

<b>Tab 1</b>	<b>CS/SB 1094</b> by <b>BI, Flores</b> ; (Similar to H 1385) Public Records/Limited Purpose International Trust Company					
187568	D	S	WD	GO, Ring	Delete everything after	02/16 03:20 PM
909112	D	S	RCS	GO, Ring	Delete everything after	02/16 03:20 PM
<b>Tab 2</b>	<b>SB 724</b> by <b>Joyner</b> ; (Identical to H 0857) Public Records					
<b>Tab 3</b>	<b>SB 712</b> by <b>Joyner</b> ; Compensation of Members of the Legislature					
<b>Tab 4</b>	<b>CS/SB 776</b> by <b>CU, Bradley</b> ; (Similar to CS/CS/H 1025) Public Records/Utility Information or Industrial Control Technology Systems Security					
639920	A	S	RCS	GO, Hays	Delete L.36 - 95:	02/16 03:20 PM
<b>Tab 5</b>	<b>CS/SB 1490</b> by <b>BI, Garcia (CO-INTRODUCERS) Soto</b> ; (Similar to CS/H 1233) Federal Home Loan Banks					
<b>Tab 6</b>	<b>SJR 1424</b> by <b>Bean</b> ; (Identical to H 1129) Election of Secretary of State/Membership of Cabinet					
<b>Tab 7</b>	<b>SB 456</b> by <b>Latvala (CO-INTRODUCERS) Soto, Grimsley, Garcia, Flores, Bullard</b> ; (Similar to H 0345) Firefighters					
249998	D	S	RCS	GO, Latvala	Delete everything after	02/16 03:21 PM
<b>Tab 8</b>	<b>SB 7022</b> by <b>CJ</b> ; OGSR/Depictions or Recordings of the Killing of a Law Enforcement Officer					
<b>Tab 9</b>	<b>SB 1150</b> by <b>Bean</b> ; (Similar to CS/H 0953) Legislative Reauthorization of Agency Rulemaking Authority					
148294	D	S	RS	GO, Ring	Delete everything after	02/16 03:21 PM
325292	SD	S	RCS	GO, Ring	Delete everything after	02/16 03:21 PM
535736	A	S	WD	GO, Hays	btw L.52 - 53:	02/16 03:21 PM

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

**MEETING DATE:** Tuesday, February 16, 2016

**TIME:** 1:30—3:30 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	<b>CS/SB 1094</b> Banking and Insurance / Flores (Similar H 1385, Compare CS/H 1383, Linked S 1106)	Public Records/Limited Purpose International Trust Company; Providing an exemption from public records requirements for certain information held by the Office of Financial Regulation relating to a limited purpose international trust company representative office; authorizing the release of certain confidential and exempt information by the office; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  BI 01/26/2016 Fav/CS GO 02/09/2016 Temporarily Postponed GO 02/16/2016 Fav/CS RC	Fav/CS Yeas 3 Nays 0
2	<b>SB 724</b> Joyner (Identical H 857)	Public Records; Authorizing a court to hold a custodian of a public record personally liable for the reasonable costs of enforcement, including attorney fees, in a civil action to enforce ch, 119, F.S., if certain conditions exist, etc.  GO 01/19/2016 Temporarily Postponed GO 02/01/2016 Not Considered GO 02/09/2016 Not Considered GO 02/16/2016 Not Considered ACJ AP	Not Considered
3	<b>SB 712</b> Joyner	Compensation of Members of the Legislature; Prescribing the annual salaries for members of the Legislature; providing for future adjustment of salaries, etc.  GO 02/16/2016 Unfavorable EE RC	Unfavorable Yeas 1 Nays 3

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Tuesday, February 16, 2016, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 776</b> Communications, Energy, and Public Utilities / Bradley (Similar CS/CS/H 1025)	Public Records/Utility Information or Industrial Control Technology Systems Security; Providing an exemption from public records requirements for information related to the security of information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CU 02/02/2016 Fav/CS GO 02/16/2016 Fav/CS RC	Fav/CS Yeas 4 Nays 0
5	<b>CS/SB 1490</b> Banking and Insurance / Garcia (Similar CS/H 1233)	Federal Home Loan Banks ; Providing that certain records requirements do not prevent or restrict the furnishing of certain information held by the Office of Financial Regulation to the Federal Home Loan Banks pursuant to an information-sharing agreement; requiring the office to execute such agreement by a specified date, etc.  BI 02/01/2016 Fav/CS GO 02/16/2016 Favorable FP	Favorable Yeas 4 Nays 0
6	<b>SJR 1424</b> Bean (Identical HJR 1129)	Election of Secretary of State/Membership of Cabinet; Proposing amendments to the State Constitution to provide for the election of the Secretary of State and the inclusion of the secretary as a member of the Cabinet, etc.  EE 02/02/2016 Favorable GO 02/16/2016 Favorable RC	Favorable Yeas 3 Nays 1
7	<b>SB 456</b> Latvala (Similar H 345)	Firefighters; Establishing a presumption as to a firefighter's condition or impairment of health caused by cancer while in the line of duty; prescribing requirements for the physical examination; authorizing specified governmental entities to negotiate policy contracts for life and disability insurance, etc.  CA 11/17/2015 Favorable GO 02/16/2016 Fav/CS AP	Fav/CS Yeas 4 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability  
Tuesday, February 16, 2016, 1:30—3:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 7022</b> Criminal Justice	OGSR/Depictions or Recordings of the Killing of a Law Enforcement Officer; Amending provisions which provide an exemption from public records requirements for a photograph or video or audio recording held by an agency that depicts or records the killing of a person; narrowing the exemption to depictions or recordings of the killing of a law enforcement officer who was acting in accordance with his or her official duties; removing the scheduled repeal of the exemption, etc.  GO 02/16/2016 Favorable RC	Favorable Yeas 4 Nays 0

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**Pending Reconsideration:**

9	<b>SB 1150</b> Bean (Similar CS/H 953)	Legislative Reauthorization of Agency Rulemaking Authority; Providing for suspension of certain rulemaking authority after a specified period, until reauthorized by general law; providing for expiration of such reauthorization after a specified period; providing for suspension of rulemaking authority upon expiration of its reauthorization, until reauthorized by general law; authorizing the Governor to delay suspension of rulemaking authority for a specified period upon declaration of a public necessity; providing exceptions, etc.  GO 01/26/2016 Not Considered GO 02/01/2016 Temporarily Postponed GO 02/09/2016 Pending reconsider (Unfavorable) GO 02/16/2016 Adopted reconsider (Fav/CS) AGG AP	Pending Motion to Reconsider Adopted -- Final Vote: Fav/CS Yeas 4 Nays 0
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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/CS/SB 1094

INTRODUCER: Governmental Oversight and Accountability Committee, Banking and Insurance Committee and Senator Flores

SUBJECT: Public Records/Limited Purpose International Trust Company

DATE: February 18, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1094 provides exemptions from the public records inspection and disclosure requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for documents held by the Office of Financial Regulation (OFR) relating to certain entities seeking a moratorium under the provisions of s. 633.041.<sup>1</sup> For purposes of this analysis, the substance of CS/HB 1383 will be considered the appropriate provisions of the substantive bill linked to this public records exemption bill.

CS/CS/SB 1094 makes confidential and exempt from public records disclosure the following information held the OFR:

- All internal corporate documents of an organization or entity applying for a moratorium under s. 663.041 (prohibition on the enforcement of ch. 633, F.S., as it relates to international trust company representative offices);
- All internal corporate documents of an international trust entity submitted pursuant to s. 663.041, (prohibition on the enforcement of the provisions of ch. 633, F.S., as it relates to international trust companies);

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<sup>1</sup>At the time this analysis is published, SB 1106 did not contain any language regarding a moratorium or s. 633.041. However, its House companion, CS/HB 1383, does contain a provision creating s. 633.041, which prohibits the OFR from enforcing the provisions of ch. 633, F.S., for certain international trust company representative offices and an international trust companies.

- The names of officers, directors, shareholders of an international trust entity, if the names are confidential pursuant to the laws of the “home” country of the international trust entity;
- Regulatory documentation from the regulatory body which provides licensing, charters, or oversight of the international trust entity;
- Working papers of the OFR generated while processing an application under s. 663.041.
- Information received by the OFR from another state, 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.

The bill allows the OFR to disclose the otherwise confidential and exempt information in specified circumstances. The bill also provides that the names of certain officers and legal entities are not confidential and exempt from public disclosure.

The bill provides a statement of public necessity.

The public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

Since this bill creates a new public records exemption, a two-thirds vote from each chamber is necessary for passage.

The bill will take effect on the same date that SB 1106, or similar legislation, is adopted during the same legislative session, or extension, and becomes a law.

## 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.<sup>2</sup> 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.<sup>3</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>4</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>5</sup> The Public Records Act states that

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<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> FLA. CONST., art. I, s. 24(a).

<sup>4</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So2d 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.

<sup>5</sup> 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.<sup>6</sup>

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

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

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>14</sup> 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.<sup>15</sup>

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<sup>6</sup> Section 119.01(1), F.S.

<sup>7</sup> 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.”

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

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

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

<sup>13</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So2d 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.

<sup>14</sup> 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).

<sup>15</sup> 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 (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>16</sup> 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.<sup>17</sup> 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:<sup>18</sup>

- 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.<sup>19</sup> 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.<sup>20</sup>

## International Financial Services Market

CS/HB 1383, the companion bill to SB 1106, creates s. 663.041. This new section prohibits the OFR from enforcing the provisions of ch. 633, F.S., on certain international trust company representative offices (ITCROs) and certain international trust companies. For the moratorium to apply to a particular ITCRO or international trust company (company), the company must provide to the OFR:

- Proof that the company has been organized and doing business in Florida since October 1, 2013;

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<sup>16</sup> 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).

<sup>17</sup> Section 119.15(3), F.S.

<sup>18</sup> Section 119.15(6)(a), F.S.

<sup>19</sup> FLA. CONST., art. I, s. 24(c).

<sup>20</sup> Section 119.15(7), F.S.



- The name(s) under which the company does business in Florida, the address of the company's registered agents, and the locations from which the company does business;
- Declarations under penalties of perjury that the company has not been subject to a consumer complaint to the OFR; has not been convicted of a felony or required to pay a fine or other penalty within the last five years; and does not provide banking or fiduciary trust services, promote or sell investments, or accept custody of assets.

In order to qualify for the moratorium, the ITCRO must meet the following standards:

- Has been organized or qualified to do business in Florida since October 1, 2013;
- Has not been the subject of a consumer complaint;
- Has not been convicted of a felony or ordered to pay a fine or penalty in the preceding five years; or  
Does not provide banking or fiduciary trust services, promote or sell investment, or accept assets.

### III. Effect of Proposed Changes:

The bill makes certain information held by the Office of Financial Regulation (OFR) confidential and exempt from the public disclosure requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S. For purposes of this analysis, the substance of CS/HB 1383 will be considered the appropriate provisions of the substantive bill linked to this public records exemption bill.

#### Scope of the Exemption

The bill creates a definition for “internal corporate information or documents” to mean the articles of organization, bylaws and other organizational documents of the entity, organization, or international trust entity applying for a moratorium. This definition includes documents that are not publically disclosed by the entity, organization or international trust entity, however, the standard for such lack of disclosure is not articulated. The definition also states that such documents may be confidential under the laws of the country where the international trust entity is organized or does business. There is no conflict of laws provision governing which law will prevail if an international trust entity is located in several countries.

The bill uses a cross-reference to s. 663.01(8), F.S.,<sup>21</sup> to define “international trust entity.” With the use of this definition it appears that an international trust company (as used in s. 663.041 in CS/HB 1383) and international representative office (as used in ch. 633, F.S.) are the same.

The bill defines “working papers” to include records of the procedures followed, tests performed, the information obtained, and the conclusions reached in processing an applications under the moratorium provisions of s. 663.041 (in CS/HB 1383).

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<sup>21</sup> Section 663.01(8), F.S., provides: “International representative office” means an office of an international banking corporation organized and licensed under the laws of a foreign country that is established or maintained in this state for the purpose of engaging in the activities described in s. 663.062, or any affiliate, subsidiary, or other person that engages in such activities, on behalf of such international banking corporation, from an office located in this state.

The bill makes the following records confidential and exempt from public disclosure requirements:

- All internal corporate documents of an organization or entity applying for a moratorium under s. 663.041 (prohibition on the enforcement of ch. 633, F.S., as it relates to international trust company representative offices);
- All internal corporate documents of an international trust entity submitted pursuant to s. 663.041 (prohibition on the enforcement of the provisions of ch. 633, F.S., as it relates to international trust companies);
- The names of officers, directors, shareholders of an international trust entity, if the names are confidential pursuant to the laws of the “home” country of the international trust entity;
- Regulatory documentation from the regulatory body which provides licensing, charters, or oversight of the international trust entity;
- Working papers of the OFR in processing the application under s. 663.041.

The bill authorizes the OFR to release confidential and exempt information in the following circumstances:

- To the authorized representative(s) of the organization or entity applying for a moratorium; The authorized representative(s) will be identified in a resolution or by written consent of the board of directors or managers of the entity or organization;
- To a fidelity insurance company or liability insurer, upon the written consent of the board of directors or managers;
- To an independent auditor;
- To a liquidator, receiver, or conservator, if one is appointed;
- To another governmental entity in furtherance of the entity’s official duties and responsibilities;
- Pursuant to a legislative subpoena. The legislative body must maintain the confidential status of such records or information except when the subpoena involves the investigation of charges against a public official subject to impeachment or removal; and,
- Pursuant to federal law.

The bill also provides that some information is not confidential and exempt from s. 119.07(1), F.S., and Article I, s. 24(a) of the Florida Constitution. The following information will be public record regardless of whether this information would be confidential or exempt under other portions of this bill or under the laws of any foreign or domestic sovereign:

- The name of the organization or entity applying for the moratorium;
- The name of the international trust entity for which the organization or entity provides services; or
- The name and business address of the directors, managers, officers or registered agent of the organization or entity applying for a moratorium.

### **Repeal Date Pursuant to the Open Government Sunset Review Act**

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. It shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

### **Statement of Public Necessity and Legislative Findings**

The bill states that the OFR will collect the names of the officers and directors of an international trust entity and will determine whether the organization or entity has met the requirements of the moratorium. The bill appears to state that this will entail the OFR collecting proof of corporate standing of the international trust entity and confirming that the organization or entity is not controlled by a foreign government or by the regulatory arm of a foreign government. This may require submission of names, documents, and regulatory records which are not public in such a foreign country. The public necessity statement goes on to state that the documents which are not normally made public in such a foreign country, or which are confidential under the laws of the foreign government “should not lose their confidential status solely because the [OFR] reviews them in processing an application for the moratorium.”

### **Effective Date**

The public records exemption in this bill takes effect on the same date that SB 1106 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

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

### **B. Public Records/Open Meetings Issues:**

#### **Vote Requirement**

Article I, s. 24(c) of the 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; 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, and the exemption “shall state with specificity the public necessity justifying the exemption and shall not be broader than necessary to accomplish the stated purpose of the law.” The Florida Supreme Court stated that a public records exemption meets constitutional requirements when the exemption “is supported by a thoroughly articulated public policy.”<sup>22</sup> The public necessity statement for this bill may not meet this standard, in that the public

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<sup>22</sup> *Bryan v. State*, 753 So. 2d 1244, 1250 (Fla. 2000).

policy reason for making documents confidential and exempt is not thoroughly articulated.

The exemption and public necessity statement may be too broad, since some terms are not clearly defined. The definition of “internal corporate information or documents” is subjective for each business entity. Neither the bill nor CS/HB 1383 explain what is an entity or organization. An overly broad public records exemption may be susceptible to a constitutional challenge. The lack of clear definitions was one of the reasons the Florida Supreme Court found that a public meetings exemption was overly broad and struck down the exemption.<sup>23</sup>

The public necessity statement also appears to be limited to documents or information that is ‘confidential and exempt’ or simply ‘exempt’ in the country of origin of the managing entity. This means that the exemption itself could be limited to such restrictions. The exemption, however, is broader, in that all internal corporate documents (under (2)(a)), and regulatory records (under (2)(c)) are confidential and exempt from public disclosure. If a corporate document or regulatory record is public in the country of origin of the managing entity, or in the State of Florida in the hands of another agency, then the reason for making the public information confidential and exempt when held by the OFR in this bill is unclear.

Currently, the bill does not appear to meet constitutional requirements for a public records exemption.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article II, s. 3 of the Florida Constitution provides that “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” The Florida Supreme Court has interpreted this constitutional provision to mean:

[t]he Legislature may not delegate the power to enact a law or to declare what the law shall be, or to exercise an unrestricted discretion in applying a law; but it may enact a law, complete in itself, designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.<sup>24</sup>

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<sup>23</sup> *Halifax Hosp. Medical Center v. News-Journal Corp.*, 742 So. 2d 567, 569-570 (Fla. 1999).

<sup>24</sup> *Conner v. Joe Hatton, Inc.*, 216 So. 2d 209, 211 (Fla. 1968). (internal citations omitted).

Furthermore, the Florida Supreme Court found that the Legislature unlawfully delegates its authority to the Executive Branch:

When the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say What the law shall be.<sup>25</sup>

In a case dealing with a public records exemption and unlawful delegation, the Florida Supreme Court found that the Legislature unlawfully delegated its authority when the Legislature made releasing records a discretionary act based on the consent of the Department of Banking and Finance.<sup>26</sup> The Florida Supreme Court stated:

As the statute is written, it makes a vast volume of private records, necessarily subject to governmental inspection confidential, but then gives the Comptroller unrestricted and unlimited power to exempt particular records and items of information from the operation of that provision of the statute making them confidential.

In other words, the Department is given power from day to day to say what is the law as to the confidential nature of any records of banks which the Department has the right to inspect or include in the reports of bank examinations.

The Constitution does not permit this delegation of legislative power.<sup>27</sup>

The bill provides that the public records exemption is subject to the laws of other countries as well as the business practices business entities of other countries. This may be ‘vague’ or contain ‘uncertain terms’ and the OFR may be unable to determine what the law is. The bill could also be construed as giving the OFR the ‘unrestricted and unlimited power’ to decide what records are public and which ones are not. If so, then this bill may susceptible to an unlawful delegation of duty if challenged in a court.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

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<sup>25</sup> *Id.* (emphasis in the original, internal citations omitted)

<sup>26</sup> *Lewis v. Bank of Pasco County*, 346 So.2d 53 (Fla. 1976).

<sup>27</sup> *Id.* at 55.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill creates a definition for “internal corporate information or documents” but refers only to “internal corporate documents.” The Legislature may wish to consider modifying the defined term as “internal corporate documents.”

The bill makes references to “entity,” “organizations or entities” and “entity or organizations” in different places in the bill. It is not clear if all of these references should include both organizations and entities throughout the bill or if this issue will be resolved once the underlying bill or the companion bill are amended. If the intent is to include both entities and organizations in this bill, then the title of the bill may need to be amended to include international trust organizations.

The bill also uses the word “confidential” in reference to how foreign governments or businesses treat their records. “Confidential” as used in Florida Statutes and case law has a specific meaning which may not be consistent with the meaning given to the term in other jurisdictions.

It is possible that all of the confidential and exempt information that is contemplated in (2)(d) will encompass most of the information exempted in (2)(a) and (b); if so (2)(a) and (b) could be unnecessary.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 663.097 of the Florida Statutes.

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

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

**CS/CS by Governmental Oversight and Accountability on February 16, 2016:**

The CS/CS does the following:

- Creates definitions for “internal corporate information or documents” and revises the definition of “working papers;”
- Includes provisions related to a moratorium or application for a moratorium.
- Makes the following information or documents held by the OFR confidential and exempt from public disclosure:

- Internal corporate information or documents;
- Regulatory documents sent to or received by the OFR;
- Working papers;
- Amends the public necessity statement.

The CS/CS deletes the following provisions that were previously in the CS:

- References to international trust company representative offices;
- The definition of and references to “reports or investigations;”
- The public records exemption for personal identifying information appearing in records relating to an application, or a new or renewal registration of a limited purpose international trust company representative office;
- The public records exemption for personal identifying information appearing in reports, investigations, and records relating to an investigation of a limited purpose international trust company representative office;
- The public records exemption for the names of existing or prospective clients of an affiliated international trust company;
- The criminal penalty for violating the public records exemption; and
- Provisions related to releasing information to law enforcement agencies or prosecutorial entities.

**CS by Banking and Insurance Committee on January 26, 2016:**

The CS references the linked bill, SB 1106.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/16/2016	.	
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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 663.097, Florida Statutes, is created to  
read:

663.097 Public records exemption.-

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

(a) "Reports or investigations" means records submitted to  
or prepared by the office as part of the office's duties





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11 performed pursuant to s. 663.045, s. 663.046, or s. 663.09.

12 (b) "Working papers" means the records of the procedure  
13 followed, the tests performed, the information obtained, and the  
14 conclusions reached in an investigation under s. 663.045, s.  
15 663.046, or s. 663.09. The term also includes books and records.

16 (2) PUBLIC RECORDS EXEMPTION.—The following information  
17 held by the office is confidential and exempt from s. 119.07(1)  
18 and s. 24(a), Art. I of the State Constitution:

19 (a) All records and information appearing in reports or  
20 investigations, records, or working papers of a limited purpose  
21 international trust company representative office, until such  
22 investigation is completed or ceases to be active. For purposes  
23 of this paragraph, an investigation is considered active while  
24 such investigation is being conducted by the office with a  
25 reasonable and good faith belief that it may lead to the  
26 initiation of administrative or criminal proceedings. An  
27 investigation does not cease to be active if the office is  
28 proceeding with reasonable dispatch and there is a good faith  
29 belief that action may be initiated by the office or other  
30 administrative or law enforcement agency. After an investigation  
31 is completed or ceases to be active, portions of the records,  
32 reports, or investigation, including working papers, are  
33 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
34 of the State Constitution to the extent that disclosure would:

- 35 1. Jeopardize the integrity of another active  
36 investigation;  
37 2. Reveal personal financial information;  
38 3. Reveal the identity of a confidential source;  
39 4. Defame or cause unwarranted damage to the good name or



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40 reputation of an individual or jeopardize the safety of an  
41 individual; or

42 5. Reveal investigative techniques or procedures.

43 (b) Any personal identifying information of the clients of  
44 a limited purpose international trust company representative  
45 office.

