden on prime contractors doing business with the state and using subcontractors. Additionally, s. 215.422, F.S., provides processing time limits for invoices submitted by state agencies.²³

It is unclear whether this provision is intended to supersede the general provision of the prompt pay law and s. 287.0585(1), F.S. If it does supersede the current law provisions, the state and its prime contractors may have difficulty complying while continuing the same level of accountability prior to the payment of subcontractor invoices.

Bonding

Description of Statutory Change

Notwithstanding any provision of law, an agency, general contractor, or prime contractor may not require a vendor to post a bid bond, performance bond, or other surety for a contract that does not exceed \$500,000. This subsection does not apply to any requirement for posting a bond pending the protest of a solicitation; the protest of a rejected bid, proposal, or reply; or the protest of a contract award.

This provision might act to override some of the performance bond requirements currently specified in Florida law.

²² Section 287.0585(1), F.S., provides for “a penalty in the amount of one-half of 1 percent of the amount due, per day, from the expiration of the period allowed . . . for payment.” The penalty cannot exceed 15 percent of the outstanding balance owed. This section also authorizes attorney’s fees and costs as ordered by the court for proceedings brought under this section.

²³ Section 215.422(2), F.S., requires the Department of Financial Services to approve payment of an invoice no later than 10 days after an agency’s filing of an approved invoice.

Implications of Statutory Change

State agencies may bear greater risk for non-performance by the small businesses. Any uninsured default may increase the costs to the state agencies. This greater risk may be offset through the purchase of surety bonds by the state agencies on behalf of the small businesses. As a result, the state agency may have to choose between bearing the risk of default by the small business and incurring additional costs associated with contracting with the small business.

Reporting

The bill requires the rules ombudsman in the executive office of the Governor to establish a system to measure and report the use of small businesses in state contracting. This system must maintain information and statistics on small business participation, awards, dollar volume of expenditures, and other appropriate types of information to analyze progress in small businesses' access to state contracts and to monitor agency compliance with this section. An agency must report its compliance with the reporting system at least annually and at the request of the rules ombudsman. All agencies must cooperate with the rules ombudsman in establishing this reporting system. The rules ombudsman must also report agency compliance for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives by February 1 of each year.

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.

D. Other Constitutional Issues:

The establishment of state preference laws may potentially implicate the Equal Protection Clause and the Commerce Clause of the U.S. Constitution.

The Equal Protection Clause

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”²⁴ The in-state preference provisions in this bill may constitute an equal protection violation. If such legislation is challenged, the court would most likely use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.²⁵ Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.²⁶

The Commerce Clause

The United States Constitution provides that Congress shall have the power “to regulate commerce . . . among the states.”²⁷ The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.²⁸

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. “If a statute ‘directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,’ the court may declare it unconstitutional as applied, without further inquiry.”²⁹
2. “. . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state’s interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits.”³⁰

However, when a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.³¹ A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.³² Since the state is acting as a “market participant” under this bill, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

²⁴ U.S. CONST. amend. XIV, § 1. See also FLA. CONST. art. I, s. 2.

²⁵ *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (stating that “unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification *rationally* further a legitimate state interest.”).

²⁶ *Id.*

²⁷ U.S. CONST. art. I, s. 8, cl. 3.

²⁸ See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

²⁹ *National Collegiate Athletic Ass’n v. Associated Press*, 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579 (1986)).

³⁰ *Id.* at 1211-1212 (citations omitted); See *Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109 (11th Cir. 2002).

³¹ See *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects); *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 93 (1984) (stating that “[t]he precise contours of the market-participant doctrine have yet to be established.”); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *Reeves, Inc. v. Stake*, 447 U.S. 429 (1980).

³² *Id.*

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

None.

B. Private Sector Impact:

The bill may shift some contracting dollars towards smaller businesses. In addition, prime contractors may be required to pay subcontractors prior to receiving payment from the state. This may require prime contractors to borrow money to pay its subcontractors. Such costs may be passed onto the state through the overall costs of the project.

C. Government Sector Impact:

This bill may increase the costs incurred by state agencies in contracting for goods and services. State agencies may see costs increase in an indeterminate amount due to required market research and possible legal challenges to contract awards. State agencies may see costs increase in an indeterminate amount due to the increase in number of procurements. The Florida Department of Law Enforcement (FDLE) estimated that the impact of this bill would require one FTE position at a total cost of \$61,504.³³ If other agencies' costs for implementing this bill are similar to FDLE, the impact on the state could be substantial.

State agencies may also see costs increase in an indeterminate amount for the purchase of surety bonds on behalf of the small business or the risk of default of the small business.

It is unclear whether the rules ombudsman will incur additional costs to create the reporting system required by the bill.

VI. Technical Deficiencies:

The proposed payment requirements conflict with existing statutory provisions. Section 287.0585(1), F.S., requires payment by contractor within 7 working days after the contractor receives payment from the government entity. The bill requires payment within 12 or 2 days of the small business submitting an invoice to the government entity or contractor. Also, s. 215.422, F.S., requires prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.

The proposed definition of "small business" contained in section 1 of the bill potentially creates a conflict with the definition of "small business" contained in the Florida Small and Minority Business Assistance Act.

³³ See FDLE Legislative Bill Analysis dated October 7, 2015 (a copy on file with the Governmental Oversight and Accountability Committee).

VII. Related Issues:

For clarity, the existing duties of the rules ombudsman specified in s. 288.7015, F.S., should be cross-referenced to the new duties specified by this bill.

Additionally, for agencies that use federal funding sources to pay for contracted services and goods, there may be requirements that do not permit subcontracting.

VIII. Statutes Affected:

This bill creates section 287.0577 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight Committee on January 11, 2016:

- Prompt payment by an agency to the prime contractor is required within 12 calendar days after receipt of a proper pay application or invoice; and
- Each contract must comply with the prompt payment provisions and the new “twice a month” billing requirement no later than July 1, 2019.

- B. **Amendments:**

None.



355758

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
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	.	
	.	

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

Senate Amendment

Delete line 96
and insert:
2. The prompt payment by an agency to the prime contractor



583094

LEGISLATIVE ACTION

Senate

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House

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

Senate Amendment

Delete line 100
and insert:
contracts must include twice a month billing. Each contract must
conform to the requirements of this subparagraph by no later
than July 1, 2019.

By Senator Bullard

39-00627-16

2016438__

A bill to be entitled

An act relating to small business participation in state contracting; creating s. 287.0577, F.S.; defining the terms "contract bundling" and "small business"; directing that agencies avoid contract bundling under certain circumstances; requiring agencies to conduct market research and include written summaries and analyses of such research in solicitations for bundled contracts; requiring certain agencies to award a percentage of contracts to small businesses; requiring contract vendors to use small businesses in the state as subcontractors or subvendors; providing requirements with respect to payment of prime contractors and subcontractors; prohibiting agencies, general contractors, and prime contractors from requiring certain bonds or other sureties for certain contracts; requiring the rules ombudsman in the Executive Office of the Governor to establish a system for reporting small business participation in state contracting; requiring agencies to cooperate with such reporting; requiring specified annual reports; providing an effective date.

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

Section 1. Section 287.0577, Florida Statutes, is created to read:

287.0577 Small business participation in state contracting; contract bundling; set-asides for small businesses; bonding and

Page 1 of 5

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

39-00627-16

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reporting requirements.

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

(a) "Contract bundling" means the consolidation of contracts for the procurement of commodities or contractual services, at least part of which may be provided or performed by one or more small businesses, into a single contract that is not appropriate for award to a small business as the prime contractor.

(b) "Small business" means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

1. Is currently, and for at least the previous 3 years has been, domiciled in the state.

2. Has a workforce of 50 or fewer permanent full-time positions, whether employees, independent contractors, or other contract personnel.

3. Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:

a. For a contractor licensed under chapter 489, \$5 million per year.

b. For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, \$500,000 per year.

c. For any other business entity, \$1 million per year.

4. Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed \$5 million. For a sole proprietorship, the net worth limit of \$5 million includes both personal and business investments but does not include the proprietor's primary

Page 2 of 5

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

39-00627-16

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59 residence.

60
61 The term includes any such business entity organized as any form
62 of corporation, partnership, limited liability company, sole
63 proprietorship, joint venture, association, trust, cooperative,
64 or other legal entity.

65 (2) CONTRACT BUNDLING; SOLICITATION.—

66 (a) An agency, to the maximum extent practicable, shall
67 structure agency contracts to facilitate competition by and
68 among small businesses, taking all reasonable steps to eliminate
69 obstacles to participation and avoiding unnecessary contract
70 bundling that may preclude small businesses' participation as
71 prime contractors.

72 (b) Before issuing a solicitation for a bundled contract,
73 an agency must conduct market research to determine whether
74 contract bundling is necessary. If the agency determines that
75 contract bundling is necessary, the agency must include in the
76 solicitation a written summary of the agency's market research
77 and a written analysis of the research that explains why
78 contract bundling is necessary.

79 (3) SET-ASIDES FOR SMALL BUSINESSES.—

80 (a) An agency shall annually award to small businesses,
81 either directly or indirectly as subcontractors, at least 35
82 percent of the total dollar amount of contracts awarded.

83 (b) Each contract awarded under s. 287.057 must require the
84 vendor to use small businesses as subcontractors or subvendors.
85 The percentage of funds, in terms of gross contract amount and
86 revenues, which must be expended for subcontracting with small
87 businesses shall be determined by the agency before the

39-00627-16

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88 solicitation for the contract is issued; however, the contract
89 may not allow a vendor to expend less than 35 percent of the
90 gross contract amount for subcontracting with small businesses.

91 (c) Each contract must include specific requirements for:

92 1. The timely payment of subcontractors by the prime
93 contractor and specific terms and conditions applicable if a
94 prime contractor does not pay a subcontractor within the time
95 limits specified in the contract.

96 2. The prompt payment by an owner of a prime contractor
97 within 12 calendar days, and payment by a prime contractor of a
98 subcontractor, subvendor, or sub-consultant within 2 calendar
99 days, after receipt of a proper pay application or invoice. All
100 contracts shall include twice a month billing.

101 (4) BONDING REQUIREMENTS.—Notwithstanding any other
102 provision of law, an agency, a general contractor, or a prime
103 contractor may not require a vendor to post a bid bond,
104 performance bond, or other surety for a contract that does not
105 exceed \$500,000. This subsection does not apply to any
106 requirement for posting a bond pending the protest of a
107 solicitation; the protest of a rejected bid, proposal, or reply;
108 or the protest of a contract award.

109 (5) REPORTING REQUIREMENTS.—The rules ombudsman in the
110 Executive Office of the Governor shall:

111 (a) Establish a system to measure and report the use of
112 small businesses in state contracting. This system shall
113 maintain information and statistics on small business
114 participation, awards, dollar volume of expenditures, and other
115 appropriate types of information to analyze progress in small
116 businesses' access to state contracts and to monitor agency

39-00627-16

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117 compliance with this section. Such reporting must include, but
118 is not limited to, the identification of all subcontracts in
119 this state contracting by dollar amount and by number of
120 subcontracts and identification of the use of small businesses
121 as prime contractors and subcontractors by dollar amounts of
122 contracts and subcontracts, number of contracts and
123 subcontracts, industry, and any conditions or circumstances that
124 significantly affected the performance of subcontractors. An
125 agency shall report its compliance with the reporting system at
126 least annually and at the request of the rules ombudsman in the
127 Executive Office of the Governor. All agencies shall cooperate
128 with the rules ombudsman in the Executive Office of the Governor
129 in establishing this reporting system.

130 (b) Report agency compliance with paragraph (a) for the
131 preceding fiscal year to the Governor and Cabinet, the President
132 of the Senate, and the Speaker of the House of Representatives
133 by February 1 of each year. The report must contain, at a
134 minimum, the following:

- 135 1. Total expenditures of each agency by industry.
- 136 2. The dollar amount and percentage of contracts awarded to
137 small businesses by each agency.
- 138 3. The dollar amount and percentage of contracts awarded
139 indirectly to small businesses as subcontractors by each agency.
- 140 4. The total dollar amount and percentage of contracts
141 awarded to small businesses, whether directly or indirectly as
142 subcontractors.

143 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)

4/16/16
Meeting Date

JB 438
Bill Number (if applicable)

Topic Small Business Participation

Amendment Barcode (if applicable)

Name Richard Watson

Job Title Legislative Counsel

Address P.O. Box 10638

Phone 850 222-0000

Street

City

State

Zip

Tallahassee FL 32302

Email HWatson@flsenate.gov

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL Security 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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/11/14
Meeting Date

SB 438
Bill Number (if applicable)

Topic Small Business Participation in State Contracting Amendment Barcode (if applicable)

Name Brace Kershner

Job Title _____

Address 231 West Bay Ave
Street
Longwood FL 32750
City State Zip

Phone 407 830 1882

Email BKershner@att.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NACM - Improved Construction Practices Committee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-11-16
Meeting Date

SB 438
Bill Number (if applicable)

Topic Small Business Participating

Amendment Barcode (if applicable)

Name DOROTHY BROWN-ALFARO

Job Title President

Address 11820 MIKAMM Pkwy

Phone 786-486-2397

Street

MIKAMM FL 33025

City

State

Zip

Email DORCOT@Bellsouth.net

DORCOT@Bellsouth.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CSBE, NABWIC, FL Hispanic, Small Businesses

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 516

INTRODUCER: Community Affairs Committee and Senators Ring and Gaetz

SUBJECT: Special Districts

DATE: January 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Fav/CS
2.	Peacock	McVaney	GO	Favorable
3.			ATD	
4.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 516 requires each special district to publish an online version of its budget information on its official website which allows the public to:

- View multiple years of budget, general ledger, and checking account data;
- Review year-over-year spending trends, examine individual accounting entries, and filter data according to categories in the special district's chart of accounts, including, but not limited to, fund, department, division, program, or activity;
- Download financial data and graphs;
- View data in different graphical formats, including, but not limited to, stacked line, trend line, bar graph, and pie chart;
- View data in tabular formats;
- View information for multiple special district departments, divisions, funds, or financial categories simultaneously; and
- View and compare revenue and expense trends simultaneously on the same graph for any level of financial data.

The bill removes several obsolete provisions relating to a special district that does not operate an official website because a special district is required to operate an official website as of October 1, 2015.

The bill provides that an independent special district that regulates transit or transportation services is subject to the Administrative Procedure Act.

II. Present Situation:

Special Districts

A special district is a unit of local government created for a special purpose, which has jurisdiction to operate within a limited geographical area. Special districts may be created by general law (an act of the Legislature), by special act (a law enacted by the Legislature at the request of a local government and affecting only that local government), by local ordinance, or by rule of the Governor and Cabinet.¹ Special districts are created to provide a wide variety of services, such as mosquito control,² beach and shore preservation districts,³ children's services,⁴ fire control and rescue,⁵ or drainage and water control.⁶

All special districts must comply with the requirements of the Uniform Special District Accountability Act of 1989 (Act) which was enacted by the Legislature to reform and consolidate laws relating to special districts. The Act also charges the Department of Economic Opportunity (DEO) Special District Accountability Program with a number of duties relating to special districts, including publishing and updating a "Florida Special District Handbook."⁷

According to the DEO, the state currently has 1,662 active special districts and 10 inactive ones, comprised of 635 dependent and 1,027 independent special districts.⁸

Special District Website Requirements

Section 189.016, F.S., requires special districts to comply with certain budget requirements and file certain documents and reports with the Department of Economic Opportunity and other state and local agencies. Section 189.016, F.S., requires special districts to make the following website postings:

- Each special district must post its tentative budget on its official website at least two days before the budget hearing, held pursuant to s. 200.065, F.S., or other law, to consider such budget.⁹

¹ Section 189.012(6), F.S. The term 'special district' does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

² Section 388.021(1), F.S. However, no new independent mosquito control districts may be created except pursuant to s. 125.01, F.S.

