

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**  
**Senator Simmons, Chair**  
**Senator Soto, Vice Chair**

**MEETING DATE:** Thursday, December 3, 2015

**TIME:** 1:00—3:00 p.m.

**PLACE:** Toni Jennings Committee Room, 110 Senate Office Building

**MEMBERS:** Senator Simmons, Chair; Senator Soto, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Gaetz, Galvano, Gibson, Joyner, Latvala, Lee, Montford, Negron, and Richter

| TAB | BILL NO. and INTRODUCER   | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION            |
|-----|---|--|-----------------------------|
| 1   | <b>SB 112</b><br>Thompson<br>(Similar H 361)                      | Absentee Voting; Replacing the term "absentee ballot" with the term "vote-by-mail ballot", etc.<br><br>EE 10/21/2015 Favorable<br>ATD 11/03/2015 Favorable<br>RC 12/03/2015 Favorable  | Favorable<br>Yeas 12 Nays 0 |
| 2   | <b>CS/SB 344</b><br>Criminal Justice / Bradley<br>(Similar H 169) | Justifiable Use or Threatened Use of Defensive Force; Specifying that once a prima facie claim of self-defense immunity has been raised, the burden of proof shall be on the party seeking to overcome the immunity from criminal prosecution; entitling criminal defendants who successfully claim immunity to an award of specified costs, attorney fees, and related expenses if a court makes specified determinations; requiring reimbursements to be paid from the operating trust fund of the state attorney who prosecuted the defendant, etc.<br><br>CJ 10/20/2015 Fav/CS<br>ACJ 11/18/2015 Favorable<br>RC 12/03/2015 Fav/CS | Fav/CS<br>Yeas 12 Nays 0    |
| 3   | <b>SB 396</b><br>Bradley<br>(Identical H 4029)                    | Nonresident Plaintiffs in Civil Actions; Repealing specified provisions relating to requirements for a nonresident plaintiff in a civil action to post security for costs, etc.<br><br>JU 11/17/2015 Favorable<br>RC 12/03/2015 Favorable  | Favorable<br>Yeas 12 Nays 0 |
| 4   | <b>SM 630</b><br>Bean<br>(Identical HM 417)                       | Article V Convention for Congressional Term Limits; Applying to Congress to call a convention under Article V of the Constitution of the United States with the sole agenda of proposing an amendment to the Constitution of the United States to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and to set a limit on the number of terms that a person may be elected as a member of the United States Senate, etc.<br><br>EE 11/17/2015 Favorable<br>RC 12/03/2015 Favorable   | Favorable<br>Yeas 12 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, December 3, 2015, 1:00—3:00 p.m.

| TAB | BILL NO. and INTRODUCER   | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION            |
|-----|---|---|-----------------------------|
| 5   | <b>CS/SB 180</b><br>Commerce and Tourism / Richter<br>(Identical CS/H 55, Compare<br>CS/H 57, Linked CS/CS/S 182)   | Trade Secrets; Including financial information in provisions prohibiting the theft, embezzlement, or unlawful copying of trade secrets; providing criminal penalties, etc.<br><br>CM 10/05/2015 Fav/CS<br>GO 11/02/2015<br>GO 11/17/2015 Favorable<br>RC 12/03/2015 Favorable   | Favorable<br>Yeas 12 Nays 0 |
| 6   | <b>CS/CS/SB 182</b><br>Governmental Oversight and<br>Accountability / Commerce and<br>Tourism / Richter<br>(Similar CS/H 57, Compare CS/H<br>55, Linked CS/S 180) | Public Records and Meetings/Trade Secrets;<br>Expanding public records exemptions for certain data processing software obtained by an agency, certain information held by a county tourism promotion agency, information related to trade secrets held by specified entities, and specified data, programs, or supporting documentation held by an agency; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.<br><br>CM 10/05/2015 Fav/CS<br>GO 11/02/2015<br>GO 11/17/2015 Fav/CS<br>RC 12/03/2015 Favorable  | Favorable<br>Yeas 12 Nays 0 |
| 7   | <b>SB 320</b><br>Richter<br>(Similar H 391)   | Public Records/Medical Technicians or Paramedics Personal Identifying Information; Creating an exemption from public records requirements for certain identifying and location information of current or former emergency medical technicians or paramedics certified under ch. 401, F.S., and the spouses and children of such emergency medical technicians or paramedics, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.<br><br>HP 10/20/2015 Favorable<br>GO 11/17/2015 Favorable<br>RC 12/03/2015 Favorable | Favorable<br>Yeas 12 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Thursday, December 3, 2015, 1:00—3:00 p.m.

| TAB | BILL NO. and INTRODUCER                       | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS   | COMMITTEE ACTION            |
|-----|---|--|-----------------------------|
| 8   | <b>SB 340</b><br>Latvala<br>(Identical H 337) | Vision Care Plans; Providing that a health insurer, a prepaid limited health service organization, and a health maintenance organization, respectively, may not require a licensed ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another vision network; providing that such insurers and organizations may not restrict a licensed ophthalmologist, optometrist, or optician to specific suppliers of materials or optical laboratories, etc.<br><br>BI      10/20/2015 Favorable<br>HP      11/17/2015 Favorable<br>RC      12/03/2015 Favorable | Favorable<br>Yeas 12 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 Rules

---

BILL: SB 112

INTRODUCER: Senator Thompson

SUBJECT: Absentee Voting

DATE: December 1, 2015

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

| ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION                        |
|----------|----------------|-----------|-------------------------------|
| 1. Fox   | Roberts        | EE        | <b>Favorable</b>              |
| 2. Sneed | Miller         | ATD       | <b>Recommended: Favorable</b> |
| 3. Fox   | Phelps         | RC        | <b>Favorable</b>              |

---

## I. Summary:

SB 112 changes the phrase “absentee” to “vote-by-mail” where it appears in the Florida Statutes, most frequently in the context of the phrase “absentee ballot(s).”

The bill has no fiscal impact on state government.

The bill takes effect July 1, 2016.

## II. Present Situation:

Originally, casting a ballot without going to the polls on election day was the province of the military; widespread absentee balloting in America had its origins during the Civil War,<sup>1</sup> as a means for both sides to afford soldiers in the field — a not insignificant portion of the electorate at the time — the opportunity to vote.<sup>2</sup> By 1924, all but a handful of states had absentee ballot

---

<sup>1</sup> Pennsylvania appears to have been the only state with an absentee ballot law pre-dating the Civil War (1813), allowing military personnel stationed more than two miles from their homes to cast an absentee ballot. See, Aaron Marshall, *Special Voting Access for the Military Nothing New, Dates from the Civil War, Mike DeWine Says* (Oct. 1, 2012), available on PolitifactOhio’s web site at <http://www.politifact.com/ohio/statements/2012/oct/01/mike-dewine/special-voting-access-military-nothing-new-dates-c/> (last accessed 10.12.2015) (citing, generally, John C. Fortier & Norman J. Ornstein, *The Absentee Ballot and the Secret Ballot: Challenges for Election Reform*, 36 U. MICH. J.L. REFORM 483 (2003)) [hereinafter, Marshall, *Special Military Voting*].