46 (c) Information received by the office from a person from  
47 another state or nation or the Federal Government which is  
48 otherwise confidential or exempt pursuant to the laws of that  
49 state or nation or pursuant to federal law.

50 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT  
51 INFORMATION.—Information made confidential and exempt under  
52 subsection (2) may be disclosed by the office:

53 (a) To the authorized representative or representatives of  
54 the limited purpose international trust company representative  
55 office that is the subject of a report or investigation. The  
56 authorized representative or representatives shall be identified  
57 in a resolution or by written consent of the board of directors  
58 if the limited purpose international trust company  
59 representative office is a corporation, or of the managers if  
60 the limited purpose international trust company representative  
61 office is a limited liability company.

62 (b) To a fidelity insurance company or liability insurer,  
63 upon written consent of the limited purpose international trust  
64 company representative office's board of directors if a  
65 corporation, or of its managers if a limited liability company.

66 (c) To an independent auditor.

67 (d) To a liquidator, receiver, or conservator for a limited  
68 purpose international trust company representative office if a



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69 liquidator, receiver, or conservator is appointed.

70 (e) To another governmental entity in the furtherance of  
71 that entity's official duties and responsibilities.

72 (f) Pursuant to a legislative subpoena. A legislative body  
73 or committee that receives records or information pursuant to a  
74 subpoena must maintain the confidential status of such records  
75 or information, except in a case involving the investigation of  
76 charges against a public official subject to impeachment or  
77 removal, in which case records or information may be disclosed  
78 only to the extent necessary as determined by the legislative  
79 body or committee.

80 (g) Pursuant to federal law.

81 (4) PUBLICATION OF INFORMATION.—Notwithstanding any  
82 provision to the contrary, this section does not make  
83 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
84 of the State Constitution:

85 (a) The name of the limited purpose international trust  
86 company representative office or any affiliated international  
87 trust company.

88 (b) The name and business address of the directors,  
89 managers, officers, or registered agent of the limited purpose  
90 international trust company representative office or any  
91 affiliated international trust company.

92 (c) Personal identifying information that is already in the  
93 public domain about the directors, officers, managers, or  
94 persons who own or control, directly or indirectly, more than 25  
95 percent of the voting stock or nonvoting stock that is  
96 convertible to voting stock of the limited purpose international  
97 trust company representative office.



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98           (5) PENALTY.—A person who willfully discloses information  
99 made confidential and exempt by this section commits a felony of  
100 the third degree, punishable as provided in s. 775.082, s.  
101 775.083, or s. 775.084.

102           (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
103 to the Open Government Sunset Review Act in accordance with s.  
104 119.15 and shall stand repealed on October 2, 2021, unless  
105 reviewed and saved from repeal through reenactment by the  
106 Legislature.

107           Section 2. (1) The Legislature finds that it is a public  
108 necessity that the following information in records related to a  
109 limited purpose internal trust company representative office  
110 held by the Office of Financial Regulation be confidential and  
111 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
112 Article I of the State Constitution: records and information in  
113 reports or investigations, records, or working papers, by the  
114 Office of Financial Regulation of a limited purpose  
115 international trust company representative office; personal  
116 identifying information of the clients of a limited purpose  
117 international trust company representative office; and  
118 information received by the Office of Financial Regulation from  
119 a person from another state or country or the Federal Government  
120 which is otherwise confidential or exempt pursuant to the laws  
121 of that state or country or pursuant to federal law.

122           (2) The Office of Financial Regulation's regulatory  
123 authority over registered limited purpose international trust  
124 company representative offices requires the Office of Financial  
125 Regulation to investigate information submitted to determine  
126 whether the applicant has met the requirements for registration



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127 or renewal, including information about the directors, officers,  
128 and certain employees of an international trust company  
129 representative office. Such an investigation may include  
130 information about suspected criminal acts or of pending criminal  
131 or administrative proceedings against such officers or  
132 employees. Public disclosure of suspected criminal acts or of  
133 pending and nonfinal criminal or administrative proceedings may  
134 impede related investigations if publicly known. Such  
135 information, if released before an adjudication, may defame an  
136 individual or an international trust company representative  
137 office that is the subject of the investigation or proceeding.  
138 Unsubstantiated information received by the Office of Financial  
139 Regulation for the purposes of conducting background  
140 investigations also may defame or cause unwarranted damage to  
141 the good name or reputation of an individual. It is the intent  
142 of the Legislature to grant such entities more protection from  
143 public disclosure than is currently provided under ss. 655.057  
144 and 655.059, Florida Statutes.

145 (3) Personal identifying information of the clients of  
146 limited purpose international trust company representative  
147 offices, if available for public access, could jeopardize the  
148 personal and financial safety of the clients and their family  
149 members. Clients of limited purpose international trust company  
150 representative offices have a high net worth and are frequently  
151 the targets of criminal predators seeking access to their  
152 assets. It is important that the exposure of such clients and  
153 their family members to threats of extortion, kidnapping, and  
154 other crimes not be increased. Placing a client's personal  
155 identifying information into the public domain would increase



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156 the risk that a client and his or her family would become the  
157 target of criminal activity. This is especially important  
158 because many of the clients of international trust company  
159 representative offices reside in or frequently travel to  
160 countries where kidnapping and extortion are significant risks  
161 and where public corruption impedes the rule of law.

162 (4) The Legislature further finds that it is a public  
163 necessity to exempt from public records requirements information  
164 received by the Office of Financial Regulation from a person  
165 from another state or nation or the Federal Government which is  
166 otherwise confidential or exempt pursuant to the laws of that  
167 state or nation or pursuant to federal law. The Legislature  
168 finds that maintaining the confidentiality of the information  
169 shared with the office by those persons is necessary to protect  
170 the sensitive nature of the information and to facilitate the  
171 sharing of such information for the office's effective and  
172 efficient performance of its duties.

173 Section 3. This act shall take effect on the same date that  
174 SB 1106 or similar legislation takes effect, if such legislation  
175 is adopted in the same legislative session or an extension  
176 thereof and becomes a law.

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

179 And the title is amended as follows:

180 Delete everything before the enacting clause  
181 and insert:

182 A bill to be entitled  
183 An act relating to public records; creating s.  
184 663.097, F.S.; defining terms; providing an exemption



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185 from public records requirements for certain  
186 information held by the Office of Financial Regulation  
187 relating to a limited purpose international trust  
188 company representative office; authorizing the release  
189 of certain confidential and exempt information by the  
190 office; authorizing the publication of certain  
191 information; providing a criminal penalty for willful  
192 disclosure; providing for future legislative review  
193 and repeal of the exemption; providing a statement of  
194 public necessity; providing a contingent effective  
195 date.



909112

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
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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 663.097, Florida Statutes, is created to  
read:

663.097 Public records exemption.-

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

(a) "Internal corporate information or documents" means the  
articles of organization, bylaws, or other organizational





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11 documents of the entity or organization applying for the  
12 moratorium pursuant to s. 663.041 or of the international trust  
13 entity that are not publicly disclosed or are confidential under  
14 the laws of the home country jurisdiction where the  
15 international trust entity is organized or doing business.

16 (b) "International trust entity" has the same definition as  
17 in s. 663.01(8).

18 (c) "Working papers" means the records of the procedure  
19 followed, the tests performed, the information obtained, and the  
20 conclusions reached in processing an application under s.  
21 663.041.

22 (2) PUBLIC RECORDS EXEMPTION.—The following information  
23 held by the office is confidential and exempt from s. 119.07(1)  
24 and s. 24(a), Art. I of the State Constitution:

25 (a) All internal corporate documents of an organization or  
26 entity applying for a moratorium under s. 663.041 or of an  
27 international trust entity submitted pursuant to s. 663.041;

28 (b) The names of the officers, directors, and shareholders  
29 of an international trust entity, if such names are otherwise  
30 confidential under the laws of the home country jurisdiction of  
31 the international trust entity;

32 (c) Documentation provided to or from the supervisory or  
33 regulatory authority or equivalent, or other similarly  
34 sanctioned body, organization, governmental entity, or  
35 recognized authority that has licensing, chartering, oversight,  
36 or similar responsibilities over the international trust entity;

37 (d) Information received by the office from a person from  
38 another state or nation or the Federal Government which is  
39 otherwise confidential or exempt pursuant to the laws of that



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40 state or nation or pursuant to federal law; and

41 (e) The work papers of the office in processing the  
42 application under s. 663.041.

43 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT  
44 INFORMATION.-Information made confidential and exempt under  
45 subsection (2) may be disclosed by the office:

46 (a) To the authorized representative or representatives of  
47 the organization or entity applying for a moratorium under s.  
48 663.041. For that entity's confidential and exempt information  
49 that has been submitted to the office, the authorized  
50 representative or representatives of that entity shall be  
51 identified in a resolution or by written consent of the board of  
52 directors if the organization or entity is a corporation, or of  
53 the managers if the organization or entity is a limited  
54 liability company.

55 (b) To a fidelity insurance company or liability insurer,  
56 upon written consent of the organization or entity's board of  
57 directors if a corporation, or of its managers if a limited  
58 liability company.

59 (c) To an independent auditor.

60 (d) To a liquidator, receiver, or conservator for the  
61 organization or entity if a liquidator, receiver, or conservator  
62 is appointed.

63 (e) To another governmental entity in the furtherance of  
64 that entity's official duties and responsibilities.

65 (f) Pursuant to a legislative subpoena. A legislative body  
66 or committee that receives records or information pursuant to a  
67 subpoena must maintain the confidential status of such records  
68 or information, except in a case involving the investigation of



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69 charges against a public official subject to impeachment or  
70 removal, in which case records or information may be disclosed  
71 only to the extent necessary as determined by the legislative  
72 body or committee.

73 (g) Pursuant to federal law.

74 (4) PUBLICATION OF INFORMATION.—Notwithstanding any  
75 provision to the contrary, this section does not make  
76 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
77 of the State Constitution:

78 (a) The name of the organization or entity applying for the  
79 moratorium under s. 663.041 or of any international trust entity  
80 for which it provides services.

81 (b) The name and business address of the directors,  
82 managers, officers, or registered agent of the organization or  
83 entity applying for moratorium under s. 663.041.

84 (5) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
85 to the Open Government Sunset Review Act in accordance with s.  
86 119.15 and shall stand repealed on October 2, 2021, unless  
87 reviewed and saved from repeal through reenactment by the  
88 Legislature.

89 Section 2. (1) The Legislature finds that it is a public  
90 necessity that the following information in records held by the  
91 Office of Financial Regulation be confidential and exempt from  
92 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
93 State Constitution: All internal corporate documents of an  
94 organization or entity applying for a moratorium under s.  
95 663.041 or of an international trust entity submitted pursuant  
96 to s. 663.041; the names of the officers, directors, and  
97 shareholders of an international trust entity if such names are



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98 otherwise confidential under the laws of the home country  
99 jurisdiction of the international trust entity; documentation  
100 provided to or from the supervisory or regulatory authority or  
101 equivalent, or other similarly sanctioned body, organization,  
102 governmental entity, or recognized authority that has licensing,  
103 chartering, oversight, or similar responsibilities over the  
104 international trust entity; information received by the office  
105 from a person from another state or nation or the Federal  
106 Government which is otherwise confidential or exempt pursuant to  
107 the laws of that state or nation or pursuant to federal law; and  
108 the work papers of the office in processing the application  
109 under s. 663.041.

110 (2) The Office of Financial Regulation is required to  
111 obtain the names of the officers and directors of an  
112 international trust entity and to determine whether the  
113 organization or entity has met the requirements for the  
114 moratorium, including proof of the corporate standing of the  
115 international trust entity and that it is not operating under  
116 the direct control of the government, regulatory, or supervisory  
117 authority of the jurisdiction of its incorporation. In certain  
118 cases, such proof may require submission to the office of  
119 internal corporate documents or shareholder lists that are not  
120 otherwise available to the public and that are considered  
121 confidential under the laws of the home country jurisdiction.  
122 Likewise, in certain jurisdictions, the names of the officers  
123 and directors are confidential under the laws of that  
124 jurisdiction. The office also may receive documentation provided  
125 to or from the supervisory or regulatory authority or  
126 equivalent, or other similarly sanctioned body, organization,



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127 governmental entity, or recognized authority that has licensing,  
128 chartering, oversight, or similar responsibilities over the  
129 international trust entity. To the extent that the home country  
130 laws of the jurisdiction in which the international trust entity  
131 is located or organized considers this information and these  
132 documents confidential, they should not lose their confidential  
133 status solely because the office reviews them in processing the  
134 application for the moratorium. The exemption does not apply if  
135 the home country jurisdiction of the international trust entity  
136 does not consider such information or documents confidential.

137 Section 3. This act shall take effect on the same date that  
138 SB 1106 or similar legislation takes effect, if such legislation  
139 is adopted in the same legislative session or an extension  
140 thereof and becomes a law.

141  
142 ===== T I T L E A M E N D M E N T =====

143 And the title is amended as follows:

144 Delete everything before the enacting clause  
145 and insert:

146 A bill to be entitled  
147 An act relating to public records; creating s.  
148 663.097, F.S.; defining terms; providing an exemption  
149 from public records requirements for certain  
150 information held by the Office of Financial Regulation  
151 relating to international trust entities; authorizing  
152 the release of certain confidential and exempt  
153 information by the office; authorizing the publication  
154 of certain information; providing for future  
155 legislative review and repeal of the exemption;



156  
157

providing a statement of public necessity; providing a  
contingent effective date.

By the Committee on Banking and Insurance; and Senator Flores

597-02619-16

20161094c1

1 A bill to be entitled  
 2 An act relating to public records; creating s.  
 3 663.097, F.S.; defining terms; providing an exemption  
 4 from public records requirements for certain  
 5 information held by the Office of Financial Regulation  
 6 relating to a limited purpose international trust  
 7 company representative office; authorizing the release  
 8 of certain confidential and exempt information by the  
 9 office; authorizing the publication of certain  
 10 information; providing a criminal penalty for willful  
 11 disclosure; providing for future legislative review  
 12 and repeal of the exemption; providing a statement of  
 13 public necessity; providing a contingent effective  
 14 date.  
 15  
 16 Be It Enacted by the Legislature of the State of Florida:  
 17  
 18 Section 1. Section 663.097, Florida Statutes, is created to  
 19 read:  
 20 663.097 Public records exemption.--  
 21 (1) DEFINITIONS.--As used in this section, the term:  
 22 (a) "Reports or investigations" means records submitted to  
 23 or prepared by the office as part of the office's duties  
 24 performed pursuant to s. 663.045, s. 663.046, or s. 663.09.  
 25 (b) "Working papers" means the records of the procedure  
 26 followed, the tests performed, the information obtained, and the  
 27 conclusions reached in an investigation under s. 663.045, s.  
 28 663.046, or s. 663.09. The term also includes books and records.  
 29 (2) PUBLIC RECORDS EXEMPTION.--The following information  
 30 held by the office is confidential and exempt from s. 119.07(1)  
 31 and s. 24(a), Art. I of the State Constitution:  
 32 (a) Any personal identifying information appearing in

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

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20161094c1

33 records relating to an application, or a new or renewal  
 34 registration, of a limited purpose international trust company  
 35 representative office.  
 36 (b) Any personal identifying information appearing in  
 37 records relating to an investigation of a limited purpose  
 38 international trust company representative office.  
 39 (c) Any personal identifying information appearing in  
 40 reports or investigations of a limited purpose international  
 41 trust company representative office, including working papers.  
 42 (d) Any portion of a list of names of the existing or  
 43 prospective clients of an affiliated international trust  
 44 company.  
 45 (e) Information received by the office from a person from  
 46 another state or nation or the Federal Government which is  
 47 otherwise confidential or exempt pursuant to the laws of that  
 48 state or nation or pursuant to federal law.  
 49 (3) AUTHORIZED RELEASE OF CONFIDENTIAL AND EXEMPT  
 50 INFORMATION.--Information made confidential and exempt under  
 51 subsection (2) may be disclosed by the office:  
 52 (a) To the authorized representative or representatives of  
 53 the limited purpose international trust company representative  
 54 office that is the subject of a report or investigation. The  
 55 authorized representative or representatives shall be identified  
 56 in a resolution or by written consent of the board of directors  
 57 if the limited purpose international trust company  
 58 representative office is a corporation, or of the managers if  
 59 the limited purpose international trust company representative  
 60 office is a limited liability company.  
 61 (b) To a fidelity insurance company or liability insurer,

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20161094c1

62 upon written consent of the limited purpose international trust  
 63 company representative office's board of directors if a  
 64 corporation, or its managers if a limited liability company.

65 (c) To an independent auditor, upon written consent of the  
 66 limited purpose international trust company representative  
 67 office's board of directors if a corporation, or its managers if  
 68 a limited liability company.

69 (d) To a liquidator, receiver, or conservator for a limited  
 70 purpose international trust company representative office if a  
 71 liquidator, receiver, or conservator is appointed. However, any  
 72 portion of the information which discloses the identity of a  
 73 current or prospective client of an affiliated international  
 74 trust company must be redacted by the office before releasing  
 75 such portion to the liquidator, receiver, or conservator.

76 (e) To any other state, federal, or foreign agency  
 77 responsible for the regulation or supervision of limited purpose  
 78 international trust company representative offices or an  
 79 affiliated international trust company.

80 (f) To a law enforcement agency in the furtherance of the  
 81 agency's official duties and responsibilities.

82 (g) To the appropriate law enforcement or prosecutorial  
 83 agency for the purpose of reporting any suspected criminal  
 84 activity.

85 (h) Pursuant to a legislative subpoena. A legislative body  
 86 or committee that receives records or information pursuant to  
 87 such a subpoena must maintain the confidential status of such  
 88 records or information, except in a case involving the  
 89 investigation of charges against a public official subject to  
 90 impeachment or removal, in which case records or information may

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91 be disclosed only to the extent necessary as determined by such  
 92 legislative body or committee.

93 (4) PUBLICATION OF INFORMATION.—This section does not  
 94 prevent or restrict the publication of:

95 (a) A report required by federal law.

96 (b) The name of the limited purpose international trust  
 97 company representative office or any affiliated international  
 98 trust company and the name and address of the directors,  
 99 managers, officers, or registered agent of the limited purpose  
 100 international trust company representative office or any  
 101 affiliated international trust company.

102 (5) PENALTY.—A person who willfully discloses information  
 103 made confidential and exempt by this section commits a felony of  
 104 the third degree, punishable as provided in s. 775.082, s.  
 105 775.083, or s. 775.084.

106 (6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject  
 107 to the Open Government Sunset Review Act in accordance with s.  
 108 119.15 and shall stand repealed on October 2, 2021, unless  
 109 reviewed and saved from repeal through reenactment by the  
 110 Legislature.

111 Section 2. (1) The Legislature finds that it is a public  
 112 necessity to exempt from public records requirements any  
 113 personal identifying information appearing in records relating  
 114 to an application, or a new or renewal registration, of a  
 115 limited purpose international trust company representative  
 116 office; any personal identifying information appearing in  
 117 records relating to an investigation of a limited purpose  
 118 international trust company representative office; any personal  
 119 identifying information appearing in reports or investigations

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120 by the Office of Financial Regulation of a limited purpose  
 121 international trust company representative office, including  
 122 working papers; and any portion of a list of names of the  
 123 existing or prospective clients of an affiliated international  
 124 trust company.

125 (2) The Legislature finds that if financial information and  
 126 lists of names of clients or prospective clients of affiliated  
 127 international trust companies are available for public access,  
 128 the personal and financial safety of the clients, the  
 129 prospective clients, and their family members who are the  
 130 subject of the information will be jeopardized. Families with  
 131 high net worth are frequently the targets of criminal predators  
 132 seeking access to their assets. It is important that the  
 133 exposure of such clients or prospective clients and their family  
 134 members to threats of extortion, kidnapping, and other crimes  
 135 not be increased. Placing family names and their related private  
 136 business records and methodologies into the public domain would  
 137 increase the risk that a family would become the target of  
 138 criminal activity. The Legislature further finds this is  
 139 especially important because many of the clients and prospective  
 140 clients of affiliated international trust companies reside in or  
 141 frequently travel to countries in which kidnapping and extortion  
 142 are significant risks and public corruption impedes the rule of  
 143 law.

144 (3) The Legislature further finds that it is a public  
 145 necessity to exempt from public records requirements information  
 146 received by the office from a person from another state or  
 147 nation or the Federal Government which is otherwise confidential  
 148 or exempt pursuant to the laws of that state or nation or

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149 pursuant to federal law. The Legislature finds that maintaining  
 150 the confidentiality of the information shared with the office by  
 151 those persons is necessary to protect the sensitive nature of  
 152 the information and to facilitate the sharing of such  
 153 information for the office's effective and efficient performance  
 154 of its duties.

155 Section 3. This act shall take effect on the same date that  
 156 SB 1106 or similar legislation takes effect, if such legislation  
 157 is adopted in the same legislative session or an extension  
 158 thereof and becomes a law.

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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)

2/16/2016

Meeting Date

1094

Bill Number (if applicable)

909112 DE

Amendment Barcode (if applicable)

Topic INTERNATIONAL TRUST CO REP. OFFICER

Name SLATER BAHLS S

Job Title

Address 215 S. MONROE ST

Street

Phone 222 8900

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing FLORIDA INTERNATIONAL ASSOC. OF ADMINISTRATORS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/16/2016

*Meeting Date*

SB 1094

*Bill Number (if applicable)*

909112

*Amendment Barcode (if applicable)*

Topic Senate Bill 1094 Amendment

Name Ms. Jamie Champion-Mongiovi

Job Title Director of Communications & Govt. Affairs

Address Florida Office of Financial Regulation

Phone 850-410-9601

*Street*

101 E Gaines Street

Florida

32399

Email jamie.mongiovi@flofr.com

*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.)

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

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BILL: SB 724

INTRODUCER: Senator Joyner

SUBJECT: Public Records

DATE: January 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	

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**I. Summary:**

SB 724 makes the public records custodian, including the elected or appointed officer heading the agency, personally liable for the reasonable costs of enforcement, including attorney fees, if a court finds the agency or custodian:

- Unlawfully refused to permit a public record to be inspected or copied; and
- Knowingly asserted a claim or defense that was not supported by facts.

The bill becomes law on July 1, 2016.

**II. Present Situation:**

**Public Records**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup>

### **Custodian of Public Records**

Pursuant to s. 119.011(5), F.S., a custodian of public records is “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.”