³ See ss. 161.25-161.45, F.S.

⁴ Section 125.901(1), F.S.

⁵ See ss 191.001-191.014, F.S., known as the Independent Special Fire Control District Act.

⁶ Section 298.01, F.S.

⁷ Section 189.064(3), F.S.

⁸ Department of Economic Opportunity, Division of Community Development, *Official List of Special Districts Online*, (data as of November 5, 2015) available at <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm> (last visited November 5, 2015).

⁹ Section 189.016(4), F.S.

- Each special district must post its final adopted budget on its official website within 30 days after adoption¹⁰ and must post any budget amendments on its official website within five days after adoption.¹¹
- If a special district does not operate an official website, the special district must transmit the tentative budget,¹² adopted budget,¹³ or budget amendment¹⁴ to the manager or administrator of the local general-purpose government in which it is located. The manager or administrator of the local general-purpose government shall post such information to its website.

Beginning October 1, 2015, or by the end of the first full fiscal year after its creation, each special district is required to maintain an official website containing specific information about the special district.¹⁵ Independent special districts are required to maintain their own website,¹⁶ while only a link to information about dependent special districts must be displayed on the home page of the local general-purpose government that created the district.¹⁷

Hillsborough County Public Transportation Commission

The Hillsborough County Public Transportation Commission (Commission) is an independent special district that regulates transit and transportation services. The Commission was created by a special act.¹⁸ The Commission regulates vehicles for-hire as defined in the special act, and these vehicles include taxicabs, limousines, vans, basic life support ambulances and wrecker services that support government agencies in Hillsborough County and non-consensual towing (private property impounds).¹⁹

The Commission's powers include:

- Regulating the operation of public vehicles on public highways;
- Adopting rules in conformance with ch. 120, F.S., the Administrative Procedures Act;
- Performing duties required by the special act and any rules adopted in accordance with the special act; and
- Fixing or approving taxicab zones, rates, fares, and charges.²⁰

The Administrative Procedure Act

The Administrative Procedure Act (APA) in ch. 120, F.S., sets forth uniform procedures that agencies must follow when exercising rulemaking authority. A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the

¹⁰ *Id.*

¹¹ Section 189.016(7), F.S.

¹² Section 189.016(4), F.S.

¹³ *Id.*

¹⁴ Section 189.016(7), F.S.

¹⁵ Section 189.069(1), F.S.

¹⁶ Section 189.069(1)(a), F.S.

¹⁷ Section 189.069(1)(b), F.S. Dependent special districts may maintain their own webpage but are not required to do so.

¹⁸ Chapter 2001-299, Laws of Fla.

¹⁹ See <http://www.hillsboroughcounty.org/ptc> (last visited on December 22, 2015).

²⁰ Chapter 2001-299, s. 5, Laws of Fla.

procedure and practice requirements of an agency.²¹ Rulemaking authority is delegated by the Legislature²² through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”²³ a rule. Agencies do not have discretion whether to engage in rulemaking.²⁴ To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.²⁵ The grant of rulemaking authority itself need not be detailed.²⁶ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.²⁷ A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.²⁸ Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.²⁹

In 1996 the Legislature extensively revised³⁰ agency rulemaking under the Administrative Procedure Act (APA)³¹ to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

III. Effect of Proposed Changes:

Section 1 amends s. 189.016, F.S., to require each special district to publish an online version of its budget information on its official website which allows the public to:

- View multiple years of budget, general ledger, and checking account data;
- Review year-over-year spending trends, examine individual accounting entries, and filter data according to categories in the special district’s chart of accounts, including, but not limited to, fund, department, division, program, or activity;
- Download financial data and graphs;
- View data in different graphical formats, including, but not limited to, stacked line, trend line, bar graph, and pie chart;
- View data in tabular formats;
- View information for multiple special district departments, divisions, funds, or financial categories simultaneously; and
- View and compare revenue and expense trends simultaneously on the same graph for any level of financial data.

²¹ Section 120.52(16), F.S.; *Florida Dep’t of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

²² *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

²³ Section 120.52(17), F.S.

²⁴ Section 120.54(1)(a), F.S.

²⁵ Sections 120.52(8) and 120.536(1), F.S.

²⁶ *Southwest Fla. Water Mgmt. Dist.*, Supra at 599.

²⁷ *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008) (internal citations omitted); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

²⁸ *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

²⁹ *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

³⁰ Ch. 96-159, Laws of Fla.

³¹ Chapter 120, F.S.

This section is amended to remove the current law provision that requires a special district that does not operate an official website to transmit the tentative budget,³² adopted budget,³³ or budget amendment³⁴ to the manager or administrator of the local general-purpose government in which it is located. These provisions became obsolete because each special district was required to operate an official website beginning October 1, 2015.³⁵

Section 2 creates s. 189.0695, F.S., to provide that an independent special district that regulates transit or transportation services is subject to the APA in ch. 120, F.S.

Section 3 amends s. 120.52, F.S., relating to the governmental entities subject to the APA, to redefine the term “agency” to include an independent special district that regulates transit or transportation services.

Section 4 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.

³² Section 189.016(4), F.S.

³³ *Id.*

³⁴ Section 189.016(7), F.S.

³⁵ Section 189.069, F.S.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on special districts relating to the increased data that a special district must provide on its website. Also, the bill may have an indeterminate fiscal impact on transportation special districts that will be subject to the APA.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The requirement in s. 189.016(4)(b), F.S., that each special district publish an online version of its budget information on its official website does not specify whether the requirement applies to a tentative budget, a final budget, or both the tentative budget and the final budget.

VIII. Statutes Affected:

This bill substantially amends the sections 189.016 and 120.52 of the Florida Statutes.

The bill also creates section 189.0695 of the Florida Statutes.

IX. Additional Information:

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

CS by Community Affairs on November 17, 2015:

Provides that an independent special district that regulates transit or transportation services is subject to the Administrative Procedure Act in ch. 120, F.S.

B. Amendments:

None.



575920

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 72 - 74

and insert:

transportation services; procedures.-

(1) An independent special district that regulates transit
or transportation services is subject to the Administrative
Procedure Act, chapter 120.

(2) This section does not apply to any entity authorized
under s. 163.567 or under chapter 343, chapter 348, or chapter



575920

11 349.
12 ===== T I T L E A M E N D M E N T =====
13 And the title is amended as follows:
14 Delete line 9
15 and insert:
16 subject to ch. 120, F.S.; providing applicability;
17 amending s. 120.52, F.S.;

By the Committee on Community Affairs; and Senators Ring and Gaetz

578-01296-16

2016516c1

A bill to be entitled

An act relating to special districts; amending s. 189.016, F.S.; requiring each special district to operate an official website; requiring each special district's official website to include specified budget information; conforming provisions to changes made by this act; creating s. 189.0695, F.S.; requiring certain independent special districts to be subject to ch. 120, F.S.; amending s. 120.52, F.S.; redefining the term "agency"; providing an effective date.

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

Section 1. Subsections (4) and (7) of section 189.016, Florida Statutes, are amended to read:

189.016 Reports; budgets; audits.—

(4) (a) The tentative budget must be posted on the special district's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget. The final adopted budget must be posted on the special district's official website within 30 days after adoption. ~~If the special district does not operate an official website, the special district must, within a reasonable period of time as established by the local general-purpose government or governments in which the special district is located or the local governing authority to which the district is dependent, transmit the tentative budget or final budget to the manager or administrator of the local general-purpose government or the~~

Page 1 of 4

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

578-01296-16

2016516c1

~~local governing authority. The manager or administrator shall post the tentative budget or final budget on the website of the local general-purpose government or governing authority. This subsection and subsection (3) do not apply to water management districts as defined in s. 373.019.~~

(b) Each special district shall publish an online version of its budget information on its official website which allows the public to:

1. View multiple years of budget, general ledger, and checking account data;

2. Review year-over-year spending trends, examine individual accounting entries, and filter data according to categories in the special district's chart of accounts, including, but not limited to, fund, department, division, program, or activity;

3. Download financial data and graphs;

4. View data in different graphical formats, including, but not limited to, stacked line, trend line, bar graph, and pie chart;

5. View data in tabular formats;

6. View information for multiple special district departments, divisions, funds, or financial categories simultaneously; and

7. View and compare revenue and expense trends simultaneously on the same graph for any level of financial data.

(7) If the governing body of a special district amends the budget pursuant to paragraph (6)(c), the adopted amendment must be posted on the official website of the special district within

Page 2 of 4

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

578-01296-16

2016516c1

59 5 days after adoption. ~~If the special district does not operate~~
 60 ~~an official website, the special district must, within a~~
 61 ~~reasonable period of time as established by the local general-~~
 62 ~~purpose government or governments in which the special district~~
 63 ~~is located or the local governing authority to which the~~
 64 ~~district is dependent, transmit the adopted amendment to the~~
 65 ~~manager or administrator of the local general-purpose government~~
 66 ~~or governing authority. The manager or administrator shall post~~
 67 ~~the adopted amendment on the website of the local general-~~
 68 ~~purpose government or governing authority.~~

69 Section 2. Section 189.0695, Florida Statutes, is created
 70 to read:

71 189.0695 Special districts regulating transit or
 72 transportation services; procedures.-An independent special
 73 district that regulates transit or transportation services is
 74 subject to the Administrative Procedure Act, chapter 120.

75 Section 3. Paragraph (a) of subsection (1) of section
 76 120.52, Florida Statutes, is amended to read:

77 120.52 Definitions.-As used in this act:

78 (1) "Agency" means the following officers or governmental
 79 entities if acting pursuant to powers other than those derived
 80 from the constitution:

81 (a) The Governor; each state officer and state department,
 82 and each departmental unit described in s. 20.04; the Board of
 83 Governors of the State University System; the Commission on
 84 Ethics; the Fish and Wildlife Conservation Commission; a
 85 regional water supply authority; a regional planning agency; a
 86 multicounty special district, but only if a majority of its
 87 governing board is comprised of nonelected persons; an

578-01296-16

2016516c1

88 independent special district that regulates transit or
 89 transportation services; educational units; and each entity
 90 described in chapters 163, 373, 380, and 582 and s. 186.504.
 91

92 This definition does not include a municipality or legal entity
 93 created solely by a municipality; a legal entity or agency
 94 created in whole or in part pursuant to part II of chapter 361;
 95 a metropolitan planning organization created pursuant to s.
 96 339.175; a separate legal or administrative entity created
 97 pursuant to s. 339.175 of which a metropolitan planning
 98 organization is a member; an expressway authority pursuant to
 99 chapter 348 or any transportation authority or commission under
 100 chapter 343 or chapter 349; or a legal or administrative entity
 101 created by an interlocal agreement pursuant to s. 163.01(7),
 102 unless any party to such agreement is otherwise an agency as
 103 defined in this subsection.

104 Section 4. 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)

11/11/15

Meeting Date

SB 516

Bill Number (if applicable)

Topic Special Districts

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title Attorney

Address 315 S. Calhoun St., Ste. 830

Phone 850/222-5702

Street

Tallahassee

City

FL

State

32309

Zip

Email clyon@llw-law.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Special Districts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/11/16
Meeting Date

SB516
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 West Jefferson

Phone 850 224 3427

Street TLH

City Fla

State _____

Zip _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Open Gov

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 142

INTRODUCER: Judiciary Committee, Senator Ring and others

SUBJECT: Student Loans

DATE: January 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>AED</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 142 creates the “For the Greater Good Attorney Student Loan Repayment Program” within the Florida Department of Education. The program provides student loan repayment assistance to eligible attorneys employed in the public sector. Funding for the program is contingent upon a specific appropriation in the General Appropriations Act.

Under the bill, an attorney is eligible for loan repayment assistance for any student loan not in default which was issued or guaranteed by a state or the federal government, if the attorney:

- Is working full-time in the public sector in Florida, by the state or a local government or the Federal Government;
- Is a member of the Florida Bar who has not received any disciplinary action;
- Has completed no less than four years and no more than 10 years of government service;
- Earns less than \$65,000 in salary; and
- Is not eligible for any other state, local, or federal grant or private fund that assists in student loan repayment.

The bill authorizes up to \$3,000 in loan payments annually for qualifying attorneys having at least 4 and up to 7 years of government employment. When an attorney reaches 7 years of employment, the amount authorized increases to \$5,000. When the attorney completes 10 years of service, loan payments cease.

An attorney must apply annually to the Department of Education for the loan repayment assistance.

II. Present Situation:

The Higher Education Act of 1965

Title IV of the Higher Education Act of 1965 established a federal loan program for eligible student and parent borrowers.¹ The program is known as the William D. Ford Federal Direct Loan Program (Direct Loan program).²

Today, the U.S. Department of Education oversees a variety of loan programs within the Direct Loan program.³ These programs include the following offerings:

- Federal Perkins Loan, a loan made by the recipient's school, for undergraduate and graduate students who qualify based on financial need. Total loan amounts are capped.
- Direct Subsidized Loan, a loan available to undergraduate students enrolled at least half-time and with demonstrated financial need. Students are not charged interest during certain time periods, such as while they are attending school.
- Direct Unsubsidized Loan, a loan available to undergraduate and graduate students who are enrolled at least half-time. Financial need is irrelevant. Interest accrues regularly.
- Direct PLUS Loan, a loan for parent borrowers of dependent students attending school as undergraduate or graduate-level students. Interest accrues regularly.
- Direct Consolidation Loan, an optional loan that combines one or more federal student loans into one new loan to streamline billing into a single monthly payment.
- Federal Family Education Loan Program (FFEL), a program in which private lenders provided students loans that the federal government guaranteed. These loans included subsidized Federal Stafford Loans, unsubsidized Federal Stafford Loans, FFEL PLUS Loans, and FFEL Consolidation Loans. In 2010, Congress passed the Health Care and Education Reconciliation Act. The Act effectively ended the FFEL, and therefore the practice of the government providing guaranteed loans.⁴ As of July 1, 2010, no new FFEL Program loans were made. Still, some loans taken out before this date continue in repayment.⁵

Law School Costs and Debt

Many law school students in Florida graduate with considerable debt. The table below details debt of recent law school graduates by public and private school attended in Florida.⁶ The report

¹ Pub. L. 89-329 (Nov. 8, 1965).

² Federal Student Aid, U.S. Department of Education, *Public Service Loan Forgiveness*, <https://studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/public-service> (last visited Oct. 8, 2015).

³ Federal Student Aid, U.S. Department of Education, *About Us*, <https://studentaid.ed.gov/about> (last visited Oct. 8, 2015).

⁴ Federal Student Aid, U.S. Department of Education, *Federal Family Education Loan Program Lender and Guaranty Agency Reports*, <https://studentaid.ed.gov/about/data-center/lender-guaranty> (last visited Oct. 8, 2015).

⁵ Federal Student Aid, U.S. Department of Education, *Subsidized and Unsubsidized Loans*, <https://studentaid.ed.gov/types/loans/subsidized-unsubsidized#eligibility> (last visited Oct. 8, 2015).

⁶ U.S. NEWS & WORLD REPORT GRAD COMPASS, *Which law school graduates have the most debt?*, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/grad-debt-rankings/> (last visited Oct. 9, 2014).

from which the information is detailed below does not expressly indicate whether the amount of debt identified includes debt incurred for undergraduate or education other than for law school.

Name of Institution	Average Indebtedness of 2015 Graduates	Percent of Grads having Debt
Ave Maria School of Law	\$132,236	87%
Nova Southeastern University	\$136,450	86%
Florida Coastal School of Law	\$162,785	93%
Florida International University	\$ 89,815	88%
Florida State University	\$ 80,375	85%
Stetson University	\$148,394	83%
St. Thomas University	\$140,808	91%
University of Florida	\$ 82,410	79%

In fact, the Florida Coastal School of Law ranks fourth in the country for highest average indebtedness of 2015 graduates.⁷

Loan Assistance and Forgiveness Programs

Federal Program

Congress created the Public Service Loan Forgiveness (PSLF) Program to encourage individuals to commit to public service, an area typically known for lower pay. The federal government provides loan forgiveness to applicants who work in certain public service jobs, including government organizations at the federal, state, or local level and private, not-for-profit organizations that provide public interest law services.