<sup>2</sup> *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169, 1175 (9<sup>th</sup> Cir. 2001); Marshall, *Special Military Voting*, *supra* at note 1. Nineteen of the 25 Union states (including the Border States) and 7 of 11 Confederate states had absentee voting laws for soldiers during the Civil War. *Id.* Though many states repealed their laws after the War — with only 6 states retaining them on the books as of 1915 — the advent of World War I ushered in a decade of new state absentee ballot laws. Daniel P. Tokaji & Ruth Colter, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 MCGEORGE L.REV. 1015, 1020 (2007), reprinted at [http://www.americanbar.org/content/dam/aba/migrated/aging/voting/pdfs/tokaji\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/aging/voting/pdfs/tokaji_authcheckdam.pdf) (last accessed 10.12.2015) [hereinafter, Tokaji, *Absentee Voting*].

laws for members of the military, with many of them extending the franchise to civilians who could not attend the polls on account of illness or other physical disability.<sup>3</sup>

In 1986, the federal government codified the right of absent military and civilian overseas voters to cast an absentee ballot in federal races in the Uniformed Overseas Citizens Absentee Voting Act (“UOCAVA”).<sup>4</sup> Through the 1990’s and especially the 2000’s, numerous states (including Florida)<sup>5</sup> amended their absentee laws to allow for even greater absentee ballot participation by voters — removing the reasons that voters traditionally had to give in order to vote an absentee ballot.<sup>6</sup> Today, a slim majority of states have some form of what the National Conference of State Legislatures refers to as “no-excuse absentee voting.”<sup>7</sup>

There seems, however, to be a lack of uniformity regarding what to call the current concepts of absentee voting. An Internet search of various statutes, federal and state executive agency sites for election administrators, and other professional organizations involved with voting indicates that the terms “absentee voting/balloting,” “no-excuse absentee balloting/voting,” “vote-by-mail,” and “all-mail balloting,” including derivations thereof, are *all* quite common.

Often, terms are used interchangeably; several Florida supervisor of elections websites, for example, refer to the process as both “vote-by-mail” and “absentee.”<sup>8</sup> In other cases, multiple terms are used to refer to the same thing depending on who’s doing the characterizing. For example, the California statutes and its Secretary of State’s web site refer to the absentee process for UOCAVA (absent military/overseas) voters as “vote by mail;”<sup>9</sup> the U.S. Department of Defense’s Federal Voting Assistance Program (“FVAP”) materials, designed to aid Californians in the military and citizens overseas cast valid ballots, refer to the California process as

<sup>3</sup> *Id.*

<sup>4</sup> 42 U.S.C. ss. 1973ff-1973ff-7.

<sup>5</sup> Florida officially did away with reasons for voting absentee back in 2001, though voters had for years been able to obtain an absentee ballot by simply attesting to the fact that they *might* not be in their precincts on Election Day. Ch. 2001-40, s. 53, LAWS OF FLA.

<sup>6</sup> Tokaji, *Absentee Voting* supra note 3 at 1021; see, Enrijeta Shino, *Absentee Voting: A Cross State Analysis* at pp. 3-5 (University of Florida, Mar. 8, 2014) (2000 general election signaled the turning point in easing legal requirements for absentee voting), available at The Florida Political Science Association web site at [http://www.fpsanet.org/uploads/8/8/7/3/8873825/2014\\_nominee\\_shino.pdf](http://www.fpsanet.org/uploads/8/8/7/3/8873825/2014_nominee_shino.pdf) (last accessed 10.12.2015).

<sup>7</sup> National Conference of State Legislatures, *Absentee and Early Voting* (February 11, 2015), available at <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx> (last accessed 10.12.2015).

<sup>8</sup> See e.g., Escambia Co. Supervisor of Elections web site at <http://www.escambiavotes.com/vote-by-mail> and <http://www.escambiavotes.com/absentee-voting-and-registration> (generally, using the term “absentee ballot” to refer to military and overseas ballots and the phrase “vote-by-mail” to refer to other ballots)(last accessed 10.12.2015); Pasco Co. Supervisor of Elections web site at <http://www.pascovotes.com/Vote-by-Mail/About-Voting-by-Mail#mil> (referring to most ballots, including military, as vote-by mail ballots) (last accessed 10.12.2015); Leon Co. Supervisor of Elections web site at <http://www.leonvotes.org/Request-an-Absentee-Ballot> and Sarasota Co. Supervisor of Elections web site at <http://www.sarasotavotes.com/content.aspx?id=19> (using both terms, “vote-by-mail” and “absentee,” interchangeably and simultaneously) (last accessed 10.12.2015).

<sup>9</sup> See Cal Elec. Code s. 3000-3024 and 3101-3123 (detailing “vote by mail” requirements and procedures for all California voters, including UOCAVA military and overseas voters); see also, Cal. SOS web site at <http://www.sos.ca.gov/elections/voter-registration/military-overseas-voters/> and <http://www.sos.ca.gov/elections/voter-registration/vote-mail/> (using the phrase “vote-by-mail” to refer to all military and civilian voting) (last accessed 10.12.2015).

“absentee” voting.<sup>10</sup> In still other cases, the absentee balloting process *itself* is bifurcated and referred to using multiple terms. For example, Oregon conducts so-called “*all-mail-ballot*” elections (no polling places).<sup>11</sup> While the statutes don’t specifically use *either* term, the Oregon Secretary of State’s web site refers to ballots mailed to a voter’s *in-state* home address as “*vote-by-mail ballots*,” while those mailed outside the state (or ballots sent to in-state voters who will be away from their home address during an election) are called “*absentee ballots*.”<sup>12</sup>

It’s also worth noting that Florida law currently includes the “*Mail Ballot Election Act*,” authorizing **all-mail-ballot** voting in certain local referenda elections.<sup>13</sup> This could serve as a possible source of confusion with the term “vote-by-mail.”

### III. Effect of Proposed Changes:

The bill changes the term “absentee” and “absentee ballot” to “vote-by-mail” and “vote-by-mail ballot,” respectively, where those terms appear in the Florida Statutes.

The bill takes effect July 1, 2016.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

<sup>10</sup> See, FVAP California web site at <http://www.fvap.gov/california> and <http://www.fvap.gov/vao/vag/chapter2/california> (describing California’s voting process for UOCAVA voters as “absentee voting guidelines,” providing links to the State’s vote by mail information, and providing information on how to receive an “absentee ballot”) (last accessed 10.12. 2015).

<sup>11</sup> See, Or. Rev. Stat. s. 254.465(1) (2013) (provides simply that county clerks must conduct all elections by mail).

<sup>12</sup> See Oregon Secretary of State web site at <http://sos.oregon.gov/voting/Pages/voteinor.aspx>; see also, Oregon’s Absentee Ballot Request form for in-state voters away from home, available at <http://sos.oregon.gov/elections/Documents/SEL111.pdf> (last accessed 10.12.2015); E-mail from Brian Corley, Legislative Liaison for the Florida State Assn. of Supervisors of Elections and Supervisor of Pasco County to Jonathan Fox, Senate Ethics and Elections Chief Attorney (March 25, 2015) (information from Oregon indicates that the term “absentee ballot” is placed on the mailing envelopes for out-of-state voters requesting ballots).

<sup>13</sup> Sections 101.6101-101.6107, F.S.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

According to the Department of State, Division of Elections, the terminology changes would need to be reflected on various agency documentation and may require coding changes to the Florida Voter Registration System. The department will absorb these costs, which are expected to be minimal, in its operating budget.

At the local level county supervisors of elections will, at a minimum, have to print and distribute new absentee ballot instructions and absentee ballot affidavits that include the term “vote-by-mail.” They may choose to re-design and revise other related absentee ballot and election materials to conform. To the extent that any of these items have already been printed, the supervisors will incur additional printing costs. As each county’s situation will differ, the cost is indeterminate but expected to be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

When this bill was heard for the 2015 Regular Session<sup>14</sup>, some expressed concerns that changing the statutes from “absentee balloting” to “vote-by-mail” could potentially: violate a U.S. Postal Service (“USPS”) regulation requiring the use of specific words on overseas absentee ballot mailing envelopes; and/or, create postal confusion, thereby delaying ballot processing, transmission and delivery in both directions. The USPS regulations, however, specifically authorize the use of terms other than the prescribed “Official Absentee Balloting Material” — such as “Vote-By-Mail” — *if required by State law*.<sup>15</sup>

---

<sup>14</sup> See SB 894 (2015 Reg. Session).