A custodian of public records is required to perform statutorily required duties such as maintaining records in fireproof vaults, repairing records and comply with retention schedules set by the Department of State.<sup>8</sup> In addition, s. 119.07, F.S., provides that public records custodian has additional duties which include:

- Acknowledging a public records request and responding to those requests in good faith;<sup>9</sup>
- Producing records after redacting exempt information or provide the statutory citation for an exemption if the entire document is exempt;<sup>10</sup>
- Maintaining records which are the subject of public records litigation;<sup>11</sup>
- If public records are provided by remote electronic means, a records custodian must ensure that those records are secure;<sup>12</sup>
- Provide supervision if someone wishes to photograph records;<sup>13</sup> and
- Provide certified copies of public records upon payment of a fee.<sup>14</sup>

Public records custodians are also responsible for supervising the production of records by all agency personnel. Section 119.07(1)(a), F.S., provides that that “[e]very person who has custody of a public record shall permit the record to be inspected and copied ... at any reasonable time, under reasonable conditions, and under reasonable supervision by the custodian of the public records.”

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<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

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

<sup>8</sup> Section 119.021, F.S.

<sup>9</sup> Section 119.07(1)(c), F.S.

<sup>10</sup> Section 119.07(1)(d)-(f), F.S.

<sup>11</sup> Section 119.07(1)(g)-(i), F.S.

<sup>12</sup> Section 119.07(2), F.S.

<sup>13</sup> Section 119.07(3), F.S.

<sup>14</sup> Section 119.07(4), F.S.

An agency may not place any conditions upon responding to a public records request other than what is specifically laid out in the law. For example, an agency may not require a person seeking a public record reveal his or her background.<sup>15</sup> Nor may an agency require an individual to put his or her request in writing as a condition of production.<sup>16</sup> In addition, a request must be honored whether it is made by phone, in writing, or in person.<sup>17</sup>

### **Enforcing Public Records Laws and Attorney Fees**

Section 119.11, F.S., provides that a court may award a plaintiff attorney fees if a plaintiff files a civil suit to enforce the provisions of ch. 119, F.S., and the court determines that the agency refused to permit inspection or copying of a public record.

Whenever an action is filed to enforce the provisions of ch. 119, F.S., the court must set an immediate hearing, giving the case priority over other pending cases.<sup>18</sup> If the court finds that the agency unlawfully refused access to a public record, the court will order the public agency to pay the plaintiff's costs and attorney fees.<sup>19</sup> A delay in turning over public records is considered an unlawful refusal, and a court will award attorney fees even if the delay was not willful or was due to incompetence.<sup>20</sup>

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.<sup>21</sup> Once an enforcement action has been filed, a court will require a public agency to pay the plaintiff's attorney fees even after the agency has produced the records.<sup>22</sup>

The public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial.<sup>23</sup> In addition, granting attorney fees also makes it more likely that public agencies will comply with public records laws and deters improper denials of requests.<sup>24</sup>

### **Personal Liability for Violating the Public Records Act**

Violation of the Public Records Act may result in civil and criminal liability pursuant to s. 119.10, F.S. A public officer who violates any provision of the Public Records Act commits a

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<sup>15</sup> *Bevan v. Wanichka*, 505 So. 2d 1116, 1118 (Fla. 2d DCA Fla. 1987).

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

<sup>17</sup> Op. Att'y Gen. Fla. 80-57 (1980).

<sup>18</sup> Section 119.11(1), F.S.

<sup>19</sup> Section 119.12, F.S.

<sup>20</sup> *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014). *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

<sup>21</sup> *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002). *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654 (Fla. 1st DCA 2014).

<sup>22</sup> *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002). *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5th DCA 1996). *Althouse v. Palm Beach County Sheriff's Office*, 92 So. 3d 899, 902 (Fla. 4th DCA 2012). Attorney fee provisions for violation of open meetings laws can be found in s. 286.011(4), F.S.

<sup>23</sup> *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

<sup>24</sup> *Id.*

civil infraction and may be fined up to \$500.<sup>25</sup> A public officer who violates a provision of s. 119.071(1), F.S., which addresses the rights of the public to inspect and copy public records, is may be suspended, removed from office or impeached. In addition a public officer who violates s. 119.07(1), F.S., commits a first degree misdemeanor.

The punishment for a first degree misdemeanor includes imprisonment for up to one year<sup>26</sup> and a \$1000 fine.<sup>27</sup> A court may sentence an individual to pay a fine in addition to or in lieu of imprisonment.<sup>28</sup>

Section 119.10, F.S., also provides that any person, not just public officers, can be held liable for violating the Public Records Act. Section 119.10(2), F.S. states that any person who willfully and knowingly violates any provision of the Public Records Act commits a first degree misdemeanor. In addition, any person who willfully and knowingly violates s. 119.105, F.S., commits a third degree felony. Section 119.105, F.S., provides confidential or exempt information contained in police reports may not be used for commercial solicitation of victims or their relatives of crimes or accidents.

A third degree felony is punishable by imprisonment for up to five years<sup>29</sup> or a fine of up to \$5000.<sup>30</sup> A court may sentence an individual to pay the fine in addition to or in lieu of imprisonment.<sup>31</sup>

### **Limitations of Liability of Governmental Employees**

Governmental employees cannot be held personally liable for tort action, or named as defendants “in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of her or his employment or function” unless the employee acted in bad faith, malicious purpose or with wanton and willful disregard of human rights, safety or property, pursuant to s. 768.28(9)(a), F.S. Instead, a plaintiff must sue the employing governmental entity.<sup>32</sup>

### **III. Effect of Proposed Changes:**

The bill allows a court to hold the public records custodian, including the elected or appointed officer heading the agency, personally liable for the reasonable costs of enforcement, including reasonable attorney fees. Attorney fees may be awarded if the following conditions are met:

- The agency or the custodian unlawfully refused to permit a public record to be inspected or copied; and
- The agency or the custodian knowingly asserted a claim or defense which the agency or the custodian knew was not supported by material facts.

<sup>25</sup> Section 119.10(1)(a), F.S.

<sup>26</sup> Section 775.082(4)(a), F.S.

<sup>27</sup> Section 775.083(1)(d), F.S.

<sup>28</sup> Section 775.083(1), F.S.

<sup>29</sup> Section 775.082(3)(e), F.S.

<sup>30</sup> Section 775.083(1)(c), F.S.

<sup>31</sup> Section 775.083(1), F.S.

<sup>32</sup> Section 768.28(9)(a), F.S.

The bill will take 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.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unknown.

C. Government Sector Impact:

Unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Usually, an employing agency will defend the agency (and therefore the employee or officer) in a public records case and the associated attorney fee lawsuit. This bill may create a situation where the interest of the agency and the interests of the public records custodian may conflict, and independent attorneys may be required. If independent attorneys are required, it is not clear who will pay those costs.

**VIII. Statutes Affected:**

This bill substantially amends section 119.12 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.

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

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By Senator Joyner

19-00715-16

2016724\_\_

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; authorizing a court to hold a custodian of a public record personally liable for the reasonable costs of enforcement, including attorney fees, in a civil action to enforce ch. 119, F.S., if certain conditions exist; providing an effective date.

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

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 ~~Attorney~~ Attorney's fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter and ~~if~~ the court determines that ~~the such~~ agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against such agency ~~the agency responsible,~~ the reasonable costs of enforcement, including reasonable attorney ~~attorneys'~~ fees.

(2) The court, on motion by the party who filed the civil action or in its own discretion, may hold the custodian of the public record that is the subject matter of such civil action personally liable for the reasonable costs of enforcement, including reasonable attorney fees, if the court finds that:

(a) The agency or the custodian of the public record unlawfully refused to permit a public record to be inspected or copied; and

(b) The agency or the custodian of the public record has asserted any claim or defense during the pendency of the civil

Page 1 of 2

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

19-00715-16

2016724\_\_

action which the agency or the custodian knew was not supported by the material facts necessary to establish such a claim or defense.

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  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

SB724  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Kraig Conn

Job Title \_\_\_\_\_

Address 301 S. Branch  
Street

Phone 222 9684

Full FL 32301  
City State Zip

Email Kconn@flcities.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 712

INTRODUCER: Senator Joyner

SUBJECT: Compensation of Members of the Legislature

DATE: February 15, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	<b>Unfavorable</b>
2.			EE	
3.			RC	

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**I. Summary:**

This bill resets, beginning July 1, 2016, the annual salary of the presiding officers and other members of the Florida Legislature to \$57,000 and \$50,000 annually, respectively. Beginning July 1, 2017, these amounts will be adjusted based on the average percentage increase in the salaries of state career service employees for the preceding fiscal year.

The fiscal impact of the adjustments is roughly \$4.9 million annually from the General Revenue Fund.

**II. Present Situation:**

**Salaries for the Florida Legislature**

The legislative power of the state is vested in the Legislature,<sup>1</sup> consisting of between 30-40 senators and 80-120 members of the House of Representatives.<sup>2</sup>

By law, the annual salaries of the President of the Senate (President) and the Speaker of the House of Representatives (Speaker) are set at \$25,000 each. The annual salaries of all other legislators are set at \$18,000 each.<sup>3</sup> Beginning July 1, 1986, the legislator salaries are adjusted each July 1 based on the average percentage increase in the salaries of state career service employees for the fiscal year just concluded.<sup>4</sup>

Although the statutory structure of legislators' salaries has automatic annual adjustments, the Legislature has periodically avoided the automatic adjustments. Since 1985, the legislators'

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<sup>1</sup> FLA. CONST. art. III, s. 1.

<sup>2</sup> FLA. CONST. art. III, s. 16.

<sup>3</sup> Section 11.13(1)(a), F.S.

<sup>4</sup> Section 11.13(1)(b), F.S.

salaries have been reduced twice<sup>5</sup>, held constant in nine other years<sup>6</sup>, and adjusted upward less than the statutory formula would have authorized.<sup>7</sup> Table 1 below shows the history of the annual salaries paid to the members of the Florida Legislature.<sup>8</sup>

**Table 1. Historical Base Salaries of Members**

Year	Members	Presiding Officers
Pre-1969	\$1,200	\$1,200
1969-1984	\$12,000	\$12,000
1985	\$18,000	\$25,000
1986	\$18,900	\$26,250
1987	\$19,848	\$27,564
1988	\$20,748	\$28,812
1989	\$21,684	\$30,120
1990-1993	\$22,560	\$31,322
1994	\$23,244	\$32,280
1995	\$24,180	\$33,576
1996	\$24,912	\$34,584
1997	\$25,668	\$35,628
1998	\$26,388	\$36,624
1999	\$27,132	\$37,644
2000	\$27,900	\$38,700
2001	\$28,608	\$39,672
2002	\$29,328	\$40,668
2003-2005	\$29,916	\$41,484
2006	\$30,996	\$42,984
2007	\$31,932	\$44,280
2008	\$30,336	\$42,072
2009-2016	\$29,697	\$41,181

### ***Comparison with Other States***

In 1999, the Florida House of Representatives commissioned a study (MGT study) to compare the compensation for the members of the Florida Legislature to that of other states.<sup>9</sup> That study compared Florida's annual salaries to that of: (a) its population peers; (b) state with similar

<sup>5</sup> Section 52, Chapter 2008-153, Laws of Florida, reduced the salaries by 5 percent when compared to the 2007 salary. Section 48, Chapter 2009-82, Laws of Florida, reduced the salaries an additional 2 percent when compared to the 2007 salary.

<sup>6</sup> Section 41, Chapter 91-157, Laws of Florida, Section 45, Chapter 92-326, L.O.F.; Section 34, Chapter 2004-269, L.O.F.; Section 58, Chapter 2010-153, L.O.F.; Section 62, Chapter 2011-47, L.O.F.; Section 41, Chapter 2012-119, L.O.F.; Section 40, Chapter 2013-41, L.O.F.; Section 54, Chapter 2014-53, L.O.F.; and Section 76, Chapter 2015-222, L.O.F.

<sup>7</sup> Section 44, Chapter 2003-399, Laws of Florida, authorized an adjustment of 2% beginning July 1, 2003.

<sup>8</sup> Office of Legislative Service, The Florida Legislature, *Legislative Fact Sheet 2015-2016* (on file with the Committee on Governmental Oversight and Accountability).

<sup>9</sup> MGT of America, Inc., *Review of the Compensatory Package for the Florida Legislature*, dated May 15, 2000 (on file with the Committee on Governmental Oversight and Accountability).

“professionalism” of the members; and (c) states with similar authority vis-à-vis the executive branch.

### *Population Peers*

Table 2 compares Florida salaries to that of its population peers. The MGT study noted that the southern states (noted in italics in the table) were the only states that paid less than Florida. The two most populous states (California and New York) paid the most. Texas, the third most populous state, paid the least.<sup>10</sup> Those comparisons continue based on the 2015 data.<sup>11</sup> The average annual legislator salary of Florida’s population peers grew about 21.5 percent from 1999 to 2015. Florida’s annual legislator salary grew only 12.5 percent during that same period.

**Table 2. Population Peers**

State	1999 Salary <sup>12</sup>	2015 Salary <sup>13</sup>
California	\$99,000	\$97,197
<i>Georgia</i>	\$11,348	\$17,342
Illinois	\$50,803	\$67,836
Massachusetts	\$46,410	\$60,033
Michigan	\$55,054	\$71,685
New Jersey	\$35,000	\$49,000
New York	\$79,500	\$79,500
<i>North Carolina</i>	\$13,951	\$13,951
Ohio	\$42,427	\$60,584
Pennsylvania	\$59,245	\$85,339
<i>Tennessee</i>	\$16,500	\$20,884
<i>Texas</i>	\$7,200	\$7,200
<i>Virginia</i>	\$17,640	S \$18,000 H \$17,640
Wisconsin	\$41,809	\$50,950
<b>Average</b>	<b>\$41,135</b>	<b>\$49,964</b>
<b>Florida</b>	<b>\$26,388</b>	<b>\$29,697</b>

### *Peers Based on Legislative Professionalism*

The third way of grouping the states for comparison is based on the level of legislative professionalism – the degree to which legislative work is the full time vocation of the legislative members. In the MGT study, Florida was grouped in the “hybrid legislature” category, exhibiting some characteristics of both the “professional legislature” and the “citizen legislature.” In 1999, 8 of the other 24 states paid more than Florida. Today, ten of the 24 states pay more than Florida. The average salary for other hybrid states has grown 38 percent from

<sup>10</sup> Id., p. 3-3.

<sup>11</sup> National Conference of State Legislators (NCSL), *2015 State Legislator Compensation and Living Expense Allowances During Session*, <http://www.ncsl.org/research/about-state-legislatures/2015-state-legislator-compensation.aspx> (last visited February 10, 2016).

<sup>12</sup> MGT, *supra* at p. 3-3.

<sup>13</sup> NCSL, *supra*.

1999 to 2015 while Florida’s legislator salary has grown roughly 12.5 percent during that same time period.

**Table 4. Hybrid Legislatures**

State	1999 Salary <sup>14</sup>	2015 Salary <sup>15</sup>
Alabama	\$1,030	\$42,849
Alaska	\$24,012	\$50,400
Arizona	\$24,000	\$24,000
Colorado	\$30,000	\$30,000
Connecticut	\$21,788	\$28,000
Delaware	\$29,574	\$44,541
Hawaii	\$32,000	\$59,004
Iowa	\$20,758	\$25,000
Kansas	\$9,720	\$7,979 <sup>16</sup>
Kentucky	\$7,852	\$11,293 <sup>17</sup>
Louisiana	\$16,800	\$22,800
Maryland	\$30,591	\$45,207
Minnesota	\$31,140	\$31,141
Mississippi	\$10,000	\$10,000
Missouri	\$29,080	\$35,915
Nebraska	\$12,000	\$12,000
North Carolina	\$13,951	\$13,951
Oklahoma	\$38,400	\$38,400
Oregon	\$14,496	\$23,052
South Carolina	\$10,400	\$6,000
Tennessee	\$16,500	\$20,884
Texas	\$7,200	\$7,200
Virginia	\$17,640	S \$18,000 H \$17,640
Washington	\$28,300	\$42,106
<b>Average</b>	<b>\$19,895</b>	<b>\$27,466</b>
<b>Florida</b>	<b>\$26,388</b>	<b>\$29,697</b>

*Peers Based on Functional Similarity*

The MGT study also compared Florida to other states based on functional similarity – the amount of power vis-à-vis the executive branch and the amount of influence in the appointment and budget processes.<sup>18</sup> Table 3 shows that in 1999 only two states in this group paid higher salaries than Florida. Today, five of these states exceed the Florida salary level. The average

<sup>14</sup> MGT, *supra* at p. 3-5.

<sup>15</sup> NCSL, *supra*.

<sup>16</sup> This amount is based on the assumption that the \$88.66 per day stipend will be paid for 90 calendar days.

<sup>17</sup> This amount is based on the assumption that the \$188.22 per day stipend will be paid for 60 legislative days.

<sup>18</sup> MGT, *supra* at p. 3-3.

salary for similar “functional” states has grown about 70 percent from 1999 to 2015 while Florida’s legislator salary has grown roughly 12.5 percent during that same time period.

**Table 3. Similar States based on Functionality**

State	1999 Salary <sup>19</sup>	2015 Salary <sup>20</sup>
Alabama	\$1,030	\$42,849
Alaska	\$24,012	\$50,400
Arizona	\$24,000	\$24,000
Arkansas	\$12,500	\$39,000
Louisiana	\$16,800	\$22,800
Mississippi	\$10,000	\$10,000
Nevada	\$7,800	\$17,555 <sup>21</sup>
New Mexico	\$0	\$0
Oklahoma	\$38,400	\$38,400
Rhode Island	\$10,768	\$15,171
South Carolina	\$10,400	\$10,400
Washington	\$28,300	\$42,106
<b>Average</b>	<b>\$15,334</b>	<b>\$26,057</b>
<b>Florida</b>	<b>\$26,388</b>	<b>\$29,697</b>

### III. Effect of Proposed Changes:

This bill resets, beginning July 1, 2016, the annual salary of the presiding officers and other members of the Florida Legislature to \$57,000 and \$50,000 annually, respectively. Beginning July 1, 2017, these amounts will be adjusted based on the average percentage increase in the salaries of state career service employees for the preceding fiscal year.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

<sup>19</sup> Id. at p 3-4.

<sup>20</sup> NCSL, *supra*.

<sup>21</sup> This amount is based on the assumption that the \$146.29 per day stipend will be paid for 120 calendar days.



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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact of the salary adjustments, taking into account the salary, associated employer-paid federal tax liabilities, and the associated employer-paid Florida Retirement System contributions, is estimated to be roughly \$4.9 million annually from the General Revenue Fund.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The \$50,000 annual salary proposed by this bill is comparable to the \$18,000 annual salary paid in 1985 and grown an average 3.35% annually through 2015.

**VIII. Statutes Affected:**

This bill substantially amends section 11.13 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 Joyner

19-00349B-16

2016712\_\_

1 A bill to be entitled  
 2 An act relating to compensation of members of the  
 3 Legislature; amending s. 11.13, F.S.; prescribing the  
 4 annual salaries for members of the Legislature;  
 5 providing for future adjustment of salaries; providing  
 6 an effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Subsection (1) of section 11.13, Florida  
 11 Statutes, is amended to read:  
 12 11.13 Compensation of members.—  
 13 (1) (a) The annual salaries of members of the Senate and  
 14 House of Representatives, payable in 12 equal monthly  
 15 installments, shall be:  
 16 1. The President of the Senate and Speaker of the House of  
 17 Representatives, \$57,000 ~~\$25,000~~ each.  
 18 2. All other members of the Senate and House of  
 19 Representatives, \$50,000 ~~\$18,000~~ each.  
 20 (b) Effective July 1, 2017 ~~1986~~, and each July 1  
 21 thereafter, the annual salaries of members of the Senate and  
 22 House of Representatives shall be adjusted by the average  
 23 percentage increase in the salaries of state career service  
 24 employees for the preceding fiscal year ~~just concluded~~. The  
 25 Appropriations Committee of each house shall certify to the  
 26 Office of Legislative Services the average percentage increase  
 27 in the salaries of state career service employees before July 1  
 28 of each year. The Office of Legislative Services shall, as of  
 29 July 1 of each year, determine the adjusted annual salaries in

Page 1 of 2

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

19-00349B-16

2016712\_\_

30 accordance with this paragraph as provided herein.  
 31 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  
**APPEARANCE RECORD**

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

02/16/2016  
Meeting Date

SB 712  
Bill Number (if applicable)

Topic Compensation of the Legislature

Amendment Barcode (if applicable)

Name Antonio Davis

Job Title Homeless Veteran

Address 2313 NW 6th Court  
Street

Phone \_\_\_\_\_

Ft Lauderdale   FL   33311   
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/CS/SB 776

INTRODUCER: Governmental Oversight and Accountability Committee, Communications, Energy, and Public Utilities Committee and Senator Bradley

SUBJECT: Public Records/Utility Information or Industrial Control Technology Systems Security

DATE: February 17, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sorchych-Hoffman/ Wiehle	Caldwell	CU	<b>Fav/CS</b>
2.	Kim	McVaney	GO	<b>Fav/CS</b>
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 776 exempts from public access and inspection requirements certain information relating to the information technology security of a utility owned or operated by a unit of local government, which, if disclosed, could result in the identification of vulnerabilities that could result in a security breach.

The bill contains a statement of public necessity as required by the Florida Constitution. The public necessity statement provides that information technology security should exempt from public disclosure in order to prevent security breaches and threats to utilities.

This is a new public records exemption, so a two-thirds vote by each chamber will be necessary for passage.

The bill will become effective upon becoming law.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to access any record made or received in relation to the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>1</sup> The records of all three branches of state government are specifically included.<sup>2</sup>

The Florida Statutes also provide conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees the right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption<sup>7</sup> and must be no broader than necessary to accomplish the stated purpose of the law.<sup>8</sup> A bill enacting an exemption may not contain other substantive provisions<sup>9</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>10</sup>

The Open Government Sunset Review Act (“OGSR Act”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>11</sup> It requires the automatic repeal of an exemption on October 2nd of the fifth year after creation or

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

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

<sup>5</sup> Section 119.07(1)(a), F.S.

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

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> *Id.*

<sup>9</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> Section 119.15, F.S.

substantial amendment, unless the Legislature reenacts the exemption.<sup>12</sup> The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>13</sup>

### **Present Security-Related Public Records Exemptions**

Section 119.071(3), F.S., provides the existing public records exemptions for security-related information. The following are ‘confidential and exempt’ or ‘exempt’ from public disclosure:

- A security system plan<sup>14</sup> or portion thereof for property owned by or leased to the state or any of its political subdivisions, as well as the security system plans of privately owned or leased property;
- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; and
- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development.

