

Tab 1	SB 464 by Clemens; (Similar to CS/H 00181) Natural Hazards						
Tab 2	CS/SB 534 by CA, Perry; (Identical to CS/H 00599) Public Works Projects						
721430	A	S	RCS	GO, Perry	Delete L.55 - 56:	03/22 06:20 PM	
Tab 3	SB 616 by Steube; Concealed Weapons or Firearms						
696944	A	S	RCS	GO, Steube	Delete L.59:	03/22 06:21 PM	
Tab 4	CS/SB 886 by CF, Powell; (Similar to CS/H 00791) Public Records/Substance Abuse Impaired Persons						
560794	A	S	RCS	GO, Powell	Delete L.40 - 57:	03/22 06:22 PM	
Tab 5	SB 1062 by Powell (CO-INTRODUCERS) Bracy; (Similar to CS/H 00239) Public Records/Protective Injunction Petitions						
540526	D	S	RCS	GO, Powell	Delete everything after	03/22 06:22 PM	
Tab 6	SB 1446 by Rouson; (Identical to H 01187) Pay-for-success Contracts						
Tab 7	SB 1540 by Brandes; (Compare to H 01281) Department of Management Services						
191440	A	S	RCS	GO, Brandes	Before L.17:	03/22 06:23 PM	
121722	A	S	RCS	GO, Brandes	btw L.66 - 67:	03/22 06:23 PM	
Tab 8	SB 7002 by CA; OGSR/Donor Information/Publicly Owned Performing Arts Center						
Tab 9	SB 7014 by AG; (Identical to H 07035) OGSR/Nonpublished Reports or Data/Department of Citrus						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Baxley, Chair
Senator Artiles, Vice Chair

MEETING DATE: Wednesday, March 22, 2017
TIME: 1:30—3:30 p.m.
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Baxley, Chair; Senator Artiles, Vice Chair; Senators Galvano, Grimsley, Rader, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 464 Clemens (Similar CS/H 181)	Natural Hazards; Creating an interagency workgroup to share information, coordinate ongoing efforts, and collaborate on initiatives relating to natural hazards; designating the director of the Division of Emergency Management or his or her designee as the liaison to and coordinator of the workgroup, etc. MS 02/21/2017 Favorable CA 03/06/2017 Favorable GO 03/22/2017 Favorable RC	Favorable Yeas 7 Nays 0
2	CS/SB 534 Community Affairs / Perry (Identical CS/H 599)	Public Works Projects; Prohibiting the state and political subdivisions that contract for public works projects from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers or carriers; prohibiting the state and political subdivisions from restricting qualified bidders from submitting bids or being awarded contracts, etc. CA 03/06/2017 Fav/CS GO 03/22/2017 Fav/CS AP	Fav/CS Yeas 4 Nays 3
3	SB 616 Steube (Compare S 140)	Concealed Weapons or Firearms; Authorizing a concealed weapons or concealed firearms licensee to temporarily surrender a weapon or firearm if the licensee approaches courthouse security or management personnel upon arrival and follows their instructions, etc. JU 03/07/2017 Favorable GO 03/22/2017 Fav/CS RC	Fav/CS Yeas 4 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 22, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 886 Children, Families, and Elder Affairs / Powell (Similar CS/H 791)	Public Records/Substance Abuse Impaired Persons; Providing an exemption from public records requirements for petitions for involuntary assessment and stabilization, court orders, related records, and personal identifying information regarding substance abuse impaired persons; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/13/2017 Fav/CS GO 03/22/2017 Fav/CS RC	Fav/CS Yeas 7 Nays 0
5	SB 1062 Powell (Similar CS/H 239)	Public Records/Protective Injunction Petitions; Providing an exemption from public records requirements for petitions, and the contents thereof, for certain protective injunctions that are dismissed in certain circumstances; requiring the removal of petitions dismissed before, on, or after a specified date from publicly accessible records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 03/14/2017 Favorable GO 03/22/2017 Fav/CS RC	Fav/CS Yeas 7 Nays 0
6	SB 1446 Rouson (Identical H 1187)	Pay-for-success Contracts; Authorizing a state agency to negotiate and enter into a pay-for-success contract with a private entity, subject to authorization in the General Appropriations Act; requiring a contracted private entity to annually report to the appropriate state agency for the length of the contract; authorizing the Department of Health to implement the Nurse-Family Partnership pay-for-success program, etc. GO 03/22/2017 Favorable HP AP RC	Favorable Yeas 6 Nays 0
7	SB 1540 Brandes (Compare H 1281)	Department of Management Services; Creating the Statewide Procurement Efficiency Task Force within the department; specifying the purpose and membership of the task force; providing meeting requirements; providing that task force members shall serve without compensation or reimbursement of expenses, etc. GO 03/22/2017 Fav/CS AGG AP	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Wednesday, March 22, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 7002 Community Affairs	OGSR/Donor Information/Publicly Owned Performing Arts Center; Amending provisions which provide an exemption from public records requirements for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center if the donor desires to remain anonymous; removing the scheduled repeal of the exemption, etc. GO 03/22/2017 Favorable RC	Favorable Yeas 6 Nays 0
9	SB 7014 Agriculture (Identical H 7035)	OGSR/Nonpublished Reports or Data/Department of Citrus; Amending provisions relating to an exemption from public records requirements for nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof which is conducted, caused to be conducted, or funded by the Department of Citrus; abrogating the scheduled repeal of the exemption, etc. GO 03/22/2017 Favorable RC	Favorable Yeas 7 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 464

INTRODUCER: Senator Clemens

SUBJECT: Natural Hazards

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Peacock</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
4.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 464 creates an interagency workgroup to address the impacts of natural hazards in this state. Natural hazards are defined to include, but are not limited to, extreme heat, drought, wildfires, sea-level change, high tides, storm surge, saltwater intrusion, stormwater runoff, flash floods, inland flooding, and coastal flooding.

The natural hazards interagency workgroup is comprised of a liaison from each agency within the executive branch of state government, each water management district, and the Florida Public Service Commission. The director of the Florida Division of Emergency Management (FDEM), or his or her designee, will serve as both the agency liaison and the coordinator of the workgroup.

The bill requires the FDEM to prepare an annual progress report on the implementation of the state's enhanced hazard mitigation plan as it relates to natural hazards. The annual report is due to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2019, and each year thereafter. Each liaison is responsible for posting the workgroup's annual report to their respective agency's website.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Natural Hazards in Florida

A hazard is any event or condition with the potential to cause fatalities, injuries, property damage, infrastructure damage, agricultural loss, environmental damage, business interruption,

or other structural and financial loss.¹ Hazards are categorized as either natural, human-caused, or technological.² The Florida Division of Emergency Management identifies the following natural hazards that pose the greatest threat to Florida:

- Floods, to include potential for dam failure and sea level rise;
- Tropical cyclones;³
- Severe storms and tornadoes;
- Wildfires;
- Drought;
- Extreme heat;
- Winter storms and freezes;
- Erosion; and
- Sinkholes, landslides, and seismic events.⁴

Since 1980, the United States has sustained 203 weather and climate disasters where overall damages and costs reached or exceeded \$1 billion, costing U.S. taxpayers in excess of \$1.1 trillion.⁵ Of those 203 events, 44 had some impact to Florida.⁶ During that same period of time, Florida received 62 major disaster or emergency declarations for natural hazards and 57 Fire Management Assistance⁷ declarations.⁸

FEMA Mitigation Grant Programs

The Federal Emergency Management Agency (FEMA) was established in 1979 to centralize federal emergency and disaster activities.⁹ FEMA's mission is to support citizens and first responders to build, sustain, and improve capabilities to prepare for, protect against, respond to, recover from, and mitigate all hazards.

The latter of FEMA's primary mission areas, hazard mitigation, is defined as any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards.¹⁰

¹ FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Executive Summary*, page 2 (Aug. 2013), available at <http://www.floridadisaster.org/mitigation/State/Index.htm> (last visited February 24, 2017).

² FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Section 3.0: State Risk Assessment*, page 3.7 (Aug. 2013).

³ Tropical cyclones are classified as a tropical depression, tropical storm, hurricane, or major hurricane. See National Hurricane Center, *Tropical Cyclone Climatology*, available at <http://www.nhc.noaa.gov/climo/> (last visited Feb. 24, 2017).

⁴ FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Section 3.0: State Risk Assessment*, pages 3.12-3.14 (Aug. 2013).

⁵ National Oceanic and Atmospheric Administration, *Billion-Dollar Weather and Climate Disasters*, available at <http://www.ncdc.noaa.gov/billions> (last visited Feb. 24, 2017).

⁶ See National Oceanic and Atmospheric Administration, *Billion-Dollar Weather and Climate Disasters: Mapping*, available at <http://www.ncdc.noaa.gov/billions/mapping> (last visited Feb. 24, 2017).

⁷ A FEMA Fire Management Assistance declaration makes funding through the Fire Management Assistance Grant Program available to states, local, and tribal governments for the mitigation, management, and control of fires on publicly or privately owned forests or grasslands, which threaten such destruction as would constitute a major disaster. See FEMA, *Fire Management Assistance Grant Program*, available at <https://www.fema.gov/fire-management-assistance-grant-program> (last visited Feb. 24, 2017).

⁸ FEMA, *Disaster Declarations*, available at https://www.fema.gov/disasters?field_state_tid_selective=47&field_disaster_type_term_tid=All&field_disaster_declaration_type_value=All&items_per_page=20 (last visited Feb. 24, 2017).

⁹ FEMA, *About the Agency* (May 11, 2016), available at <https://www.fema.gov/about-agency> (last visited Feb. 24, 2017).

¹⁰ 44 C.F.R. s. 201.2.

FEMA administers five mitigation grant programs designed to reduce community vulnerability to disasters and their effects, promote individual and community safety and resilience, and promote community vitality after an incident.¹¹ Mitigation programs are also intended to reduce response and recovery resource requirements in the wake of a disaster or incident, which results in a safer community that is less reliant on external financial assistance.¹²

Four of the FEMA mitigation grant programs are authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).¹³ These programs include the Hazard Mitigation Grant Program, the Pre-Disaster Mitigation Grant Program, the Public Assistance Grant Program, and the Fire Management Assistance Grant Program.¹⁴ The National Flood Insurance Act authorizes the fifth grant program called the Flood Mitigation Assistance grant, which was created with the goal of reducing or eliminating claims under the National Flood Insurance Program.¹⁵ Funds received from any one of these grants can be used for hazard mitigation planning, mitigation activities,¹⁶ or both.¹⁷

In order for state, tribal, and local governments to receive a FEMA mitigation grant, the applicant must produce a hazard mitigation plan approved by FEMA that conforms to a specified set of requirements.¹⁸ At a minimum, a hazard mitigation plan must outline processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.¹⁹ Jurisdictions must update their plans and re-submit them to FEMA every 5 years to maintain eligibility.²⁰

Florida Division of Emergency Management

The Florida Division of Emergency Management (FDEM) administers programs to rapidly apply all available aid to impacted communities stricken by emergency.²¹ The FDEM is responsible for maintaining a comprehensive statewide program of emergency management to ensure that Florida is prepared to respond to emergencies, recover from them, and mitigate against their impacts. In doing so, the FDEM coordinates efforts with and among the federal government, other state agencies, local governments, school boards, and private agencies that have a role in

¹¹ FEMA, *Hazard Mitigation Assistance Guidance*, (Feb. 27, 2015), available at https://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/HMA_Guidance_022715_508.pdf (last visited Feb. 24, 2017).

¹² *Id.*

¹³ 42 U.S.C. 5121 et seq.

¹⁴ See FEMA, *Hazard Mitigation Planning Laws, Regulations, and Policies* (Sept. 12, 2016), available at <https://www.fema.gov/hazard-mitigation-planning-laws-regulations-policies> (last visited Feb. 24, 2017).

¹⁵ *Id.*

¹⁶ Examples of hazard mitigation activities include, but are not limited to, the elevation or relocation of chronically flood-damaged homes away from flood hazard areas, retrofitting buildings to make them resistant to earthquakes or strong winds, and adoption and enforcement of adequate building codes and standards set by local, state, and federal governments. See FEMA, *Mitigation Ideas* (Jan. 2013), available at https://www.fema.gov/media-library-data/20130726-1904-25045-2423/fema_mitigation_ideas_final_01252013.pdf (last visited Feb. 24, 2017).

¹⁷ FEMA, *Hazard Mitigation Plan Requirement*, (Dec. 23, 2016), available at <https://www.fema.gov/hazard-mitigation-plan-requirement> (last visited Feb. 24, 2017).

¹⁸ See 44 C.F.R. ss.201.4-201.7.

¹⁹ 42 U.S.C. 5165(b)(2).

²⁰ *Supra* note 17.

²¹ Section 14.2016, F.S.

emergency management.²² The FDEM also serves as the administrator of federal funds awarded to the state and local governments through FEMA's mitigation grant programs.

State of Florida Enhanced Hazard Mitigation Plan

As described above, FEMA requires all states to have a FEMA-approved hazard mitigation plan as a condition to receive some types of federal disaster assistance.²³ As specified in the Stafford Act, a state's hazard mitigation plan must:

- Identify the natural hazards, risks, and vulnerabilities of all areas in the state;
- Support development of local government mitigation plans;
- Provide for technical assistance to local and tribal governments for mitigation planning; and
- Identify and prioritize mitigation actions that the state will support, as resources become available.²⁴

The current State of Florida Enhanced Hazard Mitigation Plan, effective August 2013, identifies potential hazards and vulnerabilities, sets goals, and establishes specific mitigation actions to reduce risk to people, buildings, infrastructure, and the environment.²⁵ Within the plan is a section dedicated to profiling Florida's natural, technological, and manmade hazards in extensive detail.²⁶ Of those natural hazards, the plan profiles flooding, to include flash floods, inland floods, and coastal floods; tropical cyclones, to include storm surge; severe storms and tornadoes; wildfires; drought; extreme heat; winter storms and freezes; erosion; sinkholes, earthquakes, and landslides; tsunamis; and solar storms.²⁷

The FDEM is responsible for developing and coordinating efforts to maintain and update the state hazard mitigation plan. The FDEM accomplishes this with the collaboration and coordination of an advisory team known as the State Hazard Mitigation Plan Advisory Team (SHMPAT).²⁸ The SHMPAT participants include numerous state agencies, regional planning councils, water management districts, state universities, other government entities, and community stakeholders. The primary function of the SHMPAT is to assist the FDEM with the development, implementation, and maintenance of the state hazard mitigation plan, comment on draft versions, and to maximize the leveraging potential of all state mitigation related resources.²⁹

The current State of Florida Enhanced Hazard Mitigation Plan took effect in August 2013. The FDEM and the SHMPAT are in the process of updating the current plan for FEMA to approve in 2018.

²² Section 252.35(1), F.S.

²³ Supra note 17.

²⁴ 42 U.S.C. s.5165(c).

²⁵ Supra note 1.

²⁶ FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Section 3.3: Profiling Florida's Hazards* (Aug. 2013).

²⁷ *Id.*

²⁸ FDEM, *State of Florida Enhanced Hazard Mitigation Plan, Section 2.0: Planning Process* (Aug. 2013).

²⁹ *Id.*

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 252.3655, F.S., to establish a natural hazards interagency workgroup. This workgroup is directed to share information on the current and potential impacts of natural hazards throughout the state, coordinate the ongoing efforts of state agencies in addressing the impacts of natural hazards, and collaborate on statewide initiatives to address the impacts of natural hazards.

The term “natural hazards” includes, but is not limited to, extreme heat, drought, wildfires, sea-level change, high tides, storm surge, saltwater intrusion, stormwater runoff, flash floods, inland flooding, and coastal flooding.

The workgroup is comprised of a liaison from each agency within the executive branch of state government, each water management district, and the Florida Public Service Commission. The director of the Florida Division of Emergency Management, or his or her designee, will serve as both the agency liaison and the coordinator of the workgroup.

Each agency liaison must provide information on the current and potential impacts of natural hazards to his or her agency, agency resources available to mitigate against natural hazards, and efforts made by the agency to address the impacts of natural hazards.

The workgroup must meet in person or by teleconference on a quarterly basis to share information, leverage agency resources, coordinate ongoing efforts, and provide information for inclusion in annual progress report.

The FDEM is responsible for preparing an annual progress report on behalf of the workgroup on the implementation of the state’s enhanced hazard mitigation plan, developed and submitted in accordance with 42 U.S.C. s. 5165 and any implementing regulations, as it relates to natural hazards. The annual report is due to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2019, and each year thereafter. Each liaison is responsible for posting the workgroup’s annual report to their respective agency’s website. The report shall, at a minimum:

- Assess the relevance, level, and significance of current agency efforts to address the impacts of natural hazards; and
- Strategize and prioritize ongoing efforts to address the impacts of natural hazards.

Section 2 of the bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill directs the FDEM to serve as the coordinator of the natural hazards interagency workgroup and prepare an annual report on behalf of the workgroup. According to the FDEM, the resources and manpower needed to develop the workgroup and organize quarterly teleconferences exceed the FDEM's current resources.³⁰ The FDEM estimates it would need at least one additional full-time employee to manage the added responsibilities provided in the bill.³¹

Additionally, the bill may increase the workload for existing agency personnel designated as an agency's liaison to the natural hazards interagency workgroup.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the FDEM, implementation of a natural hazards interagency workgroup may duplicate many of the functions currently undertaken by the State Hazard Mitigation Plan Advisory Team.³² The FDEM also states that in addition to the federally mandated 5-year update, the FDEM maintains and updates the State Hazard Mitigation Plan as needed.³³

VIII. Statutes Affected:

This bill creates section 252.3655 of the Florida Statutes.

³⁰ FDEM, *Senate Bill 464 Agency Analysis* (Jan. 26, 2017) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

³¹ *Id.*

³² *Id.*

³³ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Clemens

31-00783-17

2017464__

A bill to be entitled

An act relating to natural hazards; creating s. 252.3655, F.S.; creating an interagency workgroup to share information, coordinate ongoing efforts, and collaborate on initiatives relating to natural hazards; defining the term "natural hazards"; requiring certain agencies to designate liaisons to the workgroup; designating the director of the Division of Emergency Management or his or her designee as the liaison to and coordinator of the workgroup; specifying duties and responsibilities of each liaison and the workgroup; requiring the division to prepare an annual report; specifying report requirements; requiring each agency liaison to ensure that the report is posted on his or her agency's website; requiring the workgroup to submit the report to the Governor and the Legislature; providing an effective date.

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

Section 1. Section 252.3655, Florida Statutes, is created to read:

252.3655 Natural hazards interagency workgroup.-

(1) (a) An interagency workgroup is created for the purpose of sharing information on the current and potential impacts of natural hazards throughout the state, coordinating the ongoing efforts of state agencies in addressing the impacts of natural hazards, and collaborating on statewide initiatives to address the impacts of natural hazards. As used in this section, the term "natural hazards" includes, but is not limited to, extreme heat, drought, wildfire, sea-level change, high tides, storm

Page 1 of 3

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31-00783-17

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surge, saltwater intrusion, stormwater runoff, flash floods, inland flooding, and coastal flooding.

(b) Each agency within the executive branch of state government, each water management district, and the Florida Public Service Commission shall select from within such agency a person to be designated as the agency liaison to the workgroup.

(c) The director of the Division of Emergency Management or his or her designee shall serve as the liaison to and coordinator of the workgroup.

(d) Each liaison shall provide information from his or her respective agency on the current and potential impacts of natural hazards to his or her agency, agency resources available to mitigate against natural hazards, and efforts made by the agency to address the impacts of natural hazards.

(e) The workgroup shall meet in person or by teleconference on a quarterly basis to share information, leverage agency resources, coordinate ongoing efforts, and provide information for inclusion in the annual progress report submitted pursuant to subsection (2).

