

Tab 1	SB 186 by Lee (CO-INTRODUCERS) Book ; (Similar to H 00577) Public Records/Victim of Mass Violence
Tab 2	SJR 362 by Brandes ; (Similar to CS/H 00249) Abolishing the Constitution Revision Commission
Tab 3	SB 426 by Flores (CO-INTRODUCERS) Torres, Hooper ; (Identical to H 00857) Firefighters
Tab 4	SB 7008 by JU ; OGSR/Security Breach Information/Department of Legal Affairs
Tab 5	SB 7010 by JU ; (Identical to H 07025) OGSR/Treatment-based Drug Court Programs
Tab 6	SB 7018 by ED ; (Identical to H 07005) OGSR/Public Research Facility/Animal Research
Tab 7	SB 7020 by ED ; (Identical to H 07001) OGSR/University Direct-support Organization/Research Funding or Research Plans

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Hooper, Chair
Senator Rader, Vice Chair

MEETING DATE: Tuesday, February 19, 2019
TIME: 2:30—4:00 p.m.
PLACE: 301 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Rader, Vice Chair; Senators Albritton, Bean, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 186 Lee (Similar H 577, H 7017)	Public Records/Victim of Mass Violence; Defining the term "killing of a victim of mass violence"; expanding an existing exemption from public records requirements for a photograph or a video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or a video or audio recording held by an agency which depicts or records the killing of a victim of mass violence; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/11/2019 Favorable GO 02/19/2019 Favorable RC	Favorable Yeas 4 Nays 0
2	SJR 362 Brandes (Similar CS/HJR 249, Compare H 251)	Abolishing the Constitution Revision Commission; Proposing amendments to the State Constitution to abolish the Constitution Revision Commission, etc. JU 02/04/2019 Favorable GO 02/19/2019 Favorable RC	Favorable Yeas 4 Nays 0
3	SB 426 Flores (Identical H 857)	Firefighters; Granting certain benefits to a firefighter upon receiving a diagnosis of cancer if certain conditions are met; requiring an employer to make certain disability payments to a firefighter in the event of a total and permanent disability; providing for death benefits to a firefighter's beneficiary if a firefighter dies as a result of cancer or cancer treatments, etc. GO 02/19/2019 Favorable CA AP	Favorable Yeas 4 Nays 0
4	SB 7008 Judiciary	OGSR/Security Breach Information/Department of Legal Affairs; Amending provisions which provides a public records exemption for information received by the Department of Legal Affairs pursuant to a notification of a security breach or during the course of an investigation of such breach; removing the scheduled repeal of the exemption, etc. GO 02/19/2019 Favorable RC	Favorable Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, February 19, 2019, 2:30—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 7010 Judiciary (Identical H 7025)	OGSR/Treatment-based Drug Court Programs; Amending provisions relating to an exemption from public records requirements for certain information relating to screenings for participation in treatment-based drug court programs and subsequent treatment status reports; removing the scheduled repeal of the exemption, etc. GO 02/19/2019 Favorable RC	Favorable Yeas 4 Nays 0
6	SB 7018 Education (Identical H 7005)	OGSR/Public Research Facility/Animal Research; Amending a provision which provides an exemption from public records requirements for the personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts or is engaged in activities related to animal research; removing the scheduled repeal of the exemption, etc. GO 02/19/2019 Favorable RC	Favorable Yeas 3 Nays 0
7	SB 7020 Education (Identical H 7001)	OGSR/University Direct-support Organization/Research Funding or Research Plans; Amending provisions relating to an exemption from public meeting requirements for specified meetings of a university direct-support organization at which proposals seeking research funding or research plans are discussed; removing the scheduled repeal of the exemption, etc. GO 02/19/2019 Favorable RC	Favorable Yeas 3 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 186

INTRODUCER: Senators Lee and Book

SUBJECT: Public Records/Victim of Mass Violence

DATE: February 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 186 amends s. 406.136, F.S., and transfers this section to s. 119.071, F.S. The bill expands an existing public records exemption to make confidential and exempt from public disclosure any photographs and video and audio recordings that depict or record the killing of a victim of mass violence. Currently, s. 406.136, F.S., makes confidential and exempt only the photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill defines the term “killing of a victim of mass violence” as “all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person.”

The bill specifies who may obtain such photographs and recordings, the process of obtaining these materials pursuant to a court order when good cause is shown, and factors a court must consider in determining good cause.

The bill provides that it is a third degree felony for any custodian of such photographs and recordings to willfully and knowingly violate the exemption requirements. The Legislature’s Office of Economic and Demographic Research preliminarily estimates this penalty provision will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).

The exemption is retroactive and applies to all such photographs or recordings held by an agency. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.

The bill provides a statement of public necessity as required by the State Constitution.

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The bill is effective upon becoming a law.

II. Present Situation:

Public Records Law

The State 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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states “[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.”⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁴ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with

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” 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 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

Exemption for Photographs and Recordings Depicting the Killing of a Law Enforcement Officer

In 2011, the Legislature enacted s. 406.136, F.S., to make confidential and exempt from public disclosure those photographs and video and audio recordings that depict or record the killing of *a person*.²⁰ In 2016, the Legislature elected not to reenact the exemption as originally enacted but rather to narrow the exemption so that it applies only to photographs and video and audio recordings that depict the killing of *a law enforcement officer who was acting in accordance with his or her official duties*.²¹ These photographs and video and audio recordings are confidential and exempt from public record disclosure requirements, except that the exemption permits a surviving spouse to view or copy any such photograph or video recording and listen to or copy any such audio recording.²² If there is no surviving spouse, the deceased's surviving parents may access the records, and if there are no surviving parents, an adult child of the deceased may access the records.²³ The surviving relative who has the authority to access the records may designate in writing an agent to obtain them.²⁴

In addition, a local governmental entity or a state or federal agency, in furtherance of its official duties and pursuant to a written request, may view or copy any such photograph or video recording and listen to or copy any such audio recording. Unless otherwise required in the performance of the entity's or agency's duties, the identity of the deceased must remain confidential and exempt.²⁵

Persons other than those covered by these exceptions may only have access to such photographs and recordings if they obtain a court order. Upon a showing of good cause, a court may issue an order authorizing any person to view or copy any such photograph or video recording and listen to or copy any such audio recording. The court may prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider:

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Chapter 2011-115, Laws of Fla. (creating s. 406.136, F.S., effective July 1, 2011). "Killing of a person" was defined to mean all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S. (2015).

²¹ Chapter 2016-214, Laws of Fla. The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S.

²² Section 406.136(2), F.S.

²³ *Id.*

²⁴ Section 406.136(3)(a), F.S.

²⁵ Section 406.136(3)(b), F.S.

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.²⁶

In all cases, the viewing, copying, listening to, or other handling of any such photograph or recording must be under the direct supervision of the custodian of the record or the custodian's designee.²⁷

If a petition is filed with the court to view, listen to, or copy such photograph or recording, a surviving spouse must be given reasonable notice that the petition has been filed, a copy of the petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased.²⁸

It is a third degree felony for any custodian of such photographs or recordings to willfully and knowingly violate these provisions.²⁹ The same penalty applies to anyone who willfully and knowingly violates a court order issued under these provisions.³⁰

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings, upon good cause shown, from restricting or otherwise controlling the disclosure of a killing, crime scene, or similar photograph or video or audio recording in the same manner as previously described.³¹

The exemption is retroactive and applies to all such photographs or recordings, regardless of whether the killing of the person occurred before, on, or after July 1, 2011. However, the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of the act, which restrict or limit access to any such photographs or recordings.³²

Exemptions Which May Apply to Murder Victims

Several existing public records exemptions may apply to certain records or information relating to murder victims:

²⁶ Section 406.136(4), F.S.

²⁷ Section 406.136(4)(c), F.S.

²⁸ Section 406.136(5), F.S.

²⁹ Section 406.136(6)(a), F.S. A third degree felony is punishable by a term of imprisonment up to 5 years, a fine up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

³⁰ Section 406.136(6)(b), F.S.

³¹ Section 406.136(6)(c), F.S.

³² Section 406.136(7), F.S.

- Active criminal intelligence information³³ and active criminal investigative information³⁴ are exempt from public disclosure;³⁵
- The address of a victim of an incident of mass violence is exempt from public disclosure;³⁶ and
- A photograph or video or audio recording of an autopsy held by a medical examiner is confidential and exempt from public disclosure.³⁷

III. Effect of Proposed Changes:

The bill amends s. 406.136, F.S., and transfers this section to s. 119.071, F.S.³⁸ The bill expands an existing public records exemption to make confidential and exempt photographs and video and audio recordings that depict or record *the killing of a victim of mass violence*. Currently, s. 406.136, F.S., makes confidential and exempt the photographs and video and audio recordings that depict or record *the killing of a law enforcement officer who was acting in accordance with his or her official duties*. The current exemption and the exemption created by the bill only apply to such photographs or recordings held by an agency.

The bill defines the term “killing of a victim of mass violence” as “all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person.”³⁹

³³ Section 119.011(3)(a), F.S., defines “criminal intelligence information” as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Such information is “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d)1., F.S.

³⁴ Section 119.011(3)(b), F.S., defines “criminal investigative information” as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Such information is “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d)2., F.S.

³⁵ Criminal intelligence information and criminal investigative information does not include the name, sex, age, and address of a person arrested or of the victim of a crime. Section 119.011(3)(c) 2., F.S.

³⁶ Section 119.071(2)(o), F.S. For purposes of this paragraph, the term “incident of mass violence” means an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. *Id.*

³⁷ Section 406.135(2), F.S. The exemption contains an exception for the surviving spouse (and other designated persons if the spouse is deceased) and a local governmental entity, or a state or federal agency, in furtherance of its official duties, without a court order. Section 406.135(2) and (3), F.S. The court, upon a showing of good cause, may issue an order authorizing any person to view or copy a photograph or video recording of an autopsy and may prescribe any restrictions or stipulations that the court deems appropriate. Section 406.135(4)(a), F.S. A criminal or administrative proceeding is exempt from s. 406.135, F.S., but unless otherwise exempted, is subject to all other provisions of ch. 119, F.S., provided however that this section does not prohibit a court in such proceedings upon good cause shown from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner prescribed in this section. Section 406.135(7), F.S.

³⁸ Specifically, s. 406.136, F.S., is transferred, renumbered as s. 119.071(2)(p), F.S., and amended.

³⁹ This definition differs from the definition of “incident of mass violence” in s. 119.071(2)(o), F.S., which exempts from public disclosure the address of a victim of an incident of mass violence. *See* Footnote 36 of this analysis.

The bill also retains provisions relevant to the current exemption and applies them to the new exemption, including:

- Specifying who may obtain such photographs and recordings, the process of obtaining these materials pursuant to a court order when good cause is shown, and factors a court must consider in determining good cause;
- Providing that it is a third degree felony for any custodian of such photographs and recordings to willfully and knowingly violate the exemption requirements;
- Specifying that the exemption is retroactive and applies to all such photographs or recordings; and
- Providing that the exemption does not overturn or abrogate or alter any existing orders duly entered into by any court of this state, as of the effective date of this act, which restrict or limit access to such photographs or recordings.⁴⁰

The bill provides a public necessity statement as required by the State Constitution. The statement includes legislative findings regarding photographs and video and audio recordings that depict or record the killing of a victim of mass violence. These findings indicate:

- Such photographs and recordings render a graphic and often disturbing visual or aural representation of the deceased which, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased;
- Widespread unauthorized dissemination of such photographs and recordings would subject the immediate family of the deceased to continuous injury;
- Dissemination of such photographs and recordings is harmful to the public because terrorists will use them to attract followers, bring attention to their cause, and inspire others to kill, and such dissemination may also educe violent acts by the mentally ill or morally corrupt;
- There continues to be other types of available information, such as crime scene reports, which are available and which are less intrusive and injurious to the immediate family of the deceased and continue to provide for public oversight; and
- The exemption should be given retroactive application because it is remedial in nature.

The bill provides for repeal of the exemption on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The bill is effective upon becoming a law.⁴¹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁰ See “Present Situation” section of this analysis for a detailed discussion of these provisions.

⁴¹ The bill also directs the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs in this act with the date this act becomes a law.

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

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. Because the bill expands a public record exemption, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law.

There are substantial legislative findings in the statement of public necessity in support of the public records exemption. Further, upon a showing of good cause, a court may issue an order authorizing any person to view or copy any such photograph or video or audio recording (subject to any restrictions or stipulations that the court deems appropriate). For these reasons, the bill appears to be no broader than necessary to accomplish its stated purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The bill expands an existing public records exemption to make confidential and exempt photographs or video or audio recordings that depict or record the killing of a victim of mass violence.

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

The bill may have an indeterminate fiscal impact on agencies relating to training and redaction of exempt information. However, costs may be minimal if they can be absorbed by the agencies because training and redaction of exempt information are part of the day-to-day responsibilities of agencies.

The bill provides that it is a third degree felony for any custodian of photographs and video and audio recordings that depict or record the killing of a victim of mass violence to willfully and knowingly violate the exemption requirements.

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research preliminarily estimates this penalty provision will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill expands an existing public records exemption to make confidential and exempt photographs or video or audio recordings that depict or record the killing of a victim of mass violence. The bill defines the term "killing of a victim of mass violence" as "all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which *three or more people*, not including the perpetrator, are *killed* by an intentional act of violence by another person."

In 2018, the Legislature created s. 119.071(2)(o), F.S., which provides a public record exemption for the address of a victim of an incident of mass violence.⁴² For purposes of this paragraph, the term "incident of mass violence" means an "incident in which *four or more people*, not including the perpetrator, are severely *injured or killed* by an intentional and indiscriminate act of violence of another."

⁴² Chapter 2018- 2, Laws of Fla. The term "victim" is defined to mean a person killed or injured during an incident of mass violence, not including the perpetrator.

The legislature may want to consider conforming the definitions related to mass violence in subsection (o) and (p) to be consistent.