Security systems are also exempt from public disclosure under s. 281.301, F.S. This exemption provides that information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property which is in the possession of any agency is confidential and exempt from public disclosure. This security system exemption includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information. Section 281.301, F.S., also provides an exemption for public meetings which include discussions about security systems.

Security information that is a trade secret are exempt from public disclosure requirements under s. 815.045, F.S.<sup>15</sup> There is also a public records exemption for data, programs or supporting

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<sup>12</sup> Section 119.15(3), F.S.

<sup>13</sup> Section 119.15(6)(b), F.S.

<sup>14</sup> The section defines the term “security system plan” to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

<sup>15</sup> Section 815.045, F.S. states:

Trade secret information.—The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative

documentation that is trade secret which resides on a computer, computer system or network, as well as any electronic device. This exemption provides that such trade secrets are confidential and exempt, pursuant to s. 815.04(3)(a), F.S.

### **Applicability of Public Records Requirements to Utilities**

The public records laws apply to any record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf. For the public records law to apply directly to a utility, the utility would have to be a governmental entity, a municipality. However, the public records laws could apply indirectly to the records of a nongovernmental if that utility were required to file the records with a governmental agency, so that the records would become records received in connection with the agency's official business. For example, the Public Service Commission (PSC) regulates some utilities that are not governmental entities and are not directly subject to the public records laws, but that have to make numerous filings with the PSC, which then become subject to public records laws.

In order to protect confidential information in these records, the PSC statutes include a public records exemption. Section 366.093, F.S., provides that proprietary confidential business information held by the PSC is confidential and therefore exempt from public disclosure. Section 366.093(3), F.S., defines the term "proprietary confidential business information," in part, to mean:

information, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Proprietary confidential business information includes "security measures, systems, or procedures"<sup>16</sup> and could be interpreted to include the type of information covered by the bill.

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that a public records exemption be created. The Legislature in making disclosure of trade secrets a crime has clearly established the importance attached to trade secret protection. Disclosing trade secrets in an agency's possession would negatively impact the business interests of those providing an agency such trade secrets by damaging them in the marketplace, and those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.

<sup>16</sup> Section 366.093(3)(c), F.S.

### **III. Effect of Proposed Changes:**

The bill creates a definition of the term “utility” for purposes of the public records statutes, defining the term to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

The bill exempts from public records law information which is held by a utility owned or operated by a unit of local government and is:

- Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government which are designed to protect the utility’s networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information, whether in physical or virtual form, related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The exemption applies to these categories of information whether held before, on, or after the effective date of the exemption.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also includes a public necessity statement making legislative findings. The public necessity statement provides that, as utilities becomes more connected and integrated through information and communications technology, the exposure to damage from attacks through such technology increases. Disclosure of security measures could result in the identification of vulnerabilities that allow a security breach that damages utility systems and disrupts the safe and reliable operation of such systems, adversely impacting the public health and safety and the economic well-being of the state, as well as impact national security. The public necessity statement also provides that the public and private harm in disclosing the information technology security information outweighs any public benefit derived from disclosure of such information.

The bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

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



This bill makes certain information submitted to cities and counties confidential and exempt from public disclosure. As a result, cities and counties holding such information may incur costs associated with redacting such information before providing related documents to the public. However, the costs incurred by the cities and counties are anticipated to be insignificant.

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

The bill contains a statement of public necessity justifying the need for the public records exemption as required by Article I, s. 24(c), of the Florida Constitution. The exemption appears to be no broader than necessary to accomplish the purpose outlined in the public necessity statement.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Indeterminable.

**C. Government Sector Impact:**

Government entities will have to train their staff to redact relevant information relating to the information technology security of utility agencies from public disclosure if there is a public records request.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Proponents of the bill indicated that the types of information sought to be protected include:

- Information technology security reports, diagrams, PowerPoints, flowcharts, and correspondence that detail the security strategy, protective measures, and implementation plans and results, whether created by the utility or by a third party tasked with reviewing and stress-testing systems and procedures.
- Information technology software lists that detail the software used to defend security networks, provide card access to restricted areas, and provide remote access to critical systems.
- Critical Infrastructure Protection (CIP) Reports sent to the Florida Regional Coordinating Council (FRCC).

- CIP Audits, responses, recommendations, and action plans sent to FRCC.
- Correspondence related to the CIP plans with FRCC.
- Physical and virtual security plans, reports, diagrams, PowerPoints, flowcharts, and correspondence relating to defending the information technology infrastructure and other infrastructure (i.e., power plants, water plants, substations, power dispatching centers, grid operations centers, network operations centers, and data centers).<sup>17</sup>

### VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.011 and 119.0713.

### IX. Additional Information:

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

**CS/CS by Governmental Oversight and Accountability on February 16, 2016:**

The committee substitute does the following:

- Changes the retroactivity clause to include information “held by” utilities, which is more inclusive than “obtained by” a utility. This change will make the retroactivity clause applicable to information that a utility has in its possession or generates prior to enactment of the bill.
- Restructures the public necessity statement.

**CS by Communications, Energy, and Public Utilities on February 6, 2016:**

The committee substitute:

- Deletes the exemption for security firm identity information;
- Deletes the undefined term “utility agency” and provides a definition of the term “utility”; and
- Makes edits throughout the bill for purposes of clarity.

- B. **Amendments:**

None.

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

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<sup>17</sup> Security plans for physical infrastructure will be exempt from public disclosure pursuant to ss. 281.301 and 119.071(3), F.S.



639920

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 36 - 95  
and insert:

2. Information related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and



639920

11 reliable operation of the systems and the utility.

12 (b) This exemption applies to such information held by a  
13 utility owned or operated by a unit of local government before,  
14 on, or after the effective date of this exemption.

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

19 Section 3. (1) The Legislature finds that it is a public  
20 necessity that the following information held by a utility owned  
21 or operated by a unit of local government be exempt from s.  
22 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
23 State Constitution:

24 (a) Information related to the security of the technology,  
25 processes, or practices of a utility owned or operated by a unit  
26 of local government that are designed to protect the utility's  
27 networks, computers, programs, and data from attack, damage, or  
28 unauthorized access, which information, if disclosed, would  
29 facilitate the alteration, disclosure, or destruction of such  
30 data or information technology resources.

31 (b) Information related to the security of existing or  
32 proposed information technology systems or industrial control  
33 technology systems of a utility owned or operated by a unit of  
34 local government, which, if disclosed, would facilitate  
35 unauthorized access to, and alteration or destruction of, such  
36 systems in a manner that would adversely impact the safe and  
37 reliable operation of the systems and the utility.

38 (2) The Legislature finds that, as utility system  
39 infrastructure becomes more connected and integrated through



639920

40 information and communications technology, the exposure to  
41 damage from attacks through such technology continues to grow.  
42 These attacks may result in the disruption of utility services  
43 and damage to utility systems. Maintaining safe and reliable  
44 utility systems is vital to protecting the public health and  
45 safety and ensuring the economic well-being of the state.  
46 Accordingly, many utilities have adopted technologies,  
47 processes, and practices designed to secure data, information  
48 technology systems, and industrial control technology systems.  
49 Disclosure of sensitive information related to these security  
50 measures could result in the identification of vulnerabilities  
51 that allow a security breach that damages utility systems and  
52 disrupts the safe and reliable operation of such systems,  
53 adversely impacting the public health and safety and the  
54 economic well-being of the state. Because of the interconnected  
55 nature of utility systems, a security breach may also impact  
56 national security concerns. As a result, the Legislature finds  
57 that the public and private harm in disclosing the information  
58 made exempt by this act outweighs any public benefit derived  
59 from disclosure of such information. The protection of  
60 information made exempt by this act will ensure that utilities  
61 have greater safeguards to protect against security threats and  
62 will bolster efforts to develop more resilient information  
63 technology systems and industrial control technology systems.  
64 For these reasons, the Legislature finds that is a public  
65 necessity to make such information exempt from public records  
66 requirements, and to provide for retroactive application of the  
67 public records exemption.

By the Committee on Communications, Energy, and Public Utilities; and Senator Bradley

579-02952-16

2016776c1

A bill to be entitled

An act relating to public records; amending s. 119.011, F.S.; defining the term "utility"; amending s. 119.0713, F.S.; providing an exemption from public records requirements for information related to the security of information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government; providing for retroactive application; 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 (15) is added to section 119.011, Florida Statutes, to read:

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

(15) "Utility" means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

Section 2. Subsection (5) is added to section 119.0713, Florida Statutes, to read:

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

(5) (a) The following information held by a utility owned or operated by a unit of local government is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Information related to the security of the technology, processes, or practices of a utility owned or operated by a unit of local government that are designed to protect the utility's

Page 1 of 4

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579-02952-16

2016776c1

networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.

2. Information, whether in physical or virtual form, related to the security of existing or proposed information technology systems or industrial control technology systems of a utility owned or operated by a unit of local government, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

(b) This exemption applies to such information obtained before, on, or after the effective date of this exemption.

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

Section 3. (1) The Legislature finds that, as utility system infrastructure becomes more connected and integrated through information and communications technology, the exposure to damage from attacks through such technology continues to grow. These attacks may result in the disruption of utility services and damage to utility systems. Maintaining safe and reliable utility systems is vital to protecting the public health and safety and ensuring the economic well-being of the state. Accordingly, many utilities have adopted technologies, processes, and practices designed to secure data, information technology systems, and industrial control technology systems.

Page 2 of 4

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

579-02952-16

2016776c1

61 Disclosure of sensitive information related to these security  
 62 measures could result in the identification of vulnerabilities  
 63 that allow a security breach that damages utility systems and  
 64 disrupts the safe and reliable operation of such systems,  
 65 adversely impacting the public health and safety and the  
 66 economic well-being of the state. Because of the interconnected  
 67 nature of utility systems, a security breach may also impact  
 68 national security concerns. As a result, the Legislature finds  
 69 that the public and private harm in disclosing the information  
 70 made exempt by this act outweighs any public benefit derived  
 71 from disclosure of such information. The protection of  
 72 information made exempt by this act will ensure that utilities  
 73 have greater safeguards to protect against security threats and  
 74 will bolster efforts to develop more resilient information  
 75 technology systems and industrial control technology systems.

76 (2) The Legislature finds that it is a public necessity  
 77 that the following information relating to a utility owned or  
 78 operated by a unit of local government be exempt from s.  
 79 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 80 State Constitution:

81 (a) Information related to the security of the technology,  
 82 processes, or practices of a utility owned or operated by a unit  
 83 of local government which are designed to protect the utility's  
 84 networks, computers, programs, and data from attack, damage, or  
 85 unauthorized access, which information, if disclosed, would  
 86 facilitate the alteration, disclosure, or destruction of such  
 87 data or information technology resources.

88 (b) Information, whether in physical or virtual form,  
 89 related to the security of existing or proposed information

Page 3 of 4

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

579-02952-16

2016776c1

90 technology systems or industrial control technology systems of a  
 91 utility owned or operated by a unit of local government, which,  
 92 if disclosed, would facilitate unauthorized access to, and  
 93 alteration or destruction of, such systems in a manner that  
 94 would adversely impact the safe and reliable operation of the  
 95 systems and the utility.

96 Section 4. This act shall take effect upon becoming a law.

Page 4 of 4

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)

2-16-16

Meeting Date

776

Bill Number (if applicable)

Topic PUBLIC RECORDS / UTILITIES AGENCIES INFORMATION TECHNOLOGY SECURITY Amendment Barcode (if applicable)

Name KEVIN NOONAN

Job Title \_\_\_\_\_

Address 100 W. ANDERSON ST.  
Street

Phone 407.466.1287

ORLANDO, FL 32801  
City State Zip

Email KNOONAN@OUL.COM

Speaking:  For  Against  Information

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

Representing ORLANDO UTILITIES COMMISSION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

SB 776  
Bill Number (if applicable)

Topic Public Records / Utility IT Security

Amendment Barcode (if applicable)

Name Suzanne Goss

Job Title \_\_\_\_\_

Address 21 W. Church St.  
Street

Phone 904 665-8331

Jacksonville FL 32202  
City State Zip

Email gossSE@jea.com

Speaking:  For  Against  Information

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

Representing JEA

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)

02/16/2016

Meeting Date

SB 776

Bill Number (if applicable)

Topic Public Records Exemption Cyber Security for Municipal Utilities

Amendment Barcode (if applicable)

Name Joseph Salzverg ("Saul's Verg")

Job Title \_\_\_\_\_

Address 301 S. Bronough Street, Suite 500

Phone \_\_\_\_\_

Street

Tallahassee

FL

32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Municipal Electric 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: CS/SB 1490

INTRODUCER: Banking and Insurance Committee and Senator Garcia and others

SUBJECT: Federal Home Loan Banks

DATE: February 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>FP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1490 clarifies that the Office of Financial Regulation (OFR), is not prevented from providing otherwise confidential information to any Federal Home Loan Bank (FHLB) pursuant to an information-sharing agreement. The OFR is required to execute an information-sharing agreement with the FHLBs by August 1, 2016.

The FHLB System is a government-sponsored enterprise designed to support residential mortgage lending and community investment at the local level by providing primary mortgage liquidity (direct loans) to member financial institutions. Currently, there are over 7,300 members located in 11 regions of the country. Each member (typically a bank, thrift, credit union, or insurance company) is a shareholder in one or more of the regional FHLBs, which are privately capitalized, separate corporate entities managed within a framework established by the Federal Housing Finance Agency. Collectively, the FHLBs have been described as the largest provider of mortgage credit in the U.S. In essence, they are the “bankers' banks.”

As one of the conditions for FHLB membership eligibility, federal law requires that the financial institutions agree that state and federal examination reports be provided to the FHLBs in order to determine the financial condition of the financial institution. The scope of the OFR examinations of Florida chartered financial institutions includes an evaluation of the institutions' financial condition and compliance with state and federal requirements for safety and soundness. The OFR examination reports contain highly sensitive financial information, and in some instances, may result in a corrective or enforcement action.

Currently, the financial institution codes generally provide that OFR records related to investigations and reports of examination, operations, or condition are confidential and exempt from public records disclosure, with certain exceptions. One such exception states that the OFR is not prevented or restricted from furnishing records or information to “any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks.”<sup>1</sup> However, the current law does not specify that the OFR provide examination reports or information regarding the financial condition of FHLB members to those agencies or to the FHLBs. Secondly, the FHLBs are not federal financial institution regulators, resulting in some uncertainty regarding the OFR’s ability to share confidential supervisory information with the FHLBs. While the OFR currently has information-sharing agreements with other federal financial institution regulators, it does not have any such agreements with the FHLBs.

## **II. Present Situation:**

### **U.S. Banking System**

The U.S. dual banking system allows commercial banks to become chartered under either federal or state law. National banks are chartered under federal law, i.e., the National Bank Act.<sup>2</sup> Their primary federal regulator is the Office of the Comptroller of the Currency (OCC), an independent agency within the U.S. Department of the Treasury.

State-chartered banks are chartered under the laws of the state in which the bank is headquartered. The primary federal regulator for state banks that are members of the Federal Reserve System is the Board of Governors of the Federal Reserve System (FRB). The primary federal regulator for non-FRB member banks is the Federal Deposit Insurance Corporation (FDIC).<sup>3</sup> Credit unions may also be either state or federally chartered. Their primary federal regulator is the National Credit Union Administration.

### **Office of Financial Regulation**

In Florida, the Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes).<sup>4</sup> The OFR does not regulate financial institutions that are nationally chartered or chartered in other states. In addition, the OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida.

The OFR ensures Florida-chartered financial institutions’ compliance with state and federal requirements for safety and soundness.<sup>5</sup> Like their federal counterparts, the OFR conducts

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<sup>1</sup> Section 655.057(5)(b), F.S.

<sup>2</sup> The act give enumerated powers and “all such incidental powers as shall be necessary to carry on the business of banking” to nationally chartered banks.” 12 U.S.C. s. 24 Seventh.

<sup>3</sup> 12 U.S.C. s. 1813(q).

<sup>4</sup> Chs. 655, 657, 658, 660, 663, 665, 667, F.S.

<sup>5</sup> While the Codes do not specifically define “safety and soundness,” s. 655.005(1)(y), F.S., defines “unsafe and unsound practice” as “any practice or conduct found by the office to be contrary to generally accepted standards applicable to a

regular examinations of Florida institutions. The Codes require the OFR to conduct examinations of each Florida financial institution during each 18-month period, although it may examine more frequently based on the institution's risk profile, prior exam history, or significant changes in the institution or its operations.<sup>6</sup> The examinations primarily review the institution's condition as to its Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity (such as interest rate risk), based on a uniform supervisory rating system (CAMELS) that is used by state and federal financial institution regulators to classify a financial institution's overall condition.<sup>7</sup> Upon completion of the examination, the regulator presents its findings and recommended corrective measures to the institution through a highly confidential examination report.<sup>8</sup>

### ***Confidentiality of Records and Information***

Currently, s. 655.057, F.S., governs the confidentiality of records and information relating to investigations; informal enforcement actions; trade secrets; and reports of examination, operations, or condition, including working papers prepared by, or for the use of, the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions in Florida. The statute generally provides that, except as otherwise provided in that section and except for such portions thereof that are otherwise public record, OFR records related to investigations and reports of examination, operations, or condition are confidential and exempt from s. 119.07(1), F.S. Subsection (5) of the current statute states that s. 655.057, F.S., does not prevent or restrict the OFR from "furnishing records or information to any other state, federal, or foreign agency responsible for the regulation or supervision of financial institutions, including Federal Home Loan Banks." However, the current statute does not clearly require or mandate that the OFR provide records or information relating to investigations, informal enforcement actions, trade secrets, and reports of examination, operations, or condition to any other agency, or any Federal Home Loan Bank.

The OFR routinely shares confidential supervisory information with other federal and state agencies that are responsible for the regulation and supervision of financial institutions (such as the FDIC, the National Credit Union Administration, or the Financial Crimes Enforcement Network (FinCEN)<sup>9</sup>), in accordance with memoranda of understanding (MOUs) that acknowledge the existing framework of federal and state laws and regulations which uniformly respect the confidential treatment that the documents or information would receive under the

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financial institution, or a violation of any prior agreement in writing or order of a state or federal regulatory agency, which practice, conduct, or violation creates the likelihood of loss, insolvency, or dissipation of assets or otherwise prejudices the interest of the financial institution or its depositors or members. In making this determination, the office must consider the size and condition of the financial institution, the gravity of the violation, and the prior conduct of the person or institution involved."

<sup>6</sup> Section 655.045(1), F.S.

<sup>7</sup> CAMELS is based on the Federal Financial Institutions Examination Council's Uniform Financial Institutions Rating System. Institutions are assessed on a 1 (best) to 5 (worst) rating system. *See* FDIC Financial Institution Letter FIL-105-96 (Dec. 26, 1996).

<sup>8</sup> Section 655.057(12)(a), F.S.

<sup>9</sup> FinCEN is a bureau of the U.S. Department of Treasury that safeguards the U.S. financial system from illicit use, money laundering, and terrorist financing through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. It administers portions of the federal Bank Secrecy Act and anti-money laundering regulations, which were significantly enhanced by the U.S. Patriot Act of 2001. The Codes and federal law require the OFR to monitor and assess state-chartered financial institutions' compliance with these laws, subject to significant federal confidentiality restrictions.

submitting agency's applicable confidentiality laws.<sup>10</sup> In particular, OFR reports of examination, described above, routinely contain confidential supervisory information obtained from other bank regulators, and the OFR is obligated to protect such information pursuant to federal confidentiality restrictions and these MOUs. Willful release of confidential information is a violation of s. 655.057(13), F.S., a third-degree felony. Similar federal criminal sanctions may also apply if confidential supervisory information owned by federal financial institution regulators is improperly released.

Despite the statute's inclusion of FHLBs as permissive recipients of confidential supervisory information along with other federal bank regulators, the FHLBs are not federal agencies responsible for the regulation of financial institutions, but are 11 separate corporations owned by eligible financial institution members that collectively make up the FHLB System. As a result, there is some uncertainty regarding the OFR's ability to share information with the FHLBs under s. 655.057, F.S. The OFR does not currently have an MOU with the FHLBs.

### **Federal Home Loan Banks**

The FHLB System, established in 1932 by the Federal Home Loan Bank Act,<sup>11</sup> is a group of government-sponsored enterprises comprising of 11 regional, federally chartered banks. Each FHLB is cooperatively owned by its members—such as commercial and community banks, thrifts, credit unions, and insurance companies.<sup>12</sup> As of year-end 2014, over 7,300 financial institutions were members of the FHLB System.<sup>13</sup>

Eligible financial institutions become members through an application process and, once approved, purchase stock in their regional FHLB. To become a member of its regional FHLB, a financial institution must meet certain eligibility requirements and purchase capital stock; thereafter, it must maintain an investment in the capital stock of the FHLB sufficient to satisfy the minimum investment required for that institution in accordance with the FHLB's capital plan.<sup>14</sup> Federal law requires the institution to demonstrate compliance with certain financial condition requirements by providing documentation such as regulatory financial reports, financial statements, and regulatory examination reports.<sup>15</sup> Each potential member must agree to certain conditions, including that reports of examination by local, state, or federal agencies may be furnished by such authorities to the FHLB or the Federal Housing Finance Agency (FHFA) upon request.<sup>16</sup> According to the OFR, however, the laws pertaining to FHLBs do not address or protect the ownership or confidentiality of any information it may obtain from a state agency,<sup>17</sup> should a FHLB or the FHFA receive a federal Freedom of Information Act (FOIA) request.<sup>18</sup>

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<sup>10</sup> See, e.g., s. 655.057(9), F.S.; 12 C.F.R. pts. 261 and 309.

<sup>11</sup> Public Law 72-304 (1932); 12 U.S.C. 1421 *et seq.*

<sup>12</sup> General Accounting Office, *Federal Home Loan Banks, Information on Governance Changes, Board Diversity, and Community Lending* (GAO-15-435) (May 2015).

<sup>13</sup> See <http://www.fhlbanks.com/#what> (last visited Jan. 27, 2016).

<sup>14</sup> 12 C.F.R. s. 931.3(d).