(2) (a) On behalf of the workgroup, the Division of Emergency Management shall prepare an annual progress report on the implementation of the state's hazard mitigation plan, developed and submitted in accordance with 42 U.S.C. s. 5165 and any implementing regulations, as it relates to natural hazards. At a minimum, the annual progress report must:

1. Assess the relevance, level, and significance of current agency efforts to address the impacts of natural hazards; and

2. Strategize and prioritize ongoing efforts to address the impacts of natural hazards.

Page 2 of 3

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31-00783-17

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62 (b) Each liaison is responsible for ensuring that the
63 workgroup's annual progress report is posted on his or her
64 agency's website.

65 (c) By January 1, 2019, and each year thereafter, the
66 workgroup shall submit the annual progress report to the
67 Governor, the President of the Senate, and the Speaker of the
68 House of Representatives.

69 Section 2. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Higher Education
Communications, Energy, and Public Utilities
Criminal Justice

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JEFF CLEMENS

Democratic Whip
31st District

March 8, 2017

Senator Dennis Baxley, Chair
Senate Committee on Governmental Oversight
and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Baxley:

I respectfully request that SB 464 – Natural Hazards be added to the agenda for the next Senate Committee on Governmental Oversight and Accountability meeting.

SB 464 creates an interagency workgroup to share information on the current and potential impacts of natural hazards throughout the state, coordinate the ongoing efforts of state agencies in addressing the impacts of natural hazards, and collaborate on statewide initiatives to address the impacts of natural hazards.

Please feel free to contact me with any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 31

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/22/17

Meeting Date

464

Bill Number (if applicable)

Topic Natural Hazards

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Sr. Legislative Advocate

Address PO Box 1757

Phone 850-339-6211

Street

Tallahassee

FL

32302-1757

Email rohara@flcities.com

City

State

Zip

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.

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)

3/22/2017

Meeting Date

Topic _____

Bill Number 464

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

464

Bill Number (if applicable)

Topic NATURAL HAZARDS

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LEGISLATIVE COORDINATOR

Address 115 S. ANDREWS AVE

Phone 954-253-7320

Street

FT. LAUDERDALE

FL

33301

Email dsainvil@gmail.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing BROWARD COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 534

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee and Senator Perry

SUBJECT: Public Works Projects

DATE: March 23, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 534 prohibits the state and its political subdivisions that contract for public works projects from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers or carriers, except as otherwise required by federal or state law. Specifically, the state or political subdivision that contracts for a public works project may not require that a contractor, subcontractor, or material supplier or carrier engaged in the project:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

Public works projects include only those projects for which 50 percent or more of the cost will be paid from state-appropriated funds.

The bill also prohibits the state or a political subdivision from restricting a qualified contractor, subcontractor, or material supplier or carrier from submitting a bid on any public works project or being awarded any contract, subcontract, material order, or carrying order. However, the prohibition does not apply to discriminatory vendors or those that have committed a public entity crime.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

The Consultants' Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for architect and engineering services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of architectural and engineering professionals.¹

The Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA) in 1973,² which specifies the necessary procedures when procuring professional services by an agency.³

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process that state and local government agencies must follow when procuring the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:⁴

- A project, when the agency estimates the basic construction cost to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.⁵ In the first phase, the “competitive selection,” the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.⁶

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.⁷ Section 287.055(2)(d), F.S.,

¹ Forty-six states use this process. American Council of Engineering Companies, Qualifications-Based Selection Resource Center, available at <http://www.acec.org/advocacy/qbs/> (last visited Feb. 24, 2017).

² Chapter 73-19, Laws of Fla.

³ Section 287.055(2)(b), F.S., defines “agency” as the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term agency does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S.

⁴ Section 287.055(3)(a)1., F.S.

⁵ Sections 287.055(4) and (5), F.S.

⁶ Section 287.055(4)(b), F.S., requires agencies to consider the following factors: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

⁷ Section 287.055(4)(b), F.S.

defines the term “compensation” to mean the amount paid by the agency for professional services regardless of whether stated as compensation or as other types of rates.

In the second phase, the “competitive negotiation,” the agency negotiates compensation with the most qualified of the minimum three selected firms for professional services at compensation, which the agency determines, is “fair, competitive, and reasonable.”⁸ If the agency cannot negotiate a satisfactory contract, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm.⁹ The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.¹⁰ If the agency cannot negotiate a satisfactory contract with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until it reaches a contract.¹¹ Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects and are limited to utilizing statutorily defined procedures.¹²

Procurement of Construction Services for Public Property and Publicly Owned Buildings

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the Department of Management Services (DMS) to establish, by rule,¹³ the following construction contract procedures for:

- Determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- Awarding each state agency construction project to the lowest qualified bidder. Additionally, DMS must provide procedures for cases in which DMS declares a valid emergency to exist, which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- Governing negotiations for construction contracts and modifications to contract documents when the DMS secretary determines that such negotiations are in the best interest of the state.
- Entering into performance-based contracts for the development of public facilities when DMS determines the use of such contracts to be in the best interest of the state.

⁸ Section 287.055(5)(a), F.S.

⁹ Section 287.055(5)(b), F.S.

¹⁰ *Id.*

¹¹ Section 287.055(5)(c), F.S.

¹² Op. Att’y Gen. Fla. 2011-21 (2011).

¹³ Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F. S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

These procedures must include, but are not limited to:¹⁴

- Prequalification of bidders;
- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

The state must competitively bid contracts for construction projects that it projects to cost in excess of \$200,000.¹⁵ County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 also must be bid competitively.¹⁶ Counties, municipalities, special districts,¹⁷ or other political subdivisions seeking to construct or improve a public building must bid the project competitively if the projected cost is in excess of \$300,000.¹⁸

The solicitation of competitive bids or proposals for any state construction project with anticipated costs of more than \$200,000 must be advertised publicly in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.¹⁹ If the construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening.²⁰

Department of Management Services Convicted Vendors and Discriminatory Vendor Lists

The DMS is required to keep a convicted vendor list²¹ that identifies vendors who have committed a public entity crime.²² If a vendor is included on the convicted vendor list, the vendor may not do business with the state²³ in excess of \$35,000 as provided in s. 287.017(2), F.S., for a period of 36 months following placement on the list.

¹⁴ Section 255.29(4)(a)-(d), F.S.

¹⁵ Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

¹⁶ Section 255.0525(2), F.S.

¹⁷ Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.).

¹⁸ *Id.* For electrical work, local governments must bid projects competitively estimated to cost more than \$75,000.

¹⁹ Section 255.0525(1), F.S.

²⁰ *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

²¹ Section 287.133, F.S., and Rule 60A-1.006(5), F.A.C.

²² Section 287.133(1)(g), F.S., defines “public entity crime” as a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

²³ Section 287.134(2)(a), F.S. A vendor placed on the list may not submit bids or proposals to a public entity on a contract to provide goods and services; a contract for construction or repair of a public building or public work; or leases of real property. The vendor may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant with a public entity, and may not transact business with any public entity.

The DMS also maintains a discriminatory vendor list that identifies vendors where a determination of liability by a state circuit court or a federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion.²⁴ If DMS places a vendor on the discriminatory vendor list, the vendor may not do business with the state, and the state may not accept any bids or proposals or transact business with such vendor for a period of 36 months following placement on the list.²⁵

Preference for Employment of State Residents in Construction Contracts Funded By State Funds

Florida law provides a preference for the employment of state residents in construction contracts funded by state funds.²⁶ Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications²⁷ to those of non-residents.²⁸ If a construction contract is funded by local funds, the contract may contain such a provision.²⁹ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.³⁰

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). In order for a person to bid for a construction contract in excess of \$250,000, DOT must certify such person as qualified.³¹ Certification is also required to bid on road, bridge, or public transportation construction projects of more than \$250,000.³² The purpose of certification is to ensure professional and financial competence relating to the performance of construction contracts by evaluating bidders "with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification."³³

An applicant seeking certification of qualification must include its latest annual financial statement completed within the last 12 months.³⁴ If the applicant submits an annual financial statement that was completed more than 4 months prior to the date on which DOT receives the application, then the applicant must submit an interim financial statement and an updated application.³⁵ A certified public accountant must audit each annual or interim financial

²⁴ Section 287.134, F.S.

²⁵ Section 287.134(2), F.S.

²⁶ Section 255.099(1), F.S.

²⁷ Section 255.099(1)(a), F.S., defines "substantially equal qualifications" as the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons.

²⁸ Section 255.099(1), F.S.

²⁹ *Id.*

³⁰ Section 255.099(1)(b), F.S.

³¹ Section 337.14(1), F.S. and ch. 14-22, F.A.C.

³² Section 337.14(2), F.S.

³³ Section 337.14(1), F.S.

³⁴ *Id.*

³⁵ *Id.*

statement.³⁶ If the applicant meets the qualifications, DOT issues a certificate of qualification that is valid for 18 months after the date of the applicant's financial statement, or a shorter period as DOT prescribes.³⁷ DOT may revoke such certificate of qualification for a contractor who was delinquent on a previously awarded contract.³⁸

DOT does not prohibit a qualified, licensed or certified contractor from bidding. However, a contract may not be awarded if the bid is determined to be irregular or non-responsive. DOT does require training for certain work categories, such as bridgework and other technical road and bridge areas.

Federal Labor and Wage Laws

The National Labor Relations Act of 1935³⁹ and the Labor Management Relations Act of 1947⁴⁰ constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.⁴¹ A state may set the rate higher than the federal minimum, but not lower.⁴² It also requires employers to pay time and a half to its employees for overtime hours worked,⁴³ and establishes standards for recordkeeping⁴⁴ and child labor.⁴⁵ Over 135 million workers are covered under the act;⁴⁶ most jobs are covered by the FLSA, but not all jobs are covered. In addition, some jobs are covered, but are considered "exempt" from the FLSA overtime requirements.⁴⁷

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.⁴⁸ The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning on January 1, 2015. Beginning

³⁶ *Id.*

³⁷ Section 337.14(4), F.S.

³⁸ Section 337.16, F.S.

³⁹ 29 U.S.C. ss. 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

⁴⁰ 29 U.S.C. ss. 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

⁴¹ 29 U.S.C. s. 206.

⁴² 29 U.S.C. s. 218(a).

⁴³ 29 U.S.C. s. 207.

⁴⁴ 29 U.S.C. s. 211.

⁴⁵ 29 U.S.C. s. 212.

⁴⁶ United States Department of Labor, Wage and Hour Division, <http://www.dol.gov/whd/workers.htm> (last visited Feb 24, 2017).

⁴⁷ 29 U.S.C. s. 213; http://www.dol.gov/whd/overtime_pay.htm (last visited Feb. 24, 2017).

⁴⁸ A copy of the Executive Order can be found online at <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited Feb. 24, 2017).

January 1, 2016, and annually thereafter, employer must pay such workers an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”⁴⁹

On September 20, 2016, the Department of Labor published a Notice in the Federal Register to announce that, beginning January 1, 2017, the Executive Order increases the minimum wage rate to \$10.20 per hour and tipped employees performing work on or in connection with covered contracts generally must be paid a minimum cash wage at \$6.80 per hour.⁵⁰

State Labor and Wage Regulations

Article I, Section 6 of the State Constitution creates a constitutional right to collectively bargain for public sector employees. It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.⁵¹

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”⁵² The State Constitution requires that employers pay employees no less than the minimum wage for all hours worked in Florida.⁵³ The current state minimum wage is \$8.10 per hour,⁵⁴ which is higher than the federal rate.⁵⁵

Federal Project Labor Agreements

In 2009, President Barack Obama signed Executive Order 13502 authorizing the use of project labor agreements for federal construction projects.⁵⁶ The Executive Order defines the term “project labor agreement” as a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f). The Executive Order provides that

⁴⁹ *Id.*

⁵⁰ United States Department of Labor, Wage and Hour Division, Final Rule: Executive Order 13658, Establishing a Minimum Wage for Contractors, <https://www.dol.gov/whd/flsa/eo13658/index.htm> (last visited Feb. 24, 2017).

⁵¹ See *Hillsborough Cnty. Gov'tl Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So.2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm'n*, 410 So.2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass'n v. Legislature of Fla.*, 269 So.2d 684 (Fla. 1972).

⁵² Article X, s. 24(a), FLA. CONST. and s. 448.110, F.S.

⁵³ Article X, s. 24(c), FLA. CONST.

⁵⁴ <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices> (last visited Feb. 24, 2017).

⁵⁵ The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited Feb. 24, 2017).

⁵⁶ A copy of the Executive Order can be found online at <https://www.gpo.gov/fdsys/pkg/FR-2009-02-11/pdf/E9-3113.pdf> (last visited Feb. 24, 2017); the Executive Order is codified in subpart 22.5 of the Federal Acquisition Regulation.

executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor if the agreement will advance the federal government's goal of achieving economy and efficiency in procurement; produce labor-management stability; and ensure compliance with laws and regulations concerning safety, health, equal employment opportunity, and labor and employment standards.

Federal Prevailing Wage Requirements

The Davis-Bacon Act applies to contractors and subcontractors performing work on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public works projects or public buildings.⁵⁷ The United States Department of Labor, Wage and Hour Division, issues two types of wage determinations: general determinations (also known as area determinations) and project determinations. The wage and fringe benefits⁵⁸ in the applicable Davis-Bacon wage determination must be the minimum paid by contractors and subcontractors to laborers and mechanics.⁵⁹

III. Effect of Proposed Changes:

Section 1 creates s. 255.0992, F.S., relating to public works projects and prohibited governmental actions. The section defines the following terms:

- “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institute of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- “Public works project” means an activity of which 50 percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require that a contractor, subcontractor, or material supplier or carrier engaged in such project:

- Pay employees a predetermined amount of wages or prescribe any wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control, limit, or expand staffing; or
- Recruit, train, or hire employees from a designated, restricted, or single source.

⁵⁷ 40 U.S.C. s. 3142(a).

⁵⁸ Examples of fringe benefits include life insurance, health insurance, pension, vacation, holidays, sick leave, and other “bona fide” fringe benefits. <http://www.dol.gov/whd/programs/dbra/faqs/fringes.htm#Fringe> (last visited Feb. 24, 2017).

⁵⁹ 40 U.S.C. s. 3142(b).

The bill also provides that the state or any political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project. However, this provision does not apply to the vendors specified in ss. 287.133(convicted vendor list) and 287.134(discriminatory vendor list), F.S.

Additionally, this section does not apply to contracts executed by the Department of Transportation under ch. 337, F.S.

Section 2 provides that this act shall take effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 255.0992 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on March 22, 2017:

- Ensures that vendors and companies who have violated state and federal law and appear on lists governed by s. 287.133 or s. 297.134, F.S., are not awarded a public works contract.

CS by Community Affairs on March 6, 2017:

- Revises the definition of “public works project” so that the term includes only an activity of which 50 percent or more of the cost will be paid from state-appropriated funds; and
- Clarifies that although the state or a political subdivision that contracts for a public works project may not prohibit certain qualified, licensed, or certified persons from submitting a bid or being awarded any contract, subcontract, material order, or carrying order, this provision does not apply to vendors listed under s. 287.133 or s. 287.134, F.S.

- B. **Amendments:**

None.



721430

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
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The Committee on Governmental Oversight and Accountability
(Perry) recommended the following:

Senate Amendment (with title amendment)

Delete lines 55 - 56
and insert:
public works project. This paragraph does not apply

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

And the title is amended as follows:

Delete lines 9 - 10
and insert:

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721430

11

bidders from submitting bids; providing

By the Committee on Community Affairs; and Senator Perry

578-02150A-17

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A bill to be entitled

An act relating to public works projects; creating s. 255.0992, F.S.; providing definitions; prohibiting the state and political subdivisions that contract for public works projects from imposing restrictive conditions on certain contractors, subcontractors, or material suppliers or carriers; prohibiting the state and political subdivisions from restricting qualified bidders from submitting bids or being awarded contracts; providing an exception; providing applicability; providing an effective date.

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

Section 1. Section 255.0992, Florida Statutes, is created to read:

255.0992 Public works projects; prohibited governmental actions.—

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

(a) "Political subdivision" means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.

(b) "Public works project" means an activity of which 50

Page 1 of 3

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578-02150A-17

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percent or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

(2) (a) Except as required by federal or state law, the state or any political subdivision that contracts for a public works project may not require that a contractor, subcontractor, or material supplier or carrier engaged in such project:

1. Pay employees a predetermined amount of wages or prescribe any wage rate;

2. Provide employees a specified type, amount, or rate of employee benefits;

3. Control, limit, or expand staffing; or

4. Recruit, train, or hire employees from a designated, restricted, or single source.

(b) The state or any political subdivision that contracts for a public works project may not prohibit any contractor, subcontractor, or material supplier or carrier able to perform such work who is qualified, licensed, or certified as required by state law to perform such work from submitting a bid on the public works project or being awarded any contract, subcontract, material order, or carrying order. This paragraph does not apply to vendors listed pursuant to s. 287.133 or s. 287.134.

(3) This section does not apply to contracts executed under

Page 2 of 3

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

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59 chapter 337.

60 Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 10, 2017

I respectfully request that **Senate Bill #534**, relating to Public Works Projects, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17
Meeting Date

534
~~317~~
Bill Number (if applicable)

Topic Public Works Projects

721430
Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3731 Coconut Creek Parkway, Ste 200
Street

Phone (954) 465-6811

Coconut Creek FL 33066
City State Zip

Email cbowen@abcaestflorida.com

Speaking: For Against Information

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

Representing Associated Builders and Contractors of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

5B534

Bill Number (if applicable)

Topic Public works

Amendment Barcode (if applicable)

Name Rich Templin

Job Title

Address 135 S. Monroe

Phone 850-224-6926

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: For [] Against [X] Information []

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

Representing Florida AFL-CIO

Appearing at request of Chair: Yes [] No [X]

Lobbyist registered with Legislature: Yes [X] 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)

March 22, 2017
Meeting Date

SB 534
Bill Number (if applicable)

Topic Public Works Projects
Name Chenavia (Shi-hay-via) Smith

Amendment Barcode (if applicable)

Job Title
Address 2718 Candlewood Ct.
Street
Apopka FL 32703
City State Zip

Phone 407-733-2737
Email lsmith121@hotmail.com

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
APPEARANCE RECORD

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

3-22-17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Governmental Oversight + Accountability / Public Work Projects

Amendment Barcode (if applicable)

Name John Andrew Barclay

Job Title _____

Address 5981 SE 4th PL

Street

Phone 352-777-6218

Ocala

City

FL

State

34472

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.

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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)

3/22/17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Pre-emption Public Works

Amendment Barcode (if applicable)

Name Steve Hall

Job Title

Address 2619 CORAINE DR.

Street

Phone

Orlando

FL

32803

City

State

Zip

Email

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3-22-17

Meeting Date

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

534

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name JESS McCARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1st St 2810

Phone 305-979-7110

Street

MIAMI

33128

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing MIAMI - DADE COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/22/17
Meeting Date

SB 534
Bill Number (if applicable)

Topic PUBLIC WORKS

Amendment Barcode (if applicable)

Name Kevin Byrne

Job Title

Address 256 SE Todd Ave

Phone 772 979 5869

Street

Port St Lucie

FL

34983

Email kevinjbyrne54@gmail.com

City

State

Zip

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.

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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)

3-22-17

Meeting Date

CS-SB 534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Theresa King

Job Title President

Address P O Box 10888

Phone 850-228-8940

Street

Tallahassee

FL

32302

City

State

Zip

Email fbt.king@gmail.com

Speaking: For [] Against [X] Information []

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

Representing Florida Building and Construction Trades Council

Appearing at request of Chair: Yes [] No [X]

Lobbyist registered with Legislature: Yes [X] 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)

3/22/17
Meeting Date

534
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name MICHAEL A. WEEKS

Job Title ELECTRICIAN

Address 1123 WALT WILLIAMS Rd.
Street

Phone 863-529-6367

LAKE LAND FL. 33809
City State Zip

Email

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/22/17
Meeting Date

SB 0534
Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name MURRAY CALDWELL

Job Title _____

Address 146 E. PARK LN
Street
Cocoa Bch FL 32931
City State Zip

Phone (321) 292 4258

Email MURRFYN@AOL.COM

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.