VIII. Statutes Affected:

This bill substantially amends section 406.136 of the Florida Statutes, and transfers this section to section 119.071 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Lee

20-01583A-19

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A bill to be entitled

An act relating to public records; transferring, renumbering, and amending s. 406.136, F.S.; defining the term "killing of a victim of mass violence"; expanding an existing exemption from public records requirements for a photograph or a video or audio recording held by an agency which depicts or records the killing of a law enforcement officer to include a photograph or a video or audio recording held by an agency which depicts or records the killing of a victim of mass violence; providing criminal penalties; providing retroactive applicability; providing for future legislative review and repeal of the exemption; conforming provisions to changes made by the act; providing a statement of public necessity; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Section 406.136, Florida Statutes, is transferred, renumbered as paragraph (p) of subsection (2) of section 119.071, Florida Statutes, and amended, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

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

a. "Killing of a law enforcement officer who was acting in accordance with his or her official duties" means all acts or

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events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

b. "Killing of a victim of mass violence" means all acts or events that cause or otherwise relate to the death of a person, not including the perpetrator, who is killed in an incident in which three or more people, not including the perpetrator, are killed by an intentional act of violence by another person.

2.(2) A photograph or video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that a surviving spouse of the decedent may view and copy any such photograph or video recording or listen to or copy any such audio recording. If there is no surviving spouse, ~~then~~ the surviving parents shall have access to such records. If there is no surviving spouse or parent, ~~the then an~~ adult children child shall have access to such records.

3.a.(3)(a) The deceased's surviving relative, with whom authority rests to obtain such records, may designate in writing an agent to obtain such records.

b.(b) A local governmental entity, or a state or federal agency, in furtherance of its official duties, pursuant to a written request, may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a law enforcement officer who was acting in

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59 accordance with his or her official duties or the killing of a
60 victim of mass violence, and, unless otherwise required in the
61 performance of ~~its their~~ duties, the identity of the deceased
62 shall remain confidential and exempt.

63 ~~c.(e)~~ The custodian of the record, or his or her designee,
64 may not permit any other person to view or copy such photograph
65 or video recording or listen to or copy such audio recording
66 without a court order.

67 4.a.(4)(a) The court, upon a showing of good cause, may
68 issue an order authorizing any person to view or copy a
69 photograph or video recording that depicts or records the
70 killing of a law enforcement officer who was acting in
71 accordance with his or her official duties or the killing of a
72 victim of mass violence, or to listen to or copy an audio
73 recording that depicts or records the killing of a law
74 enforcement officer who was acting in accordance with his or her
75 official duties or the killing of a victim of mass violence, and
76 may prescribe any restrictions or stipulations that the court
77 deems appropriate.

78 ~~b.(b)~~ In determining good cause, the court shall consider:

79 ~~(I)1-~~ Whether such disclosure is necessary for the public
80 evaluation of governmental performance;

81 ~~(II)2-~~ The seriousness of the intrusion into the family's
82 right to privacy and whether such disclosure is the least
83 intrusive means available; and

84 ~~(III)3-~~ The availability of similar information in other
85 public records, regardless of form.

86 ~~c.(e)~~ In all cases, the viewing, copying, listening to, or
87 other handling of a photograph or video or audio recording that

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

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88 depicts or records the killing of a law enforcement officer who
89 was acting in accordance with his or her official duties or the
90 killing of a victim of mass violence must be under the direct
91 supervision of the custodian of the record or his or her
92 designee.

93 ~~5.(5)~~ A surviving spouse shall be given reasonable notice
94 of a petition filed with the court to view or copy a photograph
95 or video recording that depicts or records the killing of a law
96 enforcement officer who was acting in accordance with his or her
97 official duties or the killing of a victim of mass violence, or
98 to listen to or copy any such audio recording, a copy of such
99 petition, and reasonable notice of the opportunity to be present
100 and heard at any hearing on the matter. If there is no surviving
101 spouse, ~~then~~ such notice must be given to the parents of the
102 deceased and, if the deceased has no surviving living parent,
103 ~~then~~ to the adult children of the deceased.

104 6.a.(6)(a) Any custodian of a photograph or video or audio
105 recording that depicts or records the killing of a law
106 enforcement officer who was acting in accordance with his or her
107 official duties or the killing of a victim of mass violence who
108 willfully and knowingly violates this paragraph section commits
109 a felony of the third degree, punishable as provided in s.
110 775.082, s. 775.083, or s. 775.084.

111 ~~b.(b)~~ Any person who willfully and knowingly violates a
112 court order issued pursuant to this paragraph section commits a
113 felony of the third degree, punishable as provided in s.
114 775.082, s. 775.083, or s. 775.084.

115 ~~c.(e)~~ A criminal or administrative proceeding is exempt
116 from this paragraph section but, unless otherwise exempted, is

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117 subject to all other provisions of chapter 119, ~~provided~~
 118 however, ~~that~~ this paragraph section does not prohibit a court
 119 in a criminal or administrative proceeding upon good cause shown
 120 from restricting or otherwise controlling the disclosure of a
 121 killing, crime scene, or similar photograph or video or audio
 122 recording recordings in the manner prescribed in this paragraph
 123 herein.

124 ~~7.(7)~~ This exemption in this paragraph shall be given
 125 retroactive application and shall apply to all photographs or
 126 video or audio recordings that depict or record the killing of a
 127 law enforcement officer who was acting in accordance with his or
 128 her official duties or the killing of a victim of mass violence,
 129 regardless of whether the killing of the person occurred before,
 130 on, or after the effective date of this act July 1, 2011.

131 However, nothing in this paragraph herein is intended to, nor
 132 may be construed to, overturn or abrogate or alter any existing
 133 orders duly entered into by any court of this state, as of the
 134 effective date of this act, which restrict or limit access to
 135 any photographs or video or audio recordings that depict or
 136 record the killing of a law enforcement officer who was acting
 137 in accordance with his or her official duties or the killing of
 138 a victim of mass violence.

139 ~~8.(8)~~ This paragraph section only applies only to such
 140 photographs and video and audio recordings held by an agency ~~as~~
 141 ~~defined in s. 119.011~~.

142 9. This paragraph is subject to the Open Government Sunset
 143 Review Act in accordance with s. 119.15 and shall stand repealed
 144 on October 2, 2024, unless reviewed and saved from repeal
 145 through reenactment by the Legislature.

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146 Section 2. (1) The Legislature finds that it is a public
 147 necessity that photographs and video and audio recordings that
 148 depict or record the killing of a victim of mass violence be
 149 made confidential and exempt from s. 119.07(1), Florida
 150 Statutes, and s. 24(a), Article I of the State Constitution. The
 151 Legislature finds that photographs and video and audio
 152 recordings that depict or record the killing of a victim of mass
 153 violence render a graphic and often disturbing visual or aural
 154 representation of the deceased. Such photographs and video and
 155 audio recordings provide a view of the deceased in the final
 156 moments of life, in which they are often bruised, bloodied,
 157 broken, baring bullet wounds or other wounds, lacerated,
 158 dismembered, or decapitated. As such, photographs and video and
 159 audio recordings that depict or record the killing of a victim
 160 of mass violence are highly sensitive representations of the
 161 deceased which, if heard, viewed, copied, or publicized, could
 162 result in trauma, sorrow, humiliation, or emotional injury to
 163 the immediate family of the deceased and detract from the memory
 164 of the deceased. The Legislature recognizes that the existence
 165 of the Internet and the proliferation of personal computers and
 166 cellular telephones throughout the world encourages and promotes
 167 the wide dissemination of such photographs and video and audio
 168 recordings 24 hours a day and that widespread unauthorized
 169 dissemination of such photographs and video and audio recordings
 170 would subject the immediate family of the deceased to continuous
 171 injury.

172 (2) In addition to the emotional and mental injury that
 173 these photographs and video and audio recordings may cause
 174 family members, the Legislature is also concerned that

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175 dissemination of photographs and video and audio recordings that
176 depict or record the killing of a victim of mass shooting is
177 harmful to the public. The Legislature is gravely concerned and
178 saddened by the horrific mass killings perpetrated at the Pulse
179 nightclub in Orlando, at the Fort Lauderdale-Hollywood
180 International Airport, and at Marjory Stoneman Douglas High
181 School. The Legislature is concerned that, if these photographs
182 and video and audio recordings are released, terrorists will use
183 them to attract followers, bring attention to their causes, and
184 inspire others to kill. The Legislature also finds that
185 dissemination of these photographs and video and audio
186 recordings may also educe violent acts by persons who have a
187 mental illness or who are morally corrupt.

188 (3) The Legislature further recognizes that other types of
189 information, such as crime scene reports, continue to be
190 available which are less intrusive and injurious to the
191 immediate family of the deceased and continue to provide for
192 public oversight. The Legislature further finds that the
193 exemption provided in this act should be given retroactive
194 application because it is remedial in nature.

195 Section 3. The Division of Law Revision is directed to
196 replace the phrase "the effective date of this act" wherever it
197 occurs in this act with the date this act becomes a law.

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



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 11, 2019

I respectfully request that **Senate Bill # 186**, relating to Public Records/ Victim of Mass Violence, be placed on the:

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

A handwritten signature in blue ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/11

Meeting Date

SB0186

Bill Number (if applicable)

Topic VICTIMS OF MASS VIOLENCE

Amendment Barcode (if applicable)

Name MICHAEL CRABB / MAT BUTLER

Job Title LIEUTENANT / CAPTAIN

Address 2500 W. COLONIAL DR Street

Phone 321-436-4447

City OLLANDO

State FL

Zip 32804

Email MICHAEL.CRABB@OCFL.NET

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

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

Representing _____

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/2019
Meeting Date

186
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/19

Meeting Date

SB 186

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Scott McCoy

Job Title Sr. Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tally

City

FL

State

Zip

Email scott.mccoy@splcenter.org

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

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

Representing SPLC Action

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

Lobbyist registered with Legislature: [x] 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: SJR 362

INTRODUCER: Senator Brandes

SUBJECT: Abolishing the Constitution Revision Commission

DATE: February 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SJR 362 abolishes the Constitution Revision Commission by repealing provisions establishing it in the Florida Constitution. Currently, the Constitution requires that a constitution revision commission be convened once every 20 years to examine the State Constitution and propose any amendments that it deems appropriate.

If this joint resolution is approved by three-fifths of the membership of each house of the Legislature, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot and will take effect if approved by at least 60 percent of the votes cast on the measure.

II. Present Situation:

Overview

The Florida Constitution requires that a constitution revision commission be established every 20 years and that it have the authority to propose to voters a revision of all or any part of the Florida Constitution. The most recent Commission convened in 2017-2018, and proposed seven amendments to the Florida Constitution, which appeared on the 2018 General Election ballot.

Constitution Revision Commission

Origin and History

The Florida Constitution was revised extensively in 1968 by way of three joint resolutions proposed by the Legislature and approved by the voters. The revisions included the establishment of the Constitution Revision Commission as a means of proposing constitutional revisions to the voters, and the requirement that it convene once every 20 years, beginning in

1977. Accordingly, three Commissions have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.¹

Members

The Constitution requires that the Commission be comprised of 37 members, and it provides guidelines for the selection of these members. The Attorney General must serve on the Commission, and the rest of the members must be chosen by the Governor (15), Speaker of the House (9), President of the Senate (9), and the Chief Justice of the Florida Supreme Court (3). Additionally, the Governor must appoint a chair from among the 37 members.²

Task, Procedures, and Authority

The Commission's task is to examine the Constitution and decide which, if any, amendments to propose to the voters. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.³ In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State. To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.⁴

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. Indeed, it says only that the Commission must convene at the call of its chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings."⁵

The Constitution May Be Amended Only through the Processes it Prescribes

The Constitution provides that it may be amended if the voters approve an amendment originating from one of five sources: the legislature, a constitution revision commission, a citizen initiative, a constitutional convention, or the taxation and budget reform commission.⁶

Further, the Florida Supreme Court has stated that these processes are the *only* ways by which it may be amended:

The Constitution is the charter of our liberties. It cannot be changed, modified or amended by [governmental] fiat. It provides within itself the only method for its amendment, and . . . When a constitution directs how a thing shall be done, that is in effect a prohibition to its being done in any other way.⁷

¹ Constitution Revision Commission, *History*, <http://flcrc.gov/about/history.html> (last visited Jan. 29, 2019).

² FLA. CONST. art. XI, s. 2.

³ FLA. CONST. art. XI, s. 2.

⁴ FLA. CONST. art. XI, s. 5.

⁵ FLA. CONST. art. XI, s. 2.

⁶ FLA. CONST. art. XI.

⁷ *Browning v. Florida Hometown Democracy, Inc., PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations and quotations omitted); *accord State v. Florida State Imp. Com'n*, 60 So. 2d 747, 754 (Fla. 1952) (Terrell, J., and Adams, C.J., concurring) *abrogated on other grounds by Boschen v. City of Clearwater*, 777 So. 2d 958 (Fla. 2001).

Joint Resolution

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.⁸ Like a bill, it may begin in either house of the Legislature.

To pass out of the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each house.⁹ Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the votes cast on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.¹⁰

III. Effect of Proposed Changes:

This joint resolution proposes to amend the Florida Constitution to repeal the provisions that establish a constitution revision commission. The joint resolution also amends other constitutional provisions that reference a constitution revision commission. These changes effectively abolish the constitution revision commission and the commission's authority to propose constitutional amendments to be placed on the ballot for approval by the voters.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

⁸ FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

⁹ FLA. CONST. art. XI, s. 1.

¹⁰ FLA. CONST. art XI, s. 5.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State, Division of Elections, provided the following information regarding the cost of advertising the proposed amendment contained in the resolution:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The Division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$62,448.96, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

Considering that a taxation and budget reform commission (TBRC) is substantially similar to a constitution revision commission, the Legislature may wish to consider abolishing the TBRC.

A TBRC, created by Article VI, s. 6 of the Florida Constitution, is comprised of appointees who have the power to propose constitutional amendments directly to the electors. These amendments

¹¹ Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Feb. 1, 2019) (on file with the Senate Committee on Judiciary).

may include a “revision of this constitution or any part of it dealing with taxation or the state budgetary process.”¹²

VIII. Statutes Affected:

This resolution amends the following sections of the Florida Constitution: Article II, section 5, Article XI, section 2, and Article XI, section 5.

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.

¹² FLA. CONST. art. XI, s. 6(e).

By Senator Brandes

24-00636-19

2019362__

Senate Joint Resolution

A joint resolution proposing amendments to Section 5 of Article II and Section 5 of Article XI and the repeal of Section 2 of Article XI of the State Constitution to abolish the Constitution Revision Commission.

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

That the following amendments to Section 5 of Article II and Section 5 of Article XI and the repeal of Section 2 of Article XI of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE II

GENERAL PROVISIONS

SECTION 5. Public officers.—

(a) No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of the a ~~constitution revision commission~~, taxation and budget reform commission, a constitutional convention, or a statutory body having only advisory powers.