Loan forgiveness is available for government-held loans that are not in default. Additionally, the applicant must have made 120 monthly payments to qualify. The 120-month payment period started on October 1, 2007, so that the first loans will not be cancelled until October 1, 2017.⁸

Additionally, parents who received a Direct PLUS loan (on behalf of their child's education) may be eligible for loan forgiveness if the parent borrower works for a public service organization.⁹

The Florida Bar Foundation Loan Repayment Assistance Program (LRAP)

The Florida Bar Foundation operates a Loan Repayment Assistance Program (LRAP) for attorneys employed at Florida legal aid and legal services organizations. The LRAP serves organizations that receive general support funding from The Florida Bar Foundation. Money is available to assist attorneys with student loan payments through proceeds on the Bar's "Interest on Trust Accounts," or IOTA program. Staff attorneys who qualify for the benefit receive a \$5,000 annual loan to pay down student loan debt. The annual loan issued by The Florida Bar is

⁷ *Id.*

⁸ Federal Student Aid, *supra* note 1.

⁹ *Id.*

then forgiven, provided that the attorneys remain employed at qualifying organizations for a minimum of 12 months full-time or part-time (at least 50 percent of the full-time hours).¹⁰

Legislation in Other States

A total of 7 states have adopted legislation that offers loan assistance to lawyers working in certain public sector jobs. These states are California, Georgia, Illinois, Maryland, Nebraska, New Mexico, and Texas. Of these, only Maryland and New Mexico have funded their programs.¹¹

Law Schools

Many law schools offer loan repayment assistance to law school graduates working in the public interest sector. Pursuant to a survey request, 133 law schools responded that they have a loan repayment assistance program. Of the law schools in Florida, only the St. Thomas University School of Law responded affirmatively.¹²

Federal Income Taxation Implications for Cancellation of Debt or Loan Repayments

Under federal tax law, gross income includes income from the discharge of any indebtedness of \$600 or more in any calendar year.¹³ However, two types of student loan assistance may be tax free: student loan cancellation and student loan repayment assistance.

Under federal law¹⁴, to qualify for tax-free treatment, the loan must have been made by a qualified lender to assist the student in attending an eligible educational institution and contain a provision that all or part of the debt will be cancelled if the student works:

- For a certain period of time;
- In certain professions (including medicine, nursing, teaching and law); and
- For any of a broad class of employers.

Student loan repayments made to the student are tax free if received for any of the following:

- The National Health Service Corps (NHSC) Loan Repayment Program;
- A state education loan repayment program eligible for funds under the Public Health Service Act; or
- Any other state loan repayment or loan forgiveness program that is intended to provide for the increased availability of health services in underserved or health professional shortage areas (as determined by the state).

The following loan forgiveness and cancellation programs are eligible for tax-free status:

¹⁰ The Florida Bar Foundation, *General Grant Support Program*, <http://www.flabarfdn.org/grant-programs/lap/loan.aspx> (last visited Oct. 9, 2015).

¹¹ American Bar Association, *State Loan Repayment Assistance*, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/loan_repayment_assistance_programs/state_loan_repayment_assistance_programs.html (last visited Oct. 9, 2015).

¹² Equal Justice Works, *Law School LRAPS*, <http://www.equaljusticeworks.org/ed-debt/students/loan-repayment-assistance-programs/school-LRAPs/law-school-list> (last visited Oct. 9, 2015).

¹³ 26 U.S.C. s. 61(a)(12).

¹⁴ 26 U.S.C. s. 108(f).

- Public Service Loan Forgiveness;
- Teacher Loan Forgiveness;
- National Health Service Corps Loan Repayment Program;
- Perkins Loan Cancellation and Discharge for teachers in teacher shortage areas, members of the US Armed Forces (service in combat pay areas), nurses, medical technicians, firefighters, law enforcement or corrections officers, public defenders, librarians and speech pathologists serving certain schools, Head Start workers, special education teachers, child or family services workers and professional providers of early intervention services, and faculty at tribal colleges and universities;
- College or University Loan Repayment Assistance Programs for service in national need areas; and
- Law School Loan Repayment Assistance Programs.

III. Effect of Proposed Changes:

The bill establishes the “For the Greater Good Attorney Student Loan Repayment Program” within the Florida Department of Education (DOE). The program provides student loan repayment assistance to eligible attorneys employed in the public sector. The bill authorizes the DOE to adopt rules to administer the program.

Funding for the program is contingent upon, and funded entirely through appropriations from the General Revenue Fund. As such, even if the bill passes, the program cannot be implemented without funding.

The program is intended to attract more attorneys to public service, and help government agencies retain attorneys, thereby reducing turnover and costs of repeated trainings.

Under the bill, an attorney is eligible for loan repayment assistance for any student loan not in default which was issued or guaranteed by a state or the Federal Government, if the attorney:

- Is working full-time in the public sector in Florida, by the state or a local government or the federal government;
- Is a member of the Florida Bar who has not received any disciplinary action;
- Has completed no more than 10 years of government service;
- Earns less than \$65,000 in salary as reported to the Internal Revenue Service; and
- Is not eligible for any other state, local, or federal grant or private fund that assists in student loan repayment.

Qualifying Loans and Payments

To be a qualifying loan, the loan must be secured for a law school education, government-held, and not in default. The bill, however, does not explain how DOE will segregate law school loans that have been consolidated with other education loans.

Loans eligible for repayment are limited to student loans issued or guaranteed by a state or the Federal Government. Loans that are privately-held do not qualify. The bill further declares that the payments are not taxable income.¹⁵

The annual allowance for loan repayment assistance is:

- \$3,000 if the attorney has at least 4 years, and up to 7 years of employment in the public sector; and
- \$5,000 if the attorney has more than 7, but no more than 10 years of employment in the public sector.

Process for Application and Payment

The Florida Department of Education will administer the program and make payment on the loans.

To apply for loan repayment assistance, an attorney must annually submit a certification affidavit to his or her employer within 30 days after his or her employment anniversary. The affidavit must certify that the attorney is an eligible career attorney with one or more eligible student loans as of his or her last employment anniversary. Within 60 days after the most recent employment anniversary, the employer must submit the affidavit to the DOE.

Once approved, the DOE will make payments to the financial institution that services an attorney's student loan. However, if an attorney has multiple loans, the DOE must prioritize payments to the loan having the highest current interest rate.

Because the program is contingent upon appropriations by the Legislature, the Legislature may choose not to fund the program or to underfund the program. If funds appropriated are insufficient to make full payments for all eligible attorneys, the DOE must uniformly prorate payments.

The bill takes effect 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.

¹⁵ This provision is most likely unnecessary because Florida does not impose a personal income tax. For federal tax purposes, the federal law determines whether loan repayment assistance is taxable income.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The attorneys receiving this benefit will enjoy a reduction in personal liabilities. However, based on the federal tax laws, the attorney may be subject to additional federal personal income taxes.

Increasing payments based on years of service provides an incentive for attorneys to make a long-term commitment to public service.

Florida attorneys employed in any public sector position, whether by the state or a local government or the Federal Government may qualify for loan repayment assistance.

C. Government Sector Impact:

Employers in the public sector may benefit from this program by having decreased turnover.

DOE, as the agency designated to administer the program, will likely incur a fiscal impact from the bill. A fiscal impact may result from costs to operate the program and from rulemaking. The bill does not address funding for DOE.

The appropriation needed to fund this program is unknown at this time due to the broad reach of the program. Under the bill, any attorney in the public sector may qualify for loan repayment. Also, the pool of employers is broad, including any local, state, or federal organization. Finally, the bill excludes from participation attorneys who are eligible for any other kind of repayment program. As a number of other programs offer loan repayment, ascertaining the number of attorneys who do not qualify on this basis is difficult.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the Federal Family Education Loan Program (FFEL) no longer exists, some applicants for loan assistance under the bill may have received private loans through the FFEL, which were then consolidated into a Direct Loan. The bill provides that only loans issued through the Higher

Education Act (Direct Loan program) qualify for assistance. The Higher Education Act created the FFEL. Therefore, under this bill, borrowers may receive loan assistance for loans that were initially privately-held.

Also, the bill provides that payments on loans are not taxable income. Florida does not tax state income. Therefore, whether loan repayment assistance is taxable income will be determined by federal law.

VIII. Statutes Affected:

This bill creates section 1009.675 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on December 1, 2015:

- Broadens the pool of potential participants from assistant state attorneys, assistant public defenders, assistant attorneys general, and assistant statewide prosecutors to any attorney employed by the state or a local government or the Federal Government;
- Changes the administering bodies from the Justice Administrative Commission and the Office of the Attorney General to the Department of Education;
- Creates the “For the Greater Good Attorney Student Loan Repayment Program” and houses the Program in the DOE;
- Removes the cap on the dollar amount of payments that can be made for each attorney;
- Requires qualifying attorneys to earn less than \$65,000, be a member of the Florida Bar without prior disciplinary action, and not be eligible for other loan repayment programs;
- Excludes from participation attorneys who are eligible for any other repayment program; and
- Reduces the number of eligible years for repayments by revising the required number of years of work in the public sector from 3 to 12 years, to 4 to 10 years.

B. Amendments:

None.



687272

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 69

and insert:

(6) Each payment

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

And the title is amended as follows:

Delete lines 10 - 11

and insert:

to administer the program; providing procedures if

By the Committee on Judiciary; and Senators Ring and Joyner

590-01778-16

2016142c1

A bill to be entitled

An act relating to student loans; creating s. 1009.675, F.S.; creating the For the Greater Good Attorney Student Loan Repayment Program to increase employment and retention of attorneys in the public sector; providing eligibility requirements; specifying the loans that will be covered by the repayment program; requiring the Department of Education to make payments to eligible attorneys; providing procedures to administer the program; providing that a payment is not taxable income; providing procedures if appropriated funds are insufficient; authorizing rulemaking; providing an effective date.

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

Section 1. Section 1009.675, Florida Statutes, is created to read:

1009.675 For the Greater Good Attorney Student Loan Repayment Program.—

(1) There is established within the Department of Education the For the Greater Good Attorney Student Loan Repayment Program. The primary function of the program is to increase employment and retention of attorneys in the public sector by making payments that offset student loans issued or guaranteed by a state or the Federal Government. The department shall administer the program.

(2) To be eligible to participate in this program, an attorney:

Page 1 of 3

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

590-01778-16

2016142c1

(a) Must be a member of The Florida Bar;

(b) Must be employed full time by a local, state, or federal government;

(c) Must be employed in this state;

(d) Must have completed not more than 10 years of government service, regardless of whether the attorney had a break in employment of less than 2 weeks while transferring to another governmental entity;

(e) Must be earning less than \$65,000 in salary as reported to the Internal Revenue Service;

(f) Must not have received any disciplinary action from The Florida Bar;

(g) Must have an unsatisfied student loan that was issued or guaranteed by a state or the Federal Government; and

(h) Is not eligible for any other state, local, or federal grant or private fund that assists in student loan repayment.

(3) Only loans that are not in default and that were issued pursuant to the Higher Education Act of 1965, 20 U.S.C. ss. 1001 et seq., as amended, to fund an eligible attorney's law school education shall be covered.

(4) From the funds available, the Department of Education shall make an annual payment as follows:

(a) Three thousand dollars if the attorney has at least 4 years, but not more than 7 years, of continuous government service.

(b) Five thousand dollars if the attorney has more than 7 years, but not more than 10 years, of continuous government service.

(5) Each payment is contingent upon an annual receipt of a

Page 2 of 3

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

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59 certification affidavit. Within 30 days after the employment
60 anniversary of an eligible attorney, in order to receive a
61 payment under the program, such attorney must submit to his or
62 her employer a certification affidavit on a form authorized by
63 the department which certifies that the attorney was an eligible
64 attorney as of his or her last employment anniversary. If the
65 employer signs the affidavit, the employer shall submit the
66 affidavit to the department within 60 days after the most recent
67 employment anniversary of the eligible attorney, and each year
68 thereafter.

69 (6) Payments are not deemed taxable income. Each payment
70 shall be made directly to the financial institution that
71 services the loan and, if the eligible attorney holds more than
72 one eligible loan, for the loan that has the highest current
73 interest rate.

74 (7) If funds appropriated are insufficient to provide
75 maximum payment for eligible attorneys, the department shall
76 prorate payments for all eligible attorneys by an equal
77 percentage reduction for the year for which funds appropriated
78 are insufficient.

79 (8) The Department of Education may adopt rules necessary
80 to administer this program.

81 (9) The Greater Good Attorney Student Loan Repayment
82 Program may be funded annually contingent upon a specific
83 appropriation in the General Appropriations Act for the Greater
84 Good Attorney Student Loan Repayment Program.

85 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)

1-11-16

Meeting Date

142

Bill Number (if applicable)

Topic Student LOAN Asst PROGRAM

Amendment Barcode (if applicable)

Name MONICA HOFHEINZ

Job Title ASSISTANT STATE ATTORNEY

Address 201 SE 6th ST

Phone 954-831-8543

Street

FORT LAUD

FL

33301

City

State

Zip

Email hofsa17@sao17.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing STATE ATTORNEY MIKE SATZ AND FLORIDA PROSECUTING ATTYS ASSO.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/11/16
Meeting Date

142
Bill Number (if applicable)

Topic Student Loan Repayment Assistance

Amendment Barcode (if applicable)

Name Don LAMONICA

Job Title LOBBYIST

Address 103 North BRADSHAW ST.

Phone 850.545.9691

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email DLAMONICA@concent.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA PUBLIC DEFENDER ASSOC. INC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Jan 11, 2016
Meeting Date

SB 142
Bill Number (if applicable)

Topic loan Ass. for lawyers

Amendment Barcode (if applicable)

Name Nikki Fried

Job Title attorney

Address 3980 W. Broward Blvd
Ft. Lauderdale FL 33312
City State Zip

Phone 954-734-3799

Email nfried@colodnyfall.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 582

INTRODUCER: Senator Gaetz

SUBJECT: Public Corruption

DATE: November 30, 2015 REVISED: 01/08/16

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

I. Summary:

SB 582 amends the laws relating to public corruption. Specifically, the bill:

- Defines “governmental entity” to include the state, political subdivisions of the state or any other public entity that independently exercises any type of governmental function.
- Expands the definition of “public servant” to include officers and employees of the expanded definition of governmental entity and persons who are acting on behalf of a governmental entity.
- Changes the mens rea element for certain public corruption crimes from “corruptly” to “knowingly and intentionally.”

Section 817.568(11), F.S., relating to the criminal use of identification information, is reenacted to incorporate the expanded definition of “public servant.”

The bill has an effective date of October 1, 2016.

II. Present Situation:

Nineteenth Statewide Grand Jury

A statewide grand jury¹ was impaneled in February 2010 upon the petition of Governor Charlie Crist to the Supreme Court of Florida. In the Petition for Order to Impanel a Statewide Grand Jury, Governor Crist requested that the following should be addressed:²

¹ See ss. 905.31-905.40, F.S., known as the Statewide Grand Jury Act.

² Nineteenth Statewide Grand Jury First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions, December 17, 2010, Case No. SC 09-1910. Available online at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf) (last visited on November 20, 2015).

- Examine criminal activity of public officials who have abused their powers via their public office;
- Consider whether Florida’s prosecutors have sufficient resources to effectively combat corruption;
- Address the effectiveness of Florida’s current statutes in fighting public corruption;
- Identify any deficiencies in current laws, punishments or enforcement efforts and make detailed recommendations to improve our anti-corruption initiatives;
- Investigate crimes, return indictments, and make presentations; and
- Examine public policy issues regarding public corruption and develop specific recommendations regarding improving current laws.