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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)

3/22/17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Mike Phillips

Job Title

Address 6084 Kocol Lane

Phone 321-652-2089

Street

Cocoa

FL

32927

Email

City

State

Zip

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.

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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)

3/22/17

Meeting Date

SB 534

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name STEVE CHING

Job Title

Address 128 BRIDGEPORT RD.

Street

Phone 386/235-5014

DAVONIA BEET FL 32118

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.

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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)

3-22-17

Meeting Date

SB534

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name JOHN GALL

Job Title _____

Address 13398 53RD CT. N.
Street

Phone 561 308-0339

W.P. BCH. FL 33411
City State Zip

Email john.gall@prodigy.net

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.

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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)

03/22/17
Meeting Date

534
Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Katherine Hiley

Job Title Clerk - USPS

Address 657 Sweetbriar Drive
Street

Phone 813-748-5467

Oldsmar Florida 34677
City State Zip

Email Katherinehiley50@gmail

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.

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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)

03/22/2017
Meeting Date

SBS3Y
Bill Number (if applicable)

Topic Public Works Projesets

Amendment Barcode (if applicable)

Name Richard Cory Gilland

Job Title _____

Address 7140 Milton Ave

Phone 407-443-2549

Street

Cocoa

FL

32927

City

State

Zip

Email gillandc1@hotmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/22/17

Meeting Date

534

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name ANDRES TRUJILLO

Job Title FL STATE DIRECTOR

Address 11774 SW 137th AVE

Phone 786-348-5771

Street

MIAMI FL 33186

Email FLTRUJILLO@FLA.GOV

City

State

Zip

Speaking: For Against Information

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

Representing SMART-TD

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)

3/22/17

Meeting Date

534

Bill Number (if applicable)

Topic PREEMPTION

Amendment Barcode (if applicable)

Name MARCUS DIXON

Job Title Political Director

Address 2881 Corporate Way

Phone (505) 720-1627

Street

Miramar

FL

33025

Email Marcus.Dixon@seiu.org

City

State

Zip

Speaking: For Against Information

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

Representing SEIU Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-22-17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public works Projects

Amendment Barcode (if applicable)

Name Larry Kidd

Job Title

Address 220 Coleus Dr

Phone 407-273-3758

Street

Orlando FL 32807

Email LKidd01@aol.com

City

State

Zip

Speaking: For [] Against [X] Information []

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

Representing my self

Appearing at request of Chair: Yes [] No [X]

Lobbyist registered with Legislature: Yes [] No [X]

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)

3/22/17

Meeting Date

534

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LEGISLATIVE COORDINATOR

Address 115 S ANDREWS AVE

Phone 954-253-7320

Street

FT. LAUDERDALE FL 33301

Email dsainvil@broward.org

City

State

Zip

Speaking: For Against Information

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

Representing BROWARD COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-22-17
Meeting Date

SB 0534
Bill Number (if applicable)

Topic PUBLIC WORKS

Amendment Barcode (if applicable)

Name STEVE MOSLEY

Job Title _____

Address 890 CLEVELAND ST
Street

Phone 321-917-4765

TITUSVILLE, FL 32780
City State Zip

Email SMOSLEY@IAM610.ORG

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-22-17

Meeting Date

534

Bill Number (if applicable)

Topic Preemption of local Pro-worker Ordinances Amendment Barcode (if applicable)

Name Roger Simmermaker

Job Title Electronics Technician

Address 13112 Aronomink Lane

Street

Phone 407-234-4626

Orlando FL 32828

City

State

Zip

how2buyamerican@gmail.com

Email

Speaking: For Against Information

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

Representing Central Florida AFL-CIO

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)

3/22/17

Meeting Date

SB 0534

Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name John Newgarden

Job Title Electronics Technician

Address 784 BRYANT'S LANDINGS RD
Street

Phone 856 628 0997

Newgardena
City

FL
State

32465
Zip

Email newgardenj@yaho.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/22/17
Meeting Date

SB 534
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Christopher Hartman

Job Title _____

Address 760 Buttonwood Dr.
Street

Phone 321-298-1100

Merritt Island FL 32953
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.

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THE FLORIDA SENATE
APPEARANCE RECORD

22 MAR 17

Meeting Date

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

SB 534

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name WILLIAM THEODORE

Job Title _____

Address 9002 TARAWYND CT

Phone 813 926 3825

Street

ODESSA

City

FL

State

33556

Zip

Email _____

Speaking: For Against Information

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

Representing MY SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/22/2017
Meeting Date

SB 534
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Michael WEINERT

Job Title AIRCRAFT Mechanic

Address 3167 OHAMA DR
Street

Phone 727 372 2509

New Port Richey FL 34655
City State Zip

Email mikewjet@yahoo.com

Speaking: For Against Information

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

Representing SELF & Family

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)

22 MAR 17

Meeting Date

SB 534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Jeffrey Cangoni

Job Title _____

Address 6410 wild wood ct

Phone 850-276-3814

Street

Pepperdine City

State

FL

Zip

32404

Email _____

Speaking: For Against Information

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

Representing My self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-22-17
Meeting Date

SB 534
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name LORI BELL

Job Title _____

Address 21150 Gertrude Ave T2

Phone 941 8156042

Street

Port Charlotte

City

FL

State

33952

Zip

Email loriebell58@gmail.com

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.

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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)

3/23/17
Meeting Date

SB 534
Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name BRENT BONAR

Job Title

Address 1025 SANCTUARY COVE DR
Street

Phone 561-598-9801

PBG
City

FL
State

33410
Zip

Email BRENT.BONAR@rocket.com

Speaking: For Against Information

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

Representing My Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/22/17
Meeting Date

534
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name JOANNE CANNON

Job Title Retired

Address 340-50th St W

Phone 941-812-7113

BRADENTON FL 34809
City State Zip

Email jcann24@aol.com

Speaking: For ~~Against~~^{gc} Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/22/17

Meeting Date

CS/SB534

Bill Number (if applicable)

Topic PUBLIC WORKS

Amendment Barcode (if applicable)

Name J.B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE

Phone 850-556-8143

Street

TALLAHASSEE, FL 32303

Email JBCCLARK5@AETHLINK.NET

City

State

Zip

Speaking: For [] Against [x] Information []

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

Representing FL. ELECTRICAL WORKERS ASSN.

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [x] 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)

3/22/17

Meeting Date

534

Bill Number (if applicable)

Topic GOVERNMENT OVERSIGHT ACCOUNTABILITY

Amendment Barcode (if applicable)

Name GLEND A ABICENT

Job Title SERVICES TECH.

Address 4305 SW 98 AV

Phone 786-376-7181

Street

MIAMI

FL

33165

Email GLEND A ABICENT@GMAIL

City

State

Zip

.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/22/2017
Meeting Date

534
Bill Number (if applicable)

Topic CIRCUMVENTING LOCAL GOVERNMENT & people VOICE Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR, COUNCIL of FLORIDA

Address PO BOX 1766

Phone 954 860 4055

Street POMPANO BCH. FLORIDA 33061
City State Zip

Email workingfolk@hotmail.com

Speaking: For Against Information

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

Representing COMMUNICATIONS WORKERS of AMERICA

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)

3/22/2017
Meeting Date

SB-534
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Charlton James

Job Title Deputy Sheriff

Address 5705 New 49th Way

Phone 954-531-1382

Coconut Creek FL 33073
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

APPEARANCE RECORD

3-22-2017

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

SB 534

Meeting Date

Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name ANTHONY MARCIANO

Job Title SERGEANT

Address 10221 WORCHESTER DR

Phone 954-632-6878

Street

BOCA RATON FL 33428

Email AKIDM@ATT.NET

City

State

Zip

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.

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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)

3-22-17
Meeting Date

SB 534
Bill Number (if applicable)

Topic Public works Projects

Amendment Barcode (if applicable)

Name Vincent Graham

Job Title Deputy Sheriff

Address 1007 W Jasmine Lane
Street

Phone _____

N. Lauderdale FL 33068
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.

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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)

3/22/17

Meeting Date

534

Bill Number (if applicable)

Topic Public Works Project

Amendment Barcode (if applicable)

Name Arthur Rosenberg

Job Title Attorney

Address 3000 Biscayne Blvd, #106

Phone 850-509-2085

Street

Miami FL 33137

City

State

Zip

Email arthur@floridalegal.org

Speaking: For Against Information

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

Representing FloridaLegalServices

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

3-22-17

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

534

Meeting Date

Bill Number (if applicable)

Topic Public works

Amendment Barcode (if applicable)

Name James Ingle

Job Title Electrician

Address 3509 NW 22nd Dr

Phone 901-483-4800

Gainesville

FL

32605

Email Jwcin@yahoo.com

Speaking: For [] Against [x] Information []

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

Representing myself

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [] No [x]

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)

3/22/09

Meeting Date

534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Matthew Lund

Job Title Political Director

Address 46 NE 15th Ave. Suite 1200

Phone 850-445-3428

Street

Miami

State

FL

Zip

33132

Email mlund@sel-laborers.org

Speaking: For Against Information

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

Representing Southwest Laborers' District Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

03/22/17
Meeting Date

SB 534
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Jonathan Howell

Job Title Electrician

Address 1970 SW Skyline Cp
Street

Phone 386 292 2585

Ft White FL 32038
City State Zip

Email Jonathan.A.Howell@gmail.com

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.

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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)

3/22/17
Meeting Date

SB0534
Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name Sabrina S-White

Job Title IT SPECIALIST

Address 54220 VIKYI Rd.
Street

Phone 904 879 7461

Callahan FL 32011
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.

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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)

3/22/2017

Meeting Date

SB-534

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Richard Quincoles

Job Title Myself

Address 11751 SW 182 ter

Street

Phone _____

Miami

FL

33177

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.

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)

03/22/2017

Meeting Date

534

Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 2050900

Street

Tallahassee

FL

32302

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Associated General Contractors Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

534
Bill Number (if applicable)

Topic Public Works Projects

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3730 Coconut Creek Parkway, Ste 200

Phone (954) 465-6811

Coconut Creek FL 33066
City State Zip

Email cbowen@abcoastflorida.com

Speaking: For Against Information

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

Representing Associated Builders and Contractors of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-17

Meeting Date

58534

Bill Number (if applicable)

Topic Public Works project

Amendment Barcode (if applicable)

Name ROSALBA BAUZA

Job Title _____

Address 1935
Street

Phone _____

DELAND
City State Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3 122/2017

Meeting Date

Topic _____

Bill Number 534
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22
Meeting Date

534
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name SIATER BATHLIS

Job Title _____

Address 204 S MONROE ST Phone 222 8900
Street

City _____ State _____ Zip _____ Email _____

Speaking: For Against Information

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

Representing THE FLORIDA CARPENTERS

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)

3/02/2017
Meeting Date

634
101

Bill Number (if applicable)

Topic PUBLIC WORK PROTECT

Amendment Barcode (if applicable)

Name SANDY LERO

Job Title _____

Address 1501 SW 83 AVE
Street

Phone 305-300-7853

MIAMI FL 33144
City State Zip

Email SANDYLERO@ATT.NET

Speaking: For Against Information

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

Representing YOURSELF

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)

3/22/17

Meeting Date

534

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name HORACE ATKINS

Job Title _____

Address 601 SW 68 Ter
Street

Phone 305 206 9497

Pembroke Pines FL
City State

33023
Zip

Email BigHorace1@HOTMAIL.COM

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.

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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)

3/22/17
Meeting Date

534
~~401~~
Bill Number (if applicable)

Topic PUBLIC WORKS PROJECTS

Amendment Barcode (if applicable)

Name FRANK RAMIREZ

Job Title _____

Address 25131 SW 120PL
Street

Phone (305) 801-7679

HONESTAD FL 33032
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.

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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)

3-22

534

Meeting Date

Bill Number (if applicable)

Topic Public Works

Amendment Barcode (if applicable)

Name James Fogle

Job Title Electrician

Address 3509 NW 22nd Dr

Phone 901-483-4800

Street

Gainesville

FL

32605

Email

City

State

Zip

Speaking: For [] Against [x] Information []

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

Representing Myself

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [] No [x]

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 616

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Steube

SUBJECT: Concealed Weapons or Firearms

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Favorable
2.	Ferrin	Ferrin	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 616 defines the term “courthouse,” and authorizes a person who has a concealed weapons and firearms license to carry a concealed weapon or firearm into a courthouse for as long as it takes him or her to report to courthouse security or management. Then, the licensee must follow security or management personnel’s instructions for removing, securing, and storing the item, or the licensee must surrender the item until the licensee is leaving the courthouse. As such, the bill does not permit anyone to carry a concealed weapon or firearm throughout a courthouse or into a courtroom.

The bill also states that any local ordinance, administrative rule, administrative order, or regulation that conflicts with the stated definition of courthouse or the right to carry a weapon or firearm into a courthouse, as permitted by this bill, is preempted to the Legislature. Further, the bill subjects a person or entity that enacts or enforces a preempted ordinance, rule, order, or regulation to penalties including, but not limited to fines and removal from office by the Governor.

The bill is effective upon becoming a law.

II. Present Situation:

Concealed Carry of Firearms, Weapons, or Electric Weapons or Devices

Lawful Concealed Carry of Weapons or Firearms

Chapter 790, F.S., regulates who can carry weapons and firearms and where and how a person may carry them. In general, this chapter prohibits a person from carrying a concealed firearm unless the person has a concealed weapon or firearm license.¹

Florida's concealed carry licensing scheme is set forth in s. 790.06, F.S. The license only permits the concealed carry of handguns and certain non-firearm weapons.² Currently, there are roughly 1.7 million Floridians holding a standard concealed carry license.³

To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services, and the Department *shall* grant the license to each applicant who:⁴

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance or been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competence with a firearm;⁵
- Has not been adjudicated an incapacitated person in a guardianship proceeding, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

¹ See ss. 790.01 and 790.06, F.S.; *but see* s.790.25(3), F.S., which provides that the prohibition against carrying a concealed weapon and the licensure requirement do not apply in certain circumstances.

² "For the purposes of this section, concealed firearms and concealed weapons are defined as a handgun, electronic weapon or device, tear gas gun, knife, or billie, but the term does not include a machine gun as defined" elsewhere in statute. Section 790.06(1), F.S.

³ As of February 28, 2017, 1,721,862 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited March 2, 2017).

⁴ Section 790.06(2), F.S. Accordingly, Florida is referred to as a "shall-issue" state, as opposed to a "may-issue" state. Also, the Department must deny a license to an applicant who meets criteria set forth in s. 790.06(3), F.S.

⁵ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- Has not been committed to a mental institution, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

The licensing statute strongly implies that licensees may carry concealed throughout Florida, as a general matter.⁶ However, the statute also expressly states that the license does not permit a licensee to carry a concealed weapon or firearm into any:⁷

- *Courthouse*;
- *Courtroom*;⁸
- Place of nuisance, such as a brothel or place where criminal gang activity takes place repeatedly;
- Police, sheriff, or highway patrol station;
- Detention facility, prison, or jail;
- Polling place;
- Meeting of the governing body of a county, public school district, municipality, or special district;
- Meeting of the Legislature or a committee of the Legislature;
- School, college, or professional athletic event not related to firearms;
- Elementary or secondary school facility or administration building;
- Career center;
- Portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- College or university facility unless the licensee is a registered student, employee, or faculty member of such college or university and the weapon is a stun gun or nonlethal electric weapon or device designed solely for defensive purposes and the weapon does not fire a dart or projectile;
- Airport's passenger terminal and sterile area, provided that no person shall be prohibited from carrying any legal firearm into the terminal, which firearm is encased for shipment for purposes of checking such firearm as baggage to be lawfully transported on any aircraft; or
- Place where the carrying of firearms is prohibited by federal law.

⁶ The licensing statute expressly states that licensees are not subject to the statute that criminalizes concealed carry. The licensing statute also expressly states that the license does not authorize carrying into a list of places. Thus the licensing statute strongly implies, though nowhere expressly states, that licensees may carry generally throughout Florida.

⁷ Section 790.06(12)(a), F.S. (Emphasis added)

⁸ "Except that nothing in this section would preclude a judge from carrying a concealed weapon or determining who will carry a concealed weapon in his or her courtroom." Section 790.06(12)(a)5., F.S. Note that this provision does not refer to *firearms*, but only *weapons*.

A licensee who carries a concealed weapon or firearm into a courthouse or other prohibited place commits a second degree misdemeanor, which is punishable by up to 60 days in jail and a fine not to exceed \$500.⁹

Preemption of Firearms and Ammunition Regulations

The Joe Carlucci Uniform Firearms Act (Act), codified as s. 790.33, F.S., became law in 1987.¹⁰ The policy and intent of the Act is stated as follows:

It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.¹¹

The Act accomplished its stated purpose by “occupying the whole field of regulation of firearms and ammunition,” as stated in subsection (1) of the Act:

Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances are hereby declared null and void.¹²

Additionally, the Act requires the court to impose civil fines of up to \$5,000 against certain government officials who willfully enact or cause an improper ordinance, regulation, or rule to be enforced. The offending government official may not use public funds to pay the fine. And the government official may be removed from office by the Governor.¹³

There are limited exceptions to the preemption provisions included in the Act, which does not prohibit:¹⁴

- Zoning ordinances that encompass firearms businesses along with other businesses, provided that they are not designed to restrict or prohibit the sale, purchase, transfer, or manufacture of firearms or ammunition;
- Regulations pertaining to firearms and ammunition issued to law enforcement agencies;
- Regulations prohibiting the carrying of firearms and ammunition by an employee of a local jurisdiction during and in the course of his or her official duties;

⁹ Section 790.06(12)(d), F.S. See also ss. 775.082(4)(b), F.S. and 775.083(1)(e), F.S.

¹⁰ Chapter 87-23, Laws of Fla.

¹¹ Section 790.33(2)(a), F.S.

¹² Section 790.33(1), F.S.

¹³ Section 790.33(3), F.S.

¹⁴ Section 790.33(4), F.S.

- A court or administrative law judge from hearing and resolving any case or controversy or issuing any opinion or order on a matter within the jurisdiction of that court or judge; or
- The Florida Fish and Wildlife Conservation Commission’s regulation of the use of firearms or ammunition to take wildlife or on shooting ranges managed by the commission.

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act,¹⁵ local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits for certain sporting goods stores, and banned recreational shooting.

III. Effect of Proposed Changes:

The bill defines the term “courthouse” as a building, or that portion thereof, in which hearings and trials are conducted on a regular basis and houses judicial chambers. The bill authorizes a person who has a concealed weapons and firearms license to carry a concealed weapon or firearm into a courthouse for as long as it takes him or her to report to courthouse security or management. Then, the licensee must:

- Follow the security or management personnel’s direction for removing, securing, and storing such weapon or firearm, or
- Temporarily surrender the weapon or firearm to the security or management personnel, who shall store the weapon or firearm in a locker, safe, or other secure location and return the weapon or firearm to the licensee when he or she is exiting the courthouse.

As such, the bill does not permit carrying a firearm past the entryway of most courthouses,¹⁶ and clearly does not authorize a licensee to carry into any courtroom.

The bill also provides that a local ordinance, administrative rule, administrative order, or regulation that conflicts with this section of law and the right to carry is preempted to the Legislature, and the person or entity that enacts or enforces a preempted ordinance, order, rule, or regulation is subject to penalties set forth in 790.33, F.S. including, but not limited to civil fines and removal from office by the Governor.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

¹⁵ *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

¹⁶ However, some courthouses have no security checkpoints at their entrances.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Courthouses may need to purchase lockers to store handguns for persons who have a concealed weapon or firearm license.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 790.06 of the Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 22, 2017:

- The amendment provides that for the purposes of this section, the term “courthouse” means a building, or that portion thereof, in which hearings and trials are conducted on a regular basis and houses judicial chambers.
- The amendment also provides that a local ordinance, administrative rule, administrative order, or regulation that conflicts with this section of law and the right to carry is preempted to the Legislature, and the person or entity that enacts or enforces a preempted ordinance, order, rule, or regulation is subject to penalties set forth in 790.33, F.S. including, but not limited to civil fines and removal from office by the Governor.