Page 1 of 4

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(b) Each state and county officer, before entering upon the duties of the office, shall give bond as required by law, and shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the state; and that I will well and faithfully perform the duties of ... (title of office) ... on which I am now about to enter. So help me God.",

and thereafter shall devote personal attention to the duties of the office, and continue in office until a successor qualifies.

(c) The powers, duties, compensation and method of payment of state and county officers shall be fixed by law.

ARTICLE XI

AMENDMENTS

SECTION 5. Amendment or revision election.—

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of a ~~revision commission~~, constitutional convention or the taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety

Page 2 of 4

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59 days after such filing.

60 (b) A proposed amendment or revision of this constitution,
61 or any part of it, by initiative shall be submitted to the
62 electors at the general election provided the initiative
63 petition is filed with the custodian of state records no later
64 than February 1 of the year in which the general election is
65 held.

66 (c) The legislature shall provide by general law, prior to
67 the holding of an election pursuant to this section, for the
68 provision of a statement to the public regarding the probable
69 financial impact of any amendment proposed by initiative
70 pursuant to section 3.

71 (d) Once in the tenth week, and once in the sixth week
72 immediately preceding the week in which the election is held,
73 the proposed amendment or revision, with notice of the date of
74 election at which it will be submitted to the electors, shall be
75 published in one newspaper of general circulation in each county
76 in which a newspaper is published.

77 (e) Unless otherwise specifically provided for elsewhere in
78 this constitution, if the proposed amendment or revision is
79 approved by vote of at least sixty percent of the electors
80 voting on the measure, it shall be effective as an amendment to
81 or revision of the constitution of the state on the first
82 Tuesday after the first Monday in January following the
83 election, or on such other date as may be specified in the
84 amendment or revision.

85 BE IT FURTHER RESOLVED that the following statement be
86 placed on the ballot:

87 CONSTITUTIONAL AMENDMENT

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24-00636-19

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88 ARTICLE II, SECTION 5

89 ARTICLE XI, SECTIONS 2 AND 5

90 ABOLISHING THE CONSTITUTION REVISION COMMISSION.—Proposing
91 an amendment to the State Constitution to abolish the
92 Constitution Revision Commission, which meets at 20-year
93 intervals and is scheduled to next convene in 2037, as a method
94 of submitting proposed amendments or revisions to the State
95 Constitution to electors of the state for approval. This
96 amendment does not affect the ability to revise or amend the
97 State Constitution through citizen initiative, constitutional
98 convention, the Taxation and Budget Reform Commission, or
99 legislative joint resolution.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper
Committee on Governmental Oversight and
Accountability

Subject: Committee Agenda Request

Date: February 4, 2019

I respectfully request that **Senate Joint Resolution #362**, relating to **Abolishing the Constitution Revision Commission**, 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

APPEARANCE RECORD

2/19/19

Meeting Date

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

SB 362

Bill Number (if applicable)

Topic Abolishing CRC

Amendment Barcode (if applicable)

Name Demetrius Minor

Job Title Dir. of Coalitions

Address _____

Phone _____

Street

City

State

Zip

Email dmminor@afphq.org

Speaking: For Against Information

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

Representing Americans For Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/19

Meeting Date

362

Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Legislative Affairs Director

Address 310 W College

Phone 850 222 2557

Tallahassee FL 32301

Email adam.basford@fla.gov

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

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

Representing FL Farm Bureau

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

Lobbyist registered with Legislature: [] Yes [] No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/19

Meeting Date

362

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

Email tim.nungesser@nfib.org

City

State

Zip

Speaking: For Against Information

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

Representing NFIB (National Federation of Independent Business)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/19

Meeting Date

SB 362

Bill Number (if applicable)

Topic CRC

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title

Address 135 S. Monroe

Phone 850-224-6926

Street

Tallahassee

FL

32304

City

State

Zip

Email

Speaking: [X] For [] Against [] 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 [X] No

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/2019
Meeting Date

362
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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 (10/14/14)

APPEARANCE RECORD

0362

2-19-19

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

SB ~~62~~

Bill Number (if applicable)

Meeting Date

Topic Abolishing the Constitution Revision

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Volunteer

(850)

Address _____

Phone 322-7599

Street

Tallahassee

amalie.datz@

Email mac.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Victim of Constitution Revision Commission

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 426

INTRODUCER: Senators Flores and Torres

SUBJECT: Firefighters

DATE: February 18, 2019 REVISED: _____

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

I. Summary:

SB 426 makes firefighters who are diagnosed with certain cancers eligible to receive certain disability or death benefits. Specifically, in lieu of pursuing workers' compensation coverage, a firefighter is entitled to cancer treatment, at no cost to the firefighter, and a one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer. In order to be entitled to such benefits, the firefighter must:

- Be employed full-time as a firefighter;
- Be employed by the state, university, city, county, port authority, special district, or fire control district;
- Have been employed by his or her employer for at least 5 continuous years;
- Not have used tobacco products for at least the preceding 5 years; and
- Have not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer.

The bill provides that the term "cancer" includes bladder cancer, brain cancer, breast cancer, cervical cancer, colon cancer, esophageal cancer, kidney cancer, large intestinal cancer, lung cancer, malignant melanoma, mesothelioma, multiple myeloma, non-Hodgkin's lymphoma, oral cavity and pharynx cancer, ovarian cancer, prostate cancer, rectal cancer, skin cancer, stomach cancer, testicular cancer, and thyroid cancer.

In addition, the employer must provide coverage within an employer-sponsored health plan or through a group health insurance trust fund. The firefighter may not be required to contribute toward any deductible, co-payment, or coinsurance amount for the treatment of cancer.

For disability and death benefits, the employer must consider a firefighter permanently and totally disabled if diagnosed with one of the 21 enumerated cancers and unable to render useful and effective service as a firefighter (rather than an employee). Moreover, the cancer or the

treatment of cancer is deemed to have occurred in the line of duty, resulting in higher disability and death benefits.

The fiscal impact on state and local governments employing firefighters is unknown at this time.

The bill takes effect July 1, 2019.

II. Present Situation:

Under Florida law, a firefighter may be eligible for benefits upon a showing by a preponderance of the evidence that exposure to a specific toxic substance, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee and that the exposure arose out of employment.¹

Cancer Studies regarding Firefighters

The incidence of cancer among firefighters appears to be higher on average than other occupations. Firefighters work in inherently dangerous situations on a daily basis. They are exposed to many different carcinogens, either inhaled or absorbed through the skin both on the scene and in the firehouse. Studies have been conducted at the state, national, and international level resulting in the identification of cancers found to be common among firefighters.² This information has been used to train and educate firefighters to reduce exposure to carcinogens resulting from firefighting activities.

In 2010, the National Institute for Occupational Safety and Health (NIOSH) initiated a study to evaluate the cancer risk of firefighters.³ The study served to identify whether firefighters are at a higher risk of developing cancer related to exposure on the job. Researchers studied death related to cancer as well as specific types of cancers involved. Researchers took into consideration the types and number of fire runs, use of protective equipment, and diesel exhaust controls. The study spanned 4 years and the sample size included over 30,000 career firefighters serving in Chicago, Philadelphia, and San Francisco between 1950 and 2010.

According to the 2010 study, firefighters have a 9 percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general population in the United States. The cancers mostly responsible for this higher risk were respiratory (lung, mesothelioma), gastrointestinal (oral cavity, esophageal, large intestine) and kidney.⁴

¹ Section 112.1815(2)(a), F.S.

² Occupation and Cancer, American Cancer Society, <https://www.cancer.org/content/dam/cancer-org/cancer-control/en/booklets-flyers/occupation-and-cancer-fact-sheet.pdf>; 15 Jobs That Put You at a Higher Risk of Cancer, <https://www.cheatsheet.com/money-career/jobs-put-higher-cancer-risk.html/?a=viewall>; Cancer Facts and Figures, American Cancer Society, <https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures.html>; Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009), [https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\).pdf](https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015).pdf).

³ See also, Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009), [https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-\(2015\)-508.pdf](https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015)-508.pdf).

⁴ *Supra*, note 2.

Workers' Compensation Insurance

Under ch. 440, F.S., relating to Workers' Compensation, the employer must pay compensation or furnish benefits if the employee suffers an accidental compensable injury or death arising out of work performed in the course and scope of employment.⁵ The injury, its occupational cause, and any resulting disability must be established to a reasonable degree of medical certainty, and the accidental compensable injury must be the major contributing cause of any resulting injuries.⁶

Compensation for permanent total disability is equal to 66 2/3 percent of the employee's average weekly wages payable to the employee during the continuance of the total disability.⁷ In addition, an employee will generally receive an annual supplemental income benefit equal to three percent per year of the compensation payment, multiplied by the number of calendar years since the date of the injury, until age 62.⁸

Compensation for temporary total disability is equal to 66 2/3 percent of the employee's average weekly wages payable to the employee during the continuance of the total disability but not to exceed 104 weeks. At the earlier of the 104th week or the employee reaching maximum medical improvement, the temporary disability payment will cease and the injured employee's permanent impairment will be determined.⁹

Where the disability or death of an employee results from an "occupational disease," it will be treated as an injury by accident.¹⁰ The employee or his survivors will be entitled to compensation. "Occupational disease" is defined to be "only a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee."¹¹

An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only. An injury or disease involving an occupational disease or repetitive exposure, both causation and sufficient exposure to support causation must be proven by clear and convincing evidence.¹²

⁵ Section 440.09(1), F.S.

⁶ *Id.*

⁷ Section 440.15(1)(a), F.S.

⁸ Section 440.15(1)(f), F.S.

⁹ Section 440.15(2)(a), F.S.

¹⁰ Section 440.151(1)(a), F.S.

¹¹ Section 440.151(2), F.S.

¹² Section 440.09(1), F.S.

The Florida Retirement System (FRS)

General Background

The Florida Retirement System (FRS) was established in 1970.¹³ The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S.¹⁴ As of June 30, 2018, the FRS had 643,333 active members, 415,800 annuitants, 16,032 disabled retirees, and 33,432 active participants of the Deferred Retirement Option Program (DROP).¹⁵ As of June 30, 2018, the FRS consisted of 1,002 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 173 cities and 267 special districts that have elected to join the system.¹⁶

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

- The Regular Class¹⁷ consists of 551,997 active members and 7,349 in renewed membership;
- The Special Risk Class¹⁸ includes 72,642 active members and 976 in renewed membership;
- The Special Risk Administrative Support Class¹⁹ has 87 active members;
- The Elected Officers' Class²⁰ has 2,050 active members and 120 in renewed membership; and
- The Senior Management Service Class²¹ has 7,881 active members and 207 in renewed membership.²²

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

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

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

¹³ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 35. Available online at: https://www.rol.frs.state.fl.us/forms/2017-18_CAFR.pdf. (Last visited January 28, 2019.)

¹⁴ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

¹⁵ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 160.

¹⁶ *Id.* at 196.

¹⁷ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

¹⁸ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

¹⁹ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

²⁰ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

²¹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

²² All figures from Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 163.

The Special Risk Class of the FRS

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S.

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

are required to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.²³

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

Disability Retirement Benefits for Special Risk Members of the FRS

There are two types of disability retirement available under the Florida Retirement System: regular disability, and in-the-line-of-duty disability retirement. To qualify for either type of disability retirement, members must be totally and permanently disabled to the extent that they are unable to work.²⁴ An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for disability benefits.²⁵

To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.²⁶ Under the FRS pension plan, the minimum benefit under regular disability retirement, regardless of class, is 25 percent of the employee's average final compensation.²⁷ In contrast, in-the-line-of-duty disability benefits are available to members on their first day of employment. There is no vesting period. Special Risk Class members receive a minimum in-the-line-of-duty disability benefit of 65 percent of their average final compensation.²⁸ Members in all other classes are eligible to receive a minimum in-the-line-of-duty disability benefit of 42 percent of their average final compensation.²⁹

²³ Section 121.0515(1), F.S.

²⁴ Section 121.091(4)(b), F.S.

²⁵ Florida Retirement System Employer Handbook, Disability Retirement, ch. 10-2, available at https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf (last visited Feb. 15, 2019).

²⁶ Sections 121.091(4)(a) and 121.591(2)(b)2., F.S.

²⁷ Section 121.091(4)(f), F.S.

²⁸ *Id.*

²⁹ *Id.*

Under the investment plan, the disability benefits are in lieu of the normal benefits (the accumulations of contributions and investment earnings in the member's account).³⁰ Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefit calculated the same as a similarly situated pension plan member.³¹

Death Benefits for Special Risk Members of the FRS

Section 121.091(7), F.S., provides death benefits for active members of the FRS pension plan who die before retirement. If an employee dies before vesting, the employee's spouse receives only the accumulated FRS contributions that were made on the employee's behalf. For vested employees, the employee will be assumed to have retired on the date of death, and the spouse may elect one of the annuity options that provide payment to survivors.

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan. Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.³² Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in-the-line-of-duty.³³ If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in-the-line-of-duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for his or her lifetime equal to 100 percent of the member's monthly salary at death.³⁴ If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.³⁵ If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.³⁶

For instances relating to in-the-line-of-duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of the member's death.³⁷ If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or service eligible for purchase, to purchase enough service credit to vest the member posthumously.³⁸

³⁰ Section 121.591(2), F.S.

³¹ Section 121.591(2)(g), F.S.

³² Section 121.091(7), F.S.

³³ Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

³⁴ Section 121.091(7)(d) and (i), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

³⁵ *Id.*

³⁶ Section 121.091(7)(b) and (d), F.S.

³⁷ Section 121.091(7)(e), F.S.

³⁸ Section 121.091(7)(f), F.S.

Under the investment plan, the beneficiary may transfer the accumulations in the member's account to the pension fund and receive the death benefits allowed under the pension plan.³⁹

Retirement Plans for Municipalities and Special Districts

Chapters 175, F.S., provide funding mechanisms for municipal firefighters' and police officers' pension plans. The statute provides a uniform retirement system for firefighters and sets standards for operating and funding of pension systems through a trust fund supported by a tax on insurance premiums. Most Florida firefighters participate in these plans. Two types of plans are governed by each of these chapters—charter plans and local law plans. To be considered totally and permanently disabled, charter plan employees must only be found disabled from rendering useful and efficient service as a firefighter.⁴⁰ Under local law plans, the standards may vary for determining eligibility for disability retirement, death benefits, and the benefits paid, although all plans must abide by minimum standards established under ss. 175.351, F.S.