<sup>15</sup> U.S.P.S. Regulations, DMM 703.8.2.5, available at <http://pe.usps.com/text/dmm300/703.htm> (last accessed 10.12.2015). The postal regulation at issue provides as follows:

**8.2.5 Envelope**

The envelope used to send balloting material and the envelope supplied for return of the ballots must have printed across the face the words “Official Absentee Balloting Material—First-Class Mail” (*or similar language required by state law*) in a rectangular box. Immediately below, the words “No Postage Necessary in the U.S. Mail—DMM 703.8.0” must be printed. ...

(emphasis added).

Furthermore, nothing in the bill would prohibit the supervisors of elections from continuing to use the term “Official Absentee Balloting Material” on their overseas ballots to minimize confusion within their local post offices; indeed, the law would still require that overseas ballot envelopes meet USPS and other federal requirements.<sup>16</sup> On balance, the postal concerns don’t appear to be a significant legal or practical impediment to moving forward with the bill.

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 97.012, 97.021, 97.026, 98.065, 98.077, 98.0981, 98.255, 100.025, 101.051, 101.151, 101.5612, 101.5614, 101.572, 101.591, 101.6105, 101.62, 101.64, 101.65, 101.655, 101.661, 101.662, 101.663, 101.67, 101.68, 101.69, 101.6921, 101.6923, 101.6925, 101.694, 101.6951, 101.6952, 101.697, 102.031, 102.141, 102.168, 104.047, 104.0515, 104.0616, 104.17, 117.05, 394.459, 741.406, 916.107 .

### **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.

---

---

<sup>16</sup> The current Florida law, which is not materially changed by this bill, provides that all “absentee envelopes” for UOCAVA voters comply with the specifications mandated by the U.S. Department of Defense’s Federal Voting Assistance Program and the USPS. Section 101.694(3), F.S. (NOTE: Although housed in a section of the statutes entitled “Mailing of ballots upon receipt of federal postcard application,” a 2005 change to the law clarified that the requirements were applicable to ALL envelopes printed for UOCAVA voters — not just those ballots requested with the federal postcard application. See Ch. 2005-277, s. 50, at 2664, LAWS OF FLA. (codified at s. 101.694(3), F.S.) (striking language limiting the section to federal postcard applicants); see also, Florida House of Representatives, Bill Analysis - CS/HB 1567 (2005), at p. 13 (Apr. 20, 2005) (discussing changes to s. 101.694 as impacting envelope requirements for “absent electors overseas,” without reference to federal postcard applicants), available at <http://archive.flsenate.gov/data/session/2005/House/bills/analysis/pdf/h1567e.SAC.pdf> [last accessed 10.12.2015].)



By Senator Thompson

12-00204-16

2016112\_\_

A bill to be entitled

An act relating to absentee voting; amending ss.

97.012, 97.021, 97.026, 98.065, 98.077, 98.0981,

98.255, 100.025, 101.051, 101.151, 101.5612, 101.5614,

101.572, 101.591, 101.6105, 101.62, 101.64, 101.65,

101.655, 101.661, 101.662, 101.663, 101.67, 101.68,

101.69, 101.6921, 101.6923, 101.6925, 101.694,

101.6951, 101.6952, 101.697, 102.031, 102.141,

102.168, 104.047, 104.0515, 104.0616, 104.17, 117.05,

394.459, 741.406, and 916.107, F.S.; replacing the

term "absentee ballot" with the term "vote-by-mail

ballot"; conforming terminology to changes made by the

act; providing an effective date.

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

Section 1. Subsection (13) of section 97.012, Florida Statutes, is amended to read:

97.012 Secretary of State as chief election officer.—The Secretary of State is the chief election officer of the state, and it is his or her responsibility to:

(13) Designate an office within the department to be responsible for providing information regarding voter registration procedures and vote-by-mail ~~absentee~~ ballot procedures to absent uniformed services voters and overseas voters.

Section 2. Subsections (1) and (13) of section 97.021, Florida Statutes, are amended to read:

97.021 Definitions.—For the purposes of this code, except

Page 1 of 46

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

12-00204-16

2016112\_\_

where the context clearly indicates otherwise, the term:

(1) "Absent elector" means any registered and qualified voter who casts a vote-by-mail ~~an absentee~~ ballot.

(13) "Election costs" shall include, but not be limited to, expenditures for all paper supplies such as envelopes, instructions to voters, affidavits, reports, ballot cards, ballot booklets for vote-by-mail ~~absentee~~ voters, postage, notices to voters; advertisements for registration book closings, testing of voting equipment, sample ballots, and polling places; forms used to qualify candidates; polling site rental and equipment delivery and pickup; data processing time and supplies; election records retention; and labor costs, including those costs uniquely associated with vote-by-mail ~~absentee~~ ballot preparation, poll workers, and election night canvass.

Section 3. Section 97.026, Florida Statutes, is amended to read:

97.026 Forms to be available in alternative formats and via the Internet.—It is the intent of the Legislature that all forms required to be used in chapters 97-106 shall be made available upon request, in alternative formats. Such forms shall include vote-by-mail ~~absentee~~ ballots as alternative formats for such ballots become available and the Division of Elections is able to certify systems that provide them. Whenever possible, such forms, with the exception of vote-by-mail ~~absentee~~ ballots, shall be made available by the Department of State via the Internet. Sections that contain such forms include, but are not limited to, ss. 97.051, 97.052, 97.053, 97.057, 97.058, 97.0583, 97.071, 97.073, 97.1031, 98.075, 99.021, 100.361, 100.371,

Page 2 of 46

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

12-00204-16

2016112\_\_

101.045, 101.171, 101.20, 101.6103, 101.62, 101.64, 101.65,  
101.657, 105.031, 106.023, and 106.087.

Section 4. Paragraph (c) of subsection (4) of section  
98.065, Florida Statutes, is amended to read:

98.065 Registration list maintenance programs.—

(4)

(c) The supervisor must designate as inactive all voters  
who have been sent an address confirmation final notice and who  
have not returned the postage prepaid, preaddressed return form  
within 30 days or for which the final notice has been returned  
as undeliverable. Names on the inactive list may not be used to  
calculate the number of signatures needed on any petition. A  
voter on the inactive list may be restored to the active list of  
voters upon the voter updating his or her registration,  
requesting a vote-by-mail ~~an absentee~~ ballot, or appearing to  
vote. However, if the voter does not update his or her voter  
registration information, request a vote-by-mail ~~an absentee~~  
ballot, or vote by the second general election after being  
placed on the inactive list, the voter's name shall be removed  
from the statewide voter registration system and the voter shall  
be required to reregister to have his or her name restored to  
the statewide voter registration system.

Section 5. Subsection (4) of section 98.077, Florida  
Statutes, is amended to read:

98.077 Update of voter signature.—

(4) All signature updates for use in verifying vote-by-mail  
~~absentee~~ and provisional ballots must be received by the  
appropriate supervisor of elections no later than the start of  
the canvassing of vote-by-mail ~~absentee~~ ballots by the

12-00204-16

2016112\_\_

canvassing board. The signature on file at the start of the  
canvass of the vote-by-mail ~~absentee~~ ballots is the signature  
that shall be used in verifying the signature on the vote-by-  
mail ~~absentee~~ and provisional ballot certificates.