B. Amendments:

None.

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



696944

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with directory and title amendments)

Delete line 59

and insert:

(17) (a) As used in this section, the term "courthouse"
means a building in which trials and hearings are conducted on a
regular basis. If a building is used primarily for purposes
other than the conduct of hearings and trials and housing
judicial chambers, the term courthouse includes only that
portion of the building that is primarily used for hearings and



11 trials and judicial chambers.

12 (b) A local ordinance, administrative rule, administrative
13 order, or regulation that is in conflict with the definition of
14 courthouse in this subsection or the rights set forth under
15 subparagraph (12)(a)4. is preempted to the Legislature under s.
16 790.33. The person, justice, judge, county, agency,
17 municipality, district or other entity that enacts or causes to
18 be enforced a local ordinance, administrative rule,
19 administrative order, or regulation that is preempted is subject
20 to the penalties set forth in 790.33 including, but not limited
21 to, civil fines and removal from office by the Governor.

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

23
24 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

25 And the directory clause is amended as follows:

26 Delete lines 12 - 13

27 and insert:

28 Section 1. Present subsection (17) of section 790.06,
29 Florida Statutes, is redesignated as subsection (18), a new
30 subsection (17) is added to that section, and present paragraph
31 (a) of subsection (12) of that section is amended, to read:

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

34 And the title is amended as follows:

35 Delete line 7

36 and insert:

37 upon arrival and follow their instructions; defining
38 the term courthouse; providing that inconsistent
39 definitions are preempted and subjecting those



696944

40 responsible for enacting or causing the enforcement of
41 an inconsistent definition are subject to certain
42 penalties; providing

By Senator Steube

23-00694-17

2017616__

1 A bill to be entitled
 2 An act relating to concealed weapons or firearms;
 3 amending s. 790.06, F.S.; authorizing a concealed
 4 weapons or concealed firearms licensee to temporarily
 5 surrender a weapon or firearm if the licensee
 6 approaches courthouse security or management personnel
 7 upon arrival and follows their instructions; providing
 8 an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Paragraph (a) of subsection (12) of section
 13 790.06, Florida Statutes, is amended to read:
 14 790.06 License to carry concealed weapon or firearm.—
 15 (12) (a) A license issued under this section does not
 16 authorize any person to openly carry a handgun or carry a
 17 concealed weapon or firearm into:
 18 1. Any place of nuisance as defined in s. 823.05;
 19 2. Any police, sheriff, or highway patrol station;
 20 3. Any detention facility, prison, or jail;
 21 4. Any courthouse, except when a licensee approaches
 22 security or management personnel upon arrival at a courthouse
 23 and notifies them of the presence of the weapon or firearm and
 24 follows the security or management personnel's instructions for
 25 removing, securing, and storing such weapon or firearm, or when
 26 the licensee temporarily surrenders such weapon or firearm to
 27 the security or management personnel, who shall store the weapon
 28 or firearm in a locker, safe, or other secure location and
 29 return the weapon or firearm to the licensee when he or she is
 30 exiting the courthouse;
 31 5. Any courtroom, except that nothing in this section would
 32 preclude a judge from carrying a concealed weapon or determining

Page 1 of 2

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

23-00694-17

2017616__

33 who will carry a concealed weapon in his or her courtroom;
 34 6. Any polling place;
 35 7. Any meeting of the governing body of a county, public
 36 school district, municipality, or special district;
 37 8. Any meeting of the Legislature or a committee thereof;
 38 9. Any school, college, or professional athletic event not
 39 related to firearms;
 40 10. Any elementary or secondary school facility or
 41 administration building;
 42 11. Any career center;
 43 12. Any portion of an establishment licensed to dispense
 44 alcoholic beverages for consumption on the premises, which
 45 portion of the establishment is primarily devoted to such
 46 purpose;
 47 13. Any college or university facility unless the licensee
 48 is a registered student, employee, or faculty member of such
 49 college or university and the weapon is a stun gun or nonlethal
 50 electric weapon or device designed solely for defensive purposes
 51 and the weapon does not fire a dart or projectile;
 52 14. The inside of the passenger terminal and sterile area
 53 of any airport, provided that no person shall be prohibited from
 54 carrying any legal firearm into the terminal, which firearm is
 55 encased for shipment for purposes of checking such firearm as
 56 baggage to be lawfully transported on any aircraft; or
 57 15. Any place where the carrying of firearms is prohibited
 58 by federal law.
 59 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

March 8, 2017

The Honorable Denis Baxley
Florida Senate
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Baxley,

I am writing this letter because my bill, SB 616 Concealed Weapons or Firearms, has been referred to the Senate Government Oversight and Accountability Committee. This bill is in the second committee of reference. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

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

Very respectfully yours,

A handwritten signature in black ink, appearing to read "W. Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- 328 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-2017

Meeting Date

SB-616

Bill Number (if applicable)

696944

Amendment Barcode (if applicable)

Topic Firearms / Court Houses (Steube)

Name Marion Hammer

Job Title _____

Address PO Box 1387

Street

Tallahassee

City

Florida

State

32302

Zip

Phone 850-222-9518

Email _____

Speaking: For Against Information

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

Representing NRA & Unified Sportsmen of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-2017

Meeting Date

SB-616

Bill Number (if applicable)

Topic Firearms / Court Houses (Steube)

Amendment Barcode (if applicable)

Name Marion Hammer

Job Title _____

Address PO Box 1387

Phone 850-222-9518

Street

Tallahassee

Florida

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing NRA & Unified Sportsmen of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3/22/17

Meeting Date

616

Bill Number (if applicable)

Topic Gun check-in at Courthouses

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title legislative advocate

Address 540 Beverly Ct.

Phone 772 204 1792

Street

Tallahassee

FL

32301

City

State

Zip

Email lwvfadvocacy@gmail.com

Speaking: For Against Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17
Meeting Date

616
Bill Number (if applicable)

Topic CONCEALED WEAPONS OR FIREARMS

Amendment Barcode (if applicable)

Name EDWARD G. LABRADOR

Job Title DIRECTOR, INTERGOVERNMENTAL AFFAIRS

Address 115 S. ANDREWS AVE
Street

Phone 954-826-1155

FT. LAUDERDALE FL 33301
City State Zip

Email elabrador@broward.org

Speaking: For Against Information

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

Representing BROWARD COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 886

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families, and Elder Affairs Committee and Senator Powell

SUBJECT: Public Records/Substance Abuse Impaired Persons

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Kim	Ferrin	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 886 creates a new exemption from the public records inspection and access requirement of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for petitions for involuntary assessment and stabilization of a substance abuse impaired person filed pursuant to s. 397.6815, F.S. The bill provides for a retroactive application of the public records exemption.

The bill requires a two-thirds vote of both chambers for passage.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

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

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

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

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

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

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

Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR 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.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

²² FLA. CONST. art. I, s. 24(c).

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.²³

Marchman Act

Section 397.301, F.S., creates the Hal. S. Marchman Alcohol and Other Drug Services Act (the “Marchman Act”). This act was created by the Legislature to provide assistance to substance abuse impaired persons through health and rehabilitative services.

A person’s spouse or guardian, any relative, a private practitioner, the director of a licensed service provider, or an adult who has personal knowledge of the person’s substance abuse impairment may file a petition for involuntary assessment and stabilization of an individual.²⁴ The petition for involuntary assessment and stabilization has several elements, and must include facts to support the need for involuntary assessment and stabilization, including the reason for the applicant’s belief that:

- The respondent is substance abuse impaired; and
- The respondent has lost the power of self-control with respect to substance abuse; and either that:
- The respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or
- The respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.²⁵

Once the petition is filed with the Clerk of Court, the court must schedule a hearing to take place within 10 days, or can issue an order immediately.²⁶ After hearing, the court determines whether the respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent. An order authorizing involuntary assessment and stabilization must include the court’s finding on the availability and appropriateness of the alternatives and may order that a specific service provider perform the involuntary assessment and stabilization.²⁷

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of five days²⁸ to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.²⁹ During that time, an assessment is completed on the individual.³⁰ After the assessment, the service provider may release the

²³ Section 119.15(7), F.S.

²⁴ Section 397.6811, F.S.

²⁵ Section 397.6814, F.S.

²⁶ Section 397.6815, F.S.

²⁷ Section 397.6818, F.S.

²⁸ Section 397.6821, F.S.

²⁹ Section 397.6811, F.S.

³⁰ Section 397.6819, F.S.

respondent, the respondent may voluntarily stay at the facility or the court may order the service provider to retain custody of the respondent.³¹

III. Effect of Proposed Changes:

Section 1 creates s. 397.6760, F.S., to provide that all petitions for involuntary assessment and stabilization, court orders, and related records filed with or by a court under Part V of Section 397, F.S., are confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution. The pleadings and other documents may be disclosed by the clerk of court, upon request, to certain persons or agencies, such as the petitioner, the respondent and their legal representatives, as well as the Department of Corrections. The bill provides that records made confidential and exempt from public disclosure can be submitted by the clerk of the court to the Florida Department of Law Enforcement as required by s. 790.065, F.S.³²

This public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides for retroactive application of the public records exemption.

Section 2 provides a statement of public necessary as required by the State Constitution.³³ The public necessity statement provides that making petitions and court records filed under the Marchman Act confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution protects a person's personal health information and sensitive personal information which, if released, could cause unwarranted damage to the person's reputation. Additionally, the knowledge that such information could be disclosed could have a chilling effect on the willingness of individuals to seek treatment.

Section 3 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for a public records exemptions to pass.

³¹ Section 397.6822, F.S.

³² Section 790.065, F.S., concerns the sale and delivery of firearms. Clerks of the court are required to transfer the records of certain impaired people to FDLE.

³³ FLA. CONST. art. I, s. 24(c).

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The public necessity for the bill is to protect sensitive health information of those who are involuntarily examined and to protect their reputations and reputations of their families. The media has published information from Marchman Act files and thus made public intensely private information. The bill exempts court records related to an involuntary assessments and appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

There is an indeterminate impact on circuit courts. Currently, circuit courts maintain the confidentiality of clinical records within Marchman Act cases. In this bill, petitions for involuntary assessment and stabilization will also be confidential. Circuit courts may see an indeterminate increase in costs to keep additional records confidential.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 397.6760 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on March 22, 2017:

CS/CS/SB 886 does the following:

- Removes redundant language.
- Adds a reference to s. 24(a) Art. I of the Florida Constitution that was inadvertently omitted.
- Adds the Department of Children and Families to the list of entities which may receive Marchman Act court documents upon request.

CS by Children, Families, and Elder Affairs on March 13, 2017:

CS/SB 886 creates s. 397.6760, F.S., to provide an exemption from public records requirements for petitions, court orders, and related records for involuntary assessment and stabilization under Part V of Ch. 397, F.S. The amendment identifies the persons and agencies that may receive the pleadings and other documents made confidential and exempt. The exemption from public records request will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act unless saved from repeal through reenactment by the Legislature.

- B. **Amendments:**

None.



560794

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 40 - 57
and insert:

(i) The Department of Children and Families, without
charge.

(j) The Department of Corrections, without charge if the
respondent is committed or is to be returned to the custody of
the Department of Corrections from the Department of Children
and Families.



560794

11 (k) A person or entity authorized to view records upon a
12 court order for good cause. In determining if there is good
13 cause for the disclosure of records, the court must weigh the
14 person or entity's need for the information against potential
15 harm to the respondent from the disclosure.

16 (2) This section does not preclude the clerk of the court
17 from submitting the information required by s. 790.065 to the
18 Department of Law Enforcement.

19 (3) The clerk of the court may not publish personal
20 identifying information on a court docket or in a publicly
21 accessible file.

22 (4) A person or entity receiving information pursuant to
23 this section shall maintain that information as confidential and
24 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
25 Constitution.

By the Committee on Children, Families, and Elder Affairs; and
Senator Powell

586-02389-17

2017886c1

1 A bill to be entitled
2 An act relating to public records; creating s.
3 397.6760, F.S.; providing an exemption from public
4 records requirements for petitions for involuntary
5 assessment and stabilization, court orders, related
6 records, and personal identifying information
7 regarding substance abuse impaired persons; providing
8 exceptions authorizing the release of such petitions,
9 orders, records, and identifying information to
10 certain persons and entities; providing applicability;
11 prohibiting a clerk of court from publishing personal
12 identifying information on a court docket or in a
13 publicly accessible file; providing for retroactive
14 application; providing for future legislative review
15 and repeal of the exemption; providing a statement of
16 public necessity; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 397.6760, Florida Statutes, is created
21 to read:
22 397.6760 Court records; confidentiality.-
23 (1) All petitions for involuntary assessment and
24 stabilization, court orders, and related records that are filed
25 with or by a court under this part are confidential and exempt
26 from s. 119.071(1) and s. 24(a), Art. I of the State
27 Constitution. Pleadings and other documents made confidential
28 and exempt by this section may be disclosed by the clerk of the
29 court, upon request, to any of the following:

Page 1 of 4

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

586-02389-17

2017886c1

30 (a) The petitioner.
31 (b) The petitioner's attorney.
32 (c) The respondent.
33 (d) The respondent's attorney.
34 (e) The respondent's guardian or guardian advocate, if
35 applicable.
36 (f) In the case of a minor respondent, the respondent's
37 parent, guardian, legal custodian, or guardian advocate.
38 (g) The respondent's treating health care practitioner.
39 (h) The respondent's health care surrogate or proxy.
40 (i) The Department of Corrections, without charge and upon
41 request if the respondent is committed or is to be returned to
42 the custody of the Department of Corrections from the Department
43 of Children and Families.
44 (j) A person or entity authorized to view records upon a
45 court order for good cause. In determining if there is good
46 cause for the disclosure of records, the court must weigh the
47 person or entity's need for the information against potential
48 harm to the respondent from the disclosure.
49 (2) This section does not preclude the clerk of the court
50 from submitting the information required by s. 790.065 to the
51 Department of Law Enforcement.
52 (3) The clerk of the court may not publish personal
53 identifying information on a court docket or in a publicly
54 accessible file.
55 (4) A person or entity receiving information pursuant to
56 this section shall maintain such information as confidential and
57 exempt from s. 119.07(1).
58 (5) The exemption under this section applies to all

Page 2 of 4

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

586-02389-17 2017886c1

59 documents filed with a court before, on, or after July 1, 2017.

60 (6) This section is subject to the Open Government Sunset
 61 Review Act in accordance with s. 119.15 and shall stand repealed
 62 on October 2, 2022, unless reviewed and saved from repeal
 63 through reenactment by the Legislature.

64 Section 2. The Legislature finds that it is a public
 65 necessity that petitions for involuntary assessment and
 66 stabilization and related court orders and records that are
 67 filed with or by a court under part V of chapter 397, Florida
 68 Statutes, and the personal identifying information of a
 69 substance abuse impaired person which is published on a court
 70 docket and maintained by the clerk of the court under part V of
 71 chapter 397, Florida Statutes, be made confidential and exempt
 72 from disclosure under s. 119.07(1), Florida Statutes, and s.
 73 24(a), Article I of the State Constitution. A person's health
 74 and sensitive, personal information regarding his or her actual
 75 or alleged substance abuse impairment are intensely private
 76 matters. The media have obtained, and published information
 77 from, such records without the affected person's consent. The
 78 content of such records or personal identifying information
 79 should not be made public merely because they are filed with or
 80 by a court or placed on a docket. Making such petitions, orders,
 81 records, and identifying information confidential and exempt
 82 from disclosure will protect such persons from the release of
 83 sensitive, personal information which could damage their and
 84 their families' reputations. The publication of personal
 85 identifying information on a physical or virtual docket,
 86 regardless of whether any other record is published, defeats the
 87 purpose of protections otherwise provided. Further, the

Page 3 of 4

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

586-02389-17 2017886c1

88 knowledge that such sensitive, personal information is subject
 89 to disclosure could have a chilling effect on a person's
 90 willingness to seek out and comply with substance abuse
 91 treatment services.

92 Section 3. This act shall take effect July 1, 2017.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

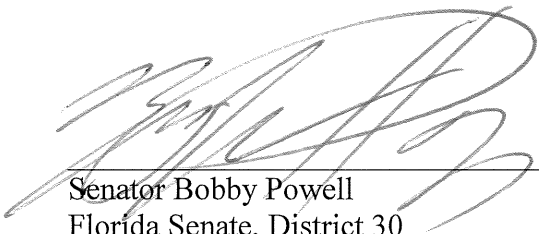
To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 13, 2017

I respectfully request that **Senate Bill #886**, relating to Public Records/ Substance Abuse Impaired Persons, be placed on the:

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



Senator Bobby Powell
Florida Senate, District 30

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1062

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Powell and Bracy

SUBJECT: Public Records/Protective Injunction Petitions

DATE: March 23, 2017 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1062 creates a new public records exemption. The bill makes a petition for injunction and its contents exempt from disclosure if the petition is dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction, or based on insufficiency of the petition itself without an injunction being issued.

This bill applies to all types of injunctions for protection, including injunctions against domestic violence,¹ repeat violence,² dating violence,³ sexual violence,⁴ stalking, and cyberstalking.⁵

The bill requires petitions for a protective injunction that are exempt under this bill to be removed from publicly available websites. If a petition is placed on a website, and later dismissed on or after July 1, 2017, which is the effective date of the bill, the webmaster with the clerk of the court or county recorder is responsible for removing the petition. If the petition is placed on the website before July 1, 2017, the respondent named in the petition must first request removal in writing.

The bill requires a two-thirds vote by both chambers for passage.

¹ Section 741.30(1), F.S.

² Section 784.046(2), F.S.

³ *Id.*

⁴ *Id.*

⁵ Section 784.0485, F.S.

The bill includes a statement of public necessity.

This public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

The bill has an effective date of July 1, 2017.

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.⁶ 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.⁷

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.⁸ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁹ 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.¹⁰

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.¹¹ 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.”¹² A violation of the Public Records Act may result in civil or criminal liability.¹³

⁶ FLA. CONST., art. I, s. 24(a).

⁷ *Id.*

⁸ 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.

⁹ Public records laws are found throughout the Florida Statutes.

¹⁰ Section 119.01(1), F.S.

¹¹ 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.”

¹² *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹³ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to public records requirements.¹⁴ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁵ 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.¹⁶ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁷

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁸ 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” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ 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.²¹ The OGSR also requires specified questions to be considered during the review process.²² In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

The OGSR process does not apply to public records exemptions that are required by federal law or which apply solely to the Legislature or the State Court System.²³

¹⁴ FLA. CONST., art. I, s. 24(c).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹⁸ 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).

¹⁹ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

²⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it 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.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(a), F.S. The specified questions are:

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

²³ Section 119.15(2), F.S.

Injunctions

A person may petition the court for several types of injunctions for protection, including injunctions against domestic violence,²⁴ repeat violence,²⁵ dating violence²⁶ sexual violence,²⁷ stalking, and cyberstalking.²⁸

Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.²⁹

Repeat violence constitutes two incidents of violence or stalking committed by the respondent, one of which must have been within six months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.³⁰

Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.³¹ The existence of a dating relationship is determined based on the following:

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement; and
- The frequency and type of interaction must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

Sexual violence is any one incident of:

- Sexual battery;
- A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney.³²

Stalking is defined as a crime committed by a person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person.³³ Cyberstalking means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person,

²⁴ Section 741.30(1), F.S.

²⁵ Section 784.046(2), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 784.0485(1), F.S.

²⁹ Section 741.28(2), F.S.

³⁰ Section 784.046(1)(b), F.S.

³¹ Section 784.046(1)(d), F.S.

³² Section 784.046(1)(c), F.S.