Presumptions and Burdens of Proof Relating to “in the line of duty” Disability and Death

Existing In the Line of Duty Presumptions for Firefighters

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

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

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

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

Burden of Proof for In-the-Line-of-Duty Benefits

Absent one of the existing presumptions, the FRS member has the burden of proof when claiming in-the-line-of-duty disability or death benefits. The member must show by competent evidence that the death or disability occurred in-the-line-of-duty in order to receive the higher benefits.⁴¹ If the employee or the employee's survivors cannot meet the burden of proof, the

³⁹ Section 121.591(4), F.S.

⁴⁰ Section 175.191, F.S.

⁴¹ Sections 121.091(4)(c) and (7)(d), F.S.

employee or the employee's survivors are entitled only to the lesser benefits available under regular death or disability benefits.

Under existing law, a firefighter that is disabled or dies as a result of cancer must show that the cancer was contracted due to some factor directly related to the employment as a firefighter. Due to latency periods,⁴² it may be difficult for an employee to meet this burden.

Firefighter Death Benefits under s. 112.191, F.S.

Section 112.191(2)(a), F.S., grants a death benefit of \$50,000 to each firefighter, while engaged in the performance of his or her firefighter duties, accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life. Section 112.191(2)(i), F.S., directs the Division of the State Fire Marshal to adjust the death benefit annually based on the increase in the Consumer Price Index for All Urban Consumers. As of July 1, 2018, the amount of the benefit is \$69,801.94.⁴³

III. Effect of Proposed Changes:

The bill applies to a firefighter who is employed full-time by the state or local governments and whose primary responsibilities are the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county and state fire prevention codes and laws pertaining to the prevention and control of fires. Based on this definition, the employers include the Department of Agriculture and Consumer Service (Forest Service), the Department of Financial Services (State Fire Marshal's Office), the Department of Children and Families, the Department of Military Affairs, state universities, cities, counties, port authorities, and fire control districts.

To be eligible for benefits under this bill, a firefighter must be diagnosed with one of 21 specific cancers enumerated in the bill. Upon a diagnosis of one of these cancers, a firefighter is eligible for two new benefits established in the bill - cancer treatment, at the employer's expense, and a \$25,000 cash payment. Under the bill, the firefighter also becomes eligible for disability and death benefits. Based on the conclusive presumption contained in the bill that the cancer or the resulting treatment of cancer occurred in the line of duty, and if the firefighter no longer is able to render useful and effective service as firefighter, the firefighter becomes eligible for enhanced disability benefits either under an employer-sponsored retirement plan or employer-sponsored disability retirement plan. Likewise, if the firefighter dies from the cancer or circumstances that arise from the cancer treatment, the firefighter's death is conclusively presumed to be in the line of duty, resulting in a higher death benefit for the firefighter's beneficiaries.

⁴² "The time between first exposure to a cancer-causing agent and clinical recognition of the disease is called the latency period. Latency periods vary by cancer type, but usually are 15 to 20 years, or longer. Because of this, past exposures are more relevant than current exposures as potential causes of cancers occurring in workers today. Often, these exposures are hard to document." The National Institute for Occupational Safety and Health (NIOSH), *available at* <http://www.cdc.gov/niosh/topics/cancer/clusters.html> (last visited February 16, 2019).

⁴³ Rule 69A-64.005, F.A.C.

Benefits in lieu of workers compensation benefits

The bill provides that, upon a diagnosis of cancer, a firefighter is entitled to certain benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, F.S., if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer. The benefits are:

- Cancer treatment, at no cost to the firefighter, covered within an employer-sponsored health plan or through a group health insurance trust fund, or a rider added to such policy. The firefighter may not be required to contribute toward any deductible, co-payment, or coinsurance amount for the treatment of cancer. The employer may timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter.
- A one-time cash payout of \$25,000, upon the firefighter's initial diagnosis of cancer.

The benefits must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter has otherwise met the employment criteria when he or she terminated employment and was not subsequently employed as a firefighter following that date. A firefighter's cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer for purposes of determining leave time and employee retention policies.

Disability benefits

If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the firefighter totally and permanently disabled if he or she is prevented from rendering useful and effective service as a firefighter (rather than service as an officer or employee for the FRS) and is likely to remain disabled continuously and permanently due to the diagnosis of cancer or circumstances arising out of the treatment of cancer.

If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary, at no cost to the firefighter, until the firefighter's death. This will serve as coverage for total and permanent disabilities attributable to the diagnosis of cancer arising out of the treatment of cancer.

Death benefits

If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the firefighter to have died in the line of duty if he or she dies as a result of cancer or circumstances arising out of the treatment of cancer.

If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a death benefit to the firefighter's beneficiary, at no cost to the firefighter or his or her beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at

least 10 years following the firefighter's death as a result of cancer or circumstances arising out of the treatment of cancer.

A firefighter who dies as a result of cancer or circumstances arising out of the treatment of cancer is considered to have died while engaged in the performance of his or her firefighter duties under s. 112.191(2)(a), F.S., and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.⁴⁴

Funding Firefighter Health Benefits

The bill requires the costs of purchasing the insurance policy or providing benefits through a self-funded system be borne solely by the employer that employs firefighters. The costs of the insurance policy or benefits provided through a self-funded system may not be funded by individual firefighters, by any group health insurance trust fund funded partially or wholly by firefighters, or by any self-insured trust fund that provides health insurance coverage which is funded partially or wholly by firefighters.

Firefighter protections

The bill directs the Division of State Fire Marshal within the Department of Financial services to adopt rules to establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations.

Other issues

The bill contains a legislative finding that determines and declares that this act fulfills an important state interest.

The bill takes effect July 1, 2019.

Other implications

Effective Service

Under current law, to be eligible for disability benefits under the FRS, the member must be prevented, by reason of a medically determinable physical or mental impairment, from "rendering useful and efficient service as an officer or an employee."⁴⁵ Under the bill, a member who is diagnosed with cancer becomes eligible for disability benefits if the member is "prevented from rendering useful and effective service as a firefighter" due to the diagnosis of cancer or circumstances that arise from the treatment of cancer. Even though a member is physically capable of performing services, a member may become eligible to receive disability benefits because the member is not be able to perform duties related to his or her preferred occupation (firefighter). No other members in the FRS are afforded this benefit.

⁴⁴ Section 112.191(2)(a), F.S., provides that a firefighter who is accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life while engaged in the performance of his or her firefighter duties is entitled to a sum of \$50,000. However, such killing must not be the result of suicide and such bodily injury may not be intentionally self-inflicted.

⁴⁵ Section 121.091(4)(b), F.S.

Conclusive presumption of disability

In terms of the presumption of disability, the bill appears to create a conclusive presumption of disability. Under current law, the burden of proof is on the member to show that the medical condition occurred or became symptomatic during the time the member was employed by the FRS-participating employer, that the member was totally and permanently disabled at the time of termination from such employment, and for an in-line-of-duty disability, that the disability was caused by a job-related illness or accident which occurred while the member was in an employee/employer relationship with the FRS-participating employer.

Under the bill, the member must only show that the firefighter was diagnosed with one of the 21 cancers and was employed by an FRS-participating employer. Moreover, the employer has no opportunity to rebut the presumption that the illness was job-related or in-line-of-duty.

Funding of the benefits

Lines 114-122, as noted above, requires the costs of the benefits created by this act to be funded solely by the employer of firefighters. The costs cannot be funded by individual firefighters, by any group health insurance trust fund funded partially or wholly by firefighters, or by any self-insured trust fund that provides health insurance coverage that is funded partially or wholly by firefighters.

These restrictions would require the state and local employers to set up new health insurance programs because most public sector health insurance programs require employee premiums and copayments. Health insurance products typically shift financial burdens among the participants; particularly, healthy employees (including firefighters) pay premiums that ultimately subsidize the costs incurred by other less healthy employees (including firefighters) and dependents.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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

The bill contains a finding that the bill fulfills an important state interest (section 2). The bill appears to apply to all persons similarly situated (those employers employing firefighters), including state agencies, school boards, community colleges, counties, municipalities and special districts. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article X, section 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Lines 82-100 of the bill increase benefits to firefighters participating in public sector retirement plans, including the Florida Retirement System and the various chapter 175 plans sponsored by Florida cities. A special study to determine the actuarial impact on the Florida Retirement System is necessary to determine the appropriate level of concurrent funding necessary to meet the constitutional requirements. Likewise, actuarial impact statements for the local government pension plans are required as well.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact on the state, universities, cities, counties, and special fire control districts is unknown at this time. However, these employers should anticipate incurring additional costs (a) to provide \$25,000 payment to each firefighter diagnosed with one of the 21 specific cancers enumerated in the bill; (b) for any cancer treatment undertaken by an eligible firefighter; (c) associated with potentially higher disability retirement benefits; (d) associated with potentially higher in-line-of-duty death benefits; and (e) associated with the adjusted \$50,000 death benefit granted by s. 112.191(2)(a), F.S.

VI. Technical Deficiencies:

Lines 61-63 directs the employer to provide cancer treatment within an employer-sponsored health plan. The provision also addresses the employer reimbursing the firefighter for out-of-pocket deductibles, copayments, and coinsurance incurred. Lines 114-122 prohibit the use of insurance programs that are partially or wholly funded by firefighters. Most employer-sponsored health plans require employee paid premiums and copayments or coinsurance. The two provisions appear to be inconsistent with each other.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.1816 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Flores

39-00816A-19

2019426__

1 A bill to be entitled
 2 An act relating to firefighters; creating s. 112.1816,
 3 F.S.; providing definitions; granting certain benefits
 4 to a firefighter upon receiving a diagnosis of cancer
 5 if certain conditions are met; requiring an employer
 6 to make certain disability payments to a firefighter
 7 in the event of a total and permanent disability;
 8 providing for death benefits to a firefighter's
 9 beneficiary if a firefighter dies as a result of
 10 cancer or cancer treatments; specifying that any costs
 11 associated with benefits granted by the act must be
 12 borne by the employer; requiring the Division of State
 13 Fire Marshal to adopt certain rules; providing a
 14 declaration of important state interest; providing an
 15 effective date.

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

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

21 112.1816 Firefighters; cancer diagnosis.-

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

23 (a) "Cancer" includes:

- 24 1. Bladder cancer.
 25 2. Brain cancer.
 26 3. Breast cancer.
 27 4. Cervical cancer.
 28 5. Colon cancer.
 29 6. Esophageal cancer.

Page 1 of 5

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

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30 7. Invasive skin cancer.
 31 8. Kidney cancer.
 32 9. Large intestinal cancer.
 33 10. Lung cancer.
 34 11. Malignant melanoma.
 35 12. Mesothelioma.
 36 13. Multiple myeloma.
 37 14. Non-Hodgkin's lymphoma.
 38 15. Oral cavity and pharynx cancer.
 39 16. Ovarian cancer.
 40 17. Prostate cancer.
 41 18. Rectal cancer.
 42 19. Stomach cancer.
 43 20. Testicular cancer.
 44 21. Thyroid cancer.
 45 (b) "Employer" has the same meaning as in s. 112.191.
 46 (c) "Firefighter" means an individual employed as a full-
 47 time firefighter within the fire department or public safety
 48 department of an employer whose primary responsibilities are the
 49 prevention and extinguishing of fires; the protection of life
 50 and property; and the enforcement of municipal, county, and
 51 state fire prevention codes and laws pertaining to the
 52 prevention and control of fires.
 53 (2) Upon a diagnosis of cancer, a firefighter is entitled
 54 to the following benefits, as an alternative to pursuing
 55 workers' compensation benefits under chapter 440, if the
 56 firefighter has been employed by his or her employer for at
 57 least 5 continuous years, has not used tobacco products for at
 58 least the preceding 5 years, and has not been employed in any

Page 2 of 5

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

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59 other position in the preceding 5 years which is proven to
 60 create a higher risk for any cancer:

61 (a) Cancer treatment, at no cost to the firefighter,
 62 covered within an employer-sponsored health plan or through a
 63 group health insurance trust fund. The health plan, trust fund,
 64 or insurance policy, or a rider added to such policy, may not
 65 require the firefighter to contribute toward any deductible,
 66 copayment, or coinsurance amount for the treatment of cancer. In
 67 complying with this paragraph, the employer may timely reimburse
 68 the firefighter for any out-of-pocket deductible, copayment, or
 69 coinsurance costs incurred.

70 (b) A one-time cash payout of \$25,000, upon the
 71 firefighter's initial diagnosis of cancer.

72 The benefits specified in paragraphs (a) and (b) must be made
 73 available by a former employer of a firefighter for 10 years
 74 following the date that the firefighter terminates employment,
 75 so long as the firefighter otherwise met the criteria specified
 76 in this subsection when he or she terminated employment and was
 77 not subsequently employed as a firefighter following that date.
 78 For purposes of determining leave time and employee retention
 79 policies, the employer must consider a firefighter's cancer
 80 diagnosis as an injury or illness incurred in the line of duty.

81 (3) (a) If the firefighter participates in an employer-
 82 sponsored retirement plan, the retirement plan must consider the
 83 firefighter totally and permanently disabled if he or she is
 84 prevented from rendering useful and effective service as a
 85 firefighter and is likely to remain disabled continuously and
 86 permanently due to the diagnosis of cancer or circumstances that
 87

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88 arise out of the treatment of cancer.

89 (b) If the firefighter does not participate in an employer-
 90 sponsored retirement plan, the employer must provide a
 91 disability retirement plan that provides the firefighter with at
 92 least 42 percent of his or her annual salary, at no cost to the
 93 firefighter, until the firefighter's death, as coverage for
 94 total and permanent disabilities attributable to the diagnosis
 95 of cancer which arise out of the treatment of cancer.

96 (4) (a) If the firefighter participated in an employer-
 97 sponsored retirement plan, the retirement plan must consider the
 98 firefighter to have died in the line of duty if he or she dies
 99 as a result of cancer or circumstances that arise out of the
 100 treatment of cancer.

101 (b) If the firefighter did not participate in an employer-
 102 sponsored retirement plan, the employer must provide a death
 103 benefit to the firefighter's beneficiary, at no cost to the
 104 firefighter or his or her beneficiary, totaling at least 42
 105 percent of the firefighter's most recent annual salary for at
 106 least 10 years following the firefighter's death as a result of
 107 cancer or circumstances that arise out of the treatment of
 108 cancer.