Section 6. Paragraphs (b) and (d) of subsection (1) and  
paragraph (a) of subsection (2) of section 98.0981, Florida  
Statutes, are amended to read:

98.0981 Reports; voting history; statewide voter  
registration system information; precinct-level election  
results; book closing statistics.—

(1) VOTING HISTORY AND STATEWIDE VOTER REGISTRATION SYSTEM  
INFORMATION.—

(b) After receipt of the information in paragraph (a), the  
department shall prepare a report in electronic format which  
contains the following information, separately compiled for the  
primary and general election for all voters qualified to vote in  
either election:

1. The unique identifier assigned to each qualified voter  
within the statewide voter registration system;

2. All information provided by each qualified voter on his  
or her voter registration application pursuant to s. 97.052(2),  
except that which is confidential or exempt from public records  
requirements;

3. Each qualified voter's date of registration;

4. Each qualified voter's current state representative  
district, state senatorial district, and congressional district,  
assigned by the supervisor of elections;

5. Each qualified voter's current precinct; and

6. Voting history as transmitted under paragraph (a) to

12-00204-16

2016112\_\_

include whether the qualified voter voted at a precinct location, voted during the early voting period, voted by vote-by-mail ~~absentee~~ ballot, attempted to vote by vote-by-mail ~~absentee~~ ballot that was not counted, attempted to vote by provisional ballot that was not counted, or did not vote.

(d) File specifications are as follows:

1. The file shall contain records designated by the categories below for all qualified voters who, regardless of the voter's county of residence or active or inactive registration status at the book closing for the corresponding election that the file is being created for:

a. Voted a regular ballot at a precinct location.

b. Voted at a precinct location using a provisional ballot that was subsequently counted.

c. Voted a regular ballot during the early voting period.

d. Voted during the early voting period using a provisional ballot that was subsequently counted.

e. Voted by vote-by-mail ~~absentee~~ ballot.

f. Attempted to vote by vote-by-mail ~~absentee~~ ballot, but the ballot was not counted.

g. Attempted to vote by provisional ballot, but the ballot was not counted in that election.

2. Each file shall be created or converted into a tab-delimited format.

3. File names shall adhere to the following convention:

a. Three-character county identifier as established by the department followed by an underscore.

b. Followed by four-character file type identifier of 'VH03' followed by an underscore.

Page 5 of 46

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

12-00204-16

2016112\_\_

c. Followed by FVRS election ID followed by an underscore.

d. Followed by Date Created followed by an underscore.

e. Date format is YYYYMMDD.

f. Followed by Time Created - HHMMSS.

g. Followed by ".txt".

4. Each record shall contain the following columns: Record Identifier, FVRS Voter ID Number, FVRS Election ID Number, Vote Date, Vote History Code, Precinct, Congressional District, House District, Senate District, County Commission District, and School Board District.

(2) PRECINCT-LEVEL ELECTION RESULTS.—

(a) Within 30 days after certification by the Elections Canvassing Commission of a presidential preference primary election, special election, primary election, or general election, the supervisors of elections shall collect and submit to the department precinct-level election results for the election in a uniform electronic format specified by paragraph (c). The precinct-level election results shall be compiled separately for the primary or special primary election that preceded the general or special general election, respectively. The results shall specifically include for each precinct the total of all ballots cast for each candidate or nominee to fill a national, state, county, or district office or proposed constitutional amendment, with subtotals for each candidate and ballot type, unless fewer than 10 voters voted a ballot type. "All ballots cast" means ballots cast by voters who cast a ballot whether at a precinct location, by vote-by-mail ~~absentee~~ ballot including overseas vote-by-mail ~~absentee~~ ballots, during the early voting period, or by provisional ballot.

Page 6 of 46

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

12-00204-16

2016112\_\_

175 Section 7. Subsection (1) of section 98.255, Florida  
 176 Statutes, is amended to read:  
 177 98.255 Voter education programs.—  
 178 (1) The Department of State shall adopt rules prescribing  
 179 minimum standards for nonpartisan voter education. The standards  
 180 shall, at a minimum, address:  
 181 (a) Voter registration;  
 182 (b) Balloting procedures, by mail ~~absentee~~ and polling  
 183 place;  
 184 (c) Voter rights and responsibilities;  
 185 (d) Distribution of sample ballots; and  
 186 (e) Public service announcements.  
 187 Section 8. Section 100.025, Florida Statutes, is amended to  
 188 read:  
 189 100.025 Citizens residing overseas; notice of elections.—A  
 190 citizen of this state who is residing overseas may notify the  
 191 supervisor of elections in the county where he or she is  
 192 registered of his or her overseas address; and, thereafter, the  
 193 supervisor shall notify such citizen at least 90 days prior to  
 194 regular primary and general elections and when possible prior to  
 195 any special election so that such citizen may follow the  
 196 procedures for ~~absentee~~ voting by mail provided by law.  
 197 Section 9. Subsection (3) of section 101.051, Florida  
 198 Statutes, is amended to read:  
 199 101.051 Electors seeking assistance in casting ballots;  
 200 oath to be executed; forms to be furnished.—  
 201 (3) Any elector applying to cast a vote-by-mail ~~an absentee~~  
 202 ballot in the office of the supervisor, in any election, who  
 203 requires assistance to vote by reason of blindness, disability,

Page 7 of 46

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

12-00204-16

2016112\_\_

204 or inability to read or write may request the assistance of some  
 205 person of his or her own choice, other than the elector's  
 206 employer, an agent of the employer, or an officer or agent of  
 207 his or her union, in casting his or her vote-by-mail ~~absentee~~  
 208 ballot.  
 209 Section 10. Paragraph (b) of subsection (1) of section  
 210 101.151, Florida Statutes, is amended to read:  
 211 101.151 Specifications for ballots.—  
 212 (1)  
 213 (b) Early voting sites may employ a ballot-on-demand  
 214 production system to print individual marksense ballots,  
 215 including provisional ballots, for eligible electors pursuant to  
 216 s. 101.657. Ballot-on-demand technology may be used to produce  
 217 marksense vote-by-mail ~~absentee~~ and election-day ballots.  
 218 Section 11. Subsection (3) of section 101.5612, Florida  
 219 Statutes, is amended to read:  
 220 101.5612 Testing of tabulating equipment.—  
 221 (3) For electronic or electromechanical voting systems  
 222 configured to tabulate vote-by-mail ~~absentee~~ ballots at a  
 223 central or regional site, the public testing shall be conducted  
 224 by processing a preaudited group of ballots so produced as to  
 225 record a predetermined number of valid votes for each candidate  
 226 and on each measure and to include one or more ballots for each  
 227 office which have activated voting positions in excess of the  
 228 number allowed by law in order to test the ability of the  
 229 automatic tabulating equipment to reject such votes. If any  
 230 error is detected, the cause therefor shall be corrected and an  
 231 errorless count shall be made before the automatic tabulating  
 232 equipment is approved. The test shall be repeated and errorless

Page 8 of 46

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

12-00204-16

2016112\_\_

results achieved immediately before the start of the official count of the ballots and again after the completion of the official count. The programs and ballots used for testing shall be sealed and retained under the custody of the county canvassing board.