<sup>15</sup> 12 U.S.C. s. 1424(a)(2)(B); 12 C.F.R. ss. 1263.6(a)(4) and 1263.11.

<sup>16</sup> 12 C.F.R. s. 1263.31(b).

<sup>17</sup> Office of Financial Regulation, Agency Legislative Bill Analysis of Senate Bill 1490 (Jan. 21, 2016).

<sup>18</sup> FOIA does not apply to “matters that are...contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an *agency* responsible for the regulation or supervision of financial institutions.”

The federal regulator charged with overseeing the FHLBs is the FHFA, and is thus considered a “federal agency responsible for the regulation of financial institutions” that the OFR is authorized by s. 655.057, F.S., to share certain confidential information. However, the OFR currently does not have a MOU with the FHFA.<sup>19</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 655.057(5), F.S., to clarify that OFR is not prevented from providing otherwise confidential information to any FHLB or any state, federal, or foreign agency responsible for the regulation or supervision of financial institutions. This change correctly reflects the FHLBs’ status as not being a regulator of federal financial institutions.

The bill requires the OFR to make reports of examination and other information relating to a FHLB member’s condition available to the FHLBs in accordance with an information-sharing agreement.

**Section 2** requires the OFR to execute an information-sharing agreement with the FHLBs by August 1, 2016.

**Section 3** makes the act effective 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.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

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5 U.S.C. s. 522(b)(8). For purposes of FOIA, “agency” means authorities of the government of the United States (excluding its territories and possessions), but not of the states themselves.

<sup>19</sup> See *supra* note 17.

**B. Private Sector Impact:**

The bill's clarification of the OFR's ability to share information with the FHLBs may expedite or facilitate financial institutions' new membership in the FHLBs and continued supervision by the FHFA.

**C. Government Sector Impact:**

The execution of an information-sharing agreement should allow the OFR and the FHLBs to provide for the permissible use of supervisory information, restricted access, safekeeping, and other terms that will ensure the confidentiality of information shared. Therefore, the impact to the OFR should be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 655.057 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 Banking and Insurance on February 1, 2016:**

The CS clarifies that the OFR's authority to share information with other state, federal, or foreign agencies responsible for the regulation or supervision of financial institutions no longer includes FHLBs, which correctly reflects the status of FHLBs as not being a financial institution regulator. The CS authorizes the OFR to furnish information to FHLBs regarding its member institutions, in accordance with an information-sharing agreement between the FHLBs and the OFR. The OFR is required to execute the information-sharing agreement with the FHLBs by August 1, 2016.

**B. Amendments:**

None.



By the Committee on Banking and Insurance; and Senators Garcia  
and Soto

597-02876-16

20161490c1

A bill to be entitled

An act relating to the Federal Home Loan Banks;  
amending s. 655.057, F.S.; providing that certain  
records requirements do not prevent or restrict the  
furnishing of certain information held by the Office  
of Financial Regulation to the Federal Home Loan Banks  
pursuant to an information-sharing agreement;  
requiring the office to execute such agreement by a  
specified date; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section  
655.057, Florida Statutes, is amended, and paragraph (f) is  
added to that subsection, to read:

655.057 Records; limited restrictions upon public access.—

(5) This section does not prevent or restrict:

(b) Furnishing records or information to any other state,  
federal, or foreign agency responsible for the regulation or  
supervision of financial institutions, ~~including Federal Home  
Loan Banks.~~

(f) Furnishing information to the Federal Home Loan Banks  
regarding their member institutions pursuant to an information-  
sharing agreement between the Federal Home Loan Banks and the  
office.

Any confidential information or records obtained from the office  
pursuant to this subsection shall be maintained as confidential  
and exempt from s. 119.07(1).

Section 2. The Office of Financial Regulation shall execute  
an information-sharing agreement with the Federal Home Loan

Page 1 of 2

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

597-02876-16

20161490c1

Banks for purposes of s. 655.057(5)(f), Florida Statutes, by  
August 1, 2016.

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**  
State Senator René García  
38<sup>th</sup> District

**Please reply to:**

**District Office:**

1490 West 68 Street  
Suite # 201  
Hialeah, FL. 33014  
Phone# (305) 364-3100

February 16, 2015

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

Dear Senator Ring:

I respectfully request that my aide, Miguel Abad, presents **SB 1490: Federal Home Loan Banks**, at the next possible Committee on Governmental Oversight and Accountability Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read 'René García', with a stylized flourish at the end.

State Senator René García  
District 38  
RG:AD

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

SB149D  
Bill Number (if applicable)

Topic Federal Home Loan Banks

Amendment Barcode (if applicable)

Name Jared Ross

Job Title SVP Gov. Affairs

Address 3692 Coolidge Ct.  
Street

Phone \_\_\_\_\_

Tallahassee FL 32311  
City State Zip

Email jared.ross@lscu.coop

Speaking:  For  Against  Information

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

Representing Florida Credit Union Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/16/2016

*Meeting Date*

SB 1490

*Bill Number (if applicable)*

Topic Waive in Support of SB 1490

*Amendment Barcode (if applicable)*

Name Ms. Jamie Champion-Mongiovi

Job Title Director of Communications & Govt. Affairs

Address Florida Office of Financial Regulation

Phone 850-410-9601

*Street*

101 E Gaines Street

Florida

32399

Email jamie.mongiovi@flofr.com

*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  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

1490  
Bill Number (if applicable)

Topic FHLB Bill

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title Exec of Govt. Affairs

Address 1081 Thonmuck Rd

Phone 224-2265

Tallahassee FL 32303  
City State Zip

Email adi@marcofl.com

Speaking:  For  Against  Information

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

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SJR 1424

INTRODUCER: Senator Bean

SUBJECT: Election of Secretary of State/Membership of Cabinet

DATE: February 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SJR 1424 makes the Secretary of State a statewide elected office as of the 2018 general election and makes the Secretary a member of the Florida Cabinet.

The joint resolution specifically directs the legislature to enact implementing legislation by January 8, 2019.

If passed by a three-fifths vote of each house of the Legislature, the proposal will be voted on at the general election in November 2016; sixty percent of those voting on the measure is required for approval.

**II. Present Situation:**

A joint resolution is the only authorized method by which the Legislature may propose amendments to the State Constitution. If passed, the proposed amendment would appear on a statewide ballot for voter approval or rejection. It must pass each house by a three-fifths vote of the membership. A joint resolution is also used for redistricting.<sup>1</sup>

Changes to the Florida Constitution can be proposed by a joint resolution of the Legislature, constitutional revision commission, citizens' initiative process, or taxation and budget commission.<sup>2</sup> If the proposed amendment is approved by vote of at least sixty percent of the electors voting on the measure, it will become effective as an amendment on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.<sup>3</sup>

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<sup>1</sup> *The Florida Senate, Glossary*, <http://www.flsenate.gov/Reference/Glossary#resolution> (last visited February 11, 2016).

<sup>2</sup> FLA. CONST. art. XI.

<sup>3</sup> FLA. CONST. art. XI, s. 5.

## Secretary of State

The Secretary of State is the state's chief of elections, chief cultural officer and head of the Department of State.<sup>4</sup> The Department consists of the Office of the Secretary and the Divisions of Administrative Services, Corporations, Cultural Affairs, Elections, Historical Resources, and Library and Information Services.

Since 2003, the position of Florida Secretary of State has been an *appointed, non-Cabinet* post.

Prior to that time, the Secretary was an *elected Cabinet* position — one of six serving members in addition to the Governor. The 2003 change was the result of a 1998 amendment to the Florida Constitution that restructured the Cabinet from 6 to 3 officers<sup>5</sup> (plus the governor), as well as making other governmental operations changes<sup>6</sup>; the amendment was one of several proposed by the Constitution Revision Commission (“CRC”).

### III. Effect of Proposed Changes:

SJR 1424 makes the Secretary of State a statewide elected office as of the 2018 general election and makes the Secretary a member of the Florida Cabinet. As such, the Secretary will be subject to the eight-year term limits applicable to other members of the Cabinet pursuant to Art. VI, section 4, of the Florida Constitution.

### 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.

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<sup>4</sup> See <http://dos.myflorida.com/about-the-department/> (last visited on February 11, 2016).

<sup>5</sup> Florida's Attorney General, Chief Financial Officer, and the Commissioner of Agriculture.

<sup>6</sup> Constitution Revision Commission Amendment 8 (1998), *Restructuring the State Cabinet* (available at Florida Secretary of State's web site at: <http://dos.elections.myflorida.com/initiatives/fulltext/pdf/11-4.pdf> (last accessed January 27, 2016)).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

According to the Division, the cost to advertise constitutional amendments for the 2014 general election was \$135.97 per word. Using 2014 rates, the cost to advertise this amendment for the 2016 general election could be \$106,328.54 at a minimum.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

SJR 942 by Senator Garcia proposes to make the Commissioner of Education a member of the Florida Cabinet. If both joint resolutions pass and are approved by the electors, the Cabinet will expand from 3 to 5 statewide officers (plus the governor), one member shy of the total number prior to the CRC Cabinet changes that took effect in 2003.

**VIII. Statutes Affected:**

This joint resolution substantially amends Article IV of the Florida Constitution and creates an implementation schedule in Article XII.

**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 Bean

4-00435A-16

20161424\_\_

Senate Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article IV and the creation of a new section in Article XII of the State Constitution to provide for the election of the Secretary of State and the inclusion of the secretary as a member of the Cabinet.

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

That the following amendments to Sections 3 and 4 of Article IV and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IV  
EXECUTIVE

SECTION 3. Succession to office of governor; acting governor.-

(a) Upon vacancy in the office of governor, the lieutenant governor shall become governor. Further succession to the office of governor shall be prescribed by law. A successor shall serve for the remainder of the term.

(b) Upon impeachment of the governor and until completion of trial thereof, or during the governor's physical or mental incapacity, the lieutenant governor shall act as governor. Further succession as acting governor shall be prescribed by law. Incapacity to serve as governor may be determined by the supreme court upon due notice after docketing of a written suggestion thereof by four ~~three~~ cabinet members, and in such case restoration of capacity shall be similarly determined after docketing of written suggestion thereof by the governor, the

Page 1 of 4

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

4-00435A-16

20161424\_\_

legislature or four ~~three~~ cabinet members. Incapacity to serve as governor may also be established by certificate filed with the custodian of state records by the governor declaring incapacity for physical reasons to serve as governor, and in such case restoration of capacity shall be similarly established.

SECTION 4. Cabinet.-

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, ~~and~~ a commissioner of agriculture, and a secretary of state. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state, and shall keep all state funds and

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

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62 securities.

63 (d) The commissioner of agriculture shall have supervision  
64 of matters pertaining to agriculture except as otherwise  
65 provided by law.

66 (e) The secretary of state shall keep the records of the  
67 official acts of the legislative and executive departments and  
68 perform the functions conferred by this constitution upon the  
69 custodian of state records.

70 (f)~~(e)~~ The governor as chair, the chief financial officer,  
71 and the attorney general shall constitute the state board of  
72 administration, which shall succeed to all the power, control,  
73 and authority of the state board of administration established  
74 pursuant to Article IX, Section 16 of the Constitution of 1885,  
75 and which shall continue as a body at least for the life of  
76 Article XII, Section 9(c).

77 (g)~~(f)~~ The governor as chair, the chief financial officer,  
78 the attorney general, ~~and~~ the commissioner of agriculture, and  
79 the secretary of state shall constitute the trustees of the  
80 internal improvement trust fund and the land acquisition trust  
81 fund as provided by law.

82 (h)~~(g)~~ The governor as chair, the chief financial officer,  
83 the attorney general, ~~and~~ the commissioner of agriculture, and  
84 the secretary of state shall constitute the agency head of the  
85 Department of Law Enforcement.

## ARTICLE XII

## SCHEDULE

Cabinet reorganization.-

86  
87  
88  
89 (a) The amendments to Sections 3 and 4 of Article IV  
90 relating to election of the secretary of state and the inclusion

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91 of the secretary as a member of the cabinet shall take effect  
92 January 8, 2019, but shall govern with respect to the qualifying  
93 for and the holding of the primary and general elections for the  
94 office of the secretary of state in 2018.

95 (b) By January 8, 2019, the legislature shall enact  
96 implementing legislation that includes any conforming changes to  
97 the Florida Statutes necessitated by the reorganization of the  
98 cabinet.

99 BE IT FURTHER RESOLVED that the following statement be  
100 placed on the ballot:

## CONSTITUTIONAL AMENDMENT

## ARTICLE IV, SECTIONS 3 AND 4

## ARTICLE XII

104 ELECTION OF SECRETARY OF STATE; MEMBERSHIP OF CABINET.-  
105 Proposing an amendment to the State Constitution to provide for  
106 the statewide election of the Secretary of State, beginning with  
107 the 2018 primary and general elections; revising membership of  
108 the Cabinet to include the secretary; making technical revisions  
109 necessary to conform the State Constitution to the revised  
110 membership of the Cabinet; and requiring the Legislature to  
111 enact implementing legislation. Under current law, the secretary  
112 is appointed by and serves at the pleasure of the Governor.

Page 4 of 4

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.)

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

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**BILL:** CS/SB 456

**INTRODUCER:** Governmental Oversight and Accountability Committee, Senator Latvala and others

**SUBJECT:** Firefighters

**DATE:** February 17, 2015      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 456 provides that any condition or impairment of the health of a firefighter employed full-time by a state or local government which is caused by multiple myeloma, non-Hodgkin's lymphoma, prostate cancer or testicular cancer and results in total or partial disability or death is presumed to have been accidental and to have been suffered "in the line of duty" unless the contrary is shown by competent evidence. In the line of duty retirement compensates an employee whose disability or death arises out of and in the actual performance of employment. In the line of duty retirement provides greater compensation to the firefighter or his or her dependents than would otherwise be available.

In order to be entitled to the presumption, a firefighter must have:

- Successfully passed a pre-employment physical examination that did not reveal any evidence of a health condition.
- Been employed as a firefighter with the current employer for at least 5 continuous years before becoming disabled or before the employee's death.
- Not used tobacco products for at least 5 years before becoming disabled or before the employee's death; and
- Not been employed during the preceding 5 years in any other position that is proven to create a higher risk for the named diseases.

A firefighter employed on July 1, 2016, is not required to meet the physical examination requirement in order to be entitled to the presumption.

Based on the results of a special actuarial study, the additional cost to the Florida Retirement System is expected to be about \$420,000 annually. The additional costs to other public sector retirement plans has not been determined.

The fiscal impact of this legislation as it relates to workers' compensation benefits has not been determined.

## II. Present Situation:

### The Florida Retirement System (FRS)

The FRS is the fifth largest public retirement system in the United States. It is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S., and administered by the Department of Management Services (DMS).<sup>1</sup> The FRS was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the Pension Plan. 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.<sup>2</sup>

The FRS consists of 1,014 total employers. It is the primary retirement plan for the employees and officers of state and county government agencies, district school boards, Florida College institutions, and state universities, as well as the employees and officers of the 186 cities and 262 special districts that have elected to join the system.<sup>3</sup> Members of the FRS are required to make employee contributions of 3 percent of their salary.<sup>4</sup> As of June 30, 2014, the FRS had 622,089 active members, 362,216 retired members and beneficiaries, and 38,058 active members of the Deferred Retirement Option Program (DROP).<sup>5</sup>

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

- Regular Class<sup>6</sup> consists of 537,993 active members, plus 5,402 in renewed membership;
- Special Risk Class<sup>7</sup> includes 68,593 active members;
- Special Risk Administrative Support Class<sup>8</sup> has 84 active members;

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<sup>1</sup> Section 121.021(5), F.S.

<sup>2</sup> The Florida Retirement System Annual Report, July 1, 2013 – June 30, 2014, at 29, *available at* [https://www.rol.frs.state.fl.us/forms/2013-14\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf) (last visited October 26, 2015).

<sup>3</sup> *Id.*, at 146.

<sup>4</sup> 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.

<sup>5</sup> Florida Retirement System 2013-2014 Annual Report, at 6.

<sup>6</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>7</sup> 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.

<sup>8</sup> 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.

- Elected Officers' Class<sup>9</sup> has 2,040 active members, plus 147 in renewed membership; and
- Senior Management Service Class<sup>10</sup> has 7,607 members, plus 184 in renewed membership.<sup>11</sup>

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

### ***The Special Risk Class of the FRS***

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S. As of June 30, 2014, there were 68,593 active members<sup>12</sup> in the Special Risk Class of the FRS.

In originally establishing the Special Risk Class of membership in the FRS, the Legislature recognized that persons employed in certain categories of positions:

are required to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.<sup>13</sup>

A person who is a member in the Special Risk Class may retire at an earlier age and is eligible to receive higher disability and death benefits than Regular Class members.

### ***Disability Retirement Benefits for Special Risk Members of the FRS***

There are two types of disability retirement available under the Florida Retirement System: in the line of duty disability retirement and regular disability retirement. To qualify for either type of disability retirement, members must be totally and permanently disabled to the extent that they are unable to work. An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for

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<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> All figures from Florida Retirement System 2013-2014 Annual Report, at 115.

<sup>12</sup> *Id.*

<sup>13</sup> Section 121.0515(1), F.S.

disability benefits.<sup>14</sup> To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.<sup>15</sup>

Under the FRS pension plan, the minimum benefit under regular disability retirement is 25 percent of the employee's average final compensation.<sup>16</sup> In contrast, in the line of duty disability benefits are available to members on their first day of employment. There is no vesting period. Special Risk Class members receive a minimum in the line of duty disability benefit of 65 percent of their average final compensation.<sup>17</sup>

Under the investment plan, the disability benefits are in lieu of the normal benefits (the accumulations of contributions and investment earnings in the member's account).<sup>18</sup> Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefit calculated the same as a similarly situated pension plan member.<sup>19</sup>

### ***Death Benefits for Special Risk Members of the FRS***

Section 121.091(7), F.S., provides death benefits for active members of the FRS pension plan who die before retirement. If an employee dies before vesting, the employee's spouse receives only the accumulated FRS contributions that were made on the employee's behalf. For vested employees, the employee will be assumed to have retired on the date of death, and the spouse may elect one of the annuity options that provide payment to survivors. Because those annuity options are based on the number of years of service and are discounted based on the age of the annuity recipient, the beneficiary of younger employees with few years of service receive a relatively small monthly amount.

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan. Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.<sup>20</sup> Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty.<sup>21</sup> If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in the line of duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for his or her lifetime equal to one-half the member's monthly salary at death.<sup>22</sup> If the spouse dies, the benefit continues until the member's youngest child

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<sup>14</sup> Florida Retirement System Employer Handbook, Disability Retirement, ch. 10-2, available at [https://www.rol.frs.state.fl.us/forms/EH\\_ch10.pdf](https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf) (last visited Nov. 6, 2015).

<sup>15</sup> Sections 121.091(4)(a) and 121.591(2)(b)2., F.S.

<sup>16</sup> Section 121.091(4)(f), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 121.591(2), F.S.

<sup>19</sup> Section 121.591(2)(g), F.S.

<sup>20</sup> Section 121.091(7), F.S.

<sup>21</sup> Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

<sup>22</sup> Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

reaches 18 or is married, whichever occurs first.<sup>23</sup> If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.<sup>24</sup>

For instances relating to in the line of duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of the member's death.<sup>25</sup> If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or service eligible for purchase, to purchase enough service credit to vest the member posthumously.<sup>26</sup>

Under the investment plan, no minimum death benefit is payable to a surviving spouse or children. Accumulations in the member's account are payable to the designated beneficiary.<sup>27</sup>

### **Retirement Plans for Municipalities and Special Districts**

Chapters 175 and 185, F.S., provide funding mechanisms for municipal firefighters' and police officers' pension plans. Both chapters provide a uniform retirement system for firefighters and police officers and set standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters and local law enforcement officers participate in these plans. Two types of plans are governed by each of these chapters—charter plans and local law plans. To be considered totally and permanently disabled, charter plan employees must only be found disabled from rendering useful and efficient service as a firefighter or police officer.<sup>28</sup> Under local law plans, the standards may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351 and 185.35, F.S., respectively.

### **Workers' Compensation under Chapter 440, F.S.**

The employer must pay compensation or furnish benefits if the employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.<sup>29</sup> The injury, its occupational cause, and any resulting disability must be established to a reasonable degree of medical certainty, and the accidental compensable injury must be the major contributing cause of any resulting injuries.<sup>30</sup>

Compensation for permanent total disability is equal to 2/3rds of the employee's average weekly wages payable to the employee during the continuance of the total disability.<sup>31</sup>

Compensation for temporary total disability is equal to 2/3rds of the employee's average weekly wages payable to the employee during the continuance of the total disability but not to exceed

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<sup>23</sup> *Id.*

<sup>24</sup> Section 121.091(7)(b) and (d), F.S.

<sup>25</sup> Section 121.091(7)(e), F.S.

<sup>26</sup> Section 121.091(7)(f), F.S.

<sup>27</sup> Section 121.591(3), F.S.

<sup>28</sup> Sections 175.191 and 185.18, F.S.

<sup>29</sup> Section 440.09(1), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> Section 440.15(1)(a), F.S.

104 weeks. At the earlier of the 104<sup>th</sup> week or the employee reaching maximum medical improvement, the temporary disability payment will cease and the injured employee's permanent impairment will be determined.<sup>32</sup>

Where the disability or death of an employee results from an "occupational disease", it will be treated as an injury by accident.<sup>33</sup> The employee or his survivors will be entitled to compensation. "Occupational disease" is defined to be "only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee."<sup>34</sup>

### **Presumptions and Burdens of Proof Relating to "in the line of duty" Disability and Death**

#### ***Existing In the Line of Duty Presumptions for Firefighters***

Section 112.18, F.S., provides a presumption applicable to any state, municipal, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer that any such employee qualifies for in the line of duty disability or death benefits if such disability or death is the result of tuberculosis, heart disease, or hypertension.

Section 175.231, F.S., provides a similar presumption for the firefighters in any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under ch. 175, F.S., whose death or disability is the result of tuberculosis, heart disease, or hypertension.

Section 112.181, F.S., provides a presumption applicable to any emergency rescue or public safety worker, including a firefighter, that such employee qualifies for in the line of duty disability or death if such disability or death is due to hepatitis, meningococcal meningitis, or tuberculosis.

Successful passage of a pre-employment physical examination is required for these presumptions.