109 (c) Firefighters who die as a result of cancer or
 110 circumstances that arise out of the treatment of cancer are
 111 considered to have died in the manner as described in s.
 112 112.191(2) (a), and all of the benefits arising out of such death
 113 are available to the deceased firefighter's beneficiary.

114 (5) The costs of purchasing an insurance policy that
 115 provides the cancer benefits contained in this section, or the
 116 costs of providing such benefits through a self-funded system,

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117 must be borne solely by the employer that employs firefighters
118 and may not be funded by individual firefighters, by any group
119 health insurance trust fund funded partially or wholly by
120 firefighters, or by any self-insured trust fund that provides
121 health insurance coverage that is funded partially or wholly by
122 firefighters.

123 (6) The Division of State Fire Marshal within the
124 Department of Financial Services shall adopt rules to establish
125 employer cancer prevention best practices as it relates to
126 personal protective equipment, decontamination, fire suppression
127 apparatus, and fire stations.

128 Section 2. The Legislature determines and declares that
129 this act fulfills an important state interest.

130 Section 3. This act shall take effect July 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 04, 2019

I respectfully request that **Senate Bill #426**, relating to Firefighters, be placed on the:

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

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 39

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/19

Meeting Date

426

Bill Number (if applicable)

Topic Firefighters Cancer

Amendment Barcode (if applicable)

Name Jay Post

Job Title retired Firefighter

Address 230 Avenida Delmar

Phone 321-543-9073

Street Indianantic FL 32803

Email jivaevolit@hotmail.com

City State Zip

Speaking: [X] 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 [X] No

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)

2-19-19

Meeting Date

426

Bill Number (if applicable)

Topic Firefighters

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Sr. Legislative Advocate

Address PO Box 1757

Phone 850-701-3621

Street

Tallahassee

FL

32302

Email ahughes@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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-19-19

Meeting Date

426

Bill Number (if applicable)

Topic SB 426

Amendment Barcode (if applicable)

Name Meredith Stanfield

Job Title Cabinet & Legislative Affairs Director

Address PL 11, Capitol

Street

Phone 850-509-2753

Tallahassee

City

FL

State

32399

Zip

Email meredith.stanfield@myfloridacfo.com

Speaking: For Against Information

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

Representing Chief Financial Officer Jimmy Patronis

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/19

Meeting Date

~~378~~ ~~426~~ (426)

Bill Number (if applicable)

Topic Firefighters

Amendment Barcode (if applicable)

Name Commissioner Daniella Levine Cava

Job Title Miami Dade County Commissioner

Address 111 NW 1st St.

Phone (305) 375-5600

Street

Miami

City

FL

State

331

Zip

Email DLEAVA@miamidade.gov

Speaking: For Against Information

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

Representing Miami Dade County Board of County Commissioners

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/19

Meeting Date

SB 426

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name OMAR BLANCO

Job Title PRESIDENT

Address 8000 NW 21 ST.

Phone 305-593-6100

Street

MIAMI

City

FL

State

33122

Zip

Email _____

Speaking: For Against Information

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

Representing METRO-DADE FIREFIGHTERS LOCAL 1403

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-19-19

Meeting Date

426

Bill Number (if applicable)

Topic FIREFIGHTER CANCER BILL

Amendment Barcode (if applicable)

Name CLAUDINE BUZZU

Job Title FIREFIGHTER

Address 501 E ACRE DR.

Phone

Street

PLANTATION

FL

33317

City

State

Zip

Email

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

Waive Speaking: [] In Support [] Against

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

Representing LOCAL 1403 / self

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

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)

2/19/2019
Meeting Date

426
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

2.19.19
Meeting Date

426
Bill Number (if applicable)

Topic Fire Fighter Cancer

Amendment Barcode (if applicable)

Name Dwayne McKeever

Job Title Firefighter

Address 7607 1st AVE WEST
Street

Phone 941-812-2343

Brad
City

FL
State

34209
Zip

Email dmckeever@smfr.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)

2/19/19

Meeting Date

426

Bill Number (if applicable)

Topic Firefighters

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 343 W Madison St

Phone 850-224-7333

Street

Tallahassee

FL

32301

City

State

Zip

Email roccosalvatori@icloud.com

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

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

Representing Florida Professional Firefighters

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/19 Meeting Date

426 Bill Number (if applicable)

Topic Firefighter Cancer

Amendment Barcode (if applicable)

Name Jim Tolley

Job Title President Fla Professional Firefighters

Address 343 west madison st. Phone 850 224 2333

Tallahassee FL 32301 Email jimt@ppfp.org

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

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

Representing Florida Professional Firefighters

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

Lobbyist registered with Legislature: [X] 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 7008

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Security Breach Information/Department of Legal Affairs

DATE: February 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Stallard</u>	<u>Cibula</u>		JU Submitted as Committee Bill
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7008 amends s. 501.171, F.S. to save from repeal to continue the public records exemption for information received by the Department of Legal Affairs following and during the investigation of a security breach. The bill is based on an Open Government Sunset Review of the public records exemption. The exemption is scheduled for repeal on October 2, 2019.

The exemption was enacted initially as a companion bill to the Florida Information Protection Act of 2014, which requires covered entities to take reasonable steps to protect and secure personal information held in electronic form, such as social security numbers, driver license numbers, and medical information. However, if unauthorized access to the information of at least 500 people nonetheless occurs, the Act requires the covered entity involved to notify the Department.

The exemption serves to protect sensitive personal, corporate, and governmental information, as well as to ensure the integrity of an investigation of a security breach. Accordingly, allowing the exemption to be repealed could cause the:

- Premature release of confidential information that would jeopardize a related investigation;
- Publication of sensitive personal information, in turn causing identity theft or financial harm;
- or
- Disclosure of a computer forensic report that reveals vulnerabilities in a covered entity's data security, thus making the entity vulnerable to future data breaches.

The bill removes the scheduled repeal date to continue the public records exemption for information received by the Department of Legal Affairs.

The bill takes effect October 1, 2019.

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

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

The Public Records Act contains general exemptions that apply across agencies. Agency- or program-specific exemptions are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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” 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).

under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

The Florida Information Protection Act of 2014 and the Related Exemption

In 2014, the Legislature enacted the Florida Information Protection Act, which expressly requires private and governmental “covered entities”²⁰ to take reasonable steps to secure electronically

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c)

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ “Covered entity” means “a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information.” For purposes of the notice requirements set forth in the Act, the term includes governmental entities.

held personal information and to report larger security breaches that compromise this information. One aspect of the reporting requirement involves notifying the Department of Legal Affairs. A related bill made the information contained in the notification or obtained through a related investigation confidential and exempt from this state's public records laws.²¹

Florida Information Protection Act of 2014

The Florida Information Protection Act requires covered entities to notify the Department of Legal Affairs and affected individuals in the event of a breach of data security involving access to the personal information of at least 500 individuals.

A breach of security is defined as an unauthorized access of data in electronic form containing personal information. Personal information includes a person's name in combination with:

- A social security number;
- A driver license or identification card number, passport number, military identification number or other similar number issued on a government document used to verify identity;
- A financial account number or credit or debit card number in combination with a required security or access code or password necessary to gain access to a person's financial account;
- Certain medical information; or
- A person's health insurance policy number or subscriber identification number or similar identifier identification.

Personal information also includes a username or e-mail address in combination with a password or security question and answer that permits access to an online account.

Confidential and Exempt Information

Under the public records exemption related to the Act, certain information received by the Department of Legal Affairs related to a security breach is confidential and exempt from this state's public records requirements. The exempt information includes that received by the department in a notification required by the Act or through an investigation by the department or a law enforcement agency. As explained below, some information is exempt only until an investigation is completed or ceases to be active.

While an investigation is active, the department may disclose confidential and exempt information for any of the following reasons:

- In furtherance of its official duties and responsibilities.
- For print, publication, or broadcast if the department determines that the release would assist in notifying the public or in locating or identifying a person that the department believes to have been a victim of the breach or improper disposal of customer records. However, this does not justify disclosing confidential and exempt information if that information is covered by another public records exemption, is personal information or a computer forensic report, would reveal weaknesses in a covered entity's data security, or would disclose a covered entity's proprietary information.
- To another governmental agency in the furtherance of the department's official duties and responsibilities.

²¹ See SB 1526 (2014 Reg. Session).

After the completion of an investigation or once the investigation is no longer active, the following information must remain confidential and exempt from public records requirements:

- All information to which another public records exemption applies;
- Personal information;
- A computer forensic report;
- Information that would reveal weaknesses in a covered entity's data security; and
- Information that would disclose a covered entity's proprietary information.

Proprietary information means information that:

- Is owned or controlled by the covered entity.
- Is intended to be private and is treated by the covered entity as private because disclosure would harm the entity or its business operations.
- Has not been disclosed except as required by law or a private agreement that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

Proprietary information also includes trade secrets or competitive interests, which, if disclosed, would impair the competitive business of the covered entity that is the subject of the information.

Open Government Sunset Review

Because the exemption relates to security-breach information received by the Department of Legal Affairs, staff sent a survey to the department to learn of its experience in interpreting and applying the exemption. From the completed survey and follow-up conversations, staff learned the following.

The department has received an estimated 685 security-breach notifications since the law took effect on July 1, 2014. Of the notifications, nearly 90 percent came from private organizations.

The department has investigated each notification that it received. By way of the notifications and ensuing investigations, the department has received various types of information, including:

- A description of the type of attack or compromise that caused a breach;
- A description of the location of an attack within an IT enterprise;
- An explanation of the means of stopping an attack;
- The number of Florida residents affected by a breach;
- Services being offered to affected consumers;
- Customer lists;
- Patient data;
- Forensic reports relating to a covered entity's data security and IT vulnerabilities;
- Trade secrets; and
- Internal policies and procedures.

Most of this information obtained by the department is not generally available to the public—it would be available only if the department releases it on one of the bases enumerated in the

exemption statute. However, some general information is available publicly through technology blogs, news articles, and consumer advocacy websites.

Since July 1, 2014, the department has received more than 30 requests for records relating to security breaches. The department has never released these records during an active investigation and has not needed to. However, on three or four occasions, the department has released information after an investigation when the information requested was no longer confidential and exempt.

Under the statute, some types of information remain confidential and exempt even after an investigation is completed or ceases to be active. This information includes all information to which another public records exemption applies, personal information, and information that would reveal weaknesses in a covered entity's data security. The department has not released any information of these types even after an investigation was complete or ceased to be active.

III. Effect of Proposed Changes:

The bill continues the current public records exemption relating to information received by the Department of Legal Affairs following a data-security breach of a covered entity by deleting its scheduled repeal date. The exemption is scheduled for repeal on October 2, 2019.

The exemption protects from public disclosure information received by the Department of Legal Affairs through a notification of a data security breach from a covered entity or through an investigation of a breach by the department or a law enforcement agency.

Chapter 2014-190, Laws of Fla., included a public necessity statement that provided rationale for the exemption. This rationale recognized that the premature release of information being used in an active investigation of a data breach could frustrate the investigation and impair the ability of the Department of Legal Affairs as well as allow for sensitive information such as social security numbers to be gathered. It also noted that release of computer forensics could reveal weaknesses in security that could compromise future security.

The bill removes the scheduled repeal of the public records exemption. By removing the scheduled repeal of the exemption, the exemption is no longer subject to a review under the Open Government Sunset Review Act.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue. Likewise, it does not reduce the percentage of a 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 for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect information received by the Department of Legal Affairs following and during the investigation of a security breach. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The bill, by preserving the public records exemption, will continue to protect sensitive personal and data-security information from public disclosure or from premature public disclosure. Allowing the exemption to sunset would appear to increase the risk of identity theft or the divulgence of a covered entity's data-security vulnerabilities.

The private sector will continue to be subject to the cost, to the extent imposed, associated with an agency making redactions in response to the public records request.

C. Government Sector Impact:

By preserving the public records exemption, which protects governmental entities' data-security weaknesses from public disclosure, it appears likely that the government will continue to experience a decreased risk of potentially costly data breaches.

Governmental entities will continue to incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.171, 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 Judiciary

590-01172-19

20197008__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 501.171, F.S., which provides a public records exemption for information received by the Department of Legal Affairs pursuant to a notification of a security breach or during the course of an investigation of such breach; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (11) of section 501.171, Florida Statutes, is amended to read:

501.171 Security of confidential personal information.—

(11) PUBLIC RECORDS EXEMPTION.—

(a) All information received by the department pursuant to a notification required by this section, or received by the department pursuant to an investigation by the department or a law enforcement agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

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2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or improper disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in a covered entity's data security.

5. Information that would disclose a covered entity's proprietary information.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the covered entity.

2. Is intended to be private and is treated by the covered entity as private because disclosure would harm the covered entity or its business operations.

3. Has not been disclosed except as required by law or a

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59 private agreement that provides that the information will not be
60 released to the public.

61 4. Is not publicly available or otherwise readily
62 ascertainable through proper means from another source in the
63 same configuration as received by the department.

64 5. Includes:

65 a. Trade secrets as defined in s. 688.002.

66 b. Competitive interests, the disclosure of which would
67 impair the competitive business of the covered entity who is the
68 subject of the information.

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

73 Section 2. This act shall take effect October 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/2019

Meeting Date

7008

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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.

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 7010

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Treatment-based Drug Court Programs

DATE: February 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Tulloch	Cibula		JU Submitted as Committee Bill
1.	Hackett	McVaney	GO	Favorable
2.			RC	

I. Summary:

SB 7010 amends s. 397.334, F.S. to save from repeal a public records exemption for health-related records, reports, and evaluations concerning applicants to or participants in treatment-based drug court programs that is scheduled to repeal on October 2, 2019.

Treatment-based drug court programs identify and treat eligible individuals whose involvement in the justice system is largely due to substance abuse or addiction. In providing substance abuse treatment, drug court programs aim to reduce criminal recidivism and domestic violence by addressing one of the underlying causes of such behavior.

In order to determine an individual's eligibility for the drug court program, or to monitor a participant's progress in the program, a treatment provider must share the individual's health-related information with the judge and other relevant parties on the participant's drug court multidisciplinary team. Because an individual's health information becomes part of the court's record, the public records exemption makes the following health-related records, reports, and evaluations both confidential and exempt from inspection and copying by the public:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

The bill removes the scheduled repeal date to continue the public records exemption for information relating to participants and persons considered for participation in treatment-based drug court programs.