The Nineteenth Statewide Grand Jury issued its First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions on December 17, 2010. In its report, the Nineteenth Statewide Grand Jury made several recommendations to the Legislature, including revisions to ch. 838, F.S., regarding the definitions of the terms “public servant” and “corruptly” and “corrupt intent,” and the offenses of bribery, unlawful compensation or reward for official behavior, official misconduct, and bid tampering.

Color of Law

Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed “under color of law” where the enhancements for wrongful conduct are based on public authority or position or the assertion of such that does not form an element of the underlying crime. The Nineteenth Statewide Grand Jury also recommended that the legislature consider reclassification of such offenses.³

Doctrine of Mens Rea and Scienter

The term “mens rea” is defined as “a guilty mind; a guilty or wrongful purpose; a criminal intent.”⁴ Black’s Law Dictionary notes that the term scienter is defined as “knowingly” and frequently used to signify the defendant’s guilty knowledge.⁵ The general rule is that scienter or mens rea is a necessary element in the indictment for every crime.⁶

The Nineteenth Statewide Grand Jury found that the use of the word “corruptly” or “with corrupt intent” made prosecutions of offenses under ch. 838, F.S., more difficult and might require additional evidence, such as testimony from persons involved.⁷ The Nineteenth Statewide Grand Jury recommended that the additional element of “corruptly” or “with corrupt intent” be removed from the ch. 838, F.S., offenses of bribery, unlawful compensation, official misconduct, and bid tampering.⁸

³ *Id.*

⁴ BLACK’S LAW DICTIONARY 1137 (4th Rev. 1968).

⁵ *Id.* 1512.

⁶ *Chicone v. State*, 684 So.2d 736, 741 (Fla. 1996). Also, see *U.S. v. Balint*, 258 U.S. 250 (1922).

⁷ See *supra* note 2, at 24.

⁸ *Id.*

Bribery; Misuse of Public Office: Chapter 838, F.S.

Chapter 838, F.S., pertains to bribery and other offenses concerning the misuse of public office.

Section 838.014(4), F.S., defines the term “corruptly” or “with corrupt intent” as acting knowingly and dishonestly for a wrongful purpose.

Section 838.014(6), F.S., defines the term “public servant” as:

- (a) Any officer or employee of a state, county, municipal, or special district agency or entity;
- (b) Any legislative or judicial officer or employee;
- (c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
- (d) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

Bribery

Section 838.015, F.S., relates to the offense of bribery.⁹ Any individual who violates this section is guilty of a felony of the second degree, which is punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, F.S.¹⁰

Chapter 838, F.S., also contains three other bribery offenses, including bribery in athletic contests,¹¹ commercial bribery receiving,¹² and commercial bribery.¹³ In *Roque v. State*, the Florida Supreme Court held that s. 838.15, F.S., the commercial bribe receiving law, was invalid.¹⁴ The Nineteenth Statewide Grand Jury Report opined that s. 838.16, F.S., commercial bribery, was probably unconstitutionally vague since s. 838.16, F.S., referred to s. 838.15, F.S.¹⁵

⁹ Section 838.015(1), F.S., defines “bribery” as corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

¹⁰ Section 838.015(3), F.S. Under sections 775.082 and 775.083, Florida Statutes, a second degree felony is punishable by a term of imprisonment not to exceed 15 years, and a maximum fine of \$10,000. Section 775.084, Florida Statutes, relates to habitual felony offenders. If a habitual felony offender is convicted of a second degree felony, such offender may be sentenced for a term not exceeding 30 years.

¹¹ Section 838.12, F.S.

¹² Section 838.15, F.S.

¹³ Section 838.16, F.S.

¹⁴ *Roque v. State*, 664 So.2d 928 (Fla. 1995). The Court further noted that s. 838.015, F.S., was impermissibly vague and subject to arbitrary application. *Id.* at 929.

¹⁵ See *supra* note 2, at 34.

Unlawful Compensation or Reward for Official Behavior

Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. It is a second degree felony¹⁶ for any person corruptly to give, offer, or promise to any public servant any benefit not authorized by law; or for any public servant corruptly to request, solicit, accept or agree to accept any benefit not authorized by law:

- For the past, present, or future performance, nonperformance or violation of
- Any act or omission; or
- For the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission

which the person believes to have been or the public servant represents to have been either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.¹⁷

Official Misconduct

The offense of official misconduct contained in s. 838.022(1), F.S., provides that it “is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another to:

- (a) Falsify, or cause another person to falsify, any official record or official document;
- (b) Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or
- (c) Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.

Any person who violates this section commits a felony of the third degree, which is punishable as provided for in s. 775.082, s. 775.083, or s. 775.084, F.S.¹⁸

Bid Tampering

Section 838.22, F.S., provides that:

- (1) It is unlawful for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:
 - (a) Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.

¹⁶ Section 838.016(4), F.S. Any person who violates this section commits a second degree felony which is punishable as provided in ss. 775.082, 775.083, or s. 775.084, F.S. *See supra* note 10.

¹⁷ Section 838.016(1) and (2), F.S.

¹⁸ Section 838.022(3), F.S. Under sections 775.082 and 775.083, Florida Statutes, a third degree felony is punishable by a term of imprisonment not to exceed 5 years, and a maximum fine of \$5,000. Section 775.084, Florida Statutes, relates to habitual felony offenders. If a habitual felony offender is convicted of a third degree felony, such offender may be sentenced for a term not exceeding 10 years.

(b) Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.

(2) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.

(3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate subsection (1) or subsection (2).

(4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant acting in violation of subsection (1) or subsection (2).

(5) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084¹⁹

Criminal Use of Personal Identification Information

Section 817.568(11), F.S., provides, in part, that any person who willfully and without authorization fraudulently uses personal identification concerning a public servant as defined in s. 838.014, F.S., without first obtaining the consent of that individual commits a felony of the second degree.

III. Effect of Proposed Changes:

Section 1 amends s. 838.014, F.S., to define the term “governmental entity” as the state, including any unit of the executive, legislative, and judicial branches of government, political subdivisions and any agency or office thereof, or any other public entity that independently exercises any type of governmental function. The bill appears to expand the definition of “governmental entity” to include other public entities, such as Citizens Property Insurance Corporation,²⁰ statutorily-created direct support organizations,²¹ and other statutorily-created public entities. The definition of “corruptly” or “with corrupt intent” is eliminated.

The definition of the term “public servant” is expanded to include any officer, director, partner, manager, representative, or employee of a nongovernmental entity, private corporation, quasi-public corporation, or quasi-public entity, or any person subject to chapter 119, F.S., who is acting on behalf of a governmental entity. Also, for purposes of this section, the term “nongovernmental entity” is defined to mean a person, association, cooperative, corporation, partnership, organization, or other entity, whether operating for profit or not for profit, which is not a governmental entity.

Section 2 amends s. 838.015(1), F.S., relating to bribery, to change the mens rea element of the crime from “corruptly” to “knowingly and intentionally.”

¹⁹ See *supra* note 3.

²⁰ Section 627.351(6), F.S. Citizens Property Insurance Corporation was created in 2002 as a not-for-profit insurer of last resort for home-owners who could not obtain insurance elsewhere.

²¹ A direct support organization is an organization incorporated under ch. 617, F.S., and approved by the Department of State as a Florida corporation not for profit that is approved by a state agency to operate for the benefit of a specific program, such as the Florida Historic Capitol Museum Council’s direct support organization. See s. 272.131(1)(e), F.S.

Section 3 amends s. 838.016, F.S., relating to unlawful compensation or reward for official behavior, to redefine the mens rea element of the offense from “corruptly” to “knowingly and intentionally.”

Section 4 amends s. 838.022, F.S., relating to official misconduct, to change the mens rea element of the offense from “with corrupt intent” to “knowingly and intentionally.” The law is clarified so that the benefit received by the other person must be an “improper” benefit or the harm caused to another must be an “unlawful” harm. The term “improper” is not defined.

Section 5 amends s. 838.22, F.S., relating to bid tampering, to change the mens rea element of the offense from “with corrupt intent” to “knowingly and intentionally” influence in an improper manner. The term “improper” is not defined.

Section 6 reenacts s. 817.568(11), F.S., relating to criminal use of personal identification information, to incorporate the expanded definition of public servant made in section 1 of the bill.

Section 7 provides that the bill takes effect on October 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.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. In response to request for proposals and solicitation of competitive bids for state services and construction projects, a vendor may increase its bid amounts to account for the potential legal expenses that may result from a violation of public corruption laws.

C. Government Sector Impact:

Indeterminate. To the extent the mens rea element of these crimes relating to misuse of public office has become easier to prove, more public servants may be convicted of such crimes.

Also, costs for services provided by public contractors may increase to the extent public contractors factor into their bids the risk of incurring legal expenses associated with being accused of violating public corruption laws.

VI. Technical Deficiencies:

The term “improper” is not defined. This potential ambiguity may limit prosecution of the affected corruption offenses.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 838.014, 838.015, 838.016, 838.022, and 838.22 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.



401016

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/12/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 838.014, Florida Statutes, is amended to
read:

838.014 Definitions.—As used in this chapter, the term:

(1) "Benefit" means gain or advantage, or anything regarded
by the person to be benefited as a gain or advantage, including
the doing of an act beneficial to any person in whose welfare he



401016

or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

(2) "Bid" includes a response to an "invitation to bid," "invitation to negotiate," "request for a quote," or "request for proposals" as those terms are defined in s. 287.012.

(3) "Commodity" means any goods, merchandise, wares, produce, chose in action, land, article of commerce, or other tangible or intangible property, real, personal, or mixed, for use, consumption, production, enjoyment, or resale.

(4) "Governmental entity" means an agency or entity of the state, a county, a municipality, or a special district or any other public entity created or authorized by law ~~"Corruptly" or "with corrupt intent" means acting knowingly and dishonestly for a wrongful purpose.~~

(5) "Harm" means pecuniary or other loss, disadvantage, or injury to the person affected.

(6) "Public contractor" means:

(a) Any person, as defined in s. 1.01, who has entered into a contract with a governmental entity; or

(b) Any officer or employee of a person, as defined in s. 1.01, who has entered into a contract with a governmental entity.

(7) "Public servant" means:

(a) Any officer or employee of a governmental state, county, municipal, or special district agency or entity, including:

~~(b)~~ any executive, legislative, or judicial branch officer or employee;



401016

40 (b)~~(e)~~ Any person, except a witness, who acts as a general
41 or special magistrate, receiver, auditor, arbitrator, umpire,
42 referee, consultant, or hearing officer while performing a
43 governmental function; or

44 (c)~~(d)~~ A candidate for election or appointment to any of
45 the positions listed in this subsection, or an individual who
46 has been elected to, but has yet to officially assume the
47 responsibilities of, public office.

48 (8)~~(7)~~ "Service" means any kind of activity performed in
49 whole or in part for economic benefit.

50 Section 2. Section 838.015, Florida Statutes, is amended to
51 read:

52 838.015 Bribery.—

53 (1) For purposes of this section, "bribery" means:

54 (a) ~~corruptly~~ To knowingly and intentionally give, offer,
55 or promise any pecuniary or other benefit not authorized by law
56 to any public servant, which is intended to influence the
57 performance of any act or omission which the person believes to
58 be, or the public servant represents as being, either within the
59 official discretion of the public servant, in violation of a
60 public duty, or in performance of a public duty; or,

61 (b) If a public servant, ~~corruptly~~ to knowingly and
62 intentionally request, solicit, accept, or agree to accept for
63 himself or herself or another, any pecuniary or other benefit
64 not authorized by law which is given, offered, or promised with
65 an intent or a purpose to influence the performance of any act
66 or omission which the person believes to be, or the public
67 servant represents as being, either within the official
68 discretion of a public servant, in violation of a public duty,



401016

or in performance of a public duty; or

(c) If a public contractor, to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another any pecuniary or other benefit not authorized by law which is given, offered, or promised with an intent or a purpose to influence the performance of any act or omission which the person believes to be, or the public contractor represents as being, either within the official discretion of the public contractor as granted by the contract with the governmental entity, in violation of a duty required by the contract with the governmental entity, or in performance of a duty required by the contract with the governmental entity.

(2) Prosecution under this section does ~~shall~~ not require any allegation or proof that the public servant or public contractor who ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant or public contractor possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person's purpose.

(3) Any person who commits bribery commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 838.016, Florida Statutes, is amended to read:

838.016 Unlawful compensation or reward for official behavior.—

(1) It is unlawful for:



401016

98 (a) Any person ~~corruptly~~ to knowingly and intentionally
99 give, offer, or promise to any public servant, ~~or, if a public~~
100 ~~servant, corruptly to request, solicit, accept, or agree to~~
101 ~~accept,~~ any pecuniary or other benefit not authorized by law,
102 for the past, present, or future performance, nonperformance, or
103 violation of any act or omission which the person believes to
104 have been, or the public servant represents as having been,
105 either within the official discretion of the public servant, in
106 violation of a public duty, or in performance of a public duty.

107 (b) Any public servant to knowingly and intentionally
108 request, solicit, accept, or agree to accept any pecuniary or
109 other benefit not authorized by law for the past, present, or
110 future performance, nonperformance, or violation of any act or
111 omission which the person believes to have been, or the public
112 servant represents as having been, either within the official
113 discretion of the public servant, in violation of a public duty,
114 or in performance of a public duty.

115 (c) Any public contractor to knowingly and intentionally
116 request, solicit, accept, or agree to accept any pecuniary or
117 other benefit not authorized by law for the past, present, or
118 future performance, nonperformance, or violation of any act or
119 omission which the person believes to have been, or the public
120 contractor represents as having been, either within the official
121 discretion of the public contractor as granted by the contract
122 with the governmental entity, in violation of a duty required by
123 the contract with the governmental entity, or in performance of
124 a duty required by the contract with the governmental entity.

125
126 This subsection may not ~~Nothing herein shall~~ be construed to



401016

preclude a public servant or public contractor from accepting rewards for services performed in apprehending any criminal.

(2) It is unlawful for:

(a) Any person ~~corruptly~~ to knowingly and intentionally give, offer, or promise to any public servant, ~~or, if a public servant, corruptly to request, solicit, accept, or agree to accept,~~ any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

(b) Any public servant to request, solicit, accept, or agree to accept any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(c) Any public contractor to request, solicit, accept, or agree to accept any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public contractor regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the public contractor as granted by the contract with the governmental entity, in violation of a duty



401016

required by the contract with the governmental entity, or in performance of a duty required by the contract with the governmental entity.

(3) Prosecution under this section does ~~shall~~ not require that the exercise of influence or official discretion, ~~or~~ violation of a public duty or performance of a public duty, or a public contractor's violation of a duty required by a contract with a governmental entity or performance of a duty required by a contract with a governmental entity for which a pecuniary or other benefit was given, offered, promised, requested, or solicited was accomplished or was within the influence, official discretion, ~~or~~ public duty, or contractual duty of the public servant or public contractor whose action or omission was sought to be rewarded or compensated.

(4) Whoever violates the provisions of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 4. Section 838.022, Florida Statutes, is amended to read:

838.022 Official misconduct.—

(1) It is unlawful for a public servant or a public contractor, ~~with corrupt intent~~ to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, ~~by~~ to:

(a) Falsifying ~~Falsify~~, or causing ~~cause~~ another person to falsify, any official record or official document;

(b) Concealing, covering up, destroying, mutilating, or altering ~~Conceal, cover up, destroy, mutilate, or alter~~ any official record or official document except as authorized by law



401016

or contract or causing ~~cause~~ another person to perform such an act; or

(c) Obstructing, delaying, or preventing ~~Obstruct, delay, or prevent~~ the communication of information relating to the commission of a felony that directly involves or affects the governmental public agency or public entity served by the public servant or public contractor.

(2) For the purposes of this section:

(a) The term "public servant" does not include a candidate who does not otherwise qualify as a public servant.