Section 12. Paragraph (a) of subsection (5) and subsections (7) and (8) of section 101.5614, Florida Statutes, are amended to read:

101.5614 Canvass of returns.—

(5) (a) If any vote-by-mail ~~absentee~~ ballot is physically damaged so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ~~an absentee~~ ballot containing an overvoted race or a marked vote-by-mail ~~absentee~~ ballot in which every race is undervoted which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). All duplicate ballots shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the defective ballot, and be counted in lieu of the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

(7) Vote-by-mail ~~Absentee~~ ballots may be counted by automatic tabulating equipment if they have been marked in a manner which will enable them to be properly counted by such equipment.

Page 9 of 46

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

12-00204-16

2016112\_\_

(8) The return printed by the automatic tabulating equipment, to which has been added the return of write-in, vote-by-mail ~~absentee~~, and manually counted votes and votes from provisional ballots, shall constitute the official return of the election upon certification by the canvassing board. Upon completion of the count, the returns shall be open to the public. A copy of the returns may be posted at the central counting place or at the office of the supervisor of elections in lieu of the posting of returns at individual precincts.

Section 13. Section 101.572, Florida Statutes, is amended to read:

101.572 Public inspection of ballots.—The official ballots and ballot cards received from election boards and removed from vote-by-mail ~~absentee~~ ballot mailing envelopes shall be open for public inspection or examination while in the custody of the supervisor of elections or the county canvassing board at any reasonable time, under reasonable conditions; however, no persons other than the supervisor of elections or his or her employees or the county canvassing board shall handle any official ballot or ballot card. If the ballots are being examined prior to the end of the contest period in s. 102.168, the supervisor of elections shall make a reasonable effort to notify all candidates whose names appear on such ballots or ballot cards by telephone or otherwise of the time and place of the inspection or examination. All such candidates, or their representatives, shall be allowed to be present during the inspection or examination.

Section 14. Paragraphs (a) and (b) of subsection (2) of section 101.591, Florida Statutes, are amended to read:

Page 10 of 46

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

12-00204-16

2016112

291 101.591 Voting system audit.—

292 (2) (a) A manual audit shall consist of a public manual  
 293 tally of the votes cast in one randomly selected race that  
 294 appears on the ballot. The tally sheet shall include election-  
 295 day, vote-by-mail ~~absentee~~, early voting, provisional, and  
 296 overseas ballots, in at least 1 percent but no more than 2  
 297 percent of the precincts chosen at random by the county  
 298 canvassing board or the local board responsible for certifying  
 299 the election. If 1 percent of the precincts is less than one  
 300 entire precinct, the audit shall be conducted using at least one  
 301 precinct chosen at random by the county canvassing board or the  
 302 local board responsible for certifying the election. Such  
 303 precincts shall be selected at a publicly noticed canvassing  
 304 board meeting.

305 (b) An automated audit shall consist of a public automated  
 306 tally of the votes cast across every race that appears on the  
 307 ballot. The tally sheet shall include election day, vote-by-mail  
 308 ~~absentee~~, early voting, provisional, and overseas ballots in at  
 309 least 20 percent of the precincts chosen at random by the county  
 310 canvassing board or the local board responsible for certifying  
 311 the election. Such precincts shall be selected at a publicly  
 312 noticed canvassing board meeting.

313 Section 15. Section 101.6105, Florida Statutes, is amended  
 314 to read:

315 101.6105 Vote-by-mail ~~Absentee~~ voting.—The provisions of  
 316 the election code relating to vote-by-mail ~~absentee~~ voting and  
 317 vote-by-mail ~~absentee~~ ballots shall apply to elections under ss.  
 318 101.6101-101.6107 only insofar as they do not conflict with the  
 319 provisions of ss. 101.6101-101.6107.

Page 11 of 46

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

12-00204-16

2016112

320 Section 16. Section 101.62, Florida Statutes, is amended to  
 321 read:

322 101.62 Request for vote-by-mail ~~absentee~~ ballots.—

323 (1) (a) The supervisor shall accept a request for a vote-by-  
 324 mail ~~an absentee~~ ballot from an elector in person or in writing.  
 325 One request shall be deemed sufficient to receive a vote-by-mail  
 326 ~~an absentee~~ ballot for all elections through the end of the  
 327 calendar year of the second ensuing regularly scheduled general  
 328 election, unless the elector or the elector's designee indicates  
 329 at the time the request is made the elections for which the  
 330 elector desires to receive a vote-by-mail ~~an absentee~~ ballot.  
 331 Such request may be considered canceled when any first-class  
 332 mail sent by the supervisor to the elector is returned as  
 333 undeliverable.

334 (b) The supervisor may accept a written or telephonic  
 335 request for a vote-by-mail ~~an absentee~~ ballot to be mailed to an  
 336 elector's address on file in the Florida Voter Registration  
 337 System from the elector, or, if directly instructed by the  
 338 elector, a member of the elector's immediate family, or the  
 339 elector's legal guardian; if the ballot is requested to be  
 340 mailed to an address other than the elector's address on file in  
 341 the Florida Voter Registration System, the request must be made  
 342 in writing and signed by the elector. However, an absent  
 343 uniformed service voter or an overseas voter seeking a vote-by-  
 344 mail ~~an absentee~~ ballot is not required to submit a signed,  
 345 written request for a vote-by-mail ~~an absentee~~ ballot that is  
 346 being mailed to an address other than the elector's address on  
 347 file in the Florida Voter Registration System. For purposes of  
 348 this section, the term "immediate family" has the same meaning

Page 12 of 46

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

12-00204-16

2016112\_\_

as specified in paragraph (4) (c). The person making the request must disclose:

1. The name of the elector for whom the ballot is requested.
2. The elector's address.
3. The elector's date of birth.
4. The requester's name.
5. The requester's address.
6. The requester's driver license number, if available.
7. The requester's relationship to the elector.
8. The requester's signature (written requests only).

(c) Upon receiving a request for a vote-by-mail ~~an absentee~~ ballot from an absent voter, the supervisor of elections shall notify the voter of the free access system that has been designated by the department for determining the status of his or her vote-by-mail ~~absentee~~ ballot.

(2) A request for a vote-by-mail ~~an absentee~~ ballot to be mailed to a voter must be received no later than 5 p.m. on the sixth day before the election by the supervisor of elections. The supervisor of elections shall mail vote-by-mail ~~absentee~~ ballots to voters requesting ballots by such deadline no later than 4 days before the election.

(3) For each request for a vote-by-mail ~~an absentee~~ ballot received, the supervisor shall record the date the request was made, the date the vote-by-mail ~~absentee~~ ballot was delivered to the voter or the voter's designee or the date the vote-by-mail ~~absentee~~ ballot was delivered to the post office or other carrier, the date the ballot was received by the supervisor, the absence of the voter's signature on the voter's certificate, if

12-00204-16

2016112\_\_

applicable, and such other information he or she may deem necessary. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than 8 a.m. of each day, including weekends, beginning 60 days before the primary until 15 days after the general election and shall be contemporaneously provided to the division. This information shall be confidential and exempt from s. 119.07(1) and shall be made available to or reproduced only for the voter requesting the ballot, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees for political purposes only.

(4) (a) No later than 45 days before each presidential preference primary election, primary election, and general election, the supervisor of elections shall send a vote-by-mail ~~an absentee~~ ballot as provided in subparagraph (c)2. to each absent uniformed services voter and to each overseas voter who has requested a vote-by-mail ~~an absentee~~ ballot.

(b) The supervisor of elections shall mail a vote-by-mail ~~an absentee~~ ballot to each absent qualified voter, other than those listed in paragraph (a), who has requested such a ballot, between the 35th and 28th days before the presidential preference primary election, primary election, and general election. Except as otherwise provided in subsection (2) and after the period described in this paragraph, the supervisor shall mail vote-by-mail ~~absentee~~ ballots within 2 business days after receiving a request for such a ballot.