The bill takes effect October 1, 2019.

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

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

The Public Records Act contains general exemptions that apply across agencies. Agency- or program-specific exemptions are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

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

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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” 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).

under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁹

OGSR Review Process

In examining an exemption, the Act asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

broader than necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes of the Act, the Legislature finds that the purpose of the exemption outweighs open government policy, *and* the purpose 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;²¹
- 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;²² or
- It protects trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ The specified questions are:

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

OGSR Review Outcomes

At the conclusion of the review process, the Legislature may choose to (1) continue the existing exemption, (2) continue and narrow the exemption, (3) continue and expand the exemption, or (4) "sunset" (automatically repeal) the exemption. As a matter of historic practice, when choosing to continue an exemption, continuation has been accomplished by repealing the sunset date rather than reenacting the exemption.

If the Legislature chooses to either (1) continue the exemption without substantive changes or (2) continue and narrow the exemption, then it may do so *without* a public necessity statement and two-thirds vote for passage.

However, if the exemption is (3) continued and *expanded*, then a public necessity statement and two-thirds vote for passage are required.²⁵

On the other hand, if (4) the Legislature allows the exemption to sunset (repeal automatically), no action need be taken. The previously exempt records will remain exempt unless provided for by law.²⁶

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ FLA. CONST. art. I, s. 24(c).

²⁶ Section 119.15(7), F.S.

Overview of Treatment Based Drug Courts

Treatment-based drug courts are a type of problem-solving court aimed at addressing one of the causes of criminal behavior and domestic violence: substance abuse and addiction.²⁷ Generally, drug court programs identify individuals in either the criminal justice or dependency system who may benefit from substance abuse treatment. Those individuals may either be diverted to a substance abuse treatment center shortly after entering the justice system, or may be required to complete treatment later, as a condition of probation/community control or a dependency case plan. To help these individuals successfully complete treatment, drug courts provide incentives (such as reduced penalties) and support²⁸ to the individual to help him or her succeed.²⁹

Section 397.334, F.S., the statute under review, authorizes a county to fund a treatment-based drug court program to provide individualized treatment to eligible individuals in the criminal justice or dependency system.³⁰ The goal in providing treatment is to reduce criminal recidivism as well as to break the cycle of domestic violence, child abuse, and neglect owing to substance abuse.³¹ Ultimately, entry into a treatment-based drug court program is *voluntary*, and the written consent and agreement of the potential participant is necessary for a court to order him or her into a treatment program.³²

²⁷ See Florida Courts, *Problem-Solving Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/> (last visited Jan. 14, 2019).

²⁸ Section 397.334(1), F.S. Each county opting to fund a drug court program must implement the following 10 therapeutic jurisprudence principles: (1) integration of alcohol, drug treatment, and mental health services into justice system case processing; (2) nonadversarial approach; (3) early identification of eligible participants; (4) continuum of services; (5) alcohol and drug testing for abstinence; (6) coordinated strategy for responses to participants' compliance; (7) ongoing judicial interaction; (8) monitoring and evaluation for program effectiveness; (9) interdisciplinary education; and (10) partnerships with stakeholders. s. 397.334(4)(a)-(j), F.S. Note, because drug court programs are individually operated by each county and are not uniform, the Office of State Court Administrators (OSCA) publishes a guide setting out the best practice standards for drug courts to follow. This guide is based largely on the research and analysis by the National Association of Drug Court Professionals (NADP). See Florida Courts, *Florida Adult Drug Court Best Practice Standards*, June 2017, https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf.

²⁹ See *supra*, n. 20.

³⁰ See *supra*, n. 21.

³¹ See Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "Introduction," June 2017, p. 2 https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf. See also s. 397.305(1), F.S. ("Substance abuse impairment is a disease which affects the whole family and the whole society and requires a system of care that includes prevention, intervention, clinical treatment, and recovery support services that support and strengthen the family unit."); s. 397.305(8), F.S. ("It is the intent of the Legislature to provide an alternative to criminal imprisonment for substance abuse impaired adults and juvenile offenders by encouraging the referral of such offenders to service providers not generally available within the juvenile justice and correctional systems, instead of or in addition to criminal penalties."); s. 39.001(6)(d), F.S. ("It is the intent of the Legislature to encourage the use of . . . the drug court program model established under s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address mental illnesses and substance abuse disorders as the court deems appropriate at every stage of the dependency process.").

³² Section 397.334(2), F.S. As part of giving voluntary consent, the individual must be given a written copy of the "coordinated strategy" for treatment developed by the multidisciplinary team that will monitor the participant's progress. See s. 397.334(5), F.S. and "Participation" discussion, *infra*.

Throughout the drug court evaluation and treatment process, records of a drug court participant's screenings, diagnosis, and progress are made part of the participant's court record.³³ This process is discussed in more detail as follows.

Eligibility Screening Records

First, a potential participant must be screened for eligibility. Generally, a potential drug court participant is identified by one of the parties involved either when an individual enters the criminal justice system or when the state intervenes in a domestic matter.³⁴ The potential participant is then screened for eligibility by the appropriate agencies and mental health treatment professionals using "evidence-based assessment tools and procedures" in order to determine the individual's level of risk and whether he or she can be treated safely and effectively.³⁵

If an individual is determined to be eligible by the appropriate agency and mental health treatment professional, the applicant's screening information, including mental health assessments, will be referred to the presiding judge who will ultimately decide whether to permit the individual to participate. As stated above, the participant must voluntarily agree to enter the program and give written consent.³⁶

Treatment Records

Next, participants accepted to the drug court programs generally receive outpatient evaluation and treatment over the course of 9 to 12 months.³⁷ Treatment is conducted in phases which are more intensive in the beginning, and consists of group counseling, individual counseling, and peer support groups.³⁸ Participants must also submit to drug and alcohol testing throughout the

³³ See generally *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, Q. 11 (On file with Senate Judiciary Committee).

³⁴ Section 397.334(1), F.S. (contemplating involvement of and encouraging participation by "the Department of Corrections, the Department of Children and Families, the Department of Juvenile Justice, the Department of Health, the Department of Law Enforcement, the Department of Education, and such agencies, local governments, law enforcement agencies, other interested public or private sources, and individuals to support the creation and establishment of these problem-solving court programs."). The drug court administrators surveyed noted that many agencies and individuals refer individuals to the drug court programs, from the individual's attorney, public defender, or family member to the individual's arresting officer or probation officer. See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, Q. 2: "how are cases referred to the program?" (On file with Senate Judiciary Committee).

³⁵ See s. 397.334(2)-(3), (5), F.S. (providing for pre and post-trial intervention programs and for a coordinated strategy for screening and treatment among a drug court team, respectively); s. 948.08, F.S. (providing that, for pre-trial drug court diversion programs, first time felony offenders (regardless of misdemeanor record) and non-violent felony offenders may be eligible if the judge, drug court manager, prosecutor, and victim agree); s. 948.16, F.S. (setting out eligibility for participation drug and alcohol-related misdemeanor pre-trial program). See also Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "I. Target Population," June 2017, pp. 3-4 https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf (noting that those with a criminal record are not automatically disqualified from participating in drug court programs).

³⁶ See *supra*, n. 25.

³⁷ Section 397.334(4), F.S. See also Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "V. Substance Abuse Treatment," June 2017, pp. 12-14.

³⁸ *Id.* https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf.

³⁸ *Id.*

program.³⁹ As appropriate, the drug court program may also assist the participant in obtaining additional services and treatments, such as finding drug-free housing, receiving medical treatment, or obtaining family or mental health counseling.⁴⁰

A participant's treatment plan and progress is overseen by a multi-disciplinary drug court team, usually consisting of the judge or judicial officer, a case manager or treatment provider, the participant's legal representative, the participant, and representatives from any relevant state agencies.⁴¹ Pursuant to the participant's written consent and agreement, the members of the multidisciplinary team share information about the participant both when developing the initial treatment plan and as necessary throughout treatment in order to assess the participant's progress and compliance.⁴² Treatment evaluation and reports are part of the participant's court file.

Additionally, the team members attend status hearings where relevant information about the participant's treatment and progress may be shared in open court.⁴³

Exemption and Confidentiality of Treatment-based Drug Court Program Records

Before s. 397.334, F.S. was enacted in 2014, a drug court participant's court file was not automatically sealed as confidential and exempt from public inspection.⁴⁴ Rather, each individual drug court participant had to make a motion to seal the court record from public inspection.⁴⁵ For each individual motion filed, the judge had to hold a hearing and issue an order granting or denying the participant's motion.⁴⁶ This motion-driven process reportedly had a significant impact on the workload for both the judges and the court clerks' (administrative) offices.⁴⁷

³⁹ Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "VII. Drug and Alcohol Testing," June 2017, pp. 18-19, https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf.

⁴⁰ Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "VI. Additional Treatment and Social Services," June 2017, pp. 15-19,

https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf.

⁴¹ Section 397.334(5), F.S. ("While enrolled in a treatment-based drug court program, the participant is subject to a coordinated strategy developed by a drug court team under subsection (4)."). See also Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "VIII. Multidisciplinary Team," June 2017, p. 20-21

https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf.

⁴² Section 397.334(5), F.S. See also Florida Courts, *Florida Adult Drug Court Best Practice Standards*, "IV. Incentives, Sanctions, and Therapeutic Adjustments," June 2017, pp. 9-11,

https://www.flcourts.org/content/download/216679/1966020/Florida_Adult_Drug_Court_Standards_Full_Document.pdf.

⁴³ See n. 32, *supra*. See also *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, Q. 7.c. & 15.d. (On file with Senate Judiciary Committee).

⁴⁴ *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228, 229-230 (Fla. 2011). Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 280* (December 2, 2013) (on file with the Senate Committee on Judiciary).

⁴⁵ *Id.* See Fla. R. Jud. Admin. 2.420. Rule 2.420 made certain enumerated categories automatically exempt "but only insofar as [those categories] were confidential under [Florida's Sunshine Law] as of the date of adoption of Rule 2.420." *Poole v. South Dade Nursing & Rehab. Ctr.*, 139 So. 3d 436, 439 & n.4 (Fla. 3d DCA 2014) (holding that criminal competency evaluations are not confidential under Rule 2.420 or as a patient treatment record).

⁴⁶ *Id.*

⁴⁷ Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 280* (December 2, 2013) (on file with the Senate Committee on Judiciary).

Florida Laws Protecting Patient Treatment Records

Generally, a patient's treatment records are protected from disclosure by Florida's Constitutional Right to Privacy⁴⁸ and s. 456.057(7)(a), F.S. The patient's written consent is generally required before the patient's medical and treatment information may be disclosed to a third party.⁴⁹ Additionally, certain communications between a patient and psychotherapist will be deemed privileged and confidential, and cannot be disclosed without the consent of the patient to a third party.⁵⁰

While the foregoing laws protect a patient's treatment records from disclosure to third parties, the protection does not extend to certain court-ordered evaluations, like criminal pre-trial competency evaluations, because the person under evaluation is not a "patient" who is "seeking care and treatment."⁵¹ Rather, the purpose of such evaluations is to share information with a "third party," i.e., the trial court, in order to assist the trial court in making a decision; e.g., to assess whether a criminal defendant is competent to stand trial.⁵²

Federal Law Protecting Patient Treatment Records

Under Federal law, an individual's health information is generally made private and protected from release by the Health Insurance Portability and Accountability Act ("HIPAA"). HIPAA restricts the release of "protected health information" that is "created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse" concerning the "past, present, and future physical or mental health" of an individual and any treatment received.⁵³

Federal law also protects the confidentiality of substance abuse patients⁵⁴ in "federally-assisted" treatment-based drug court program.⁵⁵ Specifically, federal law prohibits the disclosure of (1) the identity of both applicants to and participants in a substance abuse treatment program, and (2) information about both applicants and patients used for diagnosis or treatment purposes.⁵⁶

⁴⁸ FLA. CONST. art. I, s. 23. However, the right to privacy in medical records is not absolute and may give way when the state has a "compelling government interest" such as controlling and prosecuting criminal activity. *State v. Carter*, 23 So. 3d 798, 801 (Fla. 1st DCA 2009). For example, individuals filling a prescription generally have only "a limited expectation of privacy in pharmacy records." *Id.* (quoting *Murphy v. State*, 115 Wash.App. 297, 62 P.3d 533, 539 (2003)).

⁴⁹ Although exceptions are listed, section 456.057(7)(a) provides that "records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient, the patient's legal representative, or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient." See also *Poole*, 139 So. 3d at 441 (discussing Florida privacy laws).

⁵⁰ Section 90.503, F.S. (defining a psychotherapist as one who is authorized to diagnose and treat "alcoholism and other drug addiction," including medical practitioners, psychologists, clinical social workers, therapists, mental health counselors, and personnel of treatment facilities who provide treatment.). See also *Poole* at 441.

⁵¹ *Poole* at 441 (citing *Miami Herald Publishing Co. v. Chappell*, 403 So. 2d 1342, 1344-45 (Fla. 3d DCA 1981)).

⁵² *Id.*

⁵³ 42 U.S.C. s 1320d(4). See also 45 C.F.R. s. 160.103.

⁵⁴ See 42 C.F.R. Part 2.

⁵⁵ 42 C.F.R. s. 2.12(b).