(b) An official record or official document includes only public records.

(3) Any person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Section 838.22, Florida Statutes, is amended to read:

838.22 Unlawful influence of the competitive solicitation process ~~Bid tampering.~~—

(1) It is unlawful for a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement, ~~with corrupt intent to knowingly and intentionally influence or attempt to influence a the competitive solicitation bidding process~~ undertaken by any governmental state, county, municipal, or special district agency, or any other public entity, ~~for the procurement of commodities or services,~~ by ~~to~~:

(a) Disclosing, except as authorized by law, ~~Disclose~~ material information concerning a vendor's response, any



401016

evaluation results, ~~bid~~ or other aspects of the competitive solicitation ~~bidding process~~ when such information is not publicly disclosed.

(b) Altering or amending ~~Alter or amend~~ a submitted response ~~bid~~, documents or other materials supporting a submitted response ~~bid~~, or any evaluation ~~bid~~ results relating to the competitive solicitation for the purpose of intentionally providing a competitive advantage to any person who submits a response ~~bid~~.

(2) It is unlawful for a public servant or a public contractor who has contracted with a governmental entity to assist in a competitive procurement, ~~with corrupt intent~~ to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another by circumventing, ~~to circumvent~~ a competitive solicitation ~~bidding~~ process required by law or rule through the use of ~~by using~~ a sole-source contract for commodities or services.

(3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant or a public contractor to violate subsection (1) or subsection (2).

(4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant or a public contractor acting in violation of subsection (1) or subsection (2).

(5) Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Paragraph (g) of subsection (3) of section



401016

921.0022, Florida Statutes, is amended to read:

921.0022 Criminal Punishment Code; offense severity ranking
chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.



401016

253	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
254	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
255	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
256	456.065 (2)	3rd	Practicing a health care profession without a license.
257	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
258	458.327 (1)	3rd	Practicing medicine without a license.
259	459.013 (1)	3rd	Practicing osteopathic medicine without a



401016

260			license.
	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
261			
	461.012 (1)	3rd	Practicing podiatric medicine without a license.
262			
	462.17	3rd	Practicing naturopathy without a license.
263			
	463.015 (1)	3rd	Practicing optometry without a license.
264			
	464.016 (1)	3rd	Practicing nursing without a license.
265			
	465.015 (2)	3rd	Practicing pharmacy without a license.
266			
	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
267			
	467.201	3rd	Practicing midwifery without a license.
268			



401016

269	468.366	3rd	Delivering respiratory care services without a license.
270	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
271	483.901 (9)	3rd	Practicing medical physics without a license.
272	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
273	484.053	3rd	Dispensing hearing aids without a license.
274	494.0018 (2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less



401016

275			than \$20,000 by a money services business.
	560.125 (5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
276			
	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
277			
	775.21 (10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
278			
	775.21 (10) (b)	3rd	Sexual predator working where children regularly congregate.
279			
	775.21 (10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or



401016

280			conceal a sexual predator.
	782.051 (3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
281			
	782.07 (1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
282			
	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
283			
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
284			
	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.



401016

285	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
286	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
287	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
288	784.048 (7)	3rd	Aggravated stalking; violation of court order.
289	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
290	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
291	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
292	784.081 (1)	1st	Aggravated battery on specified official or employee.



401016

293	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
294	784.083 (1)	1st	Aggravated battery on code inspector.
295	787.06 (3) (a) 2.	1st	Human trafficking using coercion for labor and services of an adult.
296	787.06 (3) (e) 2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
297	790.07 (4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07 (1) or (2).
298	790.16 (1)	1st	Discharge of a machine gun under specified circumstances.
299	790.165 (2)	2nd	Manufacture, sell,



401016

possess, or deliver hoax
bomb.

790.165(3)

2nd

Possessing, displaying, or
threatening to use any
hoax bomb while committing
or attempting to commit a
felony.

790.166(3)

2nd

Possessing, selling,
using, or attempting to
use a hoax weapon of mass
destruction.

790.166(4)

2nd

Possessing, displaying, or
threatening to use a hoax
weapon of mass destruction
while committing or
attempting to commit a
felony.

790.23

1st,PBL

Possession of a firearm by
a person who qualifies for
the penalty enhancements
provided for in s. 874.04.

794.08(4)

3rd

Female genital mutilation;
consent by a parent,
guardian, or a person in



401016

custodial authority to a
victim younger than 18
years of age.

305

796.05 (1)

1st

Live on earnings of a
prostitute; 2nd offense.

306

796.05 (1)

1st

Live on earnings of a
prostitute; 3rd and
subsequent offense.

307

800.04 (5) (c) 1.

2nd

Lewd or lascivious
molestation; victim
younger than 12 years of
age; offender younger than
18 years of age.

308

800.04 (5) (c) 2.

2nd

Lewd or lascivious
molestation; victim 12
years of age or older but
younger than 16 years of
age; offender 18 years of
age or older.

309

800.04 (5) (e)

1st

Lewd or lascivious
molestation; victim 12
years of age or older but
younger than 16 years;
offender 18 years or



401016

310			older; prior conviction for specified sex offense.
	806.01 (2)	2nd	Maliciously damage structure by fire or explosive.
311			
	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
312			
	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
313			
	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
314			
	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
315			
	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand



401016

theft.

316

812.014 (2) (b) 2. 2nd Property stolen, cargo
valued at less than
\$50,000, grand theft in
2nd degree.

317

812.014 (2) (b) 3. 2nd Property stolen, emergency
medical equipment; 2nd
degree grand theft.

318

812.014 (2) (b) 4. 2nd Property stolen, law
enforcement equipment from
authorized emergency
vehicle.

319

812.0145 (2) (a) 1st Theft from person 65 years
of age or older; \$50,000
or more.

320

812.019 (2) 1st Stolen property;
initiates, organizes,
plans, etc., the theft of
property and traffics in
stolen property.

321

812.131 (2) (a) 2nd Robbery by sudden
snatching.

322



401016

323	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
324	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
325	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
326	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
327	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
328	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.



401016

329	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
330	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
331	825.103 (3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
332	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
333	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.



401016

334	838.015	2nd	Bribery.
335	838.016	2nd	Unlawful compensation or reward for official behavior.
336	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
337	838.22	2nd	<u>Unlawful influence of the competitive solicitation process</u> Bid tampering.
338	843.0855 (2)	3rd	Impersonation of a public officer or employee.
339	843.0855 (3)	3rd	Unlawful simulation of legal process.
340	843.0855 (4)	3rd	Intimidation of a public officer or employee.
341	847.0135 (3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
342	847.0135 (4)	2nd	Traveling to meet a minor



401016

to commit an unlawful sex
act.

872.06

2nd

Abuse of a dead human
body.

874.05 (2) (b)

1st

Encouraging or recruiting
person under 13 to join a
criminal gang; second or
subsequent offense.

874.10

1st, PBL

Knowingly initiates,
organizes, plans,
finances, directs,
manages, or supervises
criminal gang-related
activity.

893.13 (1) (c) 1.

1st

Sell, manufacture, or
deliver cocaine (or other
drug prohibited under s.
893.03 (1) (a), (1) (b),
(1) (d), (2) (a), (2) (b), or
(2) (c) 4.) within 1,000
feet of a child care
facility, school, or
state, county, or
municipal park or publicly
owned recreational



401016

facility or community
center.

347

893.13(1)(e)1.

1st

Sell, manufacture, or
deliver cocaine or other
drug prohibited under s.
893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or
(2)(c)4., within 1,000
feet of property used for
religious services or a
specified business site.

348

893.13(4)(a)

1st

Deliver to minor cocaine
(or other s. 893.03(1)(a),
(1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.
drugs).

349

893.135(1)(a)1.

1st

Trafficking in cannabis,
more than 25 lbs., less
than 2,000 lbs.

350

893.135
(1)(b)1.a.

1st

Trafficking in cocaine,
more than 28 grams, less
than 200 grams.

351

893.135
(1)(c)1.a.

1st

Trafficking in illegal
drugs, more than 4 grams,



401016

less than 14 grams.

352

893.135
(1) (c) 2.a.

1st

Trafficking in
hydrocodone, 14 grams or
more, less than 28 grams.

353

893.135
(1) (c) 2.b.

1st

Trafficking in
hydrocodone, 28 grams or
more, less than 50 grams.

354

893.135
(1) (c) 3.a.

1st

Trafficking in oxycodone,
7 grams or more, less than
14 grams.

355

893.135
(1) (c) 3.b.

1st

Trafficking in oxycodone,
14 grams or more, less
than 25 grams.

356

893.135 (1) (d) 1.

1st

Trafficking in
phencyclidine, more than
28 grams, less than 200
grams.

357

893.135 (1) (e) 1.

1st

Trafficking in
methaqualone, more than
200 grams, less than 5
kilograms.

358

893.135 (1) (f) 1.

1st

Trafficking in



401016

359			amphetamine, more than 14 grams, less than 28 grams.
	893.135	1st	Trafficking in
	(1) (g) 1.a.		flunitrazepam, 4 grams or more, less than 14 grams.
360			
	893.135	1st	Trafficking in gamma-
	(1) (h) 1.a.		hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
361			
	893.135	1st	Trafficking in 1,4-
	(1) (j) 1.a.		Butanediol, 1 kilogram or more, less than 5 kilograms.
362			
	893.135	1st	Trafficking in
	(1) (k) 2.a.		Phenethylamines, 10 grams or more, less than 200 grams.
363			
	893.1351 (2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
364			
	896.101 (5) (a)	3rd	Money laundering, financial transactions



401016

exceeding \$300 but less
than \$20,000.

365

896.104(4)(a)1.

3rd

Structuring transactions
to evade reporting or
registration requirements,
financial transactions
exceeding \$300 but less
than \$20,000.

366

943.0435(4)(c)

2nd

Sexual offender vacating
permanent residence;
failure to comply with
reporting requirements.

367

943.0435(8)

2nd

Sexual offender; remains
in state after indicating
intent to leave; failure
to comply with reporting
requirements.

368

943.0435(9)(a)

3rd

Sexual offender; failure
to comply with reporting
requirements.

369

943.0435(13)

3rd

Failure to report or
providing false
information about a sexual
offender; harbor or



401016

conceal a sexual offender.

370

943.0435(14)

3rd

Sexual offender; failure
to report and reregister;
failure to respond to
address verification;
providing false
registration information.

371

944.607(9)

3rd

Sexual offender; failure
to comply with reporting
requirements.

372

944.607(10) (a)

3rd

Sexual offender; failure
to submit to the taking of
a digitized photograph.

373

944.607(12)

3rd

Failure to report or
providing false
information about a sexual
offender; harbor or
conceal a sexual offender.

374

944.607(13)

3rd

Sexual offender; failure
to report and reregister;
failure to respond to
address verification;
providing false
registration information.



401016

375 985.4815(10) 3rd Sexual offender; failure
to submit to the taking of
a digitized photograph.

376 985.4815(12) 3rd Failure to report or
providing false
information about a sexual
offender; harbor or
conceal a sexual offender.

377 985.4815(13) 3rd Sexual offender; failure
to report and reregister;
failure to respond to
address verification;
providing false
registration information.

378

379

380

381 Section 7. For the purpose of incorporating the amendment
382 made by this act to section 838.014, Florida Statutes, in a
383 reference thereto, subsection (11) of section 817.568, Florida
384 Statutes, is reenacted to read:

385 817.568 Criminal use of personal identification
386 information.—

387 (11) A person who willfully and without authorization
388 fraudulently uses personal identification information concerning
389 an individual who is 60 years of age or older; a disabled adult



401016

as defined in s. 825.101; a public servant as defined in s. 838.014; a veteran as defined in s. 1.01; a first responder as defined in s. 125.01045; an individual who is employed by the State of Florida; or an individual who is employed by the Federal Government without first obtaining the consent of that individual commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. This act shall take effect October 1, 2016.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to public corruption; amending s. 838.014, F.S.; deleting, revising, and providing definitions; amending s. 838.015, F.S.; revising the definition of "bribery"; providing a penalty; conforming a provision to changes made by the act; amending s. 838.016, F.S.; prohibiting a person from knowingly and intentionally giving, offering, or promising unlawful compensation or reward for official behavior to a public servant; prohibiting a public servant or public contractor from knowingly and intentionally procuring unlawful compensation or reward for official behavior; providing a penalty; conforming provisions; amending s. 838.022, F.S.; prohibiting a public servant or public contractor from knowingly and intentionally engaging in specified



401016

activities constituting official misconduct; providing
a penalty; amending s. 838.22, F.S.; prohibiting a
public servant and certain public contractors from
knowingly and intentionally influencing or attempting
to influence the competitive solicitation process;
prohibiting any person from committing specified acts
to influence the competitive solicitation process;
providing a penalty; revising terminology; amending s.
921.0022, F.S.; conforming a provision; reenacting s.
817.568(11), F.S., relating to criminal use of
personal identification information, to incorporate
the amendment made to s. 838.014, F.S., in a reference
thereto; providing an effective date.

By Senator Gaetz

1-00667A-16

2016582__

1 A bill to be entitled
 2 An act relating to public corruption; amending s.
 3 838.014, F.S.; deleting the definition of the term
 4 "corruptly" or "with corrupt intent"; defining the
 5 term "governmental entity"; expanding the definition
 6 of the term "public servant" to include certain
 7 persons who are acting on behalf of a governmental
 8 entity; amending s. 838.015, F.S.; redefining the term
 9 "bribery" to include knowing and intentional, rather
 10 than corrupt, acts; amending s. 838.016, F.S.;
 11 revising the prohibition against unlawful compensation
 12 or reward for official behavior to conform to changes
 13 made by the act; amending s. 838.022, F.S.; revising
 14 the prohibition against official misconduct to conform
 15 to changes made by the act; amending s. 838.22, F.S.;
 16 revising the prohibition against bid tampering to
 17 conform to changes made by the act; reenacting s.
 18 817.568(11), F.S., relating to criminal use of
 19 personal identification information, to incorporate
 20 the amendment made to s. 838.014, F.S., in a reference
 21 thereto; providing an effective date.
 22
 23 Be It Enacted by the Legislature of the State of Florida:
 24
 25 Section 1. Section 838.014, Florida Statutes, is amended to
 26 read:
 27 838.014 Definitions.—As used in this chapter, the term:
 28 (1) "Benefit" means gain or advantage, or anything regarded
 29 by the person to be benefited as a gain or advantage, including

Page 1 of 7

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1-00667A-16

2016582__

30 the doing of an act beneficial to any person in whose welfare he
 31 or she is interested, including any commission, gift, gratuity,
 32 property, commercial interest, or any other thing of economic
 33 value not authorized by law.
 34 (2) "Bid" includes a response to an "invitation to bid,"
 35 "invitation to negotiate," "request for a quote," or "request
 36 for proposals" as those terms are defined in s. 287.012.
 37 (3) "Commodity" means any goods, merchandise, wares,
 38 produce, chose in action, land, article of commerce, or other
 39 tangible or intangible property, real, personal, or mixed, for
 40 use, consumption, production, enjoyment, or resale.
 41 (4) "Governmental entity" means the state, including any
 42 unit of the executive, legislative, and judicial branches of
 43 government, political subdivisions and any agency or office
 44 thereof, or any other public entity that independently exercises
 45 any type of governmental function ~~"Corruptly" or "with corrupt~~
 46 ~~intent" means acting knowingly and dishonestly for a wrongful~~
 47 ~~purpose.~~
 48 (5) "Harm" means pecuniary or other loss, disadvantage, or
 49 injury to the person affected.
 50 (6) "Public servant" means:
 51 (a) Any officer or employee of a governmental state,
 52 ~~county, municipal, or special district agency or entity;~~
 53 (b) Any legislative or judicial officer or employee;
 54 (c) Any person, except a witness, who acts as a general or
 55 special magistrate, receiver, auditor, arbitrator, umpire,
 56 referee, consultant, or hearing officer while performing a
 57 governmental function; ~~or~~
 58 (d) A candidate for election or appointment to any of the

Page 2 of 7

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1-00667A-16

2016582__

positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office; or

(e) To the extent that the individual's conduct relates to the performance of a public duty of a governmental entity, any officer, director, partner, manager, representative, or employee of a nongovernmental entity, private corporation, quasi-public corporation, or quasi-public entity, or any person subject to chapter 119 who is acting on behalf of a governmental entity. For purposes of this paragraph, "nongovernmental entity" means a person, association, cooperative, corporation, partnership, organization, or other entity, whether operating for profit or not for profit, which is not a governmental entity.