³³ Section 784.048(2), F.S.

causing substantial emotional distress to that person and serving no legitimate purpose.³⁴ Aggravated stalking occurs when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person.³⁵

A form for a petition for injunction against domestic violence is provided in Florida law.³⁶ A similar form for a petition for injunction for protection against the other types of violence noted above is provided in sections 784.046(4)(b) and 784.0485(3)(b), F.S.

Upon the filing of a petition for a protective injunction, the court must hold a hearing at the earliest possible time.³⁷ If an immediate and present danger of domestic violence appears to exist, the court may grant a temporary injunction ex parte prior to the full hearing.³⁸

Florida Family Law Rules of Procedure

The Florida Family Law Rules of Procedure protect from disclosure certain sensitive information recorded in family law cases.³⁹ The main types of cases governed by the Florida Family Law Rules of Procedure are matters arising from dissolution of marriage, annulment, support including child support, paternity, adoption, and injunctions for protection.⁴⁰ Rule 12.004(a), Florida Family Law Rules of Procedure, authorizes a judge hearing a family law case to access and review files of any related case. However, parties, judges, and court personnel are prohibited from disclosing confidential information and documents contained in related case files unless disclosure complies with state and federal law.⁴¹

A petitioner for a domestic violence injunction may request that his or her address be kept confidential and exempt from public records disclosure pursuant to statute,⁴² and the address is then considered a confidential court record.⁴³

The Federal Parent Locator Service (FPLS) helps state and local child support agencies locate parents for participation in child support.⁴⁴ A family violence indicator is a notation in the FPLS that has been placed on a record when a state has reasonable evidence of domestic violence or child abuse.⁴⁵ In parent locator cases, a state court may override a family violence indicator to release information from the FPLS.⁴⁶ The state clerk of the court, however, must ensure the protection of records of open cases relating to family violence. All court records in these

³⁴ Section 784.048(1)(d), F.S.

³⁵ Section 784.048(3), F.S.

³⁶ Section 741.30(3)(b), F.S., provides a petition for injunction for protection against domestic violence.

³⁷ Sections 741.30(4) and 784.046(5), F.S.

³⁸ Section 741.30(5)(a), F.S.

³⁹ RULE 12.012, FLA. FAM. L. R. P.

⁴⁰ RULE 12.010(a)(1), FLA. FAM. L. R. P.

⁴¹ RULES 12.004(c) and 12.007(c), FLA. FAM. L. R. P.

⁴² Section 741.30(3)(b), F.S., authorizes a petitioner to furnish his or her address in a separate confidential filing.

⁴³ RULE 12.007(b), FLA. FAM. L. R. P.

⁴⁴ The Federal Office of Child Support Enforcement administers the program. More at <http://www.acf.hhs.gov/programs/css/fpls> (Last visited Feb. 8, 2016).

⁴⁵ RULE 12.650(b)(4), FLA. FAM. L. R. P.

⁴⁶ 42 U.S.C. s. 653; RULE 12.650(a), FLA. FAM. L. R. P.

proceedings are confidential and not available for public inspection until the court issues a final judgment.⁴⁷

III. Effect of Proposed Changes:

Section 1 of the bill provides that injunctions for protection are exempt from public disclosure pursuant to s. 119.07(1), F.S., and Art. I s. 24(a) of the State Constitution⁴⁸ if the court does not issue an injunction for protection for any of the following reasons:

- Failure to state a claim,
- Lack of jurisdiction; or
- Insufficiency of the petition.

The exemption from public disclosure applies to the following types of injunctions for protection: domestic violence,⁴⁹ repeat violence,⁵⁰ dating violence,⁵¹ sexual violence,⁵² stalking and cyberstalking.⁵³

The bill requires petitions for a protective injunction to be removed from publicly available websites. If a petition is placed on a website, and later dismissed on or after the effective date of the bill, the webmaster with the clerk of the court or county recorder must remove the petition. If the petition is placed on the website prior to the effective date of the bill, it is the responsibility of the person named in the petition to request removal. The request must be in writing, signed, and include the case name and number, document heading, and page number. The person requesting removal must deliver the request by mail, fax, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

This public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

The bill includes a statement of public necessity. The public necessity statement provides that a petition for injunction and its contents are exempt from s. 119.07(1), F.S., and Article I, section 24(a), of the Florida Constitution if the petition is dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction, or based on insufficiency of the petition itself without an injunction being issued.

The public necessity statement asserted to justify the exemption is that the records may be defamatory to the person named in the petition, and may cause unwarranted damage to his or her reputation. Further, the only way to protect the reputation of the person named in the petition is by removing the petition and its contents.

⁴⁷ RULE 12.650(b)(4)(i), FLA. FAM. L. R. P.

⁴⁸ Section 110.07(1), F.S., provides that public records must be made available to the public for inspection or copying.

⁴⁹ Section 741.30(1), F.S.

⁵⁰ Section 784.046(2), F.S.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Section 784.0485(1), F.S.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires the exemption to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement appears to support the public policy for the exemption, and is no broader than the stated purpose of the exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may preserve the reputation of a person named in a petition for injunction that is made exempt. Protecting a person's reputation may prevent negative financial consequences from being named as a respondent in a petition for a protective injunction.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill's effective date is July 1. Most public records exemptions have an effective date of October 1, which gives agencies time to learn and prepare for public records exemptions after the laws are published.⁵⁴

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0714, Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 22, 2017:

The CS provides that petitions that are dismissed after July 1, 2017 are automatically removed from public access.

The CS makes petitions exempt rather than confidential and exempt.

- B. **Amendments:**

None.

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

⁵⁴ *Manual for Drafting Legislation, Sixth Edition*, Office of Bill Drafting Service, The Florida Senate, p. 66.



540526

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (k) is added to subsection (1) of
section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed
to exempt from s. 119.07(1) a public record that was made a part
of a court file and that is not specifically closed by order of



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11 court, except:

12 (k)1. A petition, and the contents thereof, for an
13 injunction for protection against domestic violence, repeat
14 violence, dating violence, sexual violence, stalking, or
15 cyberstalking which is dismissed without a hearing, dismissed at
16 an ex parte hearing due to failure to state a claim or lack of
17 jurisdiction, or dismissed for any reason having to do with the
18 sufficiency of the petition itself without an injunction being
19 issued on or after July 1, 2017, is exempt from s. 119.07(1) and
20 s. 24(a), Art. I of the State Constitution.

21 2. A petition, and the contents thereof, for an injunction
22 for protection against domestic violence, repeat violence,
23 dating violence, sexual violence, stalking, or cyberstalking
24 which is dismissed without a hearing, dismissed at an ex parte
25 hearing due to failure to state a claim or lack of jurisdiction,
26 or dismissed for any reason having to do with the sufficiency of
27 the petition itself without an injunction being issued before
28 July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I
29 of the State Constitution only upon request by an individual
30 named in the petition as a respondent. The request must be in
31 the form of a signed, legibly written request specifying the
32 case name, case number, document heading, and page number. The
33 request must be delivered by mail, facsimile, or electronic
34 transmission or in person to the clerk of the court. A fee may
35 not be charged for such request.

36 Section 2. The Legislature finds that it is a public
37 necessity that a petition, and the contents thereof, for an
38 injunction for protection against domestic violence, repeat
39 violence, dating violence, sexual violence, stalking, or



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40 cyberstalking which is dismissed without a hearing, dismissed at
41 an ex parte hearing due to failure to state a claim or lack of
42 jurisdiction, or dismissed for any reason having to do with the
43 sufficiency of the petition itself without an injunction being
44 issued be made exempt from s. 119.07(1), Florida Statutes, and
45 s. 24(a), Article I of the State Constitution. The Legislature
46 finds that the existence of, and the unverified allegations
47 contained in, such a petition may be defamatory to an individual
48 named in it and cause unwarranted damage to the reputation of
49 such individual. The Legislature further finds that removing
50 such a record from public disclosure is the sole means of
51 protecting the reputation of such an individual.

52 Section 3. This act shall take effect July 1, 2017.

53
54 ===== T I T L E A M E N D M E N T =====

55 And the title is amended as follows:

56 Delete everything before the enacting clause
57 and insert:

58 A bill to be entitled
59 An act relating to public records; amending s.
60 119.0714, F.S.; providing an exemption from public
61 records requirements for petitions, and the contents
62 thereof, for injunctions for protection against
63 domestic violence, repeat violence, dating violence,
64 sexual violence, stalking, or cyberstalking which are
65 dismissed in certain circumstances; providing a
66 statement of public necessity; providing an effective
67 date.

By Senator Powell

30-00972-17

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A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; providing an exemption from public records requirements for petitions, and the contents thereof, for certain protective injunctions that are dismissed in certain circumstances; requiring the removal of petitions dismissed before, on, or after a specified date from publicly accessible records; 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. Paragraph (k) is added to subsection (1) of section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

(1) COURT FILES.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

(k)1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking which is dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued.

2.a. A petition, and the contents thereof, described in

Page 1 of 3

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subparagraph 1. which is dismissed on or after July 1, 2017, must be removed from all publicly accessible records upon dismissal.

b. A petition, and the contents thereof, described in subparagraph 1. which are dismissed before July 1, 2017, shall be removed upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such removal.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking which is dismissed without a hearing or at an ex parte hearing due to failure to state a claim, lack of jurisdiction, or any reason having to do with the sufficiency of the petition itself without an injunction being issued be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the existence of, and the unverified allegations contained in, such a petition may be defamatory to an individual named in it and cause unwarranted damage to the reputation of

Page 2 of 3

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59 such individual. The Legislature further finds that correction
60 of the public record by the removal of such a petition, and the
61 contents thereof, is the sole means of protecting the reputation
62 of such individual.

63 Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/2017

Meeting Date

Topic _____

Bill Number 1062
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

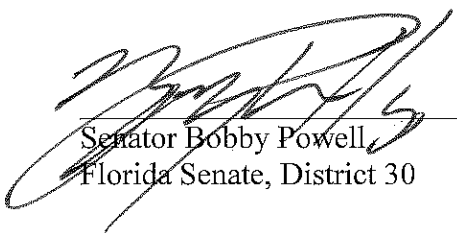
To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 15, 2017

I respectfully request that **Senate Bill #1062**, relating to Public Records/Protective Injunctions Petitions, be placed on the:

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



Senator Bobby Powell
Florida Senate, District 30

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 1446
INTRODUCER: Senator Rouson
SUBJECT: Pay-for-success Contracts
DATE: March 21, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Favorable
2.			HP	
3.			AP	
4.			RC	

I. Summary:

SB 1446 authorizes a state agency, contingent upon authorization in the General Appropriations Act, to negotiate and enter into a pay-for-success contract with a private entity. The bill defines the terms “pay-for-success contract,” “private entity,” and “success payment.”

The bill specifies the duties of the state agency for a pay-for-success contract. An independent evaluator must determine whether the outcome measures have been met under the contract, and the private entity must report annually to the state agency. Funding obtained under this program is not considered a procurement item under s. 287.057, F.S.

Contingent upon authorization in the General Appropriations Act, the Department of Health is authorized to implement the Nurse-Family Partnership pay-for-success contract as an evidence-based practice model or provider.

The bill provides a nonrecurring appropriation of \$850,000 from the General Revenue Fund for the 2017-2018 fiscal year to the Department of Health, to support existing infrastructure and implementation of the Nurse-Family Partnership model in designated healthy start coalition and federally qualified health centers.

By December 1, 2017, the Department of Management Services (DMS) must prescribe the procedures to be used by state agencies in connection with pay-for-success contracts.

The bill takes effect on July 1, 2017.

II. Present Situation:

Pay-for-Success Contract Program

A pay-for-success program allows a governmental entity to enter into contracts with private non-profit organizations to provide targeted services. Initial funding for these services is provided by private investors. When a performance measure outcome identified in the contract is achieved, as recognized by an independent evaluator, the governmental entity makes a “success payment.” The amount of the success payment is specified in the contracts, but presumably covers the costs of the services plus some level of return on the initial investment made by private investors.¹

Nurse-Family Partnership of Florida

The Nurse-Family Partnership of Florida (NFP) is an evidence-based, community health program that serves low-income, high-risk women pregnant with their first child.² Each mother is partnered with a registered nurse early in her pregnancy and receives ongoing nurse visits that continue through her child’s second birthday.

The NFP goals³ are:

- Improve pregnancy outcomes by helping women engage in good preventive health practices, including thorough prenatal care from their healthcare providers, improving their diets, and reducing their use of cigarettes, alcohol and illegal substances;
- Improve childhood health and development by helping parents provide responsible and competent care; and
- Improve the economic self-sufficiency of the family by helping parents develop a vision for their own future, plan future pregnancies, and continue their education and find work.

The NFP began serving its first Florida clients in Palm Beach County in 2008 and in Pinellas County in 2011.⁴ NFP also serves clients in Broward, Collier, Duval, Gadsden, Hendry, Hillsborough, Lee, Miami-Dade, and Orange counties.⁵

Department of Health

The Department of Health (DOH) was created in 1996,⁶ and its purpose is to protect and promote the health of all residents and visitors in the state through organized state and community efforts, including cooperative agreements with counties.⁷ One of the DOH’s duties is to provide or ensure the provision of quality health care and related services to identified populations in the state.⁸

¹ See <http://www.payforsuccess.org/learn/basics/> (last visited on March 19, 2017).

² See https://www.nursefamilypartnership.org/assets/PDF/Communities/State-profiles/FL_State_Profile.aspx (last visited on March 17, 2017).

³ *Id.*

⁴ See <http://www.nursefamilypartnership.org/locations/Florida> (last visited on March 17, 2017).

⁵ See <http://www.nursefamilypartnership.org/locations/Florida/find-a-local-agency> (last visited on March 17, 2017).

⁶ Section 20.43, F.S.

⁷ Section 20.43(1), F.S.

⁸ Section 20.43(1)(e), F.S.

In response to appropriation 467 of the 2016-2017 General Appropriations Act,⁹ a total of \$681,250 in non-recurring funds was provided to the DOH to integrate the NFP home visiting model in designated Healthy Start Coalitions and federally qualified health centers to provide intensive nurse visitation services for women and their infants. The DOH contracted with the Florida Association of Healthy Start Coalitions to implement the NFP model at 5 additional clinic sites located in Brevard, Hillsborough, Miami-Dade (two sites), and Orange counties through sub-contracts (Contract period of September 1, 2016 – June 30, 2017).¹⁰

This appropriation also authorized \$10,000 for the DOH to contract with the Nurse-Family Partnership National Service Office for process and outcome data identification, management, analysis, training, and programmatic support (Contract period of September 16, 2016 – June 30, 2017).¹¹

Chapter 287, Florida Statutes

Chapter 287, F.S., regulates state agency¹² procurement of personal property and services.¹³ Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.¹⁴

⁹ Ch. 2016-66, s. 3, Laws of Fla.

¹⁰ E-mail from Bryan P. Wendel, Government Analyst II, Office of Legislative Planning, Department of Health, dated March 17, 2017 (Copy on file with the Governmental Oversight and Accountability Committee).

¹¹ *Id.*

¹² As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

¹³ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

¹⁴ See ss. 287.012(6) and 287.057, F.S.

Contracts for commodities or contractual services in excess of \$35,000 must be procured using a competitive solicitation process.¹⁵ However, some specified contractual services and commodities are not subject to competitive-solicitation requirements.¹⁶

The Department of Management Services (DMS) assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.¹⁷

III. Effect of Proposed Changes:

Section 1 provides numerous definitions necessary to implement the pay-for-success contracts.

The term “pay-for-success contract” or “contract” is defined as a contract between a state agency and a private entity to fund a program, as specified in the General Appropriations Act, to address a critical public problem with historically poor outcomes.

The term “private entity” is defined as a private, not-for-profit organization, or a subsidiary or an affiliate thereof, exempt from federal income taxation pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, which enters into a pay-for-success contract with a state agency and subcontracts with one or more entities to provide the actual services.

The term “success payment” is defined as the amount paid to a private entity when performance outcome measures established in the pay-for-success contract are met, or as otherwise set forth in the pay-for-success contract.

Under the pay-for-success concept, the private entity must secure initial funding for the services provided under the contract from private-sector investors and enter into separate subcontracts with entities providing the services for the identified program.

Contingent upon authorization in the General Appropriations Act, a state agency may negotiate and enter into a pay-for-success contract with a private entity. This contract may be initiated in one fiscal year, may continue into subsequent fiscal years, and may be paid from appropriations authorized in any of those fiscal years.

The state agency is required to:

- Determine performance outcome measures to be included in the contract in consultation with the private entity and provider.
- Determine the data to be included in an annual report filed by a private entity.
- Select an independent, nationally recognized evaluator through competitive solicitation procedures to evaluate the performance outcome measures specified in the contract.

¹⁵ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., “competitive solicitation” means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

¹⁶ See s. 287.057(3)(e), F.S.

¹⁷ Section 287.032(2), F.S.

- Ensure that subcontractors share participant data and sign an acknowledgment that the data may be shared with an independent evaluator for research and evaluation purposes, and maintain documentation of the required acknowledgements.

A pay-for-success contract must meet all of the following requirements:

- Be limited to programs specified in the General Appropriations Act.
- Require the private entity to underwrite or secure upfront capital from private funders, such as foundations, banks, businesses, or individuals to fund the services provided under the subcontracts.
- Require an independent evaluator to determine whether the specified performance outcomes have been achieved.
- Require a success payment, consistent with the General Appropriations Act, if the specified performance outcome measures are achieved.
- Prohibit the private entity from receiving or viewing any personally identifiable participant information.

The bill requires a private entity to annually report to the state agency for the duration of the contract period. In addition, the bill specifies that funding for a program under this bill is not considered a procurement item under s. 287.057, F.S.

The bill also requires the DMS to prescribe the procedures to be used by state agencies in connection with pay-for-success contracts by December 1, 2017.

Section 2 provides that, contingent upon authorization in the General Appropriations Act, the Department of Health is authorized to implement the Nurse-Family Partnership pay-for-success contract as an evidence-based practice model or provider. All subsequent models or providers funded under this program are subject to the same requirements provided under s. 287.05715, F.S., as created by this bill.

Section 3 appropriates the nonrecurring sum of \$850,000 from the General Revenue Fund for the 2017-2018 fiscal year, to the Department of Health to support existing infrastructure and implementation of the Nurse-Family Partnership model in designated healthy start coalitions and federally qualified health centers as provided in Specific Appropriation 467 of the 2016-2017 General Appropriations Act in preparation for participation in the pay-for-success contract program established under s. 287.05715, F.S., as created by this bill.

Section 4 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared 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. Investors who fund the private providers of services could potentially lose their investments if the service provider did not meet the outcome measures whereby the state would not be required to make payment for the services provided.

C. Government Sector Impact:

Funding for pay-for-success contracts is contingent upon authorization in the General Appropriations Act, and initially limited to the DOH's implementation of the NFP pay-for-success contract. In addition, the bill requires the DMS to prescribe procedures to be used by state agencies in connection with these contracts. Administrative and technical support for the newly created task are to be provided by the DMS. As of publication of the analysis, the DMS has not provided an estimate of the impact.

VI. Technical Deficiencies:

Lines 100-101 of the bill provide, "Funding obtained for a program under this section is not a procurement item under s. 287.057, F.S." It is unclear whether this provision is intended to deem the private entity's efforts to obtain private investment not to be subject to the competitive procurement process. If this is the intent, the provision is most likely unnecessary.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 287.05715 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Rouson

19-01317B-17

20171446__

A bill to be entitled

An act relating to pay-for-success contracts; creating s. 287.05715, F.S.; defining terms; authorizing a state agency to negotiate and enter into a pay-for-success contract with a private entity, subject to authorization in the General Appropriations Act; requiring a state agency to take certain actions if participating in the program; prescribing requirements for a pay-for-success contract; requiring a contracted private entity to annually report to the appropriate state agency for the length of the contract; specifying an exclusion from competitive solicitation requirements; requiring the Department of Management Services to prescribe procedures by a specified date; authorizing the Department of Health to implement the Nurse-Family Partnership pay-for-success program; providing an appropriation; providing an effective date.