⁵⁶ See 42 C.F.R. ss. 2.11-2.12. The definition of "federally assisted" is broad enough that Florida's drug court program would likely be deemed "federally assisted" such that 42 C.F.R. Part 2 applies. The drug court program received federal grant money until 2013. See Florida Courts, *Florida's Adult Post-Adjudicatory Drug Court Expansion Program Facts*, July 2017, https://www.flcourts.org/content/download/216244/1963410/PADC_Fact_Sheet.pdf. If the state courts receive federal grant money that *could* be used toward the drug court, the drug court program meets the definition of "federally assisted." 42

However, “the HIPAA and other applicable confidentiality statutes . . . do *not* prohibit treatment professionals and or criminal justice professionals from sharing information related to substance abuse and mental health treatment” with one another.⁵⁷ For example, courts have already held that law enforcement officers and prosecutors are not specifically “covered entities” whose behavior is governed by HIPAA’s standards.⁵⁸ “Rather, these statutes control how and under what circumstances such information may be disclosed.”⁵⁹ “Treatment professionals are generally permitted to share confidential treatment information with criminal justice professionals pursuant to a voluntary, informed, and competent waiver of a patient’s confidentiality and privacy rights^[60] or pursuant to a court order^[61].”⁶² However, “[t]he scope of the disclosure must be limited to the minimum information necessary to achieve the intended aims of the disclosure.”⁶³

Staff Research of Practitioners and Interested Parties

With the assistance of the Office of State Court Administrators (OSCA), staff sent a survey to each drug court program coordinator or administrator.⁶⁴ None of the judicial circuits reported any problems understanding or administering the current exemption, nor did any report any litigation over the exemption. Additionally, none of the drug courts recommended repealing the exemption. Rather, half of the 20 judicial circuits (10) recommended keeping the existing public records exemption, while a quarter (5) recommended expanding the exemption to cover participant records in other problem-solving courts (e.g., veterans’ courts).⁶⁵ The remaining judicial circuits had no recommendation.⁶⁶

When the exemption was passed in 2014, the stated public necessity for the exemption was to encourage participation in the drug court program.⁶⁷ In response to the survey, drug court

C.F.R.. 2.12(b)(3)(ii)(Federally assisted if supported by funds provided by federal department or agency and being “[c]onducted by a state or local government unit which, through general or special revenue sharing or other forms of assistance, receives federal funds which could be (but are not necessarily) spent for the substance use disorder program”). In any event, the drug courts surveyed indicated that they regard themselves as subject to 42 C.F.R. Part 2. *See Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, Q. 16.a. (On file with Senate Judiciary Committee).

⁵⁷ See note 32, *supra*, “C. Team Communication and Decision-Making” at p. 68.

⁵⁸ *Id.* See *Carter*, 23 So. 3d at 800 (holding that HIPAA standards did not apply nor, alternatively, provide for suppression of medical history received by law enforcement officer from a pharmacy under s. 893.07(4), F.S.) (citing 45 C.F.R. §§ 160.102(a), 160.104(a); *State v. Straehler*, 307 Wis.2d 360, 745 N.W.2d 431 (2007) with parenthetical “HIPAA standards not applicable to police officers”; *State v. Downs*, 923 So.2d 726 (La.App. 1st Cir.2005) with parenthetical “HIPAA standards not applicable to district attorney.”).

⁵⁹ See *supra*, n. 48 (citation omitted).

⁶⁰ 45 C.F.R.164.502(a).

⁶¹ 45 C.F.R. §164.512(e).

⁶² See *supra*, n. 48 (citation omitted).

⁶³ *Id.* (citing 45 C.F.R. ss. 164.502(b) & 164.514(d).

⁶⁴ Nineteen out the 20 judicial circuits have at least one active adult drug court. The third judicial circuit no longer operates a drug court. See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, August 2018, (On file with Senate Judiciary Committee).

⁶⁵ See Florida Courts, *Problem-Solving Courts*, <https://www.flcourts.org/Resources-Services/Court-Improvement/Problem-Solving-Courts> (last visited Jan. 14, 2019).

⁶⁶ *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, Q. 12, 14, 17, August 2018, (On file with Senate Judiciary Committee).

⁶⁷ Ch. 2014-174, Laws of Fla.

program administrators reported observing no direct correlation between participation in the drug court program and the passage of the public records exemption.⁶⁸ Additionally, none of the drug court programs reported that anyone had declined to participate because some information may be discussed in open court. However, several programs reported that participants needing to discuss sensitive information with the court may go last when the court is less populated or may request to speak to the judge at a sidebar rather than speak in open court.⁶⁹

Of the 19 circuits having active drug court programs, only four reported receiving public records requests concerning drug court participants since 2014. Those four circuits reported receiving eight requests from either the participant or the participant's attorney, or from the news media. In seven of the eight requests, the information sought in the public records request was not released without the participant's consent. However, the Sixth Circuit reported releasing the names of participants and the treatment centers they were attending to the Tampa Tribune because the information was already publicly disclosed in a court order.⁷⁰

Conclusion and Recommendation

Absent the exemption, a drug court participant's health information could be at risk for public disclosure in several respects. First, initial screening records used to determine eligibility for participation must be shared with the court but may not necessarily be considered a protected treatment record under health privacy laws because the applicant is not yet a "patient." Second, while a participant's treatment records are protected from disclosure to a third party by other state and federal laws, drug court program participants have given written consent to share this information by virtue of their agreement to participate in the drug court program. As such, a drug court participant's treatment information and progress is shared between treatment providers, agencies, and the court and becomes part of the participant's court record. To ensure the public records law is not used to circumvent a participant's privacy in his or her treatment records and to ensure the participant's health records are sealed as quickly as possible, it appears the exemption should be reenacted.⁷¹

III. Effect of Proposed Changes:

This legislation continues a public records exemption that was created in 2014 and is scheduled to repeal on October 2, 2019. The exemption makes the following health-related records contained in a drug court participant's court file confidential and exempt without the need to file a motion to seal that portion of the record:

- Records relating to initial screenings for participation in the program.
- Records relating to substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

⁶⁸ See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, Q. 10, August 2018, (On file with Senate Judiciary Committee). In fact, several courts reported that there was a decrease in participation in some of the years between 2014 and 2018 but that this was due to other factors, such as prosecutorial decisions in certain districts. *Id.*

⁶⁹ See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, Q. 7.c. and 15.d., August 2018, (On file with Senate Judiciary Committee).

⁷⁰ See *Open Government Sunset Review Questionnaire: Section 397.334, Florida Statutes*, Q. 13, August 2018, (On file with Senate Judiciary Committee).

⁷¹ However, it should be noted that sensitive participant information may still be discussed in open court.

By removing the scheduled repeal of the exemption, the exemption is no longer subject to review under the Open Government Sunset Review Act unless the exemption is later broadened or expanded.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue. Likewise, it does reduce the percentage of a 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 for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect health-related information of applicants and participants in treatment-based drug court programs. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill makes health-related treatment records contained in the court file of a drug court participant automatically confidential and exempt from public inspection. By preserving the public records exemption, the bill may encourage some individuals to participate in the drug court program by alleviating any concern that his or her substance abuse or other medical history will be released to the public unless his or her attorney can get the file sealed. Additionally, individuals paying private counsel will not accrue the costs and fees associated with the motion-driven process to have the court file sealed.⁷²

The private sector will continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

By preserving the public records exemption, the bill permits the courts to automatically seal a participant's court record and avoid the lengthier motion-driven process, thereby reducing the workload of the judges and court administration as well as associated due process costs.⁷³

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 397.334, Florida Statutes.

⁷² See *supra*, n. 44 and text.

⁷³ *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 the Committee on Judiciary

590-01173-19

20197010__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 397.334, F.S., relating
 4 to an exemption from public records requirements for
 5 certain information relating to screenings for
 6 participation in treatment-based drug court programs
 7 and subsequent treatment status reports; removing the
 8 scheduled repeal of the exemption; providing an
 9 effective date.

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

11 Section 1. Subsection (10) of section 397.334, Florida
 12 Statutes, is amended to read:

13 397.334 Treatment-based drug court programs.—
 14 (10) (a) Information relating to a participant or a person
 15 considered for participation in a treatment-based drug court
 16 program which is contained in the following records is
 17 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 18 of the State Constitution:

19 1. Records created or compiled during screenings for
 20 participation in the program.
 21 2. Records created or compiled during substance abuse
 22 screenings.
 23 3. Behavioral health evaluations.
 24 4. Subsequent treatment status reports.

25 (b) Such confidential and exempt information may be
 26 disclosed:

27 1. Pursuant to a written request of the participant or
 28
 29

Page 1 of 2

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

590-01173-19

20197010__

30 person considered for participation, or his or her legal
 31 representative.

32 2. To another governmental entity in the furtherance of its
 33 responsibilities associated with the screening of a person
 34 considered for participation in or the provision of treatment to
 35 a person in a treatment-based drug court program.

36 (c) Records of a service provider which pertain to the
 37 identity, diagnosis, and prognosis of or provision of service to
 38 any person shall be disclosed pursuant to s. 397.501(7).

39 (d) This exemption applies to such information described in
 40 paragraph (a) relating to a participant or a person considered
 41 for participation in a treatment-based drug court program
 42 before, on, or after the effective date of this exemption.

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

47 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/2019
Meeting Date

7010
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
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Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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.

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 7018

INTRODUCER: Education Committee

SUBJECT: OGSR/Public Research Facility/Animal Research

DATE: February 18, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Olenick	Sikes		ED Submitted as Committee Bill
1.	Ponder	McVaney	GO	Favorable
2.			RC	

I. Summary:

SB 7018 saves from repeal a public records exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university that conducts animal research or is engaged in activities related to animal research. Such information is exempt from public records disclosure requirements when the information is contained in the following records:

- Animal records, including animal care and treatment records.
- Research protocols and approvals.
- Purchase and billing records related to animal research or activities.
- Animal care and committee records.
- Facility and laboratory records related to animal research or activities.

The public records exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature. The bill removes the repeal date to continue the public records exemption for personal identifying information of a person employed, under contract with, or volunteering for a public research facility.

The bill takes effect October 1, 2019.

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

¹ FLA. CONST., art. I, s. 24(a).

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

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

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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” 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 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST., art. I, s. 24(c).

exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁹ 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;²⁰
- 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;²¹ or
- It protects trade or business secrets.²²

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c)

¹⁴ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ 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 records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁵

Animal Research Public Records Exemption

Section 585.611, F.S., provides an exemption from public record disclosure requirements for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts animal research or is engaged in activities related to animal research. Such personal identifying information is exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution when it is contained in the following records:

- Animal records, including animal care and treatment records;
- Research protocols and approvals;
- Purchasing, funding, and billing records related to animal research or activities;
- Animal care and use committee records;
- Facility and laboratory records related to animal research or activities.

Section 585.611, F.S., provides for future review and repeal of the public records exemption on October 2, 2019.

Chapter 2014-37, L.O.F., included a public necessity statement that provided rationale for the exemption. This rationale recognized that the release of such personal identifying information will place such persons in danger of threats and harassment as well as physical and emotional harm from those who advocate against such research.

Open Government Sunset Review Findings and Recommendations

In August 2018, the Senate Education Committee and the House Oversight, Transparency & Administration Subcommittee, in consultation with the Department of Education and Florida

²³ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

Board of Governors office, sent an Open Government Sunset Review Questionnaire to public research facilities at public colleges and universities throughout the state regarding the need to maintain the exemption related to persons employed by, under contract with, or volunteering for a public research facility that conducts animal research or is engaged in activities related to animal research.

Nine state universities and one college returned the questionnaire. Of those, seven institutions recommended the exemption be reenacted for safety and to ensure further participation in the field. Two institutions deferred or did not provide a recommendation, and one recommended that the exemption be made both confidential and exempt. The research focus of these institutions includes scientific discovery, population studies, cancer research, Alzheimer's research, and the study of other debilitating diseases. These institutions work to advance scientific knowledge and treatment with applied research ultimately leading to cures and innovation in health and biomedical fields. The responses state that the exemption is necessary to maintain the effective and efficient administration of public research facilities and protect the safety of those employed by, under contract with, or volunteering at these facilities.

III. Effect of Proposed Changes:

The bill continues the current public records exemption relating to personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university that conducts or is engaged in activities related to animal research by deleting its scheduled repeal date. The exemption is scheduled for repeal on October 2, 2019.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal identifying information of those who are employed by, under contract with, volunteering or engaged in activities related to animal research. This bill exempts only personal identifying information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with the public research facility making redactions in response to the public records request.

C. Government Sector Impact:

Public research facilities will continue to incur costs related to the redaction of records in response to public record requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 585.611 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Education

581-02176-19

20197018__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 585.611, F.S., which
 4 provides an exemption from public records requirements
 5 for the personal identifying information of a person
 6 employed by, under contract with, or volunteering for
 7 a public research facility that conducts or is engaged
 8 in activities related to animal research; removing the
 9 scheduled repeal of the exemption; providing an
 10 effective date.

11 Be It Enacted by the Legislature of the State of Florida:
 12
 13

14 Section 1. Section 585.611, Florida Statutes, is amended to
 15 read:

16 585.611 Animal research identifying information.—

17 (1) Personal identifying information of a person employed
 18 by, under contract with, or volunteering for a public research
 19 facility, including a state university, that conducts animal
 20 research or is engaged in activities related to animal research,
 21 is exempt from s. 119.07(1) and s. 24(a), Article I of the State
 22 Constitution, when such information is contained in the
 23 following records:

24 (a) Animal records, including animal care and treatment
 25 records.

26 (b) Research protocols and approvals.

27 (c) Purchasing, funding, and billing records related to
 28 animal research or activities.

29 (d) Animal care and use committee records.

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581-02176-19

20197018__

30 (e) Facility and laboratory records related to animal
 31 research or activities.

32 (2) This exemption applies to personal identifying
 33 information as described in subsection (1) held by a public
 34 research facility, including a state university, before, on, or
 35 after the effective date of this exemption.

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

40 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/2019
Meeting Date

7018
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7020

INTRODUCER: Education Committee

SUBJECT: OGSR/University Direct-support Organization/Research Funding or Research Plans

DATE: February 18, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Bouck</u>	<u>Sikes</u>		ED Submitted as Committee Bill
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 7020 saves from repeal to continue the public meetings exemption for any portion of a meeting of the board of directors of a university direct-support organization (DSO), or of the executive committee or other committees of such board, at which any proposal seeking research funding from the DSO or a plan for initiating or supporting research is discussed. The bill removes the scheduled repeal date of the exemption.

The bill takes effect October 1, 2019.

II. Present Situation:

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.² This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.³

¹ FLA. CONST. art. I, s. 24(b).

² *Id.*

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

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”⁴ or the “Sunshine Law,”⁵ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken, to be open to the public.⁶ The board or commission must provide the public reasonable notice of such meetings.⁷ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in a manner that unreasonably restricts the public’s access to the facility.⁸ Minutes of a public meeting must be promptly recorded and open to public inspection.⁹

Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.¹⁰ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹¹

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.¹² The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹³ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁵ with specified exceptions.¹⁶ The Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁷ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁸

⁴ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

⁵ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

⁶ Section 286.011(1)-(2), F.S.

⁷ *Id.*

⁸ Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(1), F.S.

¹¹ Section 286.011(3), F.S.

¹² FLA. CONST. art. I, s. 24(c).

¹³ *Id.*

¹⁴ *See supra*, note 11.