(7) "Service" means any kind of activity performed in whole or in part for economic benefit.

Section 2. Subsection (1) of section 838.015, Florida Statutes, is amended to read:

838.015 Bribery.—

(1) For purposes of this section, "bribery" means ~~corruptly~~ to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, ~~corruptly~~ to knowingly and intentionally request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

Section 3. Subsections (1) and (2) of section 838.016,

1-00667A-16

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Florida Statutes, are amended to read:

838.016 Unlawful compensation or reward for official behavior.—

(1) It is unlawful for any person ~~corruptly~~ to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, ~~corruptly~~ to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty. This section may not ~~Nothing herein shall~~ be construed to preclude a public servant from accepting rewards for services performed in apprehending any criminal.

(2) It is unlawful for any person ~~corruptly~~ to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, ~~corruptly~~ to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

Section 4. Subsection (1) of section 838.022, Florida Statutes, is amended, and subsection (2) of that section is

1-00667A-16

2016582__

republished, to read:

838.022 Official misconduct.—

(1) It is unlawful for a public servant, ~~with corrupt intent~~ to knowingly and intentionally obtain an improper a benefit for any person or to cause unlawful harm to another, ~~by~~ ~~to~~:

(a) ~~Falsifying~~ Falsify, or causing ~~cause~~ another person to falsify, any official record or official document;

(b) Concealing, covering up, destroying, mutilating, or altering ~~Conceal, cover up, destroy, mutilate, or alter~~ any official record or official document or causing ~~cause~~ another person to perform such an act; or

(c) Obstructing, delaying, or preventing ~~Obstruct, delay, or prevent~~ the communication of information relating to the commission of a felony that directly involves or affects the governmental ~~public agency or public~~ entity served by the public servant.

(2) For the purposes of this section:

(a) The term "public servant" does not include a candidate who does not otherwise qualify as a public servant.

(b) An official record or official document includes only public records.

Section 5. Subsections (1) and (2) of section 838.22, Florida Statutes, are amended to read:

838.22 Bid tampering.—

(1) It is unlawful for a public servant, ~~with corrupt intent~~ to knowingly and intentionally influence or attempt to influence, in an improper manner, the competitive bidding process undertaken by any governmental ~~state, county, municipal,~~

1-00667A-16

2016582__

~~or special district agency, or any other public entity,~~ for the procurement of commodities or services, ~~by~~ ~~to~~:

(a) ~~Disclosing~~ Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.

(b) Altering or amending ~~Alter or amend~~ a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.

(2) It is unlawful for a public servant, ~~with corrupt intent~~ to knowingly and intentionally obtain an improper a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.

Section 6. For the purpose of incorporating the amendment made by this act to section 838.014, Florida Statutes, in a reference thereto, subsection (11) of section 817.568, Florida Statutes, is reenacted to read:

817.568 Criminal use of personal identification information.—

(11) A person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is 60 years of age or older; a disabled adult as defined in s. 825.101; a public servant as defined in s. 838.014; a veteran as defined in s. 1.01; a first responder as defined in s. 125.01045; an individual who is employed by the State of Florida; or an individual who is employed by the Federal Government without first obtaining the consent of that individual commits a felony of the second degree, punishable as

1-00667A-16

2016582__

175 provided in s. 775.082, s. 775.083, or s. 775.084.

176 Section 7. This act shall take effect October 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/11/2016

Meeting Date

SB 582

Bill Number (if applicable)

401016

Amendment Barcode (if applicable)

Topic Public Corruption

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone 8502059000

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida 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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/11/2016
Meeting Date

SB 582
Bill Number (if applicable)

Topic Anti-corruption legislation

Amendment Barcode (if applicable)

Name Matt Reed

Job Title Senior editor / Public-interest columnist

Address 1 Gannett Plaza Ave

Phone 321-409-1585

Melbourne FL 32937
City State Zip

Email mreed@floridatoday.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing USA Today Network / Gannett news sites

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name

Job Title

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

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/2/14

582
Meeting Date

582
Bill Number (if applicable)

Topic Public Corruption

Amendment Barcode (if applicable)

Name Buddy Jacobs

Job Title General Counsel

Address FLA. Prosecuting Attys Assoc
Street
Fernandina Bch FL
City State Zip

Phone 904-261-3693

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing State Attorneys of Fla.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7042

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: State-administered Retirement Systems

DATE: January 12, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
McVaney	McVaney		GO Submitted as Committee Bill
1. _____	_____	_____	_____

I. Summary:

SPB 7042 establishes the contribution rates paid by employers participating in the Florida Retirement System (FRS) beginning July 1, 2016. These rates are intended to fund the full normal cost and the amortization of the unfunded actuarial liability of the FRS. With these modifications to employer contribution rates, the FRS Trust Fund will receive roughly \$62.6 million more in revenue on an annual basis beginning July 1, 2016. The public employers that will incur these additional costs are state agencies, state universities and colleges, school districts, counties, and certain municipalities and other governmental entities.

The bill also increases the assessment paid by employers to pay the costs of administering the FRS investment plan and providing educational services to all members of the FRS. With the increased contribution rates, the State Board of Administration's Administrative Trust Fund will receive roughly \$5.7 million more on an annual basis beginning July 1, 2016. The public employers that will incur these additional costs are state agencies, state universities and colleges, school districts, counties, and certain municipalities and other governmental entities.

The bill also corrects the name of the trust fund which receives the employer-paid assessments for administrative and educational costs associated with the FRS. The correct name is the Administrative Trust Fund rather than the FRS Investment Plan Trust Fund.

II. Present Situation:

The Florida Retirement System

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

closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 186 cities and 262 special districts that have elected to join the system.⁴

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

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;
- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

Investment Plan

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

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

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

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

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

⁴ *Id.*, at 146.

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

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

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

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

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

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

Pension Plan

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

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have

¹¹ Section 121.4501(6)(a), F.S.

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

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

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

¹⁶ Section 121.4501(8), F.S.

¹⁷ FLA CONST. art. IV, s. 4.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Optional Retirement Programs

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

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

Contribution Rates

FRS employers are responsible for contributing a specified percentage of the member's monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.²⁸ The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

In the annual actuarial valuation of the Florida Retirement System based on July 1, 2015, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan.

	Valuation Results (in \$ billions)			
	July 1, 2012	July 1, 2013	July 1, 2014	July 1, 2015
Actuarial Liability	\$147.2	\$153.3	\$160.1	\$165.5
Actuarial Value of Assets	\$127.9	\$131.7	\$138.6	\$143.2
Unfunded Actuarial Liability	\$ 19.3	\$ 21.6	\$21.5	\$22.3
Funded Percentage	86.9%	85.9%	86.6%	86.5%

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

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

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

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

²⁸ Section 121.70(1), F.S.

The state actuary determines a rate associated with the normal cost of the pension plan (funding the prospective benefits) and a rate necessary to amortize the unfunded actuarial liabilities (UAL) over a thirty year period. The following are the current employer contribution rates²⁹ for each class and the blended rates recommended by the state actuary beginning in July 2016:³⁰

Membership Class	Current Rates Effective July 1, 2015		Recommended Rates to be effective July 1, 2016	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	2.91%	2.65%	2.97%	2.83%
Special Risk Class	11.35%	8.99%	11.35%	8.92%
Special Risk Administrative Support Class	3.71%	27.54%	3.87%	22.47%
Elected Officer's Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.48%	37.62%	6.63%	33.75
• Justices and Judges	11.39%	22.62%	11.68%	23.30%
• County Officers	8.48%	32.09%	8.55%	32.30%
Senior Management Service Class	4.32%	15.41%	4.38%	15.67%
Deferred Retirement Option Program	4.10%	7.12%	4.17%	7.10%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute three percent of their compensation towards retirement.³¹

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.³²

Administrative and Educational Expenses

Section 121.74, F.S., requires all employers participating in the FRS to pay additional contributions equal to 0.04 percent of the employer's covered payroll. These assessments are deposited into the State Board of Administration's Administrative Trust Fund to offset the costs of administering the investment plan and providing educational services to all members of the FRS. The assessment rates have been as high as 0.15 percent in Fiscal Year 2002-2003 (the third year of the investment plan) and were 0.05 percent from Fiscal Year 2005-2006 through Fiscal Year 2009-2010. In Fiscal Year 2010-2011, the Legislature reduced the assessment rate to ensure

²⁹ Section 121.71(4) and (5), F.S.

³⁰ Letter to Mr. Dan Drake, *Re: Blended Proposed Statutory Rates for the 2016-2017 Plan Year Reflecting a Uniform UAL Rate for All Membership Classes and DROP*, dated December 2, 2015 (on file with the Senate Committee on Governmental Accountability and Oversight).

³¹ Section 121.71(3), F.S.

³² See ss. 121.4503 and 121.72(1), F.S.

that the forfeiture account balances were reduced in a timely and appropriate manner to comply with the federal tax code.

The table below shows the assessment rate and the revenues and expenditures associated with the contributions. While the revenues into the Administrative Trust Fund have remained consistent, the estimated expenditures from the trust fund appear to have grown dramatically in recent years. This is a result of the State Board of Administration spending down monies that have been forfeited by investment plan members. As the forfeiture account balance reaches zero, more of the overall costs incurred by the SBA will be borne by the Administrative Trust Fund – resulting in the Administrative Trust Fund experiencing significantly lower ending cash balances.

State Board of Administration Administrative Trust Fund				
Fiscal Year	Assessment Rate	Revenues	Expenditures	End of Year Balance
2011-2012	0.03%	\$ 7.86 m	\$ 9.94 m	\$36.03 m
2012-2013	0.03%	\$ 7.90 m	\$ 7.71 m	\$36.65 m
2013-2014	0.03%	\$ 8.03 m	\$12.22 m	\$33.83 m
2014-2015	0.04%	\$10.71 m	\$17.64 m	\$26.14 m
2015-2016	0.04%	\$11.10 m ¹	\$22.55 m ¹	\$14.69 m ¹
2016-2017	0.04%	\$11.41 m ¹	\$22.75 m ¹	\$ 3.35 m ¹
1. Estimated amounts				

III. Effect of Proposed Changes:

The bill modifies the employer-paid contributions for FRS retirement benefits and administrative and educational expenses.

Section 1 amends s. 121.4501, F.S., to correct the name of the trust fund which receives the employer-paid assessments for administrative and educational costs associated with the FRS. The correct name is the Administrative Trust Fund rather than the FRS Investment Plan Trust Fund.

Section 2 amends s. 121.71, F.S., to set the employer-paid contributions to the Florida Retirement System Trust Fund for each membership class of the FRS.

Section 3 amends s. 121.74, F.S., to increase the employer-paid contributions to the SBA's Administrative Trust Fund from 0.04% of payroll to 0.06% of payroll. These revenues are used to offset the costs of administering the investment plan as well as providing educational services to all FRS members.

Section 4 provides findings that the bill fulfills an important state interest.

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

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

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:**Florida Retirement System**

The aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2016-2017 will increase by approximately \$62.6 million when compared to the employer contributions paid in Fiscal Year 2015-2016. The impacts by employer group for Fiscal Year 2016-2017 are noted below.

Employer Group	Additional Contributions
State Agencies	\$8.4 m
Universities	\$7.8 m
Colleges	\$2.7 m
School Boards	\$31.1 m
Counties	\$9.6 m
Other	\$3.1 m
Total	\$62.6 m

State Board of Administration's Administrative Trust Fund

With the enactment of this legislation, the revenues expected to flow into the SBA's Administrative Trust Fund will increase by approximately \$5.7 million annually. These revenues are a result of the assessment increasing from 0.04% of payroll to 0.06% of payroll. The increases by employer group for Fiscal Year 2016-2017 are noted below.

Employer Group	Additional Contributions
State Agencies	\$0.87 m
Universities	\$0.26 m
Colleges	\$0.20 m
School Boards	\$2.54 m
Counties	\$1.52 m
Other	\$0.31 m
Total	\$5.70 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 121.71 and 121.74 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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



319448

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Before line 14

insert:

Section 1. Paragraph (c) of subsection (5) of section
121.4501, Florida Statutes, is amended to read:

121.4501 Florida Retirement System Investment Plan.—

(5) CONTRIBUTIONS.—

(c) The state board, acting as plan fiduciary, must ensure
that all plan assets are held in a trust, pursuant to s. 401 of



319448

the Internal Revenue Code. The fiduciary must ensure that such contributions are allocated as follows:

1. The employer and employee contribution portion earmarked for member accounts shall be used to purchase interests in the appropriate investment vehicles as specified by the member, or in accordance with paragraph (4)(d).

2. The employer contribution portion earmarked for administrative and educational expenses shall be transferred to the state board's Administrative ~~Florida Retirement System Investment Plan~~ Trust Fund.

3. The employer contribution portion earmarked for disability benefits shall be transferred to the Florida Retirement System Trust Fund.

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

And the title is amended as follows:

Delete line 3

and insert:

systems; amending s. 121.4501, F.S.; correcting a reference to the trust fund to which certain employer assessments are transferred; amending s. 121.71, F.S.; revising required

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01819-16

20167042pb

A bill to be entitled

An act relating to state-administered retirement systems; amending s. 121.71, F.S.; revising required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System; amending s. 121.74, F.S.; revising the employer assessment rate for offsetting administrative and educational costs related to the Florida Retirement System; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsections (4) and (5) of section 121.71, Florida Statutes, are amended to read:

121.71 Uniform rates; process; calculations; levy.—

(4) Required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

	Percentage of Gross Compensation, Effective
Membership Class	July 1, <u>2016</u> 2015
Regular Class	<u>2.97%</u> 2.91%
Special Risk Class	11.35%

Page 1 of 5

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

585-01819-16

20167042pb

Special Risk
Administrative
Support Class

3.87% ~~3.71%~~

Elected Officers' Class—
Legislators, Governor,
Lt. Governor,
Cabinet Officers,
State Attorneys,
Public Defenders

6.63% ~~6.48%~~

Elected Officers' Class—
Justices, Judges

11.68% ~~11.39%~~

Elected Officers' Class—
County Elected Officers

8.55% ~~8.48%~~

Senior Management Class

4.38% ~~4.32%~~

DROP

4.17% ~~4.10%~~

(5) In order to address unfunded actuarial liabilities of the system, the required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of
------------------	---------------

Page 2 of 5

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Gross
Compensation,
Effective
July 1, 2016 ~~2015~~

Regular Class	<u>2.83%</u> 2.65%
Special Risk Class	<u>8.92%</u> 8.99%
Special Risk Administrative Support Class	<u>22.47%</u> 27.54%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	<u>33.75%</u> 37.62%
Elected Officers' Class— Justices, Judges	<u>23.30%</u> 22.62%
Elected Officers' Class— County Elected Officers	<u>32.20%</u> 32.09%
Senior Management Service	<u>15.67%</u> 15.41%

Page 3 of 5

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Class

DROP 7.10% ~~7.12%~~

Section 2. Section 121.74, Florida Statutes, is amended to read:

121.74 Administrative and educational expenses.—In addition to contributions required to fund member accounts under ss. 121.71 and 121.73, effective July 1, 2010, through June 30, 2014, employers participating in the Florida Retirement System shall contribute an employer assessment amount equal to 0.03 percent of the payroll reported for each class or subclass of Florida Retirement System membership. Effective July 1, 2014, the employer assessment is 0.04 percent of the payroll reported for each class or subclass of membership. Effective July 1, 2016, the employer assessment is 0.06 percent of the payroll reported for each class or subclass of membership. The amount assessed shall be transferred by the Division of Retirement from the Florida Retirement System Contributions Clearing Trust Fund to the State Board of Administration's Administrative Trust Fund to offset the costs of administering the investment plan and the costs of providing educational services to members of the Florida Retirement System. Approval of the trustees is required before the expenditure of these funds. Payments for third-party administrative or educational expenses shall be made only pursuant to the terms of the approved contracts for such services.