(c) The supervisor shall provide a vote-by-mail ~~an absentee~~

12-00204-16

2016112\_\_

ballot to each elector by whom a request for that ballot has been made by one of the following means:

1. By nonforwardable, return-if-undeliverable mail to the elector's current mailing address on file with the supervisor or any other address the elector specifies in the request.

2. By forwardable mail, e-mail, or facsimile machine transmission to absent uniformed services voters and overseas voters. The absent uniformed services voter or overseas voter may designate in the vote-by-mail ~~absentee~~ ballot request the preferred method of transmission. If the voter does not designate the method of transmission, the vote-by-mail ~~absentee~~ ballot shall be mailed.

3. By personal delivery before 7 p.m. on election day to the elector, upon presentation of the identification required in s. 101.043.

4. By delivery to a designee on election day or up to 5 days prior to the day of an election. Any elector may designate in writing a person to pick up the ballot for the elector; however, the person designated may not pick up more than two vote-by-mail ~~absentee~~ ballots per election, other than the designee's own ballot, except that additional ballots may be picked up for members of the designee's immediate family. For purposes of this section, "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse. The designee shall provide to the supervisor the written authorization by the elector and a picture identification of the designee and must complete an affidavit. The designee shall state in the affidavit that the designee is authorized by the elector to pick up that

Page 15 of 46

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

12-00204-16

2016112\_\_

ballot and shall indicate if the elector is a member of the designee's immediate family and, if so, the relationship. The department shall prescribe the form of the affidavit. If the supervisor is satisfied that the designee is authorized to pick up the ballot and that the signature of the elector on the written authorization matches the signature of the elector on file, the supervisor shall give the ballot to that designee for delivery to the elector.

5. Except as provided in s. 101.655, the supervisor may not deliver a vote-by-mail ~~an absentee~~ ballot to an elector or an elector's immediate family member on the day of the election unless there is an emergency, to the extent that the elector will be unable to go to his or her assigned polling place. If a vote-by-mail ~~an absentee~~ ballot is delivered, the elector or his or her designee shall execute an affidavit affirming to the facts which allow for delivery of the vote-by-mail ~~absentee~~ ballot. The department shall adopt a rule providing for the form of the affidavit.

(5) If the department is unable to certify candidates for an election in time to comply with paragraph (4)(a), the Department of State is authorized to prescribe rules for a ballot to be sent to absent uniformed services voters and overseas voters.

(6) ~~Only Nothing other than~~ the materials necessary to vote by mail ~~may absentee shall~~ be mailed or delivered with any vote-by-mail ~~absentee~~ ballot.

Section 17. Subsections (1) and (4) of section 101.64, Florida Statutes, are amended to read:

101.64 Delivery of vote-by-mail ~~absentee~~ ballots;

Page 16 of 46

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



12-00204-16

2016112

envelopes; form.-

(1) The supervisor shall enclose with each vote-by-mail ~~absentee~~ ballot two envelopes: a secrecy envelope, into which the absent elector shall enclose his or her marked ballot; and a mailing envelope, into which the absent elector shall then place the secrecy envelope, which shall be addressed to the supervisor and also bear on the back side a certificate in substantially the following form:

Note: Please Read Instructions Carefully Before  
Marking Ballot and Completing Voter's Certificate.

## VOTER'S CERTIFICATE

I, ....., do solemnly swear or affirm that I am a qualified and registered voter of .... County, Florida, and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt to commit any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I can be convicted of a felony of the third degree and fined up to \$5,000 and/or imprisoned for up to 5 years. I also understand that failure to sign this certificate will invalidate my ballot.

... (Date) ...

... (Voter's Signature) ...

(4) The supervisor shall mark, code, indicate on, or otherwise track the precinct of the absent elector for each vote-by-mail ~~absentee~~ ballot.

Section 18. Section 101.65, Florida Statutes, is amended to

12-00204-16

2016112

read:

101.65 Instructions to absent electors.—The supervisor shall enclose with each vote-by-mail ~~absentee~~ ballot separate printed instructions in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY  
BEFORE MARKING BALLOT.

1. VERY IMPORTANT. In order to ensure that your vote-by-mail ~~absentee~~ ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the day of the election. However, if you are an overseas voter casting a ballot in a presidential preference primary or general election, your vote-by-mail ~~absentee~~ ballot must be postmarked or dated no later than the date of the election and received by the supervisor of elections of the county in which you are registered to vote no later than 10 days after the date of the election.

2. Mark your ballot in secret as instructed on the ballot. You must mark your own ballot unless you are unable to do so because of blindness, disability, or inability to read or write.

3. Mark only the number of candidates or issue choices for a race as indicated on the ballot. If you are allowed to "Vote for One" candidate and you vote for more than one candidate, your vote in that race will not be counted.

4. Place your marked ballot in the enclosed secrecy envelope.

5. Insert the secrecy envelope into the enclosed mailing envelope which is addressed to the supervisor.

12-00204-16

2016112

523 6. Seal the mailing envelope and completely fill out the  
 524 Voter's Certificate on the back of the mailing envelope.

525 7. VERY IMPORTANT. In order for your vote-by-mail ~~absentee~~  
 526 ballot to be counted, you must sign your name on the line above  
 527 (Voter's Signature). A vote-by-mail ~~An absentee~~ ballot will be  
 528 considered illegal and not be counted if the signature on the  
 529 voter's certificate does not match the signature on record. The  
 530 signature on file at the start of the canvass of the vote-by-  
 531 mail ~~absentee~~ ballots is the signature that will be used to  
 532 verify your signature on the voter's certificate. If you need to  
 533 update your signature for this election, send your signature  
 534 update on a voter registration application to your supervisor of  
 535 elections so that it is received no later than the start of the  
 536 canvassing of vote-by-mail ~~absentee~~ ballots, which occurs no  
 537 earlier than the 15th day before election day.

538 8. VERY IMPORTANT. If you are an overseas voter, you must  
 539 include the date you signed the Voter's Certificate on the line  
 540 above (Date) or your ballot may not be counted.

541 9. Mail, deliver, or have delivered the completed mailing  
 542 envelope. Be sure there is sufficient postage if mailed.

543 10. FELONY NOTICE. It is a felony under Florida law to  
 544 accept any gift, payment, or gratuity in exchange for your vote  
 545 for a candidate. It is also a felony under Florida law to vote  
 546 in an election using a false identity or false address, or under  
 547 any other circumstances making your ballot false or fraudulent.

548 Section 19. Subsections (1) and (2) of section 101.655,  
 549 Florida Statutes, are amended to read:

550 101.655 Supervised voting by absent electors in certain  
 551 facilities.—

Page 19 of 46

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

12-00204-16

2016112

552 (1) The supervisor of elections of a county shall provide  
 553 supervised voting for absent electors residing in any assisted  
 554 living facility, as defined in s. 429.02, or nursing home  
 555 facility, as defined in s. 400.021, within that county at the  
 556 request of any administrator of such a facility. Such request  
 557 for supervised voting in the facility shall be made by  
 558 submitting a written request to the supervisor of elections no  
 559 later than 21 days prior to the election for which that request  
 560 is submitted. The request shall specify the name and address of  
 561 the facility and the name of the electors who wish to vote by  
 562 mail ~~absentee~~ in that election. If the request contains the  
 563 names of fewer than five voters, the supervisor of elections is  
 564 not required to provide supervised voting.