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 records or information or to include meetings.

¹⁶ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(b), F.S.

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;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

The Act also requires specified questions to be considered during the review process.²² In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁴

University Direct-Support Organizations

A university direct-support organization (DSO) is a Florida not-for-profit corporation which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university.²⁵ In addition, a university DSO may also be operated for the benefit of a research and development park or research and development authority affiliated with a state university.²⁶ The DSO must be certified by a state university board of trustees to operate in a manner consistent with the goals of the university and in the best interest of the state.²⁷ DSOs help the state universities “achieve excellence by providing supplemental resources from private gifts and bequest, and valuable education support services.”²⁸

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. The specified questions are:

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

²³ FLA. CONST. art. I, s. 24(c).

²⁴ Section 119.15(7), F.S.

²⁵ Section 1004.28(1)(a)1.-2., F.S.

²⁶ Section 1004.28(1)(a)2., F.S.

²⁷ Section 1004.28(1)(a)3., F.S.

²⁸ Board of Governors, *State University System of Florida Consolidated Financial Statements* (Fiscal Year June, 30, 2017; updated Aug. 27, 2018), at 12, available at https://www.flbog.edu/board/office/budget/doc/fin_statement/2016-2017SUSConsolidatedFinancialStatementsDraftPost-Audit.pdf.

State universities are considered agencies of the state.²⁹ As a result, state universities are subject to public records and public meetings laws.³⁰ DSO boards are also subject to public records and public meetings laws.³¹

A university DSO must provide for an annual financial audit of the organization's accounts and records which must be conducted by an independent certified public accountant pursuant to rules adopted by the Auditor General in accordance with current law³² and by the university board of trustees.³³

DSOs are subject to public record and public meeting laws.³⁴ Current law provides a public records exemption for the identity of a donor who desires to remain anonymous³⁵ and for all records of a university DSO *except* any:³⁶

- Audit report prepared by the independent auditor during the annual audit process under current law;³⁷
- Management letter;
- Records related to the expenditure of state funds; or
- Financial records related to the expenditure of private funds for travel.

In addition, current law provides that any portion of a meeting of the board of directors of the DSO, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from the law requiring public meetings.³⁸ Such exemption is subject to the Act in accordance with law,³⁹ and must be repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.⁴⁰

²⁹ Section 1001.705(1)(d), F.S.

³⁰ Chapters 119 and 286, F.S. *See Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law).

³¹ Section 1004.28, F.S.; *see also Palm Beach Community College Foundation, INC., v. WFTV, INC.*, 611 So.2nd 588 (4th DCA 1993); Op. Att'y Gen. Fla. 05-27 (2005); Op. Att'y Gen. Fla. 92-53 (1992) (providing that the John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

³² Section 11.45(8), F.S.

³³ Section 1004.28(5)(a), F.S.

³⁴ *See Palm Beach Community College Foundation, Inc. v. WTFT, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993). The Florida Attorney General opined that community college direct-support organizations are subject to Sunshine Law. Op. Att'y Gen. Fla. 05-27 (2005). *See also* Op. Att'y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

³⁵ *Id.*

³⁶ Section 1004.28(5)(b), F.S. Confidential and exempt records include any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability (OPPAGA). *Id.*

³⁷ Section 1004.28(5)(b), F.S.

³⁸ Section 1004.28(5)(c), F.S. *See also* FLA. CONST. art. I, s. 24(b), and s. 286.011, F.S.

³⁹ Section 119.15, F.S.

⁴⁰ Section 1004.28(5)(c), F.S.

Chapter 2014-207, L.O.F., included a public necessity statement that provided the rationale for the public meetings exemption. This rationale recognized the role of DSOs in raising resources for research that contains proprietary information and may lead to commercial applications. This activity requires DSOs to conduct meetings to discuss research strategies, plans, and proposals that allow for candid exchanges among reviewers. Failure to close meetings in which these activities are discussed would significantly undermine the confidentiality of the strategies, plans, and proposals themselves.

Open Government Sunset Review Findings

In August 2018, the Senate Education Committee and the House Oversight, Transparency & Administration Subcommittee, in consultation with the Florida Board of Governors office, sent an Open Government Sunset Review Questionnaire to each state university regarding the need to maintain the public meetings exemption for any portion of a meeting of the board of directors of the DSO, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed.

Seventeen DSOs representing 10 state universities returned the questionnaire. Of those, three indicated that the DSO has a board of directors or committee that discusses proposals seeking research funding or plans or programs for initiating or supporting research. Two DSOs recommended that the exemption be retained in its current form. One DSO indicated a future strategic initiative regarding research proposals that would be negatively impacted by a removal of the exemption. No DSO recommended removal or modification of the exemption.

III. Effect of Proposed Changes:

The bill saves from repeal the public meeting exemption of s. 1004.28(5)(c), F.S., thereby continuing the public meeting exemption for any portion of a meeting of the board of directors of a university DSO, or of the executive or other committees of such board, at which the board or the committee discusses a proposal seeking research funding from the DSO or a plan or program for either initiating or supporting research.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 for final passage of a bill creating or expanding an exemption to the public meetings requirements. This bill continues a current public meetings exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public meetings requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public meetings exemption without expansion.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect proposals seeking research funding from the organization or a plan or program for either initiating or supporting research. This bill exempts from the public meetings requirement only any portion of a meeting of the board of directors of the DSO, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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 1004.28 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 Education

581-02174-19

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1004.28, F.S., relating to an exemption from public meeting requirements for specified meetings of a university direct-support organization at which proposals seeking research funding or research plans are discussed; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (c) of subsection (5) of section 1004.28, Florida Statutes, is amended to read:

1004.28 Direct-support organizations; use of property; board of directors; activities; audit; facilities.—

(5) ANNUAL AUDIT; PUBLIC RECORDS EXEMPTION; PUBLIC MEETINGS EXEMPTION.—

(c) Any portion of a meeting of the board of directors of the organization, or of the executive committee or other committees of such board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/2019
Meeting Date

7020
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Children, Families, and Elder Affairs
Governmental Oversight and Accountability
Military and Veterans Affairs and Space

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR VICTOR M. TORRES, JR.

15th District

February 18, 2019

Ed Hooper, Chair
Governmental Oversight and Accountability

RE: Request for excusal from February 19, 2019 Governmental Oversight and Accountability committee meeting

Dear Chair Hooper:

Due to a family medical issue, I am unable to attend tomorrow's meeting of the Governmental Oversight and Accountability committee. Please accept this letter as a formal request for excusal of this absence. Please let me know if you have any questions or need additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Victor M. Torres, Jr.".

Victor M. Torres, Jr.
Florida State Senator
District 15

c: Joe McVaney, Staff Director, Governmental Oversight and Accountability
Lisa Vickers, Chief of Staff, President Galvano

REPLY TO:

- 101 Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (850) 410-4817
- 226 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

CourtSmart Tag Report

Room: SB 301
Caption: Committee on Government Oversight and Accountability

Case No.:

Type:
Judge:

Started: 2/19/2019 2:31:17 PM

Ends: 2/19/2019 3:43:20 PM

Length: 01:12:04

2:31:16 PM Meeting called to order
2:31:17 PM Roll Call
2:31:29 PM Quorum is present
2:31:34 PM Senator Torres is excused
2:31:59 PM Chair Hooper recognizes Rep Willhite in the audience
2:32:22 PM TAB 4 - SB 7008, OGSR/Security Breach Information/Department of Legal Affairs by Judiciary Committee
2:32:43 PM Senator Simmons explains SB 7008
2:33:12 PM Questions? Seeing none.
2:33:22 PM Any appearance cards?
2:33:29 PM Brian Pitts Trustee for Justice 2 Jesus from St. Petersburg
2:34:28 PM Any debate on the bill?
2:34:33 PM Senator Rader with comments
2:34:57 PM Additional debate? None
2:35:06 PM Senator Simmons waives close
2:35:12 PM Roll call on SB 7008
2:35:16 PM SB 7008 is reported Favorable
2:35:26 PM TAB 5 - SB 7010, OGSR/Treatment-based Drug Court Programs by Judiciary Committee
2:35:40 PM Senator Simmons explains bill
2:35:54 PM Any questions?
2:36:29 PM Public testimony
2:36:33 PM Brian Pitts Trustee of Justice 2 Jesus is recognized
2:36:42 PM Brian Pitts testifies
2:37:16 PM Any debate?
2:38:16 PM Senator Albritton is recognized in debate
2:38:35 PM Additional debate? Seeing none
2:38:46 PM Senator Rader with question
2:38:47 PM Senator Simmons waives close
2:38:50 PM Roll call on SB 7010
2:38:54 PM SB 7010 is reported Favorable
2:39:03 PM Chair says to take up Tab 1 then apologizes and says take up Tab 2
2:39:17 PM TAB 2 - SJR 362, Abolishing the Constitution Revision Commission by Senator Brandes
2:39:35 PM Senator Brandes explains SJR 362
2:39:42 PM Senator Brandes is asked questions
2:39:59 PM Senator Rader recognized to question Senator Brandes
2:40:06 PM Senator Brandes responds
2:40:46 PM Senator Rader is recognized for short series of exchange
2:42:08 PM Senator Brandes responds
2:42:22 PM Seeing no more questions
2:43:22 PM Appearance cards
2:43:26 PM Demetrius Minor Director of Coalitions for Americans for Prosperity waives in support
2:43:33 PM Adam Basford Legislative Affairs Director for FL Farm Bureau is recognized
2:45:27 PM Dr. Rick Templin of Florida AFL-CIO in support
2:47:31 PM Brian Pitts Trustee of Justice 2 Jesus
2:48:53 PM Any debate?
2:49:52 PM Senator Rader makes comments in support
2:51:32 PM Senator Albritton in support
2:52:31 PM Senator Brandes waives close
2:52:40 PM Roll call on SJR 362
2:52:46 PM SJR 362 is reported Favorable
2:53:01 PM TAB 1 - SB 186, Public Records/Victims of Mass Violence by Senator Lee
2:53:10 PM Senator Lee explains the bill

2:54:07 PM Any questions?
2:55:08 PM Seeing none
2:55:11 PM Appearance cards
2:55:15 PM Matt Butler Lieutenant of Orange FL waives in support
2:55:30 PM Brian Pitts Trustee of Justice 2 Jesus St Petersburg in support with information
2:56:05 PM Scott McCoy Sr Policy Counsel for SPLC Action of Tallahassee
2:57:38 PM on record Amy Datz Volunteer for Victim of Constitution Revision Commission
2:58:40 PM In debate Senator Bean recognized in support
2:59:55 PM No debate
2:59:58 PM Senator Lee recognized to close on bill
3:00:06 PM Senator Lee closes
3:00:36 PM Roll call on SB 186
3:00:47 PM SB 186 is reported as Favorable
3:00:55 PM Tab 3 - SB 426, Firefighters by Senator Flores
3:01:13 PM Senator Flores is recognized to explain the bill
3:02:10 PM Any questions for Senator Flores?
3:03:08 PM Senator Albritton is recognized
3:03:40 PM Senator Flores responds
3:03:47 PM Senator Rader with question
3:03:58 PM Senator Flores responds
3:04:22 PM Senator Bean is recognized
3:04:32 PM Senator Flores responds
3:05:07 PM Senator Rader with follow up question
3:05:22 PM Senator Flores responds
3:06:15 PM Appearance Cards
3:06:22 PM Jay Post of Indialantic, retired firefighter with testimony
3:11:25 PM Amber Hughes Sr. Legislative Advocate Florida League of Cities
3:16:01 PM Questions? none
3:16:05 PM Meredith Stanfield, Cabinet Legislative Affairs Director for Chief Financial Officer Jimmy Patronis, waives
in support
3:16:22 PM Miami Dade County Commissioner Daniella Levine Cava in support
3:18:01 PM Omar Blanco Metro Dade Firefighters locate 1403 of Miami FL in support
3:21:24 PM Claudine Buzzo Firefighter of Plantation Fl Local 1403 in support
3:25:27 PM Brain Pitts Trustee waives in support
3:26:26 PM Dwayne McKeaver Firefighter of Brad FL in support
3:29:10 PM Rocco Salvatori Firefighter with Florida Professional Firefighters of Tallahassee in support
3:30:50 PM Senator Rader requests to question
3:31:49 PM Sen Rader requests to move to have 15 minutes extension to the meeting
3:32:03 PM Chair Hooper responds that the GO meeting must end at the noticed time of 4:00pm per Senate Rules.
3:32:20 PM Jim Tolley President FL Professional Firefighters of Tallahassee in support
3:32:51 PM Questions? None
3:33:00 PM No debate
3:33:03 PM Senator Flores is recognized to close on SB 426
3:33:39 PM Roll Call on SB 426
3:34:07 PM SB 426 is reported favorably
3:34:25 PM Chair thanks those who assisted in keeping the meeting within the time set
3:34:33 PM Chair thanks the speakers
3:34:33 PM TAB 6 - SB 7018, OGSR/Public Research Facility/Animal Research by Education Committee
3:34:54 PM Senator Diaz is recognized to explain SB 7018
3:35:08 PM One appearance card
3:35:15 PM Brian Pitts Trustee Justice 2 Jesus with information
3:36:02 PM Any debate?
3:37:02 PM No debate
3:37:05 PM Senator Diaz is recognized to close. Senator Diaz waives close
3:37:14 PM Roll call
3:37:17 PM SB 7018 is reported Favorably
3:37:29 PM TAB 7 - SB 7020, OGSR/University Direct-support Organization/Research Funding or Research Plans by
Education Committee
3:37:48 PM Senator Diaz is recognized to explain SB 7020
3:37:54 PM Appearance Card: Brian Pitts Trustee of Justice 2 Jesus with information
3:38:28 PM Debate?
3:39:30 PM None

3:39:31 PM Senator Diaz waives close
3:39:39 PM Roll call on SB 7020
3:39:43 PM SB 7020 is reported Favorably
3:39:54 PM Chair asks if there is any other business before the committee
3:39:58 PM Senator Rader requests to be recognized
3:39:58 PM Chair Hooper recognizes Vice Chair Rader for comments
3:40:26 PM Senator Rader praises the firefighters who testified earlier
3:40:47 PM Chair Hooper: asks if any other comments
3:41:27 PM If there is no other business before the committee
3:41:30 PM Vice Chair Rader moves we adjourn
3:41:44 PM Meeting is adjourned