Section 3. The Legislature finds that a proper and legitimate state interest is served when employees, officers,

Page 4 of 5

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585-01819-16

20167042pb

72 and retirees of the state and its political subdivisions, and
73 the dependents, survivors, and beneficiaries of such employees,
74 officers, and retirees, are extended the basic protections
75 afforded by governmental retirement systems. These persons must
76 be provided benefits that are fair and adequate and that are
77 managed, administered, and funded in an actuarially sound
78 manner, as required by s. 14, Article X of the State
79 Constitution and part VII of chapter 112, Florida Statutes.
80 Therefore, the Legislature determines and declares that this act
81 fulfills an important state interest.

82 Section 4. 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: SPB 7044

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Retirement Benefits for Certain Judges

DATE: January 8, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
McVaney	McVaney		GO Submitted as Committee Bill
1. _____	_____	_____	_____

I. Summary:

SPB 7044 allows certain judges who have reached the end of their Deferred Retirement Option Program participation period (typically 60 months) to transfer the accumulated DROP proceeds to the Florida Retirement System investment plan. In the investment plan, the judges will be permitted to direct the investment of these retirement benefits.

The fiscal impact on the Florida Retirement System Trust Fund is indeterminate.

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

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

Option Program (DROP).³ As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 186 cities and 262 special districts that have elected to join the system.⁴

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

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;
- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

Investment Plan

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

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

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both inline-of-duty and regular disability retirement

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

⁴ *Id.*, at 146.

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

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

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

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

¹¹ Section 121.4501(6)(a), F.S.

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

¹³ Section 121.591, F.S.

benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

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

Pension Plan

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

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Deferred Retirement Option Program

The Deferred Retirement Option Program is available under the Florida Retirement System Pension Plan when the member first reaches eligibility for normal retirement. The Deferred Retirement Option Program allows a member to retire while continuing employment for up to 60 months. While in the Deferred Retirement Option Program, the member's retirement benefits accumulate in the Florida Retirement System Trust Fund (increased by a cost-of-living

¹⁴ See s. 121.4501(16), F.S.

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

¹⁶ Section 121.4501(8), F.S.

¹⁷ FLA. CONST., art IV, s. 4.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

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

adjustment each July, as applicable) and earn monthly interest equivalent to an annual rate of 1.3 percent. (Deferred Retirement Option Program participants with an effective Deferred Retirement Option Program begin date before July 1, 2011, earn monthly interest equivalent to an annual rate of 6.5 percent.) The election to participate in the Deferred Retirement Option Program must be made within 12 months of the member's normal retirement date, unless the member is eligible to defer the election. To participate for the maximum Deferred Retirement Option Program period, the member must enter the Deferred Retirement Option Program upon first reaching eligibility for normal retirement, or upon reaching an eligible deferral date as described below:

- A special risk class member who reaches his or her normal retirement date based upon years of service before reaching age 52 may defer Deferred Retirement Option Program entry up to age 52 and still participate for 60 months. Also, a member of the Special Risk Administrative Support Class who has at least the number of years of Special Risk Class service required to be vested and reaches his or her normal retirement date based upon years of service before reaching age 52 may defer Deferred Retirement Option Program entry up to age 52 and still participate for 60 months.
- A member of the Regular Class, Elected Officers' Class, or the Senior Management Services Class who reaches his or her normal retirement date before reaching age 57 may defer Deferred Retirement Option Program entry until age 57 and still participate for 60 months. A member of the Special Risk Administrative Support Class who does not have the number of years of Special Risk Class service required to be vested would be subject to these deferral requirements.
- A member who reaches his or her normal retirement date during a term of office may defer the Deferred Retirement Option Program election until the next succeeding term in that office and still participate for up to 60 months or until the end of that succeeding term, whichever is less.
- A member who is employed as K-12 instructional personnel as defined in section 1012.01(2), Florida Statutes, may elect to participate in the Deferred Retirement Program Option at any time after reaching his or her normal retirement date and still participate for 60 months.

Upon termination, the Deferred Retirement Option Program account is paid out as a lump sum payment, a rollover, or a combination partial lump sum payment and rollover, and monthly benefits are paid to the member in the amount as calculated upon entry into the Deferred Retirement Option Program, plus cost-of-living adjustments for intervening years.

In most cases, the Deferred Retirement Option Program participant must cease employment after a maximum of 60 months in the Deferred Retirement Option Program, must satisfy the termination requirements for retirement and must comply with applicable reemployment restrictions thereafter. However, certain exceptions apply:

- Effective July 1, 2002, a Deferred Retirement Option Program participant who holds an elective office may end Deferred Retirement Option Program participation and postpone compliance with termination requirements and reemployment limitations until he or she no longer holds the elective office (including consecutive terms in the same office). For the period between the end of Deferred Retirement Option Program participation and termination, no retirement credit is earned and the member's Deferred Retirement Option Program accumulation accrues no additional monthly benefits. If Deferred Retirement Option Program participation began before July 1, 2010, the member's Deferred Retirement

Option Program accumulation continues to earn interest after participation ends and before termination. If Deferred Retirement Option Program participation begins on or after July 1, 2010, the Deferred Retirement Option Program accumulation does not earn interest during the period after Deferred Retirement Option Program participation ends and termination.

- K-12 instructional personnel employed with a district school board, the Florida School for the Deaf and the Blind or a developmental research school of a state university may be allowed to extend their Deferred Retirement Option Program participation for up to an additional 36 months beyond their initial 60-month Deferred Retirement Option Program participation period. To qualify for the extension, the Deferred Retirement Option Program participant must receive authorization from the employer and be approved by the Division. If authorized to extend Deferred Retirement Option Program participation, a participant must remain employed in an eligible position during the period of Deferred Retirement Option Program extension.

III. Effect of Proposed Changes:

The bill allows certain judges who have reached the end of their DROP participation period to transfer the accumulated DROP proceeds to the FRS investment plan. In the investment plan, the judges will be permitted to direct the investment of these retirement benefits.

Section 1 amends s. 121.053, F.S., to allow, at the end of the DROP participation period and before termination from covered employment, an eligible officer to transfer all or a portion of his or her DROP benefits and interest into the FRS investment plan. An eligible officer is defined as a county or circuit judge who is a participant of the DROP and has attained the applicable normal retirement age (age 62 or 65 depending when the judge initially enrolled in the FRS).

Section 2 amends s. 121.091, F.S., to clarify that an eligible officer who transfers the DROP benefits to the investment plan may not receive the DROP proceeds from the investment plan until the officer has terminated all employment relationships with covered employers and completed all other requirements relating to the processing of the payments.

Section 3 amends s. 121.4501, F.S., to expand the membership of the investment plan to include the eligible elected officers that have the option to transfer DROP benefits prior to termination of employment. The section is also amended to allow the investment plan to receive the transfer of the DROP benefits prior to the officer terminating employment. This transfer must constitute a “direct trustee-to-trustee transfer” under the federal tax code.

Section 4 requires the SBA and the DMS to request a private letter ruling to ensure that the changes made to the FRS are consistent with the federal tax code regarding the qualified status of the pension plan. If the SBA or the DMS receives notification that the pension plan may be disqualified based on these changes, that portion of the bill does not apply.

Section 5 provides that the act 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:

Indeterminate. Eligible officers will be permitted to direct the investment of accrued DROP benefits after the expiration of the DROP period (typically 60 months). Based on the investment experience, the eligible officers may enjoy additional investment earnings or may lose a portion of the principal DROP benefits.

C. Government Sector Impact:

Indeterminate. To the extent that eligible officers remain in office beyond the 60-month DROP period, and the FRS investments are positive relating to the accumulated DROP balances, the FRS Trust Fund investment earnings may be decreased. On the other hand, if the FRS pension plan incurs investment losses on accumulated DROP balances, the FRS Trust Fund will not have to use other funds to offset the losses of principal associated with DROP benefits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 121.053, 121.091, and 121.4501 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01794B-16

20167044pb

A bill to be entitled

An act relating to retirement benefits for certain judges; amending s. 121.053, F.S.; authorizing certain retired members of the Florida Retirement System subsequently serving in a specified judicial office covered by the Elected Officers' Class to transfer all or a portion of benefits and interest accrued during participation in the Deferred Retirement Option Program to the investment plan; prohibiting transfer of funds to the Florida Retirement System Trust Fund after the election is made; prohibiting distribution of transferred funds until the member ceases all employment relationships and completes certain requirements; defining the term "eligible officer"; amending ss. 121.091 and 121.4501, F.S.; conforming provisions to changes made by the act; requiring the State Board of Administration and the Department of Management Services to request a private letter ruling from the United States Internal Revenue Service; providing for applicability in the event of an unfavorable private letter ruling; providing an effective date.

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

Section 1. Paragraph (a) of subsection (7) of section 121.053, Florida Statutes, is amended to read:

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

(7) A member who is elected or appointed to an elective office and who is participating in the Deferred Retirement

Page 1 of 12

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585-01794B-16

20167044pb

Option Program is not subject to termination as defined in s. 121.021, or reemployment limitations as provided in s. 121.091(9), until the end of his or her current term of office or, if the officer is consecutively elected or reelected to an elective office eligible for coverage under the Florida Retirement System, until he or she no longer holds an elective office, as follows:

(a) At the end of the 60-month DROP period:

1. The officer's DROP account may not accrue additional monthly benefits, but does continue to earn interest as provided in s. 121.091(13). However, an officer whose DROP participation begins on or after July 1, 2010, may not continue to earn such interest.

2. Retirement contributions, except for unfunded actuarial liability and health insurance subsidy contributions required in ss. 121.71(5) and 121.76, are not required of the employer of the elected officer, and additional retirement credit may not be earned under the Florida Retirement System.

3. Before termination, an eligible officer may elect to transfer all or a portion of the benefits and interest accrued during DROP participation to the investment plan pursuant to s. 121.4501(21). Once the eligible officer transfers funds to the investment plan, the eligible officer may not elect to transfer funds back to the Florida Retirement System Trust Fund. A distribution of the funds transferred to the investment plan may not occur until the member has ceased all employment relationships as provided in s. 121.021(39) and completed all the requirements under s. 121.091(13) for a distribution under the program. For purposes of this subparagraph, the term

Page 2 of 12

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585-01794B-16

20167044pb

61 "eligible officer" means a member of the pension plan
 62 participating in DROP who is serving as a county judge or
 63 circuit judge and has:

64 a. Attained age 62, if initially enrolled in the pension
 65 plan before July 1, 2011; or

66 b. Attained age 65, if initially enrolled in the pension
 67 plan on or after July 1, 2011.

68 Section 2. Paragraph (c) of subsection (13) of section
 69 121.091, Florida Statutes, is amended to read:

70 121.091 Benefits payable under the system.—Benefits may not
 71 be paid under this section unless the member has terminated
 72 employment as provided in s. 121.021(39)(a) or begun
 73 participation in the Deferred Retirement Option Program as
 74 provided in subsection (13), and a proper application has been
 75 filed in the manner prescribed by the department. The department
 76 may cancel an application for retirement benefits when the
 77 member or beneficiary fails to timely provide the information
 78 and documents required by this chapter and the department's
 79 rules. The department shall adopt rules establishing procedures
 80 for application for retirement benefits and for the cancellation
 81 of such application when the required information or documents
 82 are not received.

83 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
 84 subject to this section, the Deferred Retirement Option Program,
 85 hereinafter referred to as DROP, is a program under which an
 86 eligible member of the Florida Retirement System may elect to
 87 participate, deferring receipt of retirement benefits while
 88 continuing employment with his or her Florida Retirement System
 89 employer. The deferred monthly benefits shall accrue in the

585-01794B-16

20167044pb

90 Florida Retirement System on behalf of the member, plus interest
 91 compounded monthly, for the specified period of the DROP
 92 participation, as provided in paragraph (c). Upon termination of
 93 employment, the member shall receive the total DROP benefits and
 94 begin to receive the previously determined normal retirement
 95 benefits. Participation in the DROP does not guarantee
 96 employment for the specified period of DROP. Participation in
 97 DROP by an eligible member beyond the initial 60-month period as
 98 authorized in this subsection shall be on an annual contractual
 99 basis for all participants.

100 (c) *Benefits payable under DROP.*—

101 1. Effective on the date of DROP participation, the
 102 member's initial normal monthly benefit, including creditable
 103 service, optional form of payment, and average final
 104 compensation, and the effective date of retirement are fixed.
 105 The beneficiary established under the Florida Retirement System
 106 is the beneficiary eligible to receive any DROP benefits payable
 107 if the DROP participant dies before completing the period of
 108 DROP participation. If a joint annuitant predeceases the member,
 109 the member may name a beneficiary to receive accumulated DROP
 110 benefits payable. The retirement benefit, the annual cost of
 111 living adjustments provided in s. 121.101, and interest accrue
 112 monthly in the Florida Retirement System Trust Fund. For members
 113 whose DROP participation begins:

114 a. Before July 1, 2011, the interest accrues at an
 115 effective annual rate of 6.5 percent compounded monthly, on the
 116 prior month's accumulated ending balance, up to the month of
 117 termination or death, except as provided in s. 121.053(7).

118 b. On or after July 1, 2011, the interest accrues at an

585-01794B-16

20167044pb

effective annual rate of 1.3 percent, compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death, except as provided in s. 121.053(7).

2. Each employee who elects to participate in DROP may elect to receive a lump-sum payment for accrued annual leave earned in accordance with agency policy upon beginning participation in DROP. The accumulated leave payment certified to the division upon commencement of DROP shall be included in the calculation of the member's average final compensation. The employee electing the lump-sum payment is not eligible to receive a second lump-sum payment upon termination, except to the extent the employee has earned additional annual leave which, combined with the original payment, does not exceed the maximum lump-sum payment allowed by the employing agency's policy or rules. An early lump-sum payment shall be based on the hourly wage of the employee at the time he or she begins participation in DROP. If the member elects to wait and receive a lump-sum payment upon termination of DROP and termination of employment with the employer, any accumulated leave payment made at that time may not be included in the member's retirement benefit, which was determined and fixed by law when the employee elected to participate in DROP.

3. The effective date of DROP participation and the effective date of retirement of a DROP participant shall be the first day of the month selected by the member to begin participation in DROP, provided such date is properly established, with the written confirmation of the employer, and the approval of the division, on forms required by the division.

4. Normal retirement benefits and any interest continue to

585-01794B-16

20167044pb

accrue in DROP until the established termination date of DROP or until the member terminates employment or dies before such date, except as provided in s. 121.053(7). Although individual DROP accounts may not be established, a separate accounting of each member's accrued benefits under DROP shall be calculated and provided to the member.

5. At the conclusion of the member's participation in DROP, the division shall distribute the member's total accumulated DROP benefits, subject to the following:

a. The division shall receive verification by the member's employer or employers that the member has terminated all employment relationships as provided in s. 121.021(39).

b. The terminated DROP participant or, if deceased, the member's named beneficiary, shall elect on forms provided by the division to receive payment of the DROP benefits in accordance with one of the options listed below. If a member or beneficiary fails to elect a method of payment within 60 days after termination of DROP, the division shall pay a lump sum as provided in sub-sub-subparagraph (I).