WHEREAS, the Legislature finds that there are numerous prevention-focused social service programs and services for health care which can result in positive impacts and outcomes for individuals and families that use government resources more efficiently, and

WHEREAS, because government resources are limited, the state is often unable to fund these critical programs or services, and

WHEREAS, new and innovative financing models, like pay-for-success initiatives, are emerging throughout the country which

Page 1 of 5

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

19-01317B-17

20171446__

authorize nongovernmental entities to invest their funds to provide support for these programs and services, and

WHEREAS, such financing models enable governmental entities to shift away from a traditional model of paying service providers for a defined quantity of services to a model where governmental entities only pay upon the successful achievement of agreed-upon outcomes, and

WHEREAS, the Legislature further finds that the establishment of a pay-for-success contract program will foster partnerships between the public, private, and philanthropic sectors while also emphasizing accountability in the rendering of services and encouraging the use of sophisticated program evaluations, NOW, THEREFORE,

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

Section 1. Section 287.05715, Florida Statutes, is created to read:

287.05715 Pay-for-success contracts.-

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

(a) "Pay-for-success contract" or "contract" means a contract between a state agency and a private entity to fund a program, as specified in the General Appropriations Act, to address a critical public problem with historically poor outcomes.

(b) "Private entity" means a private, not-for-profit organization, or a subsidiary or an affiliate thereof, exempt from federal income taxation pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986 which enters into a pay-for-

Page 2 of 5

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

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59 success contract with a state agency and subcontracts with one
60 or more entities to provide the actual services.

61 (c) "Success payment" means the amount paid to a private
62 entity when performance outcome measures established in the pay-
63 for-success contract are met, or as otherwise set forth in the
64 pay-for-success contract.

65 (2) Contingent upon authorization in the General
66 Appropriations Act, a state agency may negotiate and enter into
67 a pay-for-success contract with a private entity. The contract
68 may be initiated in 1 fiscal year, may continue into subsequent
69 fiscal years, and may be paid from appropriations authorized in
70 any of those fiscal years. The state agency shall:

71 (a) Determine performance outcome measures to be included
72 in the contract in consultation with the private entity and
73 provider.

74 (b) Determine the data to be included in an annual report
75 filed by a private entity pursuant to subsection (4).

76 (c) Select an independent, nationally recognized evaluator
77 through competitive solicitation procedures to evaluate the
78 performance outcome measures specified in the contract.

79 (d) Ensure that subcontractors share participant data and
80 sign an acknowledgment that the data may be shared with an
81 independent evaluator for research and evaluation purposes, and
82 maintain documentation of the required acknowledgements.

83 (3) A pay-for-success contract must meet all of the
84 following requirements:

85 (a) Be limited to programs specified in the General
86 Appropriations Act.

87 (b) Require the private entity to underwrite or secure

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88 upfront capital from private funders, such as foundations,
89 banks, businesses, or individuals to fund the services provided
90 under the subcontracts.

91 (c) Require an independent evaluator to determine whether
92 the specified performance outcomes have been achieved.

93 (d) Require a success payment, consistent with the General
94 Appropriations Act, if the specified performance outcome
95 measures are achieved.

96 (e) Prohibit the private entity from receiving or viewing
97 any personally identifiable participant information.

98 (4) The private entity shall annually report to the state
99 agency for the duration of the contract term.

100 (5) Funding obtained for a program under this section is
101 not considered a procurement item under s. 287.057.

102 (6) By December 1, 2017, the department shall prescribe
103 procedures to be used by state agencies in connection with pay-
104 for-success contracts which are consistent with this section.

105 Section 2. Contingent upon authorization in the General
106 Appropriations Act, the Department of Health is authorized to
107 implement the Nurse-Family Partnership pay-for-success contract
108 as an evidence-based practice model or provider. All subsequent
109 models or providers funded under this program are subject to the
110 same requirements provided under s. 287.05715, Florida Statutes,
111 as created by this act.

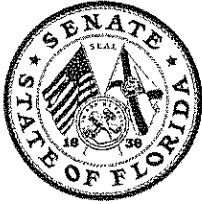
112 Section 3. For the 2017-2018 fiscal year, the nonrecurring
113 sum of \$850,000 is appropriated from the General Revenue Fund to
114 the Department of Health to support existing infrastructure and
115 implementation of the Nurse-Family Partnership model in
116 designated healthy start coalitions and federally qualified

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117 health centers as provided in Specific Appropriation 467 of the
118 2016-2017 General Appropriations Act in preparation for
119 participation in the pay-for-success contract program
120 established under s. 287.05715, Florida Statutes, as created by
121 this act.

122 Section 4. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill #1446**, relating to Pay-for-Success Contracts , be placed on the:

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

A handwritten signature in cursive script that reads "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

Cc: Sen. Frank Artiles, VC; Jay Ferrin, SD; Tamra Redig AA

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

SB 1446
Bill Number (if applicable)

Topic PAY FOR SUCCESS

Amendment Barcode (if applicable)

Name NEZAM SHAH

Job Title DIRECTOR

Address 600 CONGRESS AVE, FLOOR 16
Street

Phone 202-615-8988

AUSTIN TX 78701
City State Zip

Email NSHAH@SOCIALFINANCE.ORG

Speaking: For Against Information

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

Representing SOCIAL FINANCE

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)

3.22.17

Meeting Date

SB 1446

Bill Number (if applicable)

Topic PAY FOR SUCCESS

Amendment Barcode (if applicable)

Name GABRIELLE BARGERSTOCK

Job Title BUSINESS DEVELOPMENT MANAGER

Address 1410 PHYLUS DRIVE

Phone 321.261.1454

Street

MEERIT ISLAND FL 32952

City

State

Zip

Email gbargerstock@nursefamilypartnership.org

Speaking: For Against Information

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

Representing NURSE-FAMILY PARTNERSHIP NATIONAL SERVICE OFFICE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1540

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Department of Management Services

DATE: March 23, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1540 allows the Department of Management Services (DMS) to waive a clause in lease agreements for private property over 50,000 square feet and within 30 miles of the Capitol building for a period of up to seven years. The clause currently allows the lessee state agency to terminate the lease agreement if state-owned property becomes available to the lessee state agency and the state agency gives six months' advance written notice of termination. Under current law, this requirement may not be amended, supplemented, or waived by contract.

The bill also creates the Statewide Procurement Efficiency Task Force to evaluate the effectiveness and value of state and local procurement laws and policies to the taxpayers of this state, determine where inconsistencies in such laws and policies exist, and submit a report by July 1, 2018. The final report of the task force must include, at a minimum, recommendations for consideration by the Legislature that promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts.

The bill also requires the DMS to prepare a plan regarding the centralized management of state-owned motor vehicles, and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2018. The DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

The bill has an indeterminate fiscal impact.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Leasing and Department of Management Services (DMS) Authority

State Leasing

The DMS Facilities Program, also called the Division of Real Estate Development and Management (REDM), is responsible for the overall management of the Florida Facilities Pool, as well as other facilities and structures the DMS has been given responsibility to manage.¹ The State of Florida owns 20,256 facilities, including facilities owned by state agencies, the Florida College System, the State University System of Florida, and water management districts.² The DMS manages 110 facilities in the Florida Facilities Pool, and five federal surplus property facilities.³ The DMS also manages contracts for seven private correctional facilities and 11 Division of Telecommunications equipment buildings.⁴ The Bureau of Leasing within the REDM administers public and private leasing and ensures that leases are in the best interests of the state.⁵

Public, Private, and Other Government Leases as of June 30, 2016:

Lease Type	Lease Count	Square Footage (SF)	Percent of Total Lease Space (SF)	Annual Rent
Government	451	1,023,980	8%	\$4,210,532.82
Private	789	6,134,224	46%	\$126,692,910.52
Public	301	6,042,537	46%	\$98,795,604.37
Grand Total	1,541	13,200,741	100%	\$229,699,047.71

According to the DMS 2015 Master Leasing Report,⁶ the state leases approximately 13.2 million square feet with an annual rent of \$229.7 million, of which 6.1 million square feet is in 789 private sector leases, with an annual rent of \$126.7 million.

Chapter 255, F.S., provides the statutory authority for the DMS to manage and operate the Florida Facilities Pool and specifies the oversight role the DMS has in the leasing of privately

¹ See http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on March 23, 2017).

² DMS Master Leasing Report 2016, at p. 2. Available at http://www.dms.myflorida.com/content/download/129096/802953/2016_Master_Leasing_and_Strategic_Leasing_Report_withAppendix.pdf (last visited on March 23, 2017).

³ *Id.*

⁴ *Id.*

⁵ See http://www.dms.myflorida.com/business_operations/real_estate_development_and_management (last visited on March, 23, 2017).

⁶ DMS Master Leasing Report 2016, at p. 3.

owned space. Except as provided in ss. 255.249⁷ and 255.2501,⁸ F.S., a state agency may not lease a building or any part thereof unless prior approval of the lease conditions and the need for the lease is first obtained from the DMS.⁹

The DMS has the authority to approve leases of greater than 5,000 square feet that cover more than 12 consecutive months, if such lease is, in the judgment of the DMS, in the best interests of the state.¹⁰ Except as provided for emergency space needs,¹¹ no state agency may enter into a lease as lessee for the use of 5,000 square feet or more of space in a privately owned building except upon advertisement for and receipt of competitive solicitations.¹²

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

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

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

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

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

⁹ Section 255.25(2), F.S.

¹⁰ Section 225.25(3)(b), F.S.

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

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

¹³ Section 255.25(2)(a), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

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

Ch. 2016-62, L.O.F., requires the DMS, with the cooperation of the agencies having existing private lease contracts for office or storage space in excess of 2,000 square feet, to renegotiate or reprocure all private lease agreements expiring between July 1, 2017, and June 30, 2019, in order to reduce costs in future years. According to the 2016 Lease Renegotiation Report released by the DMS, Between July 1, 2015, and June 30, 2016, DMS and partner agencies have reprocured or renegotiated lease contracts for a savings of \$480,018.02 or 1.73% of the 156 leases that met the criteria with annual lease cost of \$27,782,391.39.²¹ However, the DMS notes that due to the improving economic outlook in Florida, rental rates are expected to rise in all major markets, which may potentially decrease returns from renegotiating leases, and that co-location may help offset the rising rental rates across the state.²²

State Lease Agreements

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

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

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

¹⁷ Also, see s. 225.25(3)(h), F.S.

¹⁸ Section 255.249(7), F.S.

¹⁹ *Id.*

²⁰ Section 255.249(8), F.S.

²¹ DMS 2016 Lease Renegotiation Status Report, available at http://www.dms.myflorida.com/content/download/129589/805274/2016_Lease_Renegotiation_report.pdf (last visited March 23, 2017).

²² *Id.*

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

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

Section 255.2503, F.S., prohibits an executive agency or department from entering into any lease on behalf of the state that requires the state agency to refrain from making legislative budget or fixed capital outlay requests for alternative space other than that in the lease agreement.²³ Any contract containing such a term is null and void.²⁴ Any person who willfully violates this section is guilty of a misdemeanor of the first degree.

Unless specifically authorized by law, no agency or branch of state government can contract to spend or enter into any agreement to spend, any moneys, in excess of the amount appropriated to such agency or branch.²⁵ Any such contract is null and void.²⁶

To best manage leasing costs, the DMS must ensure that available and suitable state-owned space takes precedence over approving an agency’s request to lease private-sector space, and whenever possible, backfill public office space, to ensure that debt service and operations and maintenance revenue projections are met.²⁷

Procurement of Personal Property and Services

Procurement of Personal Property and Services by State Agencies

Chapter 287, F.S., regulates state agency²⁸ procurement of personal property and services.²⁹ The DMS is responsible for overseeing state purchasing activity including professional and

²³ This section does not apply to any facility financed under the Florida Building and Facilities Act.

²⁴ Section 255.2503, F.S.

²⁵ Section 216.311(1), F.S.

²⁶ Section 216.311(2), F.S.

²⁷ See 2016 Department of Management Services, SB 374 Legislative Bill Analysis (October 20, 2015) copy on file with the Senate Governmental Oversight and Accountability Committee.

²⁸ As defined in s. 287.012(1), F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

²⁹ Personal property” is not independently defined for purposes of ch. 287, F.S., but the chapter title for Chapter 287, F.S., is “Procurement of Personal Property and Services.” Additionally, the definition of “commodity” in s. 287.012(5), F.S., is “any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies.” This definition is used in Part I of Ch. 287, F.S., “Commodities, Insurance, and Contractual Services.”

contractual services³⁰ as well as commodities needed to support agency activities.³¹ The DMS assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.³²

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

- Single source contracts,³³ which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,³⁴ which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals (RFP),³⁵ which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN),³⁶ which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.

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

- Price;
- Renewal price, if renewal is contemplated;
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor; and
- Consideration of prior relevant experience of the vendor.³⁷

In invitations to negotiate, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN. The evaluation criteria must also include consideration of prior relevant experience of the vendor.³⁸

³⁰ As defined in s. 287.012(8), F.S. "contractual service" includes, but is not limited to "evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. The term does not include a contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of a facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to chapter 255 and rules adopted thereunder."

³¹ See ss. 287.032 and 287.042, F.S.

³² Section 287.032(2), F.S.

³³ Section 287.057(3)(c), F.S.

³⁴ Section 287.057(1)(a), F.S.

³⁵ Section 287.057(1)(b), F.S.

³⁶ Section 287.057(1)(c), F.S.

³⁷ Section 287.057(1)(b)3., F.S.

³⁸ Section 287.057(1)(c)3., F.S.

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.³⁹ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁴⁰

Procurement of Personal Property and Services by Local Governments

Local governments are not subject to the provisions of ch. 287.057, F.S. that prescribe methods for agencies' procurement of commodities or contractual services.⁴¹ Local governmental units may look to the chapter for guidance in the procurement of goods and services, but have local policies or ordinances to address competitive solicitations.⁴²

State and Local Government Procurement of Certain Professional Services

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for architect and engineering services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of architectural and engineering professionals.⁴³

The Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA) in 1973,⁴⁴ which specifies the necessary procedures when procuring professional services⁴⁵ by an agency.⁴⁶

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process that state and local government agencies must follow when procuring the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA

³⁹ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁴⁰ See s. 287.057(3)(e), F.S.

⁴¹ See ss. 287.012(1), F.S.

⁴² In the absence of specific constitutional or statutory requirements, a public agency has no obligation to establish a bidding procedure and may contract in any manner not arbitrary or capricious. *Volume Servs. Div. of Interstate United Corp. v. Canteen Corp.*, 369 So. 2d 391 (Fla. 2d DCA 1979).

⁴³ Forty-six states use this process. American Council of Engineering Companies, Qualifications-Based Selection Resource Center, available at <http://www.acec.org/advocacy/qbs/> (last visited Feb. 24, 2017).

⁴⁴ Chapter 73-19, Laws of Fla.

⁴⁵ Section 287.055(2)(a), F.S., defines "professional services" as those within the scope of practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

⁴⁶ Section 287.055(2)(b), F.S., defines "agency" as the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term agency does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S.

requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:⁴⁷

- A project, when the agency estimates the basic construction cost to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.⁴⁸ In the first phase, the “competitive selection,” the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.⁴⁹

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.⁵⁰ Section 287.055(2)(d), F.S., defines the term “compensation” to mean the amount paid by the agency for professional services regardless of whether stated as compensation or as other types of rates.

In the second phase, the “competitive negotiation,” the agency negotiates compensation with the most qualified of the minimum three selected firms for professional services at compensation, which the agency determines, is “fair, competitive, and reasonable.”⁵¹ If the agency cannot negotiate a satisfactory contract, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm.⁵² The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.⁵³ If the agency cannot negotiate a satisfactory contract with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until it reaches a contract.⁵⁴ Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects and are limited to utilizing statutorily defined procedures.⁵⁵

⁴⁷ Section 287.055(3)(a)1., F.S.

⁴⁸ Sections 287.055(4) and (5), F.S.

⁴⁹ Section 287.055(4)(b), F.S., requires agencies to consider the following factors: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

⁵⁰ Section 287.055(4)(b), F.S.

⁵¹ Section 287.055(5)(a), F.S.

⁵² Section 287.055(5)(b), F.S.

⁵³ *Id.*

⁵⁴ Section 287.055(5)(c), F.S.

⁵⁵ Op. Att’y Gen. Fla. 2011-21 (2011).

Procurement of Construction Services for Public Property and Publicly Owned Buildings

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the DMS to establish, by rule,⁵⁶ the following construction contract procedures for:

- Determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- Awarding each state agency construction project to the lowest qualified bidder. Additionally, the DMS must provide procedures for cases in which the DMS declares a valid emergency to exist, which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- Governing negotiations for construction contracts and modifications to contract documents when the DMS secretary determines that such negotiations are in the best interest of the state.
- Entering into performance-based contracts for the development of public facilities when the DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:⁵⁷

- Prequalification of bidders;
- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

The state must competitively bid contracts for construction projects that it projects to cost in excess of \$200,000.⁵⁸ County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 also must be bid competitively.⁵⁹ Counties, municipalities, special districts,⁶⁰ or other political subdivisions seeking to construct or improve a public building must bid the project competitively if the projected cost is in excess of \$300,000.⁶¹

The solicitation of competitive bids or proposals for any state construction project with anticipated costs of more than \$200,000 must be advertised publicly in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.⁶² If the

⁵⁶ Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F. S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

⁵⁷ Section 255.29(4)(a)-(d), F.S.

⁵⁸ Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

⁵⁹ Section 255.0525(2), F.S.

⁶⁰ Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.).

⁶¹ *Id.* For electrical work, local governments must bid projects competitively estimated to cost more than \$75,000.

⁶² Section 255.0525(1), F.S.

construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening, and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening.⁶³

Department of Management Services' Fleet Management

One of the duties of the DMS is to obtain the most effective and efficient use of motor vehicles, watercraft, and aircraft for state purposes.⁶⁴ Chapter 287, F.S., Part II: Means of Transport (ss. 287.14 – 297.20) governs the purchase or lease of motor vehicles.⁶⁵ Chapter 287, F.S., Part II, applies to motor vehicles, watercraft, and aircraft owned leased, or acquired in any manner by any state agency, or the judicial branch.⁶⁶ It is unlawful for a state officer or employee to authorize the purchase or continuous lease of any motor vehicle to be paid out of state funds or any agency funds unless such funds have been appropriated by the Legislature.⁶⁷ All motor vehicles purchased or leased must be in the subcompact class, with exceptions for law enforcement, towing, transportation of more than three adults or bulk material, and vehicles operated on unpaved roads.⁶⁸ Motor vehicles needed for an emergency or to meet unforeseen or emergency situations are allowed, if approved by the Executive Office of the Governor after consulting with the legislative appropriations committees.⁶⁹ Vehicles for which replacement funds have been appropriated may not be retained in service unless an emergency or major unforeseen need exists.⁷⁰ Any motor vehicle retained for this purpose must be reported to the Legislature in subsequent agency budget request documents that detail the specific justification for retention of each vehicle.⁷¹ Motor vehicles may not be acquired on a deferred payment contract that requires payment of interest or its equivalent except when specifically approved by the Governor's Office in consultation with the legislative appropriations committees.⁷²

A state agency must obtain prior approval from the DMS for purchasing, leasing, or acquiring any motor vehicle, watercraft, or aircraft of any type.⁷³ The DMS approval is not required for casual (short-term) lease of motor vehicles by state agencies.⁷⁴ Funding in the General Appropriations Act is not allowed for purchases of vehicles in excess of prices negotiated by the DMS.⁷⁵ Also, with the DMS approval, special authorization is given to the Department of Children and Families, the Agency for Persons with Disabilities, the Department of Health, the Department of Juvenile Justice, and the Department of Corrections to secure automobiles, trucks,

⁶³ *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

⁶⁴ Section 287.16(1), F.S.