#### ***Burden of Proof for In the Line of Duty Benefits***

Absent one of the existing presumptions, the FRS member employee has the burden of proof when claiming in the line of duty disability or death benefits. The employee must show by competent evidence that the death or disability occurred in the line of duty in order to receive the higher benefits.<sup>35</sup> If the employee or the employee's survivors cannot meet the burden of proof, the employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

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<sup>32</sup> Section 440.15(2)(a), F.S.

<sup>33</sup> Section 440.151(1)(a), F.S.

<sup>34</sup> Section 440.151(2), F.S.

<sup>35</sup> Sections 121.091(4)(c) and (7)(d), F.S.



Under existing law, a firefighter that is disabled or dies as a result of cancer must show that the cancer was contracted due to some factor directly related to the employment as a firefighter. Due to latency periods,<sup>36</sup> it may be difficult for an employee to meet this burden.

### **Special Actuarial Study of Firefighter in line of duty Cancer Presumption**

On February 11, 2016, a special study<sup>37</sup> was completed to determine the contribution rates necessary to fund the FRS benefits that may be paid based on the presumptions proposed under this legislation for four cancers.<sup>38</sup> The results of this study determined that the contribution rates for the Special Risk Class (for both the pension plan and the investment plan) will need to be increased by 1 basis points (0.01%) to fund the costs of this legislation associated with the FRS.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 112.1816, F.S., to provide a presumption that any condition or impairment of the health of a firefighter employed full time by the state or a local government which is caused by multiple myeloma, non-Hodgkin's lymphoma, prostate cancer or testicular cancer and results in total or partial disability or death was accidental and was suffered in the line of duty. The presumption can be overcome by competent evidence to the contrary. This presumption shifts the burden of proof from the employee or the survivors of the employee to the employer.

The bill provides that in order to be entitled to the presumption, a new employee must have:

- Successfully passed a pre-employment physical examination that did not reveal any evidence of a health condition.
- Been employed as a firefighter with the current employer for at least 5 continuous years before becoming disabled or before the employee's death.
- Not used tobacco products for at least 5 years before becoming disabled or before the employee's death; and
- Not been employed during the preceding 5 years in any other position that is proven to create a higher risk for the named diseases.

If the employing agency fails to provide a physical examination prior to employment or immediately thereafter, the firefighter is entitled to the presumption if the firefighter otherwise meets the criteria noted above. This physical examination requirement does not apply to firefighters employed on July 1, 2016. In addition, the presumption does not apply to benefits payable under or granted in a life insurance or disability insurance policy unless the insurer and insured have negotiated for the additional benefits to be included in the policy contract.

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<sup>36</sup> "The time between first exposure to a cancer-causing agent and clinical recognition of the disease is called the latency period. Latency periods vary by cancer type, but usually are 15 to 20 years, or longer. Because of this, past exposures are more relevant than current exposures as potential causes of cancers occurring in workers today. Often, these exposures are hard to document." The National Institute for Occupational Safety and Health (NIOSH), *available at* <http://www.cdc.gov/niosh/topics/cancer/clusters.html> (last visited October 27, 2015).

<sup>37</sup> Milliman, *Re: Special Actuarial Study of Firefighter ILOD Cancer Presumption*, dated February 11, 2016 (on file with the Committee on Governmental Oversight and Accountability).

<sup>38</sup> The cancers included in the study are multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, and testicular cancer.

**Section 2** states that the Legislature will review the current status of research programs, funded by state monies, which study the incidence of cancer in firefighters prior to the 2017 Regular Session of the Legislature.

**Section 3** increases the employer-paid contribution rate for the Special Risk Class of the FRS by 0.01 percentage point. This is intended to offset the additional costs to the FRS resulting from the legislation (presumption that firefighters with certain cancers qualify for in the line of duty disability and death benefits).

**Section 4** provides a legislative determination that the act fulfills an important state interest.

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

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, section 18(a) of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless:

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated.”

The bill contains a finding that the bill fulfills an important state interest (section 4). The bill appears to apply to all persons similarly situated (those employers employing firefighters), including state agencies, school boards, community colleges, counties, municipalities and special districts. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber to be binding upon the counties and municipalities participating in the FRS.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues**

Article X, section 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries

of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Section 3 of the bill increases the employer-paid contributions to the FRS necessary to offset the costs to the FRS resulting from this legislation. Actuarial impact statements for local government pension plans are also required.<sup>39</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The costs associated with the FRS will increase by roughly \$420,000 annually. This includes \$100,000 paid by state agencies and about \$300,000 paid by counties.<sup>40</sup>

The impact of the presumption on workers' compensation claims determinations may be similar to the impact on the FRS.<sup>41</sup> However, the presumption could have a greater impact because the threshold eligibility test for workers' compensation is whether the disability arose "out of and in the course of employment." If the disability did not arise "out of and in the course of employment," the employee is not eligible to receive workers' compensation benefits. There is no provision under ch. 440, F.S., for a non-duty related disability as may be found in many retirement plans.

If successful workers' compensation claims increase due to the presumption afforded by the bill, assessments paid by carriers and employers of the Special Disability Trust Fund may increase.<sup>42</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>39</sup> Department of Management Services, *Senate Bill 456 Legislative Bill Analysis*, 5 (Oct. 29, 2016).

<sup>40</sup> Milliman, *supra* at p. 2 of Table 2.

<sup>41</sup> Department of Management Services, *supra* at 5.

<sup>42</sup> *Id.* at 5.

**VIII. Statutes Affected:**

This bill substantially amends section 112.1816 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on February 16, 2016:**

The CS makes the following changes:

- Limits the diseases eligible for the presumption to four cancers (multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, and testicular cancer);
- Removes the specific tests the physical examination must include;
- Removes the requirement that the public employer maintain a record of exposure to any known carcinogen;
- Removes the requirement that a public employer notify a firefighter of any known exposure to a carcinogen within 48 hours of the exposure.
- Increases employer-paid contributions to FRS to fund the FRS disability benefits.
- Includes a legislative determination that the bill fulfills an important state interest.

- B. **Amendments:**

None.



249998

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
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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. Section 112.1816, Florida Statutes, is created  
to read:

112.1816 Firefighter disability or death from cancer  
presumed incurred in the line of duty.—

(1) DEFINITION.—As used in this section, the term  
“firefighter” has the same meaning as in s. 112.81.



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11 (2) PRESUMPTION; ELIGIBILITY CONDITIONS.—

12 (a) Any condition or impairment of the health of a  
13 firefighter employed full time by the state or any municipality,  
14 county, port authority, special tax district, or fire control  
15 district which is caused by multiple myeloma, non-Hodgkin's  
16 lymphoma, prostate cancer, or testicular cancer and results in  
17 total or partial disability or death is presumed to have been  
18 accidental and to have been suffered in the line of duty unless  
19 the contrary is shown by competent evidence. In order to be  
20 entitled to this presumption, the firefighter:

21 1. Must have successfully passed a physical examination  
22 administered before the individual began service as a  
23 firefighter and which failed to reveal any evidence of such a  
24 health condition;

25 2. Must have been employed as a firefighter with his or her  
26 current employer for at least 5 continuous years before becoming  
27 totally or partially disabled or before his or her death;

28 3. Must not have used tobacco products for at least 5 years  
29 before becoming totally or partially disabled or before his or  
30 her death; and

31 4. Must not have been employed during the preceding 5 years  
32 in any other position that is proven to create a higher risk for  
33 multiple myeloma, non-Hodgkin's lymphoma, prostate cancer, or  
34 testicular cancer. This includes any other employment as a  
35 firefighter at another employing agency within the preceding 5  
36 years.

37 (b) An employing agency must provide a physical examination  
38 for a firefighter before he or she begins service or immediately  
39 thereafter. Notwithstanding subparagraph (a)1., if the employing



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40 agency fails to provide a physical examination before the  
41 firefighter begins service, or immediately thereafter, the  
42 firefighter is entitled to the presumption provided that he or  
43 she meets the criteria specified in subparagraphs (a)2., (a)3.,  
44 and (a)4.

45 (c) The presumption does not apply to benefits payable  
46 under or granted in a life insurance or disability insurance  
47 policy unless the insurer and insured have negotiated for the  
48 additional benefits to be included in the policy contract.

49 (3) APPLICABILITY.—A firefighter employed on July 1, 2016,  
50 is not required to meet the physical examination requirement in  
51 subsection (2) in order to be entitled to the presumption set  
52 forth in this section.

53 Section 2. The Legislature shall review the current status  
54 of research programs, funded wholly or in part by the General  
55 Appropriations Act, which study the incidence of cancer in  
56 firefighters before the convening of the 2017 Regular Session of  
57 the Legislature to determine whether any further statutory  
58 changes to this act are necessary.

59 Section 3. (1) In order to fund the benefit changes  
60 provided in this act, the required employer contribution rate  
61 for members of the Florida Retirement System established in s.  
62 121.71(4), Florida Statutes, for the Special Risk Class is  
63 increased by 0.01 percentage point.

64 (2) The adjustment provided in subsection (1) is in  
65 addition to any other changes to such contribution rates which  
66 may be enacted into law to take effect on July 1, 2016. The  
67 Division of Law Revision and Information is directed to adjust  
68 accordingly the contribution rates provided in s. 121.71,



249998

69 Florida Statutes.

70 Section 4. The Legislature determines and declares that  
71 this act fulfills an important state interest.

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

73

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

75 And the title is amended as follows:

76 Delete everything before the enacting clause  
77 and insert:

78 A bill to be entitled  
79 An act relating to firefighters; creating s. 112.1816,  
80 F.S.; defining the term "firefighter"; establishing a  
81 presumption as to a firefighter's condition or  
82 impairment of health caused by certain types of cancer  
83 while in the line of duty; specifying criteria a  
84 firefighter must meet to be entitled to the  
85 presumption; requiring an employing agency to provide  
86 a physical examination for a firefighter; specifying  
87 circumstances under which the presumption does not  
88 apply; providing for applicability; requiring the  
89 Legislature to review specified cancer research  
90 programs by a certain date; providing for an employer  
91 contribution rate increase to fund changes made by the  
92 act; providing a directive to the Division of Law  
93 Revision and Information; providing a declaration of  
94 important state interest; providing an effective date.



By Senator Latvala

20-00037-16

2016456\_\_

1 A bill to be entitled  
 2 An act relating to firefighters; creating s. 112.1816,  
 3 F.S.; establishing a presumption as to a firefighter's  
 4 condition or impairment of health caused by cancer  
 5 while in the line of duty; requiring that a  
 6 firefighter successfully pass a physical examination  
 7 in order to be entitled to the presumption; specifying  
 8 nonapplicability; prescribing requirements for the  
 9 physical examination; authorizing specified  
 10 governmental entities to negotiate policy contracts  
 11 for life and disability insurance; requiring an  
 12 employing agency to maintain records and provide  
 13 notification regarding exposure to known carcinogens;  
 14 providing for applicability; providing an effective  
 15 date.

16  
 17 Be It Enacted by the Legislature of the State of Florida:

18  
 19 Section 1. Section 112.1816, Florida Statutes, is created  
 20 to read:

21 112.1816 Firefighter disability or death from cancer  
 22 presumed incurred in the line of duty.—

23 (1) PRESUMPTION; ELIGIBILITY CONDITIONS.—Any condition or  
 24 impairment of the health of a firefighter employed full time by  
 25 the state or any municipality, county, port authority, special  
 26 tax district, or fire control district which is caused by cancer  
 27 and results in total or partial disability or death is presumed  
 28 to have been accidental and to have been suffered in the line of  
 29 duty unless the contrary is shown by competent evidence. In

Page 1 of 3

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

20-00037-16

2016456\_\_

30 order to be entitled to this presumption, the firefighter must  
 31 have successfully passed a physical examination administered  
 32 before the individual entered into service as a firefighter and  
 33 which failed to reveal any evidence of such a health condition.  
 34 If the employing agency fails to provide a physical examination  
 35 before the firefighter enters into service, the firefighter must  
 36 successfully pass a physical examination given after he or she  
 37 enters into service. The presumption does not apply to benefits  
 38 payable under or granted in a life insurance or disability  
 39 insurance policy unless the insurer and insured have negotiated  
 40 for the additional benefits to be included in the policy  
 41 contract.

42 (2) PHYSICAL EXAMINATION REQUIREMENTS.—At a minimum, a  
 43 physical examination administered pursuant to subsection (1)  
 44 must include the following tests, as appropriate to the  
 45 examinee's gender:

46 (a) Physical breast examination and mammogram for female  
 47 breast cancer.

48 (b) Digital rectal examination, proctosigmoidoscopy, and  
 49 blood stool test for colon and rectal cancer.

50 (c) Rectal examination for prostate cancer.

51 (d) Pap test for cervical or uterine cancer.

52 (e) Pelvic examination for ovarian cancer.

53 (f) Radiographic examination for lung cancer.

54 (3) LIFE AND DISABILITY INSURANCE COVERAGE.—A governmental  
 55 entity specified in subsection (1) may negotiate policy  
 56 contracts for life and disability insurance which include  
 57 accidental death benefits or double indemnity coverage and which  
 58 include the presumption that any condition or impairment of

Page 2 of 3

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

20-00037-16

2016456\_\_

59 health of any firefighter caused by cancer resulting in total or  
60 partial disability or death was accidental and suffered in the  
61 line of duty unless the contrary is shown by competent evidence.

62 (4) RECORDKEEPING AND REPORTING REQUIREMENTS.—The employing  
63 agency shall maintain a record of any reported exposure of a  
64 firefighter to a known carcinogen as defined by the  
65 International Agency for Research on Cancer and must notify the  
66 firefighter of the exposure within 48 hours after the exposure  
67 is reported.

68 (5) APPLICABILITY.—A firefighter employed on July 1, 2016,  
69 is not required to meet the physical examination requirement in  
70 subsection (1) in order to be entitled to the presumption set  
71 forth in this section.

72 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)

**2/16/16**

**456**

*Meeting Date*

*Bill Number (if applicable)*

**249998**

*Amendment Barcode (if applicable)*

Topic **Firefighters**

Name **James Tolley**

Job Title **President, Florida Professional Firefighters**

Address **1689 Mahan Center Blvd. , Suite B**

Phone **(321)-543-6796**

*Street*

**Tallahassee**

**FL**

**32308**

Email **tolley@mindspring.com**

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing **Florida Professional Firefighters**

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

456  
Bill Number (if applicable)

Topic Cancer Presumption

Amendment Barcode (if applicable)

Name Arlene Smith

Job Title Legislative Affairs

Address 1230 Indiana Ave  
Street

Phone 386-405-1552

DeLand, FL 32720  
City State Zip

Email asmith@volusia.org

Speaking:  For  Against  Information

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

Representing County of Volusia

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

SB 456  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Kraig Conn

Job Title \_\_\_\_\_

Address 301 S. Branough  
Street  
Tall FL 32301  
City State Zip

Phone 222 9684

Email Kconn@flcities.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

SB 454  
Bill Number (if applicable)

Topic FIRE FIGHTER CANCER Disability

Amendment Barcode (if applicable)

Name Dorinda Merritt

Job Title Mayor Town of Inglis

Address P.O. DRAWER 429

Phone 352-229-0477

Inglis, Florida 34449  
City State Zip

Email mayordorindamerritt@gmail.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/2016  
Meeting Date

SB456  
Bill Number (if applicable)

Topic Fire Fighter Cancer Disability

Amendment Barcode (if applicable)

Name Debra Weiss

Job Title MAYOR of Yonkeetown

Address 4150 SE 193 PL  
Street

Phone 352 447 6186

Yonkeetown FL 34498  
City State Zip

Email MayorWeiss@yahoo.com

Speaking:  For  Against  Information

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

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/14  
Meeting Date

456  
Bill Number (if applicable)

Topic Fire Fighters

Amendment Barcode (if applicable)

Name Bruce Powell

Job Title President

Address 304 NE 1st St  
Street

Phone 954-773-1250

Pompano Bch FL 33060  
City State Zip

Email president@3050fire.com

Speaking:  For  Against  Information

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

Representing Metro Broward Prof Fire Fighters

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

456  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Firefighters

Amendment Barcode (if applicable) \_\_\_\_\_

Name Lisa Henning

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr

Phone 850-766-8808

Tallahassee FL 32301  
City State Zip

Email lplegislative@aol.com

Speaking:  For  Against  Information

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

Representing Fraternal Order of Police

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

SB 0456  
Bill Number (if applicable)

Topic FF Cancer

Amendment Barcode (if applicable)

Name Doug WATLER

Job Title Fire fighter

Address 304 W 1st St

Phone 561-488-1403

Street

Pompano Bch, FL

33060

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Broward County Council of Firefighters

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)

2/16/16  
Meeting Date

SB 0456  
Bill Number (if applicable)

Topic FF CANCER

Amendment Barcode (if applicable)

Name MICHAEL SALZANO

Job Title VICE PRESIDENT

Address 309 SW 26 ST  
Street

Phone 954 650 1741

FORT LAUDERDALE FL 33315  
City State Zip

Email TURK765@ME.COM

Speaking:  For  Against  Information

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

Representing FORT LAUDERDALE PROFESSIONAL FIREFIGHTERS LOCAL 765

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/16  
Meeting Date

SB0456  
Bill Number (if applicable)

Topic FF Cancer

Amendment Barcode (if applicable)

Name Ron Tetreault

Job Title Fire Captain

Address 309 SW 26 ST  
Street

Phone 954 560 4086

FLAUID, FL 33315  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing IAFF Local 765

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-16-16

Meeting Date

456

Bill Number (if applicable)

Topic Firefighters Cancer Presumptive

Amendment Barcode (if applicable)

Name Jim Milligan

Job Title District Chief

Address 4360-55th N

Phone 727-526-5650

Street

St. Pete

FL

33714

City

State

Zip

Email milligan@lealmanfire.com

Speaking:  For  Against  Information

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

Representing Lealman Fire District

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)

456  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Presumptive Cancer SB 456

Amendment Barcode (if applicable) \_\_\_\_\_

Name MIKE BROWN

Job Title BUSINESS AGENT

Address 7179 E TROPICAL WAY  
Street

Phone 239-278-7980

PLANTATION FL 33317  
City State Zip

Email mbrownfpf@aol.com

Speaking:  For  Against  Information

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

Representing METRO BROWARD FIREFIGHTERS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

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

---

BILL: SB 7022

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Depictions or Recordings of the Killing of a Law Enforcement Officer

DATE: February 15, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Duggar	Cannon		<b>CJ Submitted as Committee Bill</b>
1.	Kim	McVaney	GO	<b>Favorable</b>
2.			RC	

---

**I. Summary:**

SB 7022 is the result of an Open Government Sunset Review of s. 406.136, F.S., performed by the Criminal Justice Committee. That section makes confidential and exempt from public disclosure photographs and video and audio recordings of the killing of a person when held by an agency. It permits a surviving spouse to view and copy these records. If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them. The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them. Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties and responsibilities. Other than these exceptions, the custodian is prohibited from releasing the records to any other person not authorized under the exemption without a court order.<sup>1</sup>

This exemption is subject to review under the Open Government Sunset Review Act.<sup>2</sup> It will expire on October 2, 2016, unless the Legislature reviews and reenacts it.

The Criminal Justice Committee voted on February 1, 2016, to reenact the exemption but limit it to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.<sup>3</sup>

Since the bill narrows the scope of the public records exemption, it does not require a two-thirds vote of each house of the Legislature for passage.

---

<sup>1</sup> Section 406.136, F.S.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Committee members discussed and weighed heavily that the genesis for the exemption's creation was the killing of a police officer during a traffic stop in Tampa that was captured on the patrol car's video camera.

## 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.<sup>4</sup> 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.<sup>5</sup>

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>6</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.”<sup>10</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>11</sup>

The Legislature may create an exemption to public records requirements.<sup>12</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>13</sup> 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.<sup>14</sup> A statutory

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<sup>4</sup> FLA. CONST., art. I, s. 24(a).

<sup>5</sup> FLA. CONST., art. I, s. 24(a).

<sup>6</sup> 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.

<sup>7</sup> Public records laws are found throughout the Florida Statutes.

<sup>8</sup> Section 119.01(1), F.S.

<sup>9</sup> 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.”

<sup>10</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>11</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

<sup>13</sup> FLA. CONST., art. I, s. 24(c).

<sup>14</sup> FLA. CONST., art. I, s. 24(c).



exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>15</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>16</sup> 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.<sup>17</sup>

### **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.<sup>18</sup> 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.<sup>19</sup> 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:<sup>20</sup>

- 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?

---

<sup>15</sup> *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.

<sup>16</sup> 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).

<sup>17</sup> 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).

<sup>18</sup> 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).

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

### **Current Exemption Under Review**

In 2011, the Legislature created a public record exemption for photographs and video and audio recordings that depict or record the killing of a person when held by an agency.<sup>23</sup> These photographs and video and audio recordings are confidential and exempt from public records requirements, except that the exemption permits a surviving spouse to view, listen, and copy these photographs and video and audio recordings.<sup>24</sup> If there is no surviving spouse, then the deceased's surviving parents may view and copy them. If there are no surviving parents, then an adult child of the deceased may view and copy them.<sup>25</sup> The surviving relative who has the authority to view and copy these records is authorized to designate in writing an agent to obtain them.<sup>26</sup>

Additionally, federal, state, and local governmental agencies, upon written request, may have access to these records in the performance of their duties and responsibilities. The identity of the deceased must remain confidential and exempt.<sup>27</sup>

Persons other than those covered by the exceptions above have access to the photographs and recordings only with a court order upon a showing of good cause and are limited by any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider the following:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.<sup>28</sup>

The specified family members must be given reasonable notice of a petition requesting access to the photographs and recordings, a copy of the petition, and the opportunity to be present and heard at any hearing on the matter.<sup>29</sup> Such access, if granted by the court, must be performed under the direct supervision of the custodian of the record or his or her designee.<sup>30</sup>

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<sup>21</sup> FLA. CONST., art. I, s. 24(c).

<sup>22</sup> Section 119.15(7), F.S.

<sup>23</sup> Ch. 2011-115, s. 1, Laws of Fla. (creating s. 406.136, F.S., effective July 1, 2011). "Killing of a person" is defined to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death." s. 406.136(1), F.S.

<sup>24</sup> Section 406.136(2), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Section 406.136(3), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 406.136(4), F.S.

<sup>29</sup> Section 406.136(5), F.S.

<sup>30</sup> Section 406.136(4)(c), F.S.