(I) Lump sum.—All accrued DROP benefits, plus interest, less withholding taxes remitted to the Internal Revenue Service, shall be paid to the DROP participant or surviving beneficiary.

(II) Direct rollover.—All accrued DROP benefits, plus interest, shall be paid from DROP directly to the custodian of an eligible retirement plan as defined in s. 402(c)(8)(B) of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a deceased member, an eligible retirement plan is an individual retirement account or an individual retirement annuity as described in s.

585-01794B-16

20167044pb

177 402(c)(9) of the Internal Revenue Code.

178 (III) Partial lump sum.—A portion of the accrued DROP
179 benefits shall be paid to DROP participant or surviving spouse,
180 less withholding taxes remitted to the Internal Revenue Service,
181 and the remaining DROP benefits must be transferred directly to
182 the custodian of an eligible retirement plan as defined in s.
183 402(c)(8)(B) of the Internal Revenue Code. However, in the case
184 of an eligible rollover distribution to the surviving spouse of
185 a deceased member, an eligible retirement plan is an individual
186 retirement account or an individual retirement annuity as
187 described in s. 402(c)(9) of the Internal Revenue Code. The
188 proportions must be specified by the DROP participant or
189 surviving beneficiary.

190
191 An eligible officer, as defined in s. 121.053(7), who
192 transferred accrued DROP benefits and interest to the investment
193 plan must meet the requirements of s. 121.4501(21), which
194 include the termination of all employment relationships as
195 provided in s. 121.021(39), and complete the requirements of
196 this sub-subparagraph to process the payment of any accrued DROP
197 benefits and interest retained in the Florida Retirement System
198 Trust Fund.

199 c. The form of payment selected by the DROP participant or
200 surviving beneficiary must comply with the minimum distribution
201 requirements of the Internal Revenue Code.

202 d. A DROP participant who fails to terminate all employment
203 relationships as provided in s. 121.021(39) shall be deemed as
204 not retired, and the DROP election is null and void. Florida
205 Retirement System membership shall be reestablished

585-01794B-16

20167044pb

206 retroactively to the date of the commencement of DROP, and each
207 employer with whom the member continues employment must pay to
208 the Florida Retirement System Trust Fund the difference between
209 the DROP contributions paid in paragraph (i) and the
210 contributions required for the applicable Florida Retirement
211 System class of membership during the period the member
212 participated in DROP, plus 6.5 percent interest compounded
213 annually.

214 6. The retirement benefits of any DROP participant who
215 terminates all employment relationships as provided in s.
216 121.021(39) but is reemployed in violation of the reemployment
217 provisions of subsection (9) are suspended during those months
218 in which the retiree is in violation. Any retiree in violation
219 of this subparagraph and any employer that employs or appoints
220 such person without notifying the division to suspend retirement
221 benefits are jointly and severally liable for any benefits paid
222 during the reemployment limitation period. The employer must
223 have a written statement from the retiree that he or she is not
224 retired from a state-administered retirement system. Any
225 retirement benefits received by a retiree while employed in
226 violation of the reemployment limitations must be repaid to the
227 Florida Retirement System Trust Fund, and his or her retirement
228 benefits shall remain suspended until payment is made. Benefits
229 suspended beyond the end of the reemployment limitation period
230 apply toward repayment of benefits received in violation of the
231 reemployment limitation.

232 7. The accrued benefits of any DROP participant, and any
233 contributions accumulated under the program, are not subject to
234 assignment, execution, attachment, or any legal process except

585-01794B-16

20167044pb

for qualified domestic relations court orders, income deduction orders as provided in s. 61.1301, and federal income tax levies.

8. DROP participants are not eligible for disability retirement benefits as provided in subsection (4).

Section 3. Paragraphs (e) and (i) of subsection (2) and subsection (21) of section 121.4501, Florida Statutes, are amended to read:

121.4501 Florida Retirement System Investment Plan.—

(2) DEFINITIONS.—As used in this part, the term:

(e) "Eligible employee" means an officer or employee, as defined in s. 121.021, who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System, including any renewed member of the Florida Retirement System initially enrolled before July 1, 2010; or

2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6), the State Community College System Optional Retirement Program as established under s. 121.051(2)(c), or the State University System Optional Retirement Program established under s. 121.35.

The term does not include any member participating in the Deferred Retirement Option Program established under s. 121.091(13), except as provided in paragraph (21)(b), a retiree of a state-administered retirement system initially reemployed in a regularly established position on or after July 1, 2010, or a mandatory participant of the State University System Optional Retirement Program established under s. 121.35.

585-01794B-16

20167044pb

(i) "Member" or "employee" means an eligible employee who enrolls in the investment plan as provided in subsection (4), a terminated Deferred Retirement Option Program member as described in paragraph (21)(a), an eligible elected officer as described in paragraph (21)(b) ~~subsection (21)~~, or a beneficiary or alternate payee of a member or employee.

(21) PARTICIPATION BY ~~TERMINATED~~ DEFERRED RETIREMENT OPTION PROGRAM MEMBERS.—

(a) Notwithstanding any other provision of law, members in the Deferred Retirement Option Program offered under part I may, after conclusion of their participation in the program and meeting the definition of termination in s. 121.021, elect to roll over or authorize a direct trustee-to-trustee transfer to an account under the investment plan of their Deferred Retirement Option Program proceeds distributed as provided under s. 121.091(13)(c)5. The transaction is considered ~~must constitute~~ an "eligible rollover distribution" within the meaning of s. 402(c)(4) of the Internal Revenue Code.

(b)1. After his or her benefits cease to accrue in the Deferred Retirement Option Program and before meeting the definition of termination in s. 121.021, an eligible officer, as defined in s. 121.053(7)(a)3., may elect to transfer all or a portion of the total accumulated Deferred Retirement Option Program benefits plus interest to the investment plan subject to the terms of s. 121.053(7)(a)3. The transaction must constitute a "direct trustee-to-trustee transfer" under the Internal Revenue Code.

2. After the eligible officer has ceased all employment relationships as provided in s. 121.021(39), the eligible

585-01794B-16

20167044pb

293 officer may authorize a distribution of those proceeds as
 294 provided in s. 121.591.

295 (c)(a) The investment plan may accept such amounts for
 296 deposit into member accounts as provided in paragraph (5) (e).

297 (d)(b) The affected member shall direct the investment of
 298 his or her investment account; however, unless he or she becomes
 299 a renewed member of the Florida Retirement System under s.
 300 121.122 and elects to participate in the investment plan, no
 301 contributions may be made to the member's account as provided
 302 under paragraph (5) (a).

303 (e)(e) The state board or the department is not responsible
 304 for locating those persons who may be eligible to participate in
 305 the investment plan under this subsection.

306 Section 4. (1) As soon as practicable after the effective
 307 date of this act, the State Board of Administration and the
 308 Department of Management Services shall request a private letter
 309 ruling from the United States Internal Revenue Service. If the
 310 United States Internal Revenue Service refuses to act upon the
 311 request for a private letter ruling, then a legal opinion from a
 312 qualified tax attorney or firm may be substituted for such
 313 private letter ruling.

314 (2) If the state board or the department receives
 315 notification from the United States Internal Revenue Service
 316 that this act or any portion of this act will cause the Florida
 317 Retirement System, or a portion thereof, to be disqualified for
 318 tax purposes under the Internal Revenue Code, then the portion
 319 that will cause the disqualification does not apply. Upon
 320 receipt of such notice, the state board and the department shall
 321 notify the presiding officers of the Legislature.

Page 11 of 12

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

585-01794B-16

20167044pb

322 Section 5. This act shall take effect upon becoming a law.

Page 12 of 12

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

CourtSmart Tag Report

Room: SB 401
Caption: Senate Governmental Oversight and Accountability Committee

Case No.:

Type:
Judge:

Started: 1/11/2016 4:02:44 PM

Ends: 1/11/2016 5:42:24 PM

Length: 01:39:41

4:02:42 PM Meeting called to order
4:02:45 PM roll call
4:02:57 PM Senator Hutson recognized to present CS/SB 196
4:03:16 PM Senator Hutson presents with Amendment 519336 strike-all
4:03:34 PM Amendment 519336 adopted
4:04:04 PM Gary Hunter with Assoc of FL COmmunity Develop waives in support
4:04:20 PM Brewster Bevis waives in support
4:04:30 PM Roll call for CS/SB 196
4:04:37 PM Reported favorably
4:04:44 PM Senator Gaetz presents SB 582
4:05:07 PM Senator Gaetz presents with the strike-all amendment 401016
4:09:14 PM Senator Latvala with a question
4:11:12 PM Senator Hays now present
4:12:44 PM Senator Gaetz with a response for Senator Latvala
4:14:10 PM Senator Ring with clarification
4:15:11 PM Senator Latvala with clarification
4:15:15 PM Senator Gaetz with clarification
4:15:19 PM Senator Gaetz with response
4:15:32 PM Senator Latvala with clarification of his question
4:16:05 PM Senator Gaetz with response
4:16:12 PM Senator Latvala with follow-up
4:16:51 PM Senator Gaetz with response
4:17:04 PM Senator Latvala with follow-up
4:17:32 PM Senator Gaetz with response
4:18:06 PM Senator Latvala with follow-up
4:18:53 PM Senator Gaetz with response
4:19:47 PM Senator Latvala with follow-up
4:20:09 PM Senator Gaetz response
4:20:20 PM Senator Latvala with follow-up
4:21:04 PM Senator Latvala asking staff for clarification
4:22:04 PM Senator Latvala with clarification, follow-up
4:22:25 PM Response from committee staff
4:22:46 PM Senator Latvala with clarification
4:23:05 PM Committee staff with response
4:23:26 PM Senator Ring with question for Senator Latvala
4:23:42 PM Senator Latvala with response
4:23:55 PM Senator Gaetz with response to Senator Latvala
4:24:31 PM Senator Latvala with follow-up
4:24:38 PM Senator Ring with clarification
4:25:23 PM Senator Latvala with response
4:25:49 PM Senator Hays recognized with question
4:26:34 PM Senator Gaetz with response to Senator Hays
4:27:17 PM Senator Hays with follow-up
4:27:22 PM Senator Gaetz with response
4:28:00 PM Warren Husband w/ Assoc of General Contractos recognized to speak
4:28:47 PM Senator Latvala with question for Warren Husband
4:29:14 PM Warren Husband with response for Senator Latvala
4:30:42 PM Senator Ring with follow-up
4:31:41 PM Warren Husband with response
4:31:54 PM Amendment 401016 adopted
4:32:23 PM Matt Reed with USA Today recognized to speak
4:38:27 PM Senator Legg with question

4:39:27 PM Matt Reed with response
4:39:36 PM Senator Legg with follow-up
4:40:03 PM Senator Latvala with question for Matt Reed
4:41:01 PM Matt Reed with response
4:41:08 PM Senator Latvala with follow-up
4:41:16 PM Matt Reed with response
4:41:19 PM Senator Latvala with follow-up
4:41:27 PM Matt Reed with response
4:42:05 PM Senator Latvala with response
4:42:54 PM Buddy Jacobs with State Attorneys of FL waives in support
4:43:14 PM Senator Latvala requests to hear from a state attorney
4:43:24 PM Buddy Jacobs recognized to speak
4:45:04 PM Senator Latvala with follow-up question
4:46:43 PM Senator Ring with comments
4:48:16 PM Senator Latvala with response
4:49:14 PM Senator Ring with response to Senator Latvala
4:50:09 PM Ben Wilcox with Common Cause Florida waives in support
4:50:49 PM Senator Ring opens debate
4:51:02 PM Senator Latvala recognized to open debate
4:52:50 PM Senator Ring with comments
4:54:05 PM Senator Gaetz recognized to close on SB 582 as amended
4:56:22 PM Roll call on SB 582
4:57:21 PM Senator Ring moves to reconsider SB 582
4:57:44 PM Senator Sobel recognized to present SB 716
4:58:16 PM Steve Uhlfelder recognized to speak
4:59:31 PM Senator Sobel recognized to close on SB 716
5:00:31 PM Roll call on SB 716
5:00:45 PM SB 716 reported favorably
5:01:01 PM Tab 3 SB 7002
5:01:26 PM Roll call on SB 7002
5:01:32 PM SB 7004 introduced
5:01:49 PM Amendment 901406 technical amendment adopted
5:02:09 PM Roll call for SB 7004
5:02:18 PM SB 7004 reported favorably
5:02:23 PM SB 7020 introduced
5:02:38 PM Roll call on SB 7020
5:03:21 PM SB 7020 reported favorably
5:03:29 PM SB 7024 introduced
5:03:40 PM Amendment 374734 technical amendment adopted
5:04:08 PM SB 7024 roll call
5:04:14 PM SB 7024 reported favorably
5:04:28 PM SB 7032 presented
5:04:46 PM Jamie Mongiovi of FL Office of Financial Reg waives in support
5:05:07 PM Roll call for SB 7032
5:05:13 PM SB 7032 reported favorably
5:05:21 PM SB 438 presented
5:05:35 PM Amendment 355758 presented by Senator Bullard
5:06:09 PM Amendment 355758 adopted
5:06:20 PM Amendment 583094 presented
5:06:31 PM Amendment 583094 adopted
5:06:35 PM Senator Hays with question on bill for Senator Bullard
5:06:55 PM Senator Bullard with response to Senator Hays
5:07:45 PM Senator Hays with follow-up
5:08:44 PM Senator Bullard with response
5:08:49 PM Senator Hays with response
5:08:53 PM Senator Bullard with response
5:09:32 PM Richard Watson with FL Surety Association
5:10:32 PM Bruce Kershner representing the NACM Improved Construction Practices Committee
5:11:25 PM Dorothy Brown-Alfaru with CSBE, NABWIC, FL Hispanic, small businesses recognized
5:15:56 PM Senator Hays recognized in debate on SB 438
5:17:37 PM Senator Bullard recognized to close on SB 438
5:20:24 PM Roll call on SB 438

5:21:23 PM SB 438 reported favorably
5:21:37 PM Chair given to Senator Hays
5:21:44 PM CS/SB 516 presented by Senator Ring
5:22:19 PM Amendment 575920 withdrawn by Senator Ring
5:23:18 PM Senator Hays with question for Senator Ring
5:23:44 PM Senator Ring with response
5:23:49 PM Senator Hays with follow-up
5:24:01 PM Senator Ring with response
5:24:14 PM Chris Lyon with FL Association of Special Districts recognized to speak
5:28:43 PM Ron Book representing Open Government recognized to speak
5:30:15 PM Senator Ring recognized to close on CS/SB 516
5:33:17 PM Roll call on CS/SB 516
5:34:18 PM CS/SB 516 reported favorably
5:34:39 PM CS/SB 142 presented by Senator Ring
5:35:17 PM Amendment 687272 withdrawn by Senator Ring
5:36:17 PM Senator Hays with question for Senator Ring
5:36:29 PM Senator Ring with response
5:36:34 PM Senator Hays with follow-up
5:36:41 PM Senator Ring with response
5:36:43 PM Senator Hays with clarification
5:36:54 PM Monica Hofheinz with State Attorney Mike Satz waives in support
5:37:18 PM Don Lamonica with FL Public Defenders Assoc waives in support
5:37:38 PM Nikki Fried with Florida Bar waives in support
5:37:49 PM Roll call on CS 142
5:38:06 PM CS 142 reported favorably
5:38:15 PM SPB 7042 presented by Senator Ring
5:38:29 PM Amendment 319448 presented by Senator Ring
5:39:17 PM Amendment 319448 adopted
5:39:29 PM SPB 7042 roll call
5:40:01 PM SB 7042 reported favorably as committee bill
5:40:11 PM SB 7044 presented by Senator Ring
5:40:20 PM roll call on SB 7044
5:41:07 PM SB 7044 reported favorably as committee bill
5:41:18 PM Senator Hays moves to be shown voting in affirmative on SB 196
5:41:34 PM meeting adjourned