⁶⁵ Section 287.14(2), F.S., defines the term "motor vehicle" as any automobile or light truck. Motor vehicle also includes any airplane or other vehicle designed primarily for transporting persons.

⁶⁶ Section 287.20, F.S.

⁶⁷ Section 287.14(3), F.S.

⁶⁸ Section 287.151(1), F.S.

⁶⁹ Section 287.14(3), F.S.

⁷⁰ Section 287.14(4), F.S.

⁷¹ *Id.*

⁷² Section 287.14(5), F.S.

⁷³ Section 287.15, F.S.

⁷⁴ *Id.*

⁷⁵ Section 287.151(2), F.S.

tractors, and other automotive equipment for use at institutions, centers, residential facilities and county health departments under their respective jurisdictions.⁷⁶

Use of state-owned or leased vehicles or aircraft is limited to travel necessary to carry out employee job assignments, official state business, security and emergency activity.⁷⁷ State employees whose duties are those of law enforcement⁷⁸ have more latitude in their use of state owned or leased motor vehicles for official state business.⁷⁹ Use of a state owned or leased motor vehicle for commuting is prohibited unless special assignment is authorized as a prerequisite by the DMS, the vehicle is required after hours to perform position duties, or an employee's home is his or her official base of operations.⁸⁰ A state agency head may assign a motor vehicle to a state officer or employee only if the officer or employee is projected to drive the motor vehicle a minimum of 10,000 miles annually on state business, unless the agency head provides written justification for the need of the assignment of the motor vehicle.⁸¹ Priority for vehicle assignment is given to those state employees who drive over 15,000 miles annually on state business.⁸²

Bureau of Fleet Management

The Bureau of Fleet Management and Federal Property Assistance within the DMS provides oversight responsibility for the state's fleet of motor vehicles and mobile equipment, along with the federal surplus property program.⁸³ The Bureau of Fleet Management manages the purchase, operation, maintenance and disposal of the state's fleet of motor vehicles and watercraft.⁸⁴ The state's fleet includes approximately 25,000 units, consisting of automobiles and light trucks, medium and heavy trucks, aircraft, construction and industrial equipment, marine equipment (e.g., boats, airboats, boat engines, etc.), trailers, tractors and mowers, small utility, motorcycles and all-terrain vehicles.⁸⁵ The Division of Fleet Management determines the motor vehicles and watercraft included on state contracts, develops technical bid specifications and assists in evaluating contracts.

⁷⁶ Section 287.155, F.S.

⁷⁷ Section 287.17(2)(a)-(d), F.S.

⁷⁸ Section 943.10(1), F.S., defines the term "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

⁷⁹ Section 287.17(3)(b), F.S., provides that the term "official state business" shall be construed to permit the use of the vehicle during normal duty hours to and from lunch or meal breaks and incidental stops for personal errands, but not substantial deviations from official state business, if such use is at the direction of or with the permission of the agency head.

⁸⁰ Section 287.17(3)(a), F.S.

⁸¹ Section 287.17(4)(a), F.S.

⁸² *Id.*

⁸³ See http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance (last visited on March 23, 2017).

⁸⁴ *See*

http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management (last visited on March 23, 2017). *Also, see* Chapters 60B-1(Motor Vehicles and Watercraft Acquisition, Assignment and Use) and 60B-3(Disposal of Motor Vehicles, Watercraft, and Aircraft), F.A.C.

⁸⁵ *Id.*

The Division of Fleet Management operates the Florida Equipment Electronic Tracking (FLEET) system, which provides the management, reporting and cost information required to effectively and efficiently manage the state's fleet and to account for equipment use and expenditures. The FLEET Online System.⁸⁶

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

The goals of the Division of Fleet Management are to:⁸⁷

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

Climate-Friendly Public Business Provisions

Section 286.29, F.S., outlines climate-friendly public business provisions required by state agencies. Some of these practices include requiring all state agencies to ensure that all maintained vehicles meet minimum maintenance schedules shown to reduce fuel consumption.⁸⁸ Each agency must measure and report compliance to the DMS through the Equipment Management Information System database.⁸⁹ Also, state agencies, universities, community colleges, and local governments that purchase motor vehicles under a state purchasing plan are required to define the intended purpose of vehicle and use class for which vehicle is being procured.⁹⁰ Additionally, all state agencies must use ethanol and biodiesel blended fuels when available.⁹¹ State agencies with central fueling operations for state-owned vehicles must procure biofuels for fleet needs to the greatest extent practicable.⁹²

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Section 286.29(3), F.S.

⁸⁹ *Id.*

⁹⁰ Section 286.29(4), F.S.

⁹¹ Section 286.29(5), F.S.

⁹² *Id.*

State Agency Fleets

Table 1 shows the state-wide count of state agency vehicles.⁹³

Table 1. State Agency Fleet as of December 20, 2016

Type	Count
Sedans & Light Trucks - Vans, SUVs, Motorcycles, etc. (< 1 ton)	17,019
Medium & Heavy Duty Trucks (>1 ton)	1,975
Buses	217
Aircraft	41
Watercraft	987
Outboard Motors	125
Heavy Duty/Misc. Equipment (Backhoes, Dozers, Forklifts, Mixers, Compressors, etc.)	1,250
Off Road (Buggies, ATVs, Golf Carts, Gators, etc.)	353
Trailers	1,155
Mowers & Plows	433
Tractors	716
Other	79
TOTAL	24,350

FLEET Management Business Case

The Fiscal Year 2013-2014 General Appropriations Act included \$224,000 to fund a FLEET Management Business Case (Business Case). The DMS contracted with Mercury Associates, Inc., in July 2013 to identify the best options for managing the state's fleet and to document recommendations in a formal business case.⁹⁴ The Business Case presents a strategic review of fleet management activities in the state and contains an analysis report and recommendations for improving the performance and cost effectiveness of Florida's state-wide fleet operations.⁹⁵

The Business Case was completed in December 2013 and concluded that the FLEET system was the least capable system Mercury Associates, Inc. had encountered in any of the 34 states they have reviewed.⁹⁶ As a consequence, much of the detailed data Mercury required to conduct this study was either not available or was only available at a summary level.⁹⁷ In addition, the Business Case identified 43 detailed recommendations. These recommendations were summarized into areas in the DMS's Legislative Budget Request, Schedule IV-B, and are summarized below:

- Fleet Administration - Expand the DMS role and increase staff resources to provide increased and centralized oversight, analysis, and services to manage the state's fleet.

⁹³ Email from James Ballas, Deputy Director of Legislative Affairs, Florida Department of Management Services (January 4, 2017) copy on file with the Senate Governmental Oversight and Accountability Committee.

⁹⁴ See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited March 23, 2017).

⁹⁵ Contract Between Florida Department of Management Services and Mercury Associates, Inc., Contract No.: DMS-12/13-008, FLEET Management Consulting Services, Attachment B-Scope of Work. See <https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=MP004> (last visited March 23, 2017).

⁹⁶ See https://www.justiceadmin.org/jac/Fleet_Management_Business_Case_Final.pdf (last visited March 23, 2017).

⁹⁷ *Id.*

- Fleet Management Information System - Replace the existing in-house developed system (FLEET) with a more robust, fully featured and user friendly, intuitive Commercial Off the Shelf (COTS) application that allows easy distribution of information to all fleet users, customers, and management in a real-time environment.
- Fleet Replacement and Financing - Centralize fleet replacement planning and budgeting in the DMS, identify optimal replacement cycles for key types of vehicles, develop a long-term fleet replacement planning program, and adopt leasing as the primary means of financing fleet renewal.
- Fleet Size and Utilization - Conduct a study to reduce the size of the fleet by eliminating low use vehicles, study the feasibility of establishing shared-use motor pool locations in Tallahassee, develop and implement an ongoing fleet utilization monitoring system, and mandate the use of charge-back rates as a financial incentive for agencies to maintain an optimized fleet size.
- Fleet Acquisition - Develop, formalize and document a policy and process for vehicle specification, solicitation and selection that incorporates best practice elements.
- Fleet Disposal - Conduct an analysis of the cost and benefits of employing various resale methods to dispose of vehicles. Use the results to establish core methods for various types of equipment. Formalize and document a policy and process for vehicle disposal that incorporates the best practice elements, including minimizing days to sale and return of funds to the agency fleet. Establish performance metrics to actively monitor and manage disposal outcomes.
- Fleet Maintenance and Repair - Open shops to all agencies; develop standards and consistent shop procedures; consolidate shops; outsource large shops and outsource all sublet repair to a maintenance service provider.
- Fleet Fueling - Review the current state contract for bulk fuel; complete a justification audit of all current sites; develop uniform pricing, chargeback and processing methods; develop and implement a fuel management program; establish electronic interface for fuel, mileage and repair data.⁹⁸

III. Effect of Proposed Changes:

Section 1 amends s. 255.249(9), F.S., to eliminate a requirement on the DMS to adopt a rule that each lease agreement include a clause to allow a lessee state agency to terminate a lease, without penalty, when a state-owned building becomes available for occupancy and the lessee has provided a six month advanced written notice to the lessor by certified mail, return receipt requested. Under the bill, the DMS may waive inclusion of the clause in the lease for property that exceeds 50,000 square feet and is located within 30 miles of the Capitol building for a lease period of up to seven years.

Some agencies may be in private leases that are not fully utilized. The clause in s. 255.249, F.S., allows agencies to move/realign to under-utilized state-owned space to reduce costs. By

⁹⁸ Fiscal Year 2016-2017, DMS LBR Manual Exhibits, Issue 4400600 Schedule IV-B page 204, document available on the Florida Fiscal portal at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=13920&DocType=PDF> (last visited March 23, 2017).

eliminating this required clause, the state's ability to negotiate reductions in square footage and continue to backfill vacant public space may be limited.⁹⁹

Section 2 provides that the bill does not impair or restrict the terms and conditions of a lease agreement entered into by a state agency pursuant to s. 255.249, F.S., before July 1, 2017.

Section 3 creates the Statewide Procurement Efficiency Task Force to evaluate the effectiveness and value of state and local procurement laws and policies to the taxpayers of this state and to determine where inconsistencies in such laws and policies exist. The task force is to be chaired by the DMS Secretary, or their designee, and composed of:

- Six members appointed by the Governor: one county government official, one municipal government official, one district school board member, and three representatives of the business community;
- Two members appointed by the Speaker of the House of Representatives: one member of the House of Representatives and one attorney who is a Florida Bar member in good standing and has expertise in procurement law; and
- Two members appointed by the President of the Senate: one member of the Senate and one attorney who is a Florida Bar member in good standing and has expertise in procurement law.

Members of the task force are to serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

The bill also requires appointments to be made by July 31, 2017, and by August 31, 2017, the task force is to have met to organize. The task force shall meet at the call of the chair. A majority of task force members constitutes a quorum, and a quorum is necessary for the purpose of voting on any action or recommendation of the task force. All meetings must be held in Tallahassee, unless otherwise decided by the task force, and no more than 2 such meetings may be held in other locations for the purpose of taking public testimony. The DMS is to provide administrative and technical support for the task force. The final report of the task force is to be submitted to the Governor, President of the Senate, and the Speaker of the House by July 1, 2018, and must include, at a minimum, recommendations for consideration by the Legislature to promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts. The task force is to be terminated December 31, 2018.

Section 4 requires the DMS to prepare a plan for the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. The DMS must submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2018.

⁹⁹ See 2016 Department of Management Services, SB 374 Legislative Bill Analysis (October 20, 2015) (copy on file with the Senate Governmental Oversight and Accountability Committee).

The plan must provide a method for:

- Using break-even mileage¹⁰⁰ in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees;
- Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools;
- Developing a motor vehicle replacement plan and budget, which must take into account operating and maintenance costs of the centralized fleet;
- Purchasing motor vehicles necessary for the operation of the centralized fleet;
- Repairing and maintaining motor vehicles;
- Monitoring the use of motor vehicles and enforcing regulations regarding proper use;
- Maintaining records related to the operation and maintenance of motor vehicles and the administration of the centralized fleet;
- Disposing of motor vehicles that are no longer needed or the use of which is not cost effective;
- Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles;
- Implementing a fuel management program and a standardized methodology for reporting fuel data;
- Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle;
- Determining when it would be cost-efficient to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use; and
- Equipping fleet motor vehicles with real-time locational monitoring systems.

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

Section 5 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

¹⁰⁰ A breakeven analysis identifies the mileage at which vehicles should be purchased as opposed to the state agency reimbursing employees for work mileage in their personal vehicles. See http://www.dms.myflorida.com/content/download/98763/571269/Fleet_Management_Business_Case_Final.pdf (last visited March 23, 2017). Also, see Office of Program Policy Analysis & Governmental Accountability, The Florida Legislature, *Centralizing Vehicle Fleet Operations and Implementing Cost-Saving Strategies Could Reduce State Spending*, Report No. 11-16 (April 2011) available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1116rpt.pdf> (last visited March 23, 2017). DMS calculated that the breakeven point for assignment of a state-owned vehicle at 7,448 miles driven for a 2010 Ford Fusion, the type of vehicle most state employees require.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

The owners of private property leased to the state have stated that they bear additional financing costs when the lessee (the state) has the option to terminate the lease based on the availability of other state-owned property.¹⁰¹ According to the owners of private property leased to the state, their creditors may classify lessees with this option as “high risk tenants”.¹⁰² If the lease agreement did not contain the current requirement allowing for termination, the owners of the private property may “save” money when refinancing their properties to the extent the institutional lenders deem the lease agreements to be of a higher value or quality without the termination clause.¹⁰³

It is unknown at this time if the DMS would utilize contract services or agency staff to develop the plan regarding the centralized management of state-owned motor vehicles required in the bill.

C. Government Sector Impact:

Indeterminate.

The state may lose a portion of its flexibility to terminate private property lease agreements when state-owned property becomes available. In addition, the state’s uniform rental rate for full-service office space in the Florida Facilities Pool facilities is \$17.18 per square foot.¹⁰⁴ This rate is below the average July 2016 private full-service office rates in all markets.¹⁰⁵ As a result of the bill, the state may lose its ability to move from more costly rates. However, the Legislature retains its authority to annually appropriate funds for the lease agreements and potentially terminate the lease agreements or a portion thereof.

¹⁰¹ Meeting with stakeholders on March 21, 2017.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ DMS Master Leasing Report 2016 at p. 16-17 (last visited on March 23, 2017)

¹⁰⁵ *Id.*

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

Administrative and technical support for the Statewide Procurement Efficiency Task Force are to be provided by the DMS. The department has indicated that it can absorb these duties with existing resources.¹⁰⁶

According to the DMS, until such time that Fleet Centralization is studied and a plan is completed the fiscal impact to State Government is unknown.¹⁰⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 255.249 and 287.057 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 22, 2017:

The CS adds the provision to 255.249 that allows the DMS to waive the inclusion of the second clause in a lease for more than 50,000 sq. ft. located within 30 miles of the Capitol for a lease period of up to 7 years. The waiver does not restrict the department from entering into lease agreements for a period exceeding 7 years, in which case the waiver would only apply to the first 7. Terms and conditions of leases agreed to before July 1, 2017 are not to be impacted.

The CS also requires the DMS to prepare a plan regarding the centralized management of state-owned motor vehicles, and submit it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2018. The plan must include an evaluation of the costs and benefits of operating and maintaining a centralized

¹⁰⁶ Email from James Ballas, Deputy Director of Legislative Affairs, Florida Department of Management Services (March 20, 2017) copy on file with the Senate Governmental Oversight and Accountability Committee.

¹⁰⁷ See 2017 Florida Department of Management Services, SB 92 Legislative Bill Analysis (December 28, 2016) (copy on file with Senate Committee on Governmental Oversight and Accountability) at 4.

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

B. Amendments:

None.

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



191440

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Before line 17

insert:

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

255.249 Department of Management Services; responsibility;
department rules.—

(9) The department shall adopt rules providing:

(e) Acceptable terms and conditions for inclusion in lease



11 agreements. At a minimum, the such terms and conditions must
12 include the statement required by s. 255.2502 and the following
13 clause clauses, which may not be amended, supplemented, or
14 waived unless otherwise provided within this paragraph:

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

18 2. "The lessee has the right to terminate this lease,
19 without penalty, if a state-owned building becomes available to
20 the lessee for occupancy and the lessee has given 6 months'
21 advance written notice to the lessor by certified mail, return
22 receipt requested." The department may waive the inclusion of
23 the clause required pursuant to this paragraph for a lease
24 agreement for real property that exceeds 50,000 square feet and
25 is located within 30 miles of the State Capitol for a lease
26 period of up to 7 years. The waiver of the clause does not
27 restrict the department from entering into lease agreements for
28 the lease of real property for a period exceeding 7 years.

29 Section 2. The amendment to s. 255.249, Florida Statutes,
30 made by this act does not impair or restrict the terms and
31 conditions of a lease agreement entered into by a state agency
32 in accordance with the requirements of s. 255.249, Florida
33 Statutes, before July 1, 2017.

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete line 3

38 and insert:

39 Services; amending s. 255.249, F.S.; revising



191440

40 requirements for department rules regarding terms and
41 conditions in lease agreements in which the state is
42 the lessee; authorizing the department to waive
43 inclusion of a clause in a lease agreement if certain
44 conditions are met; providing for construction;
45 amending s. 287.057, F.S.; creating the



121722

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 66 and 67

insert:

Section 2. Centralized fleet management plan.—

(1) The Department of Management Services shall prepare a plan regarding the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. By December 1, 2018, the department shall submit the plan to the Governor, the President of the Senate, and the Speaker of the House of



121722

11 Representatives.

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

14 (a) Using break-even mileage in the assignment and
15 administration of motor vehicles to state agencies and employees
16 to determine when it becomes cost effective for the state to
17 assign motor vehicles to employees.

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

20 (c) Developing a motor vehicle replacement plan and budget,
21 which must take into account operating and maintenance costs of
22 the centralized fleet.

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

25 (e) Repairing and maintaining motor vehicles.

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

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

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

33 (i) Monitoring and managing motor vehicle disposal outcomes
34 to determine the most cost-efficient method for disposal of
35 fleet vehicles.

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

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



121722

40 state-owned motor vehicle.

41 (1) Determining when it would be cost-efficient to use
42 alternative fuel vehicles, electric vehicles, or extended-range
43 electric vehicles or to lease or purchase such vehicles for
44 fleet use.

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

47 (3) In developing the plan, the department shall evaluate
48 the costs and benefits of operating and maintaining a
49 centralized motor vehicle fleet compared to the costs and
50 benefits of contracting with a third-party vendor for the
51 operation and maintenance of a centralized motor vehicle fleet.

52

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

54 And the title is amended as follows:

55 Between lines 12 and 13

56 insert:

57 requiring the department to prepare a plan regarding
58 the centralized management of state-owned motor
59 vehicles; requiring the department to submit the plan
60 to the Governor and the Legislature by a specified
61 date; prescribing requirements for the plan; requiring
62 the department to conduct certain evaluations while
63 developing the plan;

By Senator Brandes

24-01515A-17

20171540__

1 A bill to be entitled
 2 An act relating to the Department of Management
 3 Services; amending s. 287.057, F.S.; creating the
 4 Statewide Procurement Efficiency Task Force within the
 5 department; specifying the purpose and membership of
 6 the task force; providing meeting requirements;
 7 providing for administrative and technical support of
 8 the task force; providing that task force members
 9 shall serve without compensation or reimbursement of
 10 expenses; requiring the task force to submit a report
 11 to the Governor and the Legislature by a certain date;
 12 providing for the termination of the task force;
 13 providing an effective date.

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

15 Section 1. Subsection (24) is added to section 287.057,
 16 Florida Statutes, to read:

17 287.057 Procurement of commodities or contractual
 18 services.—

19 (24) There is created the Statewide Procurement Efficiency
 20 Task Force for the purpose of evaluating the effectiveness and
 21 value of state and local procurement laws and policies to the
 22 taxpayers of this state and determining where inconsistencies in
 23 such laws and policies exist.