It is a third degree felony for any custodian of a photograph, video, or audio recording to willingly and knowingly violate these provisions. The same penalty applies to anyone who willingly and knowingly violates a court order issued under these provisions.<sup>31</sup>

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings from restricting the disclosure of a killing, crime scene, or similar photograph or video or audio recording.<sup>32</sup> The exemption is retroactive, except that it is not intended to overturn, abrogate, or alter any existing court order in effect on July 1, 2011, that restricts or limits access to any such photograph or recording.<sup>33</sup>

The exemption is patterned after the public record exemption created earlier in s. 406.135, F.S., relating to photographs and video and audio recordings of an autopsy held by a medical examiner.<sup>34</sup> The same justification that was used in the public necessity statement for autopsy photographs was also used for the exemption under review, and provides in part:

photographs or video or audio recordings that depict or record the killing of any person render a visual or aural representation of the deceased in graphic and often disturbing fashion. Such photographs or video or audio recordings provide a view of the deceased in the final moments of life, often bruised, bloodied, broken, with bullet wounds or other wounds, cut open, dismembered, or decapitated. As such, photographs or video or audio recordings that depict or record the killing of any person are highly sensitive representations of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased, as well as injury to the memory of the deceased. The Legislature recognizes that the existence of the World Wide Web and the proliferation of personal computers throughout the world encourages and promotes the wide dissemination of such photographs and video and audio recordings 24 hours a day and that widespread unauthorized dissemination of photographs and video and audio recordings would subject the immediate family of the deceased to continuous injury. The Legislature further recognizes that there continue to be other types of available information, such as crime scene reports, which are less intrusive and injurious to the immediate family members of the deceased and which continue to provide for public oversight.<sup>35</sup>

The exemption is subject to the Open Government Sunset Review Act and as such, will be repealed on October 2, 2016, unless reviewed and reenacted by the Legislature.<sup>36</sup>

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<sup>31</sup> Section 406.136(6), F.S.

<sup>32</sup> *Id.* In *State v. Schenecker*, No. 11-CF-001376A (Fla. 13th Cir.Ct. August 3, 2011), *cert. denied sub nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), the circuit court applied the exemption to crime scene photographs of homicide victims.

<sup>33</sup> Section 406.136(7), F.S.

<sup>34</sup> Chapter 2001-1, s. 1, Laws of Fla.

<sup>35</sup> Chapter 2011-115, s. 2, Laws of Fla.

<sup>36</sup> Section 406.136(9), F.S.

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Criminal Justice Committee recommends that the Legislature retain the public records exemption created in s. 406.136, F.S. This recommendation is made in light of information gathered for the Open Government Sunset Review, indicating that there is a public necessity to continue protecting photographs and video and audio recordings that depict or record the killing of any person when held by an agency because they are highly sensitive and personal representations of the deceased. As such, widespread and continuous display of these photographs or recordings subjects the surviving family members to unwarranted trauma and emotional distress and harms the memory of the deceased.<sup>37</sup>

The Senate Criminal Justice Committee voted on February 1, 2016, to reenact the exemption but limit it to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.<sup>38</sup>

### **III. Effect of Proposed Changes:**

The bill narrows the public records exemption in s. 406.136, F.S., which provides that photographs and video and audio recordings that depict or record the killing of any person when held by an agency are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, except they are accessible to certain specified family members of the deceased person and public governmental agencies without a court order. Under the bill, the exemption will only apply to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.

The bill also amends s. 406.136, F.S., to remove the sentence that requires its repeal.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>37</sup> According to the majority of survey responses from state agencies, state universities and colleges, municipalities, and local law enforcement agencies that receive or maintain such records, the exemption should be reenacted because it protects information that is personal and highly sensitive, the release of which subjects the surviving family members to further trauma and emotional distress. The responses were as follows: out of 23 state agencies, 10 recommended reenactment (13 were not applicable); out of 20 state university and colleges, 6 recommended reenactment (14 were not applicable); out of 109 municipalities, including 49 police departments, 34 recommended reenactment (31 were from police departments) (77 were not applicable); and out of 32 sheriff's offices, 26 recommended reenactment (6 were not applicable). Several responses had no recommendation regarding repeal or reenactment. One response recommended repealing the exemption. Several responses recommended clarifying the notification provision. Reenactment was generally recommended to continue protecting the surviving family members from emotional distress and trauma and protecting the memory of the deceased.

<sup>38</sup> Committee members discussed and weighed heavily that the genesis for the exemption's creation was the killing of a police officer during a traffic stop in Tampa that was captured on the patrol car's video camera.

## B. Public Records/Open Meetings Issues:

In *Campus Communications, Inc., v. Earnhardt*,<sup>39</sup> the Fifth District Court of Appeal upheld the law this exemption is patterned after (which exempts autopsy photographs and video and audio recordings) against an unconstitutional overbreadth challenge brought by a newspaper. The court held that the newspaper had not established good cause to view or copy the photographs and that the exemption applied retroactively.<sup>40</sup> The court found that s. 406.135, F.S., met constitutional and statutory requirements that the exemption is no broader than necessary to meet its public purpose, even though not all autopsy recordings are graphic and result in trauma when viewed. The court also found that the Legislature stated with specificity the public necessity justifying the exemption in ch. 2001-1, Laws of Fla.<sup>41</sup> Furthermore, the court found the statute provides for disclosure of written autopsy reports, allows for the publication of exempted records upon good cause if the requisite statutory criterion is met, and is supported by a thoroughly articulated public policy to protect against trauma that is likely to result upon disclosure to the public.<sup>42</sup>

The court concluded that it is the prerogative of the Legislature to determine that autopsy photographs are private and need to be protected and that this privacy right prevails over the right to inspect and copy public records. The court also stated that its function is to determine whether the Legislature made this determination in a constitutional manner. Finding that the statute was constitutionally enacted and that it was properly applied to the facts in this case, the Fifth District Court of Appeal affirmed the lower court's finding of constitutionality.<sup>43</sup> The court went on to certify the question of constitutionality to the Florida Supreme Court. On July 1, 2003, the Florida Supreme Court, per curiam, denied review of this case, leaving in place the appellate court's holding.<sup>44</sup>

Since the bill narrows the scope of the public records exemption in s. 406.136, F.S., it does not require a two-thirds vote of each house of the Legislature for passage.

## C. Trust Funds Restrictions:

None.

## D. Constitutional Issues:

In a federal civil rights case filed against the County of San Diego, a federal appeals court found that the U.S. Constitution protects the right of a family not to have images of a deceased family member be publically disseminated.<sup>45</sup> The plaintiff in the case was a

<sup>39</sup> *Campus Communications, Inc.*, 821 So. 2d 388, 403 (Fla. 5th DCA 2002), *review dismissed* 845 So. 2d 894 (Fla. 2003), *review denied*, 848 So. 2d 1153 (Fla. 2003) *certiorari denied* 540 U.S. 1049 (2003).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 395.

<sup>42</sup> *Id.* at 394.

<sup>43</sup> *Id.* at 403.

<sup>44</sup> *Campus Communications, Inc. v. Earnhardt*, 845 So. 2d 894 (Fla. 2003), *review denied*, 848 So. 2d 1153 (Fla. 2003) *certiorari denied* 540 U.S. 1049 (2003).

<sup>45</sup> The lawsuit was filed under 42 U.S.C. s. 1983, which states: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

mother whose two year old son died of a severe head injury while in the care of her paramour. During the investigation an autopsy was performed and photographs of the child's body were taken. The paramour was convicted of second degree murder, but the conviction was ultimately set aside.<sup>46</sup> The prosecutor in the case kept some of the photos after the case concluded. After retiring, the former prosecutor gave one of the photos and an article he wrote to the media.

In *Marsh v. County of San Diego*, the US District Court of Appeals for the Ninth Circuit found that “the common law right to non-interference with a family’s remembrance of a decedent is so ingrained in our traditions that it is protected” by the United States Constitution.<sup>47</sup> This constitutional right arises out of the right to privacy derived from the 14th Amendment.<sup>48</sup> The U.S. District Court of Appeals for the Ninth Circuit found that:

A common law right rises to the level of a constitutional right if it is “deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty.” ... The *Favish* Court considered our history and traditions, and found that “th[e] well-established cultural tradition acknowledging a family's control over the body and death images of the deceased has long been recognized at common law.” For precisely the same reasons, we conclude that this right is also protected by substantive due process. (internal citations omitted).<sup>49</sup>

The court found that the publication of a child’s autopsy photographs was an intrusion of a mother’s grief “without any legitimate government purpose – “shocks the conscience”” and therefore violated the plaintiff’s substantive due process rights.<sup>50</sup> In addition, the court also found that a parent has a constitutionally protected right to control a deceased child’s remains and the images of the child’s death.<sup>51</sup>

In addition to constitutionally protected substantive due process rights to privacy, the *Marsh* court also found that in the California law governing the images of autopsy photos had created a federal liberty interest which was protected by federal procedural due process rights.<sup>52</sup> The 14th Amendment of the U.S. Constitution prohibits the deprivation of liberty without procedural due process. A state law may create a federally protected liberty interest if the state law contains:

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citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief shall be considered to be a statute of the District of Columbia.

<sup>46</sup> *Marsh v. County of San Diego*, 680 F.3d 1148, 1152 (9th Cir. 2012).

<sup>47</sup> *Id.* at 1154

<sup>48</sup> *Id.* at 1153.

<sup>49</sup> *Id.* at 1154.

<sup>50</sup> *Id.* at 1155.

<sup>51</sup> *Id.* at 1154.

<sup>52</sup> *Id.* at 1155-1158.

(1) substantive predicates governing official decision making, and (2) explicitly mandatory language specifying the outcome that must be reached if the substantive predicates have been met.’ In order to contain the requisite substantive predicates. (internal citations and quotation marks omitted).<sup>53</sup>

The *Marsh* court found that the California law met the requirements for creating a liberty interest protected by the U.S. Constitution and concluded:

California consciously and deliberately gave its citizens the right not to have government officials engage in unwarranted reproduction of autopsy photographs or other death images of deceased relatives. Once a state law creates that right, the [U.S.] Constitution steps in to protect it against deprivations without due process of law.<sup>54</sup>

Ultimately, the defendants prevailed in the civil rights lawsuit because the *Marsh* court determined that the state attorney who gave the autopsy photo to the press was not acting under color of law because he had retired at the time he disseminated the photo. The *Marsh* court also found that at the time the former prosecutor kept the photo for personal use, there was no court had yet found that a federally protected constitutional right to privacy existed for images of a deceased family member.<sup>55</sup>

The United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit have not opined on whether a family has a constitutionally protected privacy interest in controlling the death related images of a deceased family member. It is unclear whether those courts would concur with and follow the reasoning in *Marsh*.<sup>56</sup> Under Florida law, there exists a constitutional right to privacy along with a statutory exemption protecting photographs and video and audio recordings of the killing of a person from disclosure. Given *Marsh* and Florida’s privacy protections, the Legislature may wish to consider the following questions on this policy:

- Are images of the killing of a person sufficiently similar to an autopsy photo to be protected under the substantive due process privacy rights afforded by the U.S. Constitution?

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<sup>53</sup> *Id.* at 1155-1156.

<sup>54</sup> *Id.* at 1157-1158.

<sup>55</sup> *Id.* at 1159-1160.

<sup>56</sup> The United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit, which includes Florida, have considered similar cases regarding the right of a family to control the publication of images of a deceased family member, however, none of those courts have considered whether such privacy rights were protected by the U.S. Constitution. A federal district court in the Wisconsin, which is located in the United States Court of Appeals for the Seventh Circuit, considered the question and expressly found that “the *Marsh* holding represents an expansion in substantive due process law not augured in Seventh Circuit precedent.” *Olejnik v. England*, 14-CV-88-JDP, 2015 WL 7588502, at \*10 (W.D. Wis. 2015). The court in *Olejnik* found that the “[t]he Seventh Circuit has not recognized any constitutionally protected interest in the “right to remembrance” or to the non-interference with a loved one’s remains. Rather, the Seventh Circuit has recognized that the [United States] Supreme Court has emphasized how limited the scope of substantive due process is, and that substantive due process is “a modest limitation that prohibits government action only when it is random and irrational.” (internal citation omitted). *Id.*

- Does the current state constitutional privacy right and public record exemption regarding the killing of a person create a privacy interest which may be protected by procedural due process clause under the Fourteenth Amendment to the U.S. Constitution?

It is possible that a court could find that this bill conflicts with the constitutional privacy rights found in *Marsh*. Generally, federal law prevails over state laws when there is a conflict between the two because of the supremacy clause of the U.S. Constitution.<sup>57</sup>

It should be noted that the Florida Constitution protects privacy, but those rights sometimes conflict with the right to public access which is also protected by the Florida Constitution. Article 1, section 23, of the Florida Constitution provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Courts will look to the Legislature to balance these competing interests.<sup>58</sup>

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

Indeterminate.

## VI. Technical Deficiencies:

None.

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<sup>57</sup> Article VI, clause 2 of the U.S. Constitution provides: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

<sup>58</sup> See *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 402-403 (Fla. 5th DCA 2002) (“Thus our function here has not been to weigh these two constitutional rights with respect to autopsy photographs and determine whether the right that helps ensure an open government freely accessible by every citizen is more significant or profound than the right that preserves individual liberty and privacy. Rather, our function has been to determine whether the Legislature has declared that the latter prevails over the former in a manner that is consistent with the constitutional provisions that bestow upon it the power to do so.”); see also *Wallace v. Guzman*, 687 So. 2d 1351, 1354 (Fla. 3d DCA 1997) (noting “[t]he [L]egislature has balanced the private/public rights by creating the various exemptions from public disclosure contained in section 119.07, Florida Statutes (1995).”).



**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 406.136 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.

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

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By the Committee on Criminal Justice

591-02917-16

20167022\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 406.136, F.S., which provides an exemption from public records requirements for a photograph or video or audio recording held by an agency that depicts or records the killing of a person; narrowing the exemption to depictions or recordings of the killing of a law enforcement officer who was acting in accordance with his or her official duties; 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 406.136, Florida Statutes, is amended to read:

406.136 A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties a ~~person.~~

(1) As used in this section, the term "killing of a law enforcement officer who was acting in accordance with his or her official duties" "~~killing of a person~~" means all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties ~~any human being~~, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

(2) A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties a ~~person~~ is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I

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

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of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, then the surviving parents shall have access to such records. If there is no surviving spouse or parent, then an adult child shall have access to such records.

(3) (a) The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a law enforcement officer who was acting in accordance with his or her official duties a ~~person~~ and, unless otherwise required in the performance of their duties, the identity of the deceased shall remain confidential and exempt.

(c) The custodian of the record, or his or her designee, may not permit any other person to view or copy such photograph or video recording or listen to or copy such audio recording without a court order.

(4) (a) The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties a ~~person~~ or to listen to or copy an audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties a ~~person~~ and may prescribe any restrictions or

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

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62 stipulations that the court deems appropriate.

63 (b) In determining good cause, the court shall consider:

64 1. Whether such disclosure is necessary for the public  
65 evaluation of governmental performance;

66 2. The seriousness of the intrusion into the family's right  
67 to privacy and whether such disclosure is the least intrusive  
68 means available; and

69 3. The availability of similar information in other public  
70 records, regardless of form.

71 (c) In all cases, the viewing, copying, listening to, or  
72 other handling of a photograph or video or audio recording that  
73 depicts or records the killing of a law enforcement officer who  
74 was acting in accordance with his or her official duties ~~a~~  
75 ~~person~~ must be under the direct supervision of the custodian of  
76 the record or his or her designee.

77 (5) A surviving spouse shall be given reasonable notice of  
78 a petition filed with the court to view or copy a photograph or  
79 video recording that depicts or records the killing of a law  
80 enforcement officer who was acting in accordance with his or her  
81 official duties ~~a person~~ or to listen to or copy any such audio  
82 recording, a copy of such petition, and reasonable notice of the  
83 opportunity to be present and heard at any hearing on the  
84 matter. If there is no surviving spouse, then such notice must  
85 be given to the parents of the deceased and, if the deceased has  
86 no living parent, then to the adult children of the deceased.

87 (6) (a) Any custodian of a photograph or video or audio  
88 recording that depicts or records the killing of a law  
89 enforcement officer who was acting in accordance with his or her  
90 official duties ~~a person~~ who willfully and knowingly violates

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91 this section commits a felony of the third degree, punishable as  
92 provided in s. 775.082, s. 775.083, or s. 775.084.

93 (b) Any person who willfully and knowingly violates a court  
94 order issued pursuant to this section commits a felony of the  
95 third degree, punishable as provided in s. 775.082, s. 775.083,  
96 or s. 775.084.

97 (c) A criminal or administrative proceeding is exempt from  
98 this section but, unless otherwise exempted, is subject to all  
99 other provisions of chapter 119, provided however that this  
100 section does not prohibit a court in a criminal or  
101 administrative proceeding upon good cause shown from restricting  
102 or otherwise controlling the disclosure of a killing, crime  
103 scene, or similar photograph or video or audio recordings in the  
104 manner prescribed herein.

105 (7) This exemption shall be given retroactive application  
106 and shall apply to all photographs or video or audio recordings  
107 that depict or record the killing of a law enforcement officer  
108 who was acting in accordance with his or her official duties ~~a~~  
109 ~~person~~, regardless of whether the killing of the person occurred  
110 before, on, or after July 1, 2011. However, nothing herein is  
111 intended to, nor may be construed to, overturn or abrogate or  
112 alter any existing orders duly entered into by any court of this  
113 state, as of the effective date of this act, which restrict or  
114 limit access to any photographs or video or audio recordings  
115 that depict or record the killing of a law enforcement officer  
116 who was acting in accordance with his or her official duties ~~a~~  
117 ~~person~~.

118 (8) This section only applies to such photographs and video  
119 and audio recordings held by an agency as defined in s. 119.011.

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

124       Section 2. 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)

7022  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Video of Slain LEO

Amendment Barcode (if applicable) \_\_\_\_\_

Name Lisa Henning

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr

Phone 850-766-8808

Tallahassee FL 32301  
City State Zip

Email lphlegislative@aol.com

Speaking:  For  Against  Information

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

Representing Fraternal Order of Police

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/16/16

Meeting Date

SB 7022

Bill Number (if applicable)

Topic Depictions or Recordings of the Killing of Law Enforcement Amendment Barcode (if applicable)

Name CARY BRADFORD

Job Title Government Relations

Address 300 E. Breward St  
Street

Phone 800-733-3722

Tallahassee FL 323601  
City State Zip

Email Cary@FIPBA.com

Speaking:  For  Against  Information

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

Representing FLORIDA POLICE Benevolent Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/14/14  
Meeting Date

7022  
Bill Number (if applicable)

Topic Open records

Amendment Barcode (if applicable)

Name Bill Peables

Job Title \_\_\_\_\_

Address PO Box 10930

Phone 850 564 3029

Tallahassee FL 32302  
City State Zip

Email Silvia.Silpala.com

Speaking:  For  Against  Information

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

Representing City of Tampa

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.)

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

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BILL: CS/SB 1150

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Legislative Reauthorization of Agency Rulemaking Authority

DATE: February 17, 2016

REVISED: \_\_\_\_\_

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

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1150 requires the Administrative Procedures Committee to submit recommendations to the President of the Senate and the Speaker of the House of Representatives by March 1, 2017, on a process to periodically review rulemaking authority granted to state agencies. Such recommendations must outline a process similar to the Open Government Sunset Review Act, set forth in s. 119.15, F.S., including the expiration of rulemaking authority until reauthorized by the Legislature.

The bill takes effect upon becoming a law.

**II. Present Situation:**

**Administrative Procedure Act**

Chapter 120, F.S., known as the Administrative Procedure Act (APA),<sup>1</sup> regulates administrative rulemaking, administrative enforcement and administrative resolution of disputes arising out of administrative actions of most state agencies and some subdivisions of state government. The term “agency” is defined in s. 120.52(1), F.S., as:

- Each state officer and state department, and departmental unit described in s. 20.04, F.S.<sup>2</sup>

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<sup>1</sup> Section 120.51, F.S.

<sup>2</sup> Section 20.04, F.S., sets the structure of the executive branch of state government.



- The Board of Governors of the State University System, the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- A regional water supply authority.
- A regional planning agency.
- A multicounty special district with a majority of its governing board comprised of non-elected persons.
- Educational units.
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.
- Other units of government in the state, including counties and municipalities, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.<sup>3</sup>

The definition of “agency” also includes the Governor<sup>4</sup> in the exercise of all executive powers other than those derived from the State Constitution.

Administrative actions authorized by law and regulated by the APA include adoption of a rule,<sup>5</sup> granting or denying a permit or license, an order enforcing a law or rule that assesses a fine or other discipline and final decisions in administrative disputes or other matters resulting in an agency decision. Such disputes include challenges to the validity of a rule or proposed rule or challenges to agency reliance on unadopted rules,<sup>6</sup> as well as challenges to other proposed agency actions which affect substantial interests of any party.<sup>7</sup> In addition to disputes, agency action occurs when the agency acts on a petition for a declaratory statement<sup>8</sup> or settles a dispute through mediation.<sup>9</sup>

### **Administrative Rulemaking**

The APA governs all rulemaking by state agencies except when specific legislation exempts its application. Rulemaking authority is delegated by the Legislature<sup>10</sup> authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>11</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>12</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>13</sup> The grant of rulemaking authority itself need not be detailed.<sup>14</sup> The particular statute being interpreted or implemented through rulemaking must

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<sup>3</sup> The definition of agency expressly excludes certain legal entities or organizations found in chs. 343, 348, 349 and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

<sup>4</sup> Section 120.52(1)(a), F.S.

<sup>5</sup> Section 120.54, F.S.

<sup>6</sup> Section 120.56, F.S.

<sup>7</sup> Section 120.569, F.S.

<sup>8</sup> Section 120.565, F.S.

<sup>9</sup> Section 120.573, F.S.

<sup>10</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>11</sup> Section 120.52(17), F.S.

<sup>12</sup> Section 120.54(1)(a), F.S.

<sup>13</sup> Sections 120.52(8) & 120.536(1), F.S.

<sup>14</sup> *Save the Manatee Club, Inc.*, supra at 599.

provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

In 1996 the Legislature extensively revised<sup>18</sup> agency rulemaking under the APA to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>19</sup> The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.<sup>20</sup> If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.<sup>21</sup>

A notice of rule development initiates public input on a rule proposal.<sup>22</sup> The process may be facilitated by conducting public workshops or engaging in negotiated rulemaking.<sup>23</sup> An agency begins the formal rulemaking by filing a notice of the proposed rule.<sup>24</sup> The notice is published by the Department of State in the Florida Administrative Register<sup>25</sup> and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared,<sup>26</sup> and how a party may request a public

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<sup>15</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>16</sup> *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

<sup>17</sup> *Sarasota County. v. Barg*, 302 So. 2d 737 (Fla. 1974).