565 (2) The supervisor of elections may, in the absence of a  
 566 request from the administrator of a facility, provide for  
 567 supervised voting in the facility for those persons who have  
 568 requested vote-by-mail ~~absentee~~ ballots. The supervisor of  
 569 elections shall notify the administrator of the facility that  
 570 supervised voting will occur.

571 Section 20. Section 101.661, Florida Statutes, is amended  
 572 to read:

573 101.661 Voting vote-by-mail ~~absentee~~ ballots.—All electors  
 574 must personally mark or designate their choices on the vote-by-  
 575 mail ~~absentee~~ ballot, except:

576 (1) Electors who require assistance to vote because of  
 577 blindness, disability, or inability to read or write, who may  
 578 have some person of the elector's choice, other than the  
 579 elector's employer, an agent of the employer, or an officer or  
 580 agent of the elector's union, mark the elector's choices or

Page 20 of 46

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

12-00204-16

2016112\_\_

581 assist the elector in marking his or her choices on the ballot.

582 (2) As otherwise provided in s. 101.051 or s. 101.655.

583 Section 21. Section 101.662, Florida Statutes, is amended  
584 to read:

585 101.662 Accessibility of vote-by-mail ~~absentee~~ ballots.—It  
586 is the intent of the Legislature that voting by vote-by-mail  
587 ~~absentee~~ ballot be by methods that are fully accessible to all  
588 voters, including voters having a disability. The Department of  
589 State shall work with the supervisors of elections and the  
590 disability community to develop and implement procedures and  
591 technologies, as possible, which will include procedures for  
592 providing vote-by-mail ~~absentee~~ ballots, upon request, in  
593 alternative formats that will allow all voters to cast a secret,  
594 independent, and verifiable vote-by-mail ~~absentee~~ ballot without  
595 the assistance of another person.

596 Section 22. Section 101.663, Florida Statutes, is amended  
597 to read:

598 101.663 Electors; change of residence to another state.—An  
599 elector registered in this state who moves his or her permanent  
600 residence to another state after the registration books in that  
601 state have closed is ~~shall be~~ permitted to vote by mail ~~absentee~~  
602 in the county of his or her former residence for the offices of  
603 President and Vice President of the United States.

604 Section 23. Section 101.67, Florida Statutes, is amended to  
605 read:

606 101.67 Safekeeping of mailed ballots; deadline for  
607 receiving vote-by-mail ~~absentee~~ ballots.—

608 (1) The supervisor of elections shall safely keep in his or  
609 her office any envelopes received containing marked ballots of

12-00204-16

2016112\_\_

610 absent electors, and he or she shall, before the canvassing of  
611 the election returns, deliver the envelopes to the county  
612 canvassing board along with his or her file or list kept  
613 regarding said ballots.

614 (2) Except as provided in s. 101.6952(5), all marked absent  
615 electors' ballots to be counted must be received by the  
616 supervisor by 7 p.m. the day of the election. All ballots  
617 received thereafter shall be marked with the time and date of  
618 receipt and filed in the supervisor's office.

619 Section 24. Section 101.68, Florida Statutes, is amended to  
620 read:

621 101.68 Canvassing of vote-by-mail ~~absentee~~ ballot.—

622 (1) The supervisor of the county where the absent elector  
623 resides shall receive the voted ballot, at which time the  
624 supervisor shall compare the signature of the elector on the  
625 voter's certificate with the signature of the elector in the  
626 registration books or the precinct register to determine whether  
627 the elector is duly registered in the county and may record on  
628 the elector's registration certificate that the elector has  
629 voted. However, effective July 1, 2005, an elector who dies  
630 after casting a vote-by-mail ~~an absentee~~ ballot but on or before  
631 election day shall remain listed in the registration books until  
632 the results have been certified for the election in which the  
633 ballot was cast. The supervisor shall safely keep the ballot  
634 unopened in his or her office until the county canvassing board  
635 canvasses the vote. Except as provided in subsection (4), after  
636 a vote-by-mail ~~an absentee~~ ballot is received by the supervisor,  
637 the ballot is deemed to have been cast, and changes or additions  
638 may not be made to the voter's certificate.

12-00204-16

2016112\_\_

639 (2) (a) The county canvassing board may begin the canvassing  
 640 of vote-by-mail ~~absentee~~ ballots at 7 a.m. on the 15th day  
 641 before the election, but not later than noon on the day  
 642 following the election. In addition, for any county using  
 643 electronic tabulating equipment, the processing of vote-by-mail  
 644 ~~absentee~~ ballots through such tabulating equipment may begin at  
 645 7 a.m. on the 15th day before the election. However,  
 646 notwithstanding any such authorization to begin canvassing or  
 647 otherwise processing vote-by-mail ~~absentee~~ ballots early, no  
 648 result shall be released until after the closing of the polls in  
 649 that county on election day. Any supervisor of elections, deputy  
 650 supervisor of elections, canvassing board member, election board  
 651 member, or election employee who releases the results of a  
 652 canvassing or processing of vote-by-mail ~~absentee~~ ballots prior  
 653 to the closing of the polls in that county on election day  
 654 commits a felony of the third degree, punishable as provided in  
 655 s. 775.082, s. 775.083, or s. 775.084.

656 (b) To ensure that all vote-by-mail ~~absentee~~ ballots to be  
 657 counted by the canvassing board are accounted for, the  
 658 canvassing board shall compare the number of ballots in its  
 659 possession with the number of requests for ballots received to  
 660 be counted according to the supervisor's file or list.

661 (c) 1. The canvassing board shall, if the supervisor has not  
 662 already done so, compare the signature of the elector on the  
 663 voter's certificate or on the vote-by-mail ~~absentee~~ ballot  
 664 affidavit as provided in subsection (4) with the signature of  
 665 the elector in the registration books or the precinct register  
 666 to see that the elector is duly registered in the county and to  
 667 determine the legality of that vote-by-mail ~~absentee~~ ballot. The

12-00204-16

2016112\_\_

668 ballot of an elector who casts a vote-by-mail ~~an absentee~~ ballot  
 669 shall be counted even if the elector dies on or before election  
 670 day, as long as, prior to the death of the voter, the ballot was  
 671 postmarked by the United States Postal Service, date-stamped  
 672 with a verifiable tracking number by a common carrier, or  
 673 already in the possession of the supervisor of elections. A  
 674 vote-by-mail ~~An absentee~~ ballot ~~is shall be~~ considered illegal  
 675 if the voter's certificate or vote-by-mail ~~absentee~~ ballot  
 676 affidavit does not include the signature of the elector, as  
 677 shown by the registration records or the precinct register.  
 678 However, a vote-by-mail ~~an absentee~~ ballot is not considered  
 679 illegal if the signature of the elector does not cross the seal  
 680 of the mailing envelope. If the canvassing board determines that  
 681 any ballot is illegal, a member of the board shall, without  
 682 opening the envelope, mark across the face of the envelope:  
 683 "rejected as illegal." The vote-by-mail ~~absentee~~ ballot  
 684 affidavit, if applicable, the envelope, and the ballot contained  
 685 therein shall be preserved in the manner that official ballots  
 686 voted are preserved.

687 2. If any elector or candidate present believes that a  
 688 vote-by-mail ~~an absentee~~ ballot is illegal due to a defect  
 689 apparent on the voter's certificate or the vote-by-mail ~~absentee~~  
 690 ballot affidavit, he or she may, at any time before the ballot  
 691 is removed from the envelope, file with the canvassing board a  
 692 protest against the canvass of that ballot, specifying the  
 693 precinct, the ballot, and the reason he or she believes the  
 694 ballot to be illegal. A challenge based upon a defect in the  
 695 voter's certificate or vote-by-mail ~~absentee~~ ballot affidavit  
 696 may not be accepted after the ballot has been removed from the

12-00204-16

2016112\_\_

mailing envelope.