24 (a) The task force shall be composed of the following 11
 25 members:

26 1. The Secretary of Management Services or his or her
 27 designee, who shall serve as chair of the task force.
 28
 29

Page 1 of 3

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

24-01515A-17

20171540__

30 2. Six members appointed by the Governor, as follows:
 31 a. One county government official.
 32 b. One municipal government official.
 33 c. One district school board member.
 34 d. Three representatives of the business community.
 35 3. Two members appointed by the Speaker of the House of
 36 Representatives, as follows:
 37 a. A member of the House of Representatives.
 38 b. An attorney who is a member in good standing of The
 39 Florida Bar and has expertise in procurement law.
 40 4. Two members appointed by the President of the Senate, as
 41 follows:
 42 a. A member of the Senate.
 43 b. An attorney who is a member in good standing of The
 44 Florida Bar and has expertise in procurement law.
 45 (b) Task force members must be appointed by July 31, 2017.
 46 By August 31, 2017, the task force shall meet to establish
 47 procedures for the conduct of its business and to elect a vice
 48 chair. The task force shall meet at the call of the chair. A
 49 majority of the members of the task force constitutes a quorum,
 50 and a quorum is necessary for the purpose of voting on any
 51 action or recommendation of the task force. All meetings shall
 52 be held in Tallahassee, unless otherwise decided by the task
 53 force, and then no more than two such meetings may be held in
 54 other locations for the purpose of taking public testimony.
 55 Administrative and technical support shall be provided by the
 56 department. Task force members shall serve without compensation
 57 and are not entitled to reimbursement for per diem or travel
 58 expenses.

Page 2 of 3

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

24-01515A-17

20171540__

59 (c) The task force must submit a final report to the
60 Governor, the President of the Senate, and the Speaker of the
61 House of Representatives by July 1, 2018. Such report must, at a
62 minimum, include recommendations for consideration by the
63 Legislature to promote procurement efficiency, streamline
64 procurement policies, establish best management practices, and
65 encourage increased use of state term contracts.

66 (d) The task force is terminated December 31, 2018.

67 Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley,
Committee on Governmental
Oversight and Accountability

Subject: Committee Agenda Request

Date: February 10th, 2017

I respectfully request that **Senate Bill #1540**, relating to **Department of Management Services**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/2017

Meeting Date

Topic _____

Bill Number 1590
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17
Meeting Date

1546
Bill Number (if applicable)

Topic State lease

Amendment Barcode (if applicable)

Name Doug Mannheim

Job Title Counsel

Address 215 S. Man Manne St

Phone 681-6810

Street
Tall. Fl 32301
City State Zip

Email dymannheimer@broadbandcassel.com

Speaking: For Against Information

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

Representing Hall Enterprises / Koger Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7002

INTRODUCER: Community Affairs Committee

SUBJECT: OGSR/Donor Information/Publicly Owned Performing Arts Center

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Present	Yeatman		CA Submitted as Committee Bill
1.	Peacock	Ferrin	GO	Favorable
2.			RC	

I. Summary:

SB 7002 eliminates the scheduled repeal of the current public records exemption for identifying information provided by a donor or a prospective donor to a publicly owned performing arts center if the donor or prospective donor wishes to remain anonymous. Such information includes the name, address, or telephone number of the donor or prospective donor. As a result, if the bill passes, this information will continue to be exempt from public disclosure.

The bill requires a majority vote for passage and takes effect on October 1, 2017.

II. Present Situation:

Public Records Law

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

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

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

⁴ Public records laws are found throughout the Florida Statutes.

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

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

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

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

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

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

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

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

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

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.¹⁷

The OGSR 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 necessary.¹⁸ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

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

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. Specific questions are enumerated for consideration under the review.²² The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

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

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(5)(a), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² Section 119.15(6)(a), F.S.

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

Examples of Existing Exemptions for Donors or Prospective Donors

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
Enterprise Florida, Inc.	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	s. 11.45(3)(i)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Development Finance Corporation, Inc.	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	s. 11.45(3)(j)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Cultural Endowment Program (Department of State)	Information which, if released, would identify donors and amounts contributed. Information which, if released, would identify prospective donors.	s. 265.605(2)	Confidential and exempt from s. 119.07(1), F.S.
Direct Support Organization (DSO) (University of West Florida)	Identity of donor or prospective donor of property to a DSO who desires to remain anonymous, and all identifying information.	s. 267.1732(8)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Citizen Support Organization (CSO) (Fish and Wildlife Conservation Commission)	Identity of donor or prospective donor to a CSO who desires to remain anonymous and all identifying information.	s. 379.223(3)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Agricultural Center and Horse Park Authority (Department of Agriculture and Consumer Services)	Identity of donor if requested by the donor in writing.	s. 570.686	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.

²³ FLA. CONST., art. I, s. 24(c).

²⁴ Section 119.15(7), F.S.

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
John and Mable Ringling Museum of Art Direct Support Organization (Florida State University)	Information that, if released, would identify donors who wish to remain anonymous or prospective donors who wish to remain anonymous when the DSO has identified the prospective donor and has not obtained the name in another manner.	s. 1004.45(2)(h)	Confidential and exempt from s. 119.07(1), F.S.
Florida Prepaid College Board Direct Support Organization	Identity of donors who wish to remain anonymous. Any sensitive, personal information regarding contract beneficiaries, including identity.	s. 1009.983(4)	Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I, State Constitution.

Publicly Owned Performing Arts Centers in Florida

Section 265.7015(1), F.S., defines the term “publicly owned performing arts center” as:

a facility consisting of at least 200 seats, owned and operated by a county, municipality, or special district, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

If a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center desires to remain anonymous, information that would identify the name, address, or telephone number of that donor or prospective donor is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.²⁵

If s. 265.7015, F.S., is not reenacted by the Legislature, it will be repealed on October 2, 2017.²⁶

Florida has dozens of performing arts centers located throughout the state, and their ownership, management, and financing varies widely according to information on their websites.

A statewide study completed in 2009²⁷ found that Florida’s nonprofit arts and culture industry generated \$3.1 billion in economic activity, including:

- 88,236 full time equivalent jobs;

²⁵ Section 265.7015(2), F.S.

²⁶ Section 265.7015(3), F.S.

²⁷ Division of Cultural Affairs of the Department of State, Arts and Economic Prosperity III: The Economic Impact of Nonprofit Arts and Culture Organizations and Their Audiences in the State of Florida, available at <http://dos.myflorida.com/cultural/info-and-opportunities/resources-by-topic/economic-impact-of-the-arts>. (Last visited January 17, 2017)

- \$2.057 billion in resident household income;
- \$196 million in local government revenue; and
- \$249 million in state government revenue.²⁸

OGSR Survey and Results

From June to September of 2016, Senate and House professional staff, in conjunction with the Division of Cultural Affairs of the Department of State, sent out a survey to publicly owned performing arts centers to ascertain if s. 265.7015, F.S., remains necessary, pursuant to the OGSR.²⁹ Four publicly owned performing arts centers responded to the survey.

The surveys revealed that publicly owned performing arts centers normally received requests for anonymity at the time of donation and that donors and prospective donors had chosen anonymity on several occasions. Most publicly owned performing arts centers appeared to collect only contact information from the donors and prospective donors such as their name, address, or phone number. One publicly owned performing arts center defined a donor as “one who is making or has made a contribution” and a prospective donor as “one who is or has been identified as one with the potential to make a contribution.”

Each of the publicly owned performing arts centers that responded to the survey believed that the exemption encouraged donations by ensuring the information provided by the donor or prospective donor remained confidential and exempt and stated that the public records exemption should be reenacted.

III. Effect of Proposed Changes:

Section 1 amends s. 265.7015, F.S., by deleting the scheduled repeal of the public records exemption. As a result, the covered records will remain exempt from disclosure.

Section 2 provides an effective date of October 1, 2017.

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 the counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not

²⁸ *Id.*

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

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

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Donors or prospective donors to publicly owned performing arts centers have the option of requesting anonymity, which may encourage more private entities to donate to these facilities.

C. Government Sector Impact:

This public records exemption may encourage donations and therefore result in a financial gain to counties and municipalities that own and operate publicly owned performing arts centers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 265.7015 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Community Affairs

578-01927-17

20177002__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 265.7015, F.S., which
 4 provides an exemption from public records requirements
 5 for information that identifies a donor or prospective
 6 donor of a donation made for the benefit of a publicly
 7 owned performing arts center if the donor desires to
 8 remain anonymous; removing the scheduled repeal of the
 9 exemption; providing an effective date.

10

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

12

13 Section 1. Section 265.7015, Florida Statutes, is amended
 14 to read:

15

16 265.7015 Confidentiality of certain donor information;
~~related to a publicly owned performing arts centers center.~~

17

18 (1) As used in this section, the term "publicly owned
 19 performing arts center" means a facility consisting of at least
 20 200 seats, owned and operated by a county, municipality, or
 21 special district, which is used and occupied to promote
 22 development of any or all of the performing, visual, or fine
 23 arts or any or all matters relating thereto and to encourage and
 24 cultivate public and professional knowledge and appreciation of
 the arts.

25

26 (2) If a donor or prospective donor of a donation made for
 27 the benefit of a publicly owned performing arts center desires
 28 to remain anonymous, information that would identify the name,
 29 address, or telephone number of that donor or prospective donor
 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.

Page 1 of 2

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

578-01927-17

20177002__

30 I of the State Constitution.
 31 ~~(3) This section is subject to the Open Government Sunset~~
 32 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 33 ~~on October 2, 2017, unless reviewed and saved from repeal~~
 34 ~~through reenactment by the Legislature.~~
 35 Section 2. This act shall take effect October 1, 2017.

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)

3/22/2017

Meeting Date

7002

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dave Ericks

Job Title Lobbyist

Address 205 S. Adams St.

Phone 800-591-7550

Street

Tallahassee

FL

32301

City

State

Zip

Email dave@ericksconsultants.com

Speaking: For Against Information

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

Representing Broward Center for the Performing Arts

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)

3/22/2017

Meeting Date

Topic _____

Bill Number 7002
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
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 7014

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/Nonpublished Reports or Data/Department of Citrus

DATE: March 21, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Akhavein</u>	<u>Becker</u>		AG Submitted as Committee Bill
1.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	Favorable
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 7014 continues the public records exemption for information contained in nonpublished reports or data related to studies or research that concerns citrus fruit, citrus fruit juices, and the products and byproducts that is conducted, caused to be conducted, or funded by the Department of Citrus. The bill removes the scheduled October 2, 2017, repeal date.

Since the bill does not expand or create an exemption to public records law, the bill requires a majority vote of each chamber for passage.

The bill has an effective date of October 1, 2017.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

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

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

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

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

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

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

Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR 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.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it 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 section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

²² FLA. CONST. art. I, s. 24(c).

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.²³

Florida Department of Citrus

The Florida Citrus Commission acts as the head of the Department of Citrus (the department).²⁴ The department carries out commission policy and acts as the commission's staff by conducting a wide variety of programs involving regulation, scientific, market, and economic research, advertising, merchandising, public and industry relations, and consumer promotion. The purpose of the department is to protect and enhance the quality and reputation of Florida citrus fruit and processed citrus products in both domestic and foreign markets. It also acts to protect public health and welfare and to stabilize and protect the state's citrus industry.

Current law provides that the powers of the department include the preparation and dissemination of important information to citrus growers, handlers, shippers, processors and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any such information described above that constitutes a trade secret is confidential and exempt from public records requirements and must not be disclosed.²⁵

Citrus Research

Section 601.13(2), F.S., authorizes the department to:

- Conduct, or cause to be conducted, a thorough and comprehensive study of citrus fruit and citrus fruit juices;
- Provide suitable and sufficient laboratory facilities and equipment, making use of the laboratory facilities and equipment of the University of Florida, for the purpose of conducting thorough and comprehensive study and research;
- Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of each, and determine and develop new and further use for citrus fruit and citrus fruit juices or the products and byproducts into which the same can be converted or manufactured;
- Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of any and all new profitable methods and instruments of distribution of citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured; and
- Conduct or cause to be conducted any research related to disease and crop efficiency that would advance the purposes of the state's citrus industry and commercialization related to advancing such research.

²³ Section 119.15(7), F.S.

²⁴ See generally s. 601.04, F.S.

²⁵ Section 601.10(8), F.S.

Department of Citrus Public Records Exemption for Nonpublished Reports or Data

The department receives guidance from the citrus industry regarding research projects and industry needs. Before the exemption, companies with brand name products were sometimes hesitant to cooperate and give access to samples of citrus fruits and citrus products.

Section 601.10(8)(b), F.S., provides that the citrus research conducted or sponsored by the department remains confidential and exempt from public disclosure until it is published.

Staff Review of the Exemptions

The Open Government Sunset Review Act requires that a public records exemption must serve an identifiable public purpose in order to be maintained. As part of the Open Government Sunset Review process to determine this, professional staff of the Senate Agriculture Committee sent a questionnaire to the department. The department recommended reenactment of the exemption without changes.²⁶

If the exemption is permitted to sunset, the department would be adversely affected because premature publication of incomplete research could interfere with the

[d]epartment's ability to conduct research paid for by the Florida citrus grower, as well impugn the credibility and veracity of the research performed... possibly resulting in research with no value to the industry who paid for it.²⁷

III. Effect of Proposed Changes:

Section 1 removes the scheduled repeal date of October 2, 2017, in the public records exemption law. Effectively, the bill permits the public records exemption relating to information contained in nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts that the department is involved with to continue as it currently exists.

Section 2 provides that this act shall take effect October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not expand the current exemption, and therefore public necessity statements are not required. Since there is no expansion of the exemption, a simple majority vote is sufficient for passage.

²⁶ The survey is on file with the Senate Agriculture Committee.

²⁷ *Senate Agency Bill Analysis Request: SB0714* (sic), Department of Citrus

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 601.10, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Agriculture

575-01923-17

20177014__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 601.10, F.S., relating
 4 to an exemption from public records requirements for
 5 nonpublished reports or data related to certain
 6 studies or research related to citrus fruit, citrus
 7 fruit juices, and the products and byproducts thereof
 8 which is conducted, caused to be conducted, or funded
 9 by the Department of Citrus; abrogating the scheduled
 10 repeal of the exemption; providing an effective date.

11

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

13

14 Section 1. Paragraph (c) of subsection (8) of section
 15 601.10, Florida Statutes, is amended to read:

16 601.10 Powers of the Department of Citrus.—The department
 17 shall have and shall exercise such general and specific powers
 18 as are delegated to it by this chapter and other statutes of the
 19 state, which powers shall include, but are not limited to, the
 20 following:

21

(8)

22 (c) Any nonpublished reports or data related to studies or
 23 research conducted, caused to be conducted, or funded by the
 24 department under s. 601.13 is confidential and exempt from s.
 25 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This~~
 26 ~~paragraph is subject to the Open Government Sunset Review Act in~~
 27 ~~accordance with s. 119.15 and shall stand repealed on October 2,~~
 28 ~~2017, unless reviewed and saved from repeal through reenactment~~
 29 ~~by the Legislature.~~

Page 1 of 2

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

575-01923-17

20177014__

30 Section 2. This act shall take effect October 1, 2017.

Page 2 of 2

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

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Committee on Governmental Oversight and Accountability

Judge:

Started: 3/22/2017 1:31:59 PM

Ends: 3/22/2017 2:56:24 PM

Length: 01:24:26

1:32:01 PM Meeting called to order- Roll Call
1:32:11 PM Quorum
1:32:46 PM Tab 1 SB 464 by Clemens; Natural Hazards
1:32:54 PM Senator Clemens recognized
1:34:26 PM Brian Pitts, Justice-2-Jesus recognized
1:36:31 PM Roll Call
1:36:41 PM SB 464 Favorable
1:37:00 PM Tab 7 SB 1540 by Brandes; Department of Management Services
1:37:10 PM Senator Brandes recognized
1:37:37 PM Amendment Barcode 191440
1:38:07 PM Amendment Barcode 121722
1:39:10 PM Bill as amended
1:39:26 PM Senator Rader
1:39:39 PM Brian Pitts, Justice-2-Jesus recognized
1:41:59 PM Senator Brandes
1:43:11 PM Roll Call
1:44:13 PM SB 1540 Favorable as a committee substitute
1:44:25 PM Tab 4 CS/SB 886; by CF, Powell; Public Records/Substance Abuse Impaired Persons
1:44:32 PM Senator Powell recognized
1:44:57 PM Amendment barcode 560794
1:45:41 PM Bill as amended
1:45:53 PM Roll Call
1:46:04 PM CS/SB 886 Favorable as a committee substitute
1:46:31 PM Tab 5 SB 1062 by Powell, Bracy; Public Records/Protective Injunction Petitions
1:47:09 PM Amendment Barcode 540526
1:47:44 PM Bill as amended
1:47:49 PM Brian Pitts, Justice-2-Jesus
1:51:07 PM Senator Stewart
1:51:14 PM Roll Call
1:51:50 PM SB 1062 Favorable as a committee substitute
1:52:06 PM Tab 9 SB 7014 by AG; OGSR/Nonpublished Reports or Data/Department of Citrus
1:53:11 PM Bill introduced by Catherin
1:53:56 PM Roll Call
1:53:59 PM SB 7014 Favorable
1:54:22 PM Tab 2 CS/SB 534 by Community Affairs, Perry; Public Works Projects
1:54:32 PM Senator Perry
1:54:50 PM Amendment barcode 721430
1:55:08 PM Bill as amended
1:55:33 PM Senator Rader
1:56:51 PM Senator Rader
1:58:21 PM Rich Templin, Florida AFL-CIO recognized
2:00:29 PM Theresa King, Florida Building and Construction Trades Council recognized
2:03:34 PM Andres Trujillo, SMART-TD recognized
2:04:34 PM Audience waiving in Opposition
2:07:23 PM Carol Bowen, Associated Builders and Contractors of Florida recognized
2:13:13 PM Brian Pitts, Justice-2-Jesus recognized
2:15:02 PM Tab 3 SB 616 by Steube; Concealed Weapons or Firearms
2:16:41 PM Amendment Barcode 696944
2:17:45 PM Senator Rouson
2:19:19 PM Senator Rouson
2:21:40 PM Marion Hammer, NRA and Unified Sportsmen of Florida recognized
2:23:49 PM Bill as amended

2:23:51 PM Edward G. Labrador, Broward County recognized
2:26:32 PM Senator Rouson
2:27:50 PM Senator Stewart
2:29:51 PM Roll Call
2:30:51 PM SB 616 Favorable as a committee substitute
2:31:08 PM Back to Tab 2 CS/SB 534 by Community Affairs, Perry; Public Works Projects
2:31:31 PM Late Appearance records
2:31:39 PM Audience waving in opposition
2:31:46 PM Jamees Ingler, Electrician recognized to speak
2:34:32 PM Senator Rader recognized
2:35:31 PM Senator Perry
2:37:37 PM Roll Call
2:38:36 PM CS/SB 534 Favorable as a committee substitute
2:39:07 PM Tab 6 SB 1446 by Rouson; Pay-for-success Contracts
2:39:31 PM Senator Rouson
2:41:30 PM Nizan Shah, Social Finance recognized
2:44:59 PM Question by Chair Baxley
2:45:03 PM Questions by Senator Rader
2:46:03 PM Gabrielle Bargerstock, Nurse-Family Partnership National Service Office recognized
2:47:53 PM Senator Rouson closing
2:48:07 PM Roll Call
2:48:31 PM SB 1446 Favorable
2:48:47 PM Tab 8 SB 7002 by Community Affairs; OGSR/Donor Information/Publicly Owned Performing Arts Center
2:50:12 PM Brian Pitts, Justice-2-Jesus recognized
2:53:56 PM Roll Call
2:54:56 PM SB 7002 Favorable
2:55:16 PM Senator Rouson
2:55:38 PM Senator Grimsley
2:55:51 PM Meeting Adjourned