<sup>18</sup> Ch. 96-159, LOF.

<sup>19</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>20</sup> *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1<sup>st</sup> DCA 1977).

<sup>21</sup> *McDonald v. Dep't of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1<sup>st</sup> DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1<sup>st</sup> DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1<sup>st</sup> DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977-978 (Fla. 1<sup>st</sup> DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5<sup>th</sup> DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1<sup>st</sup> DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5<sup>th</sup> DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5<sup>th</sup> DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1<sup>st</sup> DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1<sup>st</sup> DCA 2010).

<sup>22</sup> Section 120.54(2)(a), F.S.

<sup>23</sup> Section 120.54(2)(c)-(d), F.S.

<sup>24</sup> Section 120.54(3)(a)1., F.S..

<sup>25</sup> Section 120.54(3)(a)2., F.S.

<sup>26</sup> Section 120.541(1)(b), F.S., requires preparation of a SERC if the proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 within one year of implementation of the rule. Alternatively, s. 120.541(1)(a), F.S., provides that preparation of a SERC is triggered

hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy, adverse impact on business competitiveness or increase in regulatory costs.<sup>27</sup>

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect.<sup>28</sup> First, is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.<sup>29</sup> Next, is the likely adverse impact on business competitiveness,<sup>30</sup> productivity, or innovation.<sup>31</sup> Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.<sup>32</sup> If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."<sup>33</sup> A rule must be filed for adoption before it may go into effect<sup>34</sup> and cannot be filed for adoption until completion of the rulemaking process.<sup>35</sup>

Proposed rules also must be formally reviewed by the Legislature's Joint Administrative Procedures Committee (JAPC)<sup>36</sup> which reviews rules to determine their validity, authority, sufficiency of form, consistency with legislative intent, reasonableness of regulatory cost estimates and other matters.<sup>37</sup> An agency must formally respond to JAPC concerns or objections.<sup>38</sup>

### **Emergency Rulemaking**

Florida's APA provides for emergency rulemaking by any procedure which is fair under the circumstances when an immediate danger to the public health, safety, or welfare requires emergency action. Emergency rules may not be effective for more than 90 days but may be renewed if the agency has initiated rulemaking to adopt rules addressing the subject.<sup>39</sup>

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when a substantially affected person submits a good faith written proposal for a lower cost regulatory alternative which substantially accomplishes the objectives of the law being implemented.

<sup>27</sup> Section 120.541(2)(a), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 120.541(2)(a)1., F.S.

<sup>30</sup> Section 120.541(2)(a)2., F.S., states that business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>31</sup> *Id.*

<sup>32</sup> Section 120.541(2)(a) 3., F.S.

<sup>33</sup> Section 120.54(3)(e)6., F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

<sup>34</sup> *Id.*

<sup>35</sup> Section 120.54(3)(e), F.S.

<sup>36</sup> Section 120.54(3)(a)4., F.S.

<sup>37</sup> Section 120.545(1), F.S.

<sup>38</sup> Sections 120.54(3)(e)4. and 120.545(3), F.S.

<sup>39</sup> Section 120.54(4), F.S.

### **Administrative Procedures Committee**

Section 1.01(16), F.S., provides that the term “Administrative Procedures Committee” means a committee designated by joint rule of the Legislature or by agreement between the President of the Senate and the Speaker of the House of Representatives. This committee is also known as the Joint Administrative Procedures Committee (JAPC).

JAPC, a joint standing committee of the Legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature, is composed of no fewer than five and no more than seven members from each house, as appointed by the President of the Senate and the Speaker of the House. The primary function of JAPC is to generally review agency action pursuant to the operation of ch. 120, F.S., the Administrative Procedures Act, particularly as these actions relate to the rulemaking process. It is JAPC’s responsibility to ensure that rules adopted by the executive branch agencies do not create new law, but rather stay within the authority specifically delegated by the legislature.

Joint Rule 4.6 charges JAPC with maintaining a continuous review of agency rules and the statutory authority upon which they are based. JAPC reviews proposed rules and may review existing rules to determine whether they are within delegated legislative authority and notifies the agency if its authority is eliminated or significantly changed by repeal, amendment or holding of a court of last resort. Following each session of the Legislature, JAPC reviews each law signed by the Governor or allowed to become law without his signature and determines whether the law will have a probable effect on an agency’s rules. JAPC also constantly monitors judicial decisions in administrative law and advises the agency when either its statutory rulemaking authority or its rules are affected by these decisions.

Section 120.545, F.S., provides additional authority for the review of rules and sets out the procedures in the event of a JAPC objection to a rule. If the reviewing attorneys have concerns that a proposed or existing rule may not be authorized or exceeds the delegated rulemaking authority, the agency is contacted. Often, the agency agrees that there is no authority for the rule and withdraws or amends the rule to meet the staff concerns. If there is disagreement about whether or not there is authority for the rule, the rule is scheduled for consideration by the full committee in a public forum. The agency may appear before the committee and present argument and evidence in support of its rule. If, after hearing the agency’s argument, the committee does not find statutory authority for the rule, an objection is voted and the agency has a statutory period in which to respond. If the agency refuses to modify or withdraw a rule to which the committee has objected, public notice of the objection is given and a notation accompanies the rule when it appears in the Florida Administrative Code.

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (OGSR Act) prescribes a legislative review process for newly created or substantially amended public records and open meetings exemptions.<sup>40</sup> The OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year

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<sup>40</sup> Sections 286.0111 and 119.15, F.S. Section 286.0111, F.S. provides that the OGSR Act’s provisions found in s. 119.15, F.S., apply to s. 286.011, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered substantially amended if it is expanded to include more information or to include meetings. The OGSR Act does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. While the OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>41</sup> In practice, many exemptions are continued by repeal of the sunset date rather than reenactment of the exemption.

Under the OGSR Act, the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following specific questions in such a review:<sup>42</sup>

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

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>43</sup>

An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>44</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>45</sup> or
- It protects trade or business secrets.<sup>46</sup>

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.<sup>47</sup>

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>48</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>49</sup>

### III. Effect of Proposed Changes:

**Section 1** requires the Administrative Procedures Committee as defined in s. 1.01, F.S., to submit recommendations to the President of the Senate and the Speaker of the House of

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<sup>41</sup> Section 119.15(3), F.S.

<sup>42</sup> Section 119.15(6)(a), F.S.

<sup>43</sup> Section 119.15(6)(b), F.S.

<sup>44</sup> Section 119.15(6)(b)1., F.S.

<sup>45</sup> Section 119.15(6)(b)2., F.S.

<sup>46</sup> Section 119.15(6)(b)3., F.S.

<sup>47</sup> Section 119.15(6)(b), F.S.

<sup>48</sup> FLA. CONST., art. I, s. 24(c).

<sup>49</sup> Section 119.15(7), F.S.

Representatives by March 1, 2017, on a process to periodically review rulemaking authority granted to state agencies. Such recommendations must outline a process similar to the Open Government Sunset Review Act, set forth in s. 119.15, F.S., including the expiration of rulemaking authority until reauthorized by the Legislature.

**Section 2** provides the bill takes effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on February 16, 2016:**

- Deletes provisions of original bill regarding suspension of any new rulemaking authority for 3 years after the effective date of the law authorizing rulemaking until reauthorized by general law;
- Requires the Administrative Procedures Committee to submit recommendations by March 1, 2017, to the President of the Senate and the Speaker of the House of Representatives on a process to periodically review rulemaking authority granted to state agencies;
- Requires such legislative recommendations to outline a process similar to the Open Government Sunset Review Act, set forth in s. 119.15, F.S., including the expiration of rulemaking authority until reauthorized by the Legislature; and
- Changes effective date from July 1, 2016, to taking effect upon becoming a law.

- B. **Amendments:**

None.



148294

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/16/2016	.	
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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. Subsections (2) through (4) of section 120.536,  
Florida Statutes, are renumbered as subsections (3) through (5),  
respectively, and a new subsection (2) is added to that section,  
to read:

120.536 Rulemaking authority; reauthorization; repeal;  
challenge.—





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11           (2) (a) Notwithstanding any other provision of law, and  
12 except as provided in paragraph (g), any new rulemaking  
13 authority is suspended 4 years after the effective date of the  
14 law authorizing rulemaking until reauthorized by general law.  
15 Any rulemaking authority effective on or before July 1, 2016, is  
16 suspended July 1, 2020, until reauthorized by general law.

17           (b) Unless another date is specified in the law  
18 reauthorizing rulemaking, a reauthorization of rulemaking  
19 authority remains in effect until July 1 of the fourth calendar  
20 year following the year in which the reauthorization occurs,  
21 after which the reauthorization expires and the rulemaking  
22 authority is suspended until again reauthorized by general law.

23           (c) During the suspension of any rulemaking authority under  
24 this subsection, a rule may be adopted pursuant to such  
25 rulemaking authority but does not take effect unless ratified by  
26 the Legislature. Upon written declaration by the Governor of a  
27 public necessity, suspension of any rulemaking authority may be  
28 delayed for up to 90 days, allowing the Legislature an  
29 opportunity to reauthorize the rulemaking authority. A  
30 declaration of public necessity may be issued only once with  
31 respect to any suspension of rulemaking authority.

32           (d) Subject to the rules of the Senate and the House of  
33 Representatives, the President of the Senate and the Speaker of  
34 the House of Representatives may appoint a joint committee for  
35 the purposes of overseeing the review of rulemaking authority  
36 pursuant to this subsection. The presiding officers may agree on  
37 a 1-year and a 4-year work plan for review of rulemaking  
38 authority. The joint committee shall report its recommendations  
39 regarding reauthorization of rulemaking authority to the



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40 President of the Senate and the Speaker of the House of  
41 Representatives each year on or before the convening of the  
42 regular session of the Legislature.

43 (e) An agency may give notice by October 1 of each year to  
44 the Legislature of any agency rulemaking authority that is  
45 subject to suspension within the next two years. Such notice  
46 must be in writing and delivered to the President of the Senate,  
47 the Speaker of the House of the Representatives, and to the  
48 chair and vice chair of any joint committee appointed pursuant  
49 to paragraph (d). Such notice may include recommendations on  
50 reauthorization of, repeal of, or amendment to existing  
51 rulemaking authority. An agency may combine multiple notices for  
52 administrative convenience.

53 (f) Rules lawfully adopted remain in effect during any  
54 suspension of rulemaking authority under this subsection.

55 (g) This subsection does not apply to:

56 1. Emergency rulemaking pursuant to s. 120.54(4).

57 2. Rulemaking necessary to maintain the financial or legal  
58 integrity of any financial obligation of the state or its  
59 agencies or political subdivisions.

60 Section 2. Paragraph (c) of subsection (4) of section  
61 120.54, Florida Statutes, is amended to read:

62 120.54 Rulemaking.—

63 (4) EMERGENCY RULES.—

64 (c) An emergency rule adopted under this subsection shall  
65 not be effective for a period longer than 90 days and shall not  
66 be renewable, except when the agency finds that the immediate  
67 danger remains and continues to require emergency action, the  
68 agency has initiated rulemaking to adopt rules addressing the



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69 subject of the emergency rule, and one of the following  
70 conditions has delayed implementation of the rules either:

71 1. A challenge to the proposed rules has been filed and  
72 remains pending; or

73 2. The proposed rules have been filed for adoption and are  
74 awaiting ratification by the Legislature pursuant to any law  
75 requiring ratification for the rules to be effective s.

76 ~~120.541(3).~~

77  
78 Nothing in this paragraph prohibits the agency from adopting a  
79 rule or rules identical to the emergency rule through the  
80 rulemaking procedures specified in subsection (3).

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

82  
83 ===== T I T L E A M E N D M E N T =====

84 And the title is amended as follows:

85 Delete everything before the enacting clause  
86 and insert:

87 A bill to be entitled  
88 An act relating to legislative reauthorization of  
89 agency rulemaking authority; amending s. 120.536,  
90 F.S.; providing for suspension of certain rulemaking  
91 authority after a specified period until reauthorized  
92 by general law; providing for expiration of such  
93 reauthorization after a specified period; providing  
94 for suspension of rulemaking authority upon expiration  
95 of its reauthorization until reauthorized by general  
96 law; requiring legislative ratification of rules  
97 adopted while rulemaking authority is suspended;



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98 authorizing the Governor to delay suspension of  
99 rulemaking authority for a specified period upon  
100 declaration of a public necessity; authorizing the  
101 President of the Senate and the Speaker of the House  
102 of Representatives to appoint a joint committee to  
103 oversee the review of rulemaking authority; requiring  
104 the committee to annually report to the Legislature;  
105 authorizing an agency to provide notice to the  
106 Legislature of any rulemaking authority subject to  
107 suspension; prescribing notice requirements;  
108 specifying that lawfully adopted rules remain in  
109 effect through a suspension of rulemaking authority;  
110 providing applicability; amending s. 120.54, F.S.;  
111 revising limitations with respect to the timeframe  
112 that an emergency rule may be effective; providing an  
113 effective date.



325292

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
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The Committee on Governmental Oversight and Accountability  
(Ring) recommended the following:

1           **Senate Substitute for Amendment (148294) (with title**  
2 **amendment)**

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4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. By March 1, 2017, the Administrative Procedures  
7 Committee, as defined in s. 1.01, Florida Statutes, shall submit  
8 recommendations to the President of the Senate and the Speaker  
9 of the House of Representatives on a process to periodically  
10 review administrative rulemaking authority granted to state



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11 agencies. Such recommendations shall outline a process similar  
12 to the Open Government Sunset Review Act, set forth in s.  
13 119.15, Florida Statutes, including the expiration of rulemaking  
14 authority until reauthorized by the Legislature.

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

16

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

18 And the title is amended as follows:

19 Delete everything before the enacting clause  
20 and insert:

21

A bill to be entitled

22

An act relating to review of administrative rulemaking  
23 authority; requiring the Administrative Procedures  
24 Committee to submit recommendations regarding the  
25 periodic review of administrative rulemaking authority  
26 to the Legislature by a certain date; specifying  
27 minimum requirements for such recommendations;  
28 providing an effective date.



535736

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/16/2016	.	
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The Committee on Governmental Oversight and Accountability  
(Hays) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 52 and 53  
insert:

Section 2. Paragraph (c) of subsection (4) of section  
120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(4) EMERGENCY RULES.—

(c) An emergency rule adopted under this subsection shall  
not be effective for a period longer than 90 days and shall not



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11 be renewable, except when the agency finds that the immediate  
12 danger remains and continues to require emergency action, the  
13 agency has initiated rulemaking to adopt rules addressing the  
14 subject of the emergency rule, and one of the following  
15 conditions has delayed implementation of the rules either:

16 1. A challenge to the proposed rules has been filed and  
17 remains pending; or

18 2. The proposed rules have been filed for adoption and are  
19 awaiting ratification by the Legislature pursuant to any law  
20 requiring ratification for the rules to be effective s.  
21 ~~120.541(3).~~

22  
23 Nothing in this paragraph prohibits the agency from adopting a  
24 rule or rules identical to the emergency rule through the  
25 rulemaking procedures specified in subsection (3).  
26

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

28 And the title is amended as follows:

29 Delete line 15

30 and insert:

31 exceptions; providing applicability; amending s.  
32 120.54, F.S.; revising circumstances under which  
33 emergency rules may be renewed; providing an



By Senator Bean

4-01313-16

20161150\_\_

A bill to be entitled

An act relating to legislative reauthorization of agency rulemaking authority; amending s. 120.536, F.S.; providing for suspension of certain rulemaking authority after a specified period, until reauthorized by general law; providing for expiration of such reauthorization after a specified period; providing for suspension of rulemaking authority upon expiration of its reauthorization, until reauthorized by general law; requiring legislative ratification of rules adopted while rulemaking authority is suspended; authorizing the Governor to delay suspension of rulemaking authority for a specified period upon declaration of a public necessity; providing exceptions; providing applicability; providing an effective date.

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

Section 1. Subsections (2) through (4) of section 120.536, Florida Statutes, are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

120.536 Rulemaking authority; reauthorization; repeal; challenge.—

(2) (a) Notwithstanding any other provision of law, and except as provided in paragraph (d), any new rulemaking authority is suspended 3 years after the effective date of the law authorizing rulemaking until reauthorized by general law. Any rulemaking authority effective on or before July 1, 2016, is suspended July 1, 2019, until reauthorized by general law.

(b) A reauthorization of rulemaking authority remains in

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

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effect for 3 years, unless another date is specified in the law reauthorizing rulemaking, after which the reauthorization expires and the rulemaking authority is suspended until reauthorized by general law.

(c) During the suspension of any rulemaking authority under this subsection, a rule may be adopted pursuant to such rulemaking authority but does not take effect unless ratified by the Legislature. Upon written declaration by the Governor of a public necessity, suspension of any rulemaking authority may be delayed for up to 90 days, allowing the Legislature an opportunity to reauthorize the rulemaking authority. A declaration of public necessity may be issued only once with respect to any suspension of rulemaking authority.

(d) This subsection does not apply to:

1. Emergency rulemaking pursuant to s. 120.54(4).

2. Rulemaking necessary to maintain the financial or legal integrity of any financial obligation of the state or its agencies or political subdivisions.

(e) Rules lawfully adopted remain in effect during any suspension of rulemaking authority under this subsection.

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

Page 2 of 2

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

02/16/2016

Meeting Date

SB1150

Bill Number (if applicable)

Topic Rule Making

Amendment Barcode (if applicable)

Name Antonio Davis

Job Title Homeless Veteran

Address 2313 NW 6th Court  
Street

Phone \_\_\_\_\_

Ft Lauderdale FL 33311  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Education Pre-K - 12, Chair  
Ethics and Elections, Vice Chair  
Appropriations Subcommittee on Education  
Fiscal Policy  
Government Oversight and Accountability  
Higher Education

**SENATOR JOHN LEGG**

17th District

Legg.John.web@FLSenate.gov

February 16, 2016

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

**RE: Excused Absence**

Dear Chair Ring:

I am unable to attend the Committee on Governmental Oversight and Accountability on Tuesday, February 16, 2016, and I respectfully request that this absence be excused. My mother has suffered a critical health incident, and my presence is needed at home. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg", written over a horizontal line.

John Legg  
State Senator, District 17

cc: Joe McVaney, Staff Director  
Allison Rudd, Administrative Assistant

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

Room: SB 401

Case No.:

Type:  
Judge:

Caption: Senate Governmental Oversight and Accountability Committee

Started: 2/16/2016 1:34:08 PM

Ends: 2/16/2016 2:44:58 PM

Length: 01:10:51

1:34:15 PM Meeting called to order - Roll Call  
1:34:46 PM Tab 5 CS/SB 1490 by BI / Senator Garcia - Federal Home Loan Banks  
1:35:11 PM Senator Garcia's aide, Miguel Abad is recognized to present the bill.  
1:38:03 PM Roll Call for CS/SB 1490  
1:38:41 PM Tab 4 CS/SB 776 by CU / Senator Bradley - Public Records/Utility Information or Ind  
1:39:51 PM Amendment Barcode 639920, Senator Hays  
1:40:19 PM Motion to adopt amendment  
1:41:19 PM Roll Call for CS/SB 776  
1:42:14 PM Tab 8 SB 7022 by CJ - OGSR / Depictions or Recordings of the Killing of a Law Enfor  
1:42:29 PM Donna Dugger of the Criminal Justice Committee is recognized to present the bill.  
1:44:51 PM Roll Call for SB 7022  
1:45:10 PM Tab 7 SB 456 by Senator Latvala - Firefighters  
1:47:04 PM Strike all-Amendment Barcode 249998, Senator Latvala  
1:48:59 PM Senator Hays asks a question about the study.  
1:49:18 PM Senator Latvala responds to the question.  
1:51:10 PM Strike-all Amendment approved - back on the bill.  
1:51:43 PM Kraig Conn, Florida League of Cities  
1:53:57 PM Senator Latvala asks a question of Mr. Conn about disability analysis.  
1:54:56 PM Mr. Conn answers the question.  
2:02:02 PM SB 456 temporarily passed.  
2:02:34 PM Tab 3 SB 712 by Senator Joyner - Compensation of Members of the Legislature  
2:11:05 PM Antonio Davis, Homeless Veteran, Ft. Lauderdale, FL  
2:15:24 PM Senator Bullard speaks on the previous speaker and others in that same situation.  
2:17:25 PM Senator Latvala addresses the issues in this bill.  
2:21:38 PM Senator Ring addresses the issues in this bill.  
2:22:15 PM Senator Joyner speaks to the members .  
2:26:32 PM Roll Call for SB 712  
2:26:55 PM Tab 1 CS/SB 1094 by BI / Senator Flores - Public Records / Limited Purpose Internati  
2:27:12 PM Amendment Barcode 187568 by Senator Ring is withdrawn.  
2:27:43 PM Second Amendment Barcode 909112, Senator Ring  
2:31:11 PM Senator Latvala asks question about why do we need this exemption.  
2:32:00 PM Slater Bailiss, Florida International Assoc. of Administrators  
2:32:43 PM Jamie Champion-Mongiovi, Florida Office of Financial Regulation  
2:33:35 PM Roll Call for CS/SB 1094  
2:34:12 PM Tab 6 SJR 1424 by Senator Bean - Election of Secretary of State/Membership of Cabi  
2:34:45 PM Aide presents the bill  
2:35:04 PM Roll Call for SJR 1424  
2:35:26 PM Tab 9 SB 1150 by Senator Bean - Legislative Reauthorization of Agency Rulemaking  
2:35:53 PM Amendment Barcode 148294, Senator Ring  
2:36:26 PM Amendment Barcode 325292, Senator Ring  
2:36:42 PM Amendment Barcode 535736, Senator Hays  
2:37:22 PM Roll Call for SB 1150  
2:37:59 PM Tab 7 SB 456 by Senator Latvala - Firefighters  
2:38:27 PM Arlene Smith, County of Volusia  
2:39:18 PM James Tolley, Florida Professional Firefighters  
2:42:37 PM Senator Latvala debates on the physical impact.  
2:44:23 PM Roll Call for SB 456  
2:44:43 PM Meeting adjourned