(d) The canvassing board shall record the ballot upon the proper record, unless the ballot has been previously recorded by the supervisor. The mailing envelopes shall be opened and the secrecy envelopes shall be mixed so as to make it impossible to determine which secrecy envelope came out of which signed mailing envelope; however, in any county in which an electronic or electromechanical voting system is used, the ballots may be sorted by ballot styles and the mailing envelopes may be opened and the secrecy envelopes mixed separately for each ballot style. The votes on vote-by-mail absentee ballots shall be included in the total vote of the county.

(3) The supervisor or the chair of the county canvassing board shall, after the board convenes, have custody of the vote-by-mail absentee ballots until a final proclamation is made as to the total vote received by each candidate.

(4) (a) The supervisor of elections shall, on behalf of the county canvassing board, notify each elector whose ballot was rejected as illegal and provide the specific reason the ballot was rejected. The supervisor shall mail a voter registration application to the elector to be completed indicating the elector's current signature if the elector's ballot was rejected due to a difference between the elector's signature on the voter's certificate or vote-by-mail absentee ballot affidavit and the elector's signature in the registration books or precinct register. This section does not prohibit the supervisor from providing additional methods for updating an elector's signature.

(b) Until 5 p.m. on the day before an election, the

12-00204-16

2016112\_\_

supervisor shall allow an elector who has returned a vote-by-mail an-absentee ballot that does not include the elector's signature to complete and submit an affidavit in order to cure the unsigned vote-by-mail absentee ballot.

(c) The elector shall provide identification to the supervisor and must complete a vote-by-mail an-absentee ballot affidavit in substantially the following form:

VOTE-BY-MAIL ABSENTEE BALLOT AFFIDAVIT

I, ...., am a qualified voter in this election and registered voter of .... County, Florida. I do solemnly swear or affirm that I requested and returned the vote-by-mail absentee ballot and that I have not and will not vote more than one ballot in this election. I understand that if I commit or attempt any fraud in connection with voting, vote a fraudulent ballot, or vote more than once in an election, I may be convicted of a felony of the third degree and fined up to \$5,000 and imprisoned for up to 5 years. I understand that my failure to sign this affidavit means that my vote-by-mail absentee ballot will be invalidated.

...(Voter's Signature)...

...(Address)...

(d) Instructions must accompany the vote-by-mail absentee ballot affidavit in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE

12-00204-16

2016112

AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR  
BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ~~absentee~~ ballot will be counted, your affidavit should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 5 p.m. on the 2nd day before the election.

2. You must sign your name on the line above (Voter's Signature).

3. You must make a copy of one of the following forms of identification:

a. Identification that includes your name and photograph: United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; or public assistance identification; or

b. Identification that shows your name and current residence address: current utility bill, bank statement, government check, paycheck, or government document (excluding voter identification card).

4. Place the envelope bearing the affidavit into a mailing envelope addressed to the supervisor. Insert a copy of your identification in the mailing envelope. Mail, deliver, or have delivered the completed affidavit along with the copy of your identification to your county supervisor of elections. Be sure there is sufficient postage if mailed and that the supervisor's address is correct.

5. Alternatively, you may fax or e-mail your completed

12-00204-16

2016112

affidavit and a copy of your identification to the supervisor of elections. If e-mailing, please provide these documents as attachments.

(e) The department and each supervisor shall include the affidavit and instructions on their respective websites. The supervisor must include his or her office's mailing address, e-mail address, and fax number on the page containing the affidavit instructions; the department's instruction page must include the office mailing addresses, e-mail addresses, and fax numbers of all supervisors of elections or provide a conspicuous link to such addresses.

(f) The supervisor shall attach each affidavit received to the appropriate vote-by-mail ~~absentee~~ ballot mailing envelope.

Section 25. Section 101.69, Florida Statutes, is amended to read:

101.69 Voting in person; return of vote-by-mail ~~absentee~~ ballot.—The provisions of this code shall not be construed to prohibit any elector from voting in person at the elector's precinct on the day of an election or at an early voting site, notwithstanding that the elector has requested a vote-by-mail ~~an absentee~~ ballot for that election. An elector who has returned a voted vote-by-mail ~~absentee~~ ballot to the supervisor, however, is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board. An elector who has received a vote-by-mail ~~an absentee~~ ballot and has not returned the voted ballot to the supervisor, but desires to vote in person, shall return the ballot, whether voted or not, to the election board in the elector's precinct or to an early voting site. The returned

12-00204-16

2016112\_\_

ballot shall be marked "canceled" by the board and placed with other canceled ballots. However, if the elector does not return the ballot and the election official:

(1) Confirms that the supervisor has received the elector's vote-by-mail ~~absentee~~ ballot, the elector shall not be allowed to vote in person. If the elector maintains that he or she has not returned the vote-by-mail ~~absentee~~ ballot or remains eligible to vote, the elector shall be provided a provisional ballot as provided in s. 101.048.

(2) Confirms that the supervisor has not received the elector's vote-by-mail ~~absentee~~ ballot, the elector shall be allowed to vote in person as provided in this code. The elector's vote-by-mail ~~absentee~~ ballot, if subsequently received, shall not be counted and shall remain in the mailing envelope, and the envelope shall be marked "Rejected as Illegal."

(3) Cannot determine whether the supervisor has received the elector's vote-by-mail ~~absentee~~ ballot, the elector may vote a provisional ballot as provided in s. 101.048.

Section 26. Subsections (1) and (2) of section 101.6921, Florida Statutes, are amended to read:

101.6921 Delivery of special vote-by-mail ~~absentee~~ ballot to certain first-time voters.—

(1) The provisions of this section apply to voters who are subject to the provisions of s. 97.0535 and who have not provided the identification or certification required by s. 97.0535 by the time the vote-by-mail ~~absentee~~ ballot is mailed.

(2) The supervisor shall enclose with each vote-by-mail ~~absentee~~ ballot three envelopes: a secrecy envelope, into which

12-00204-16

2016112\_\_

the absent elector will enclose his or her marked ballot; an envelope containing the Voter's Certificate, into which the absent elector shall place the secrecy envelope; and a mailing envelope, which shall be addressed to the supervisor and into which the absent elector will place the envelope containing the Voter's Certificate and a copy of the required identification.

Section 27. Section 101.6923, Florida Statutes, is amended to read:

101.6923 Special vote-by-mail ~~absentee~~ ballot instructions for certain first-time voters.—

(1) The provisions of this section apply to voters who are subject to the provisions of s. 97.0535 and who have not provided the identification or information required by s. 97.0535 by the time the vote-by-mail ~~absentee~~ ballot is mailed.

(2) A voter covered by this section shall be provided with printed instructions with his or her vote-by-mail ~~absentee~~ ballot in substantially the following form:

READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR BALLOT NOT TO COUNT.

1. In order to ensure that your vote-by-mail ~~absentee~~ ballot will be counted, it should be completed and returned as soon as possible so that it can reach the supervisor of elections of the county in which your precinct is located no later than 7 p.m. on the date of the election. However, if you are an overseas voter casting a ballot in a presidential preference primary or general election, your vote-by-mail

12-00204-16

2016112\_\_

871 ~~absentee~~ ballot must be postmarked or dated no later than the  
 872 date of the election and received by the supervisor of elections  
 873 of the county in which you are registered to vote no later than  
 874 10 days after the date of the election.

875 2. Mark your ballot in secret as instructed on the ballot.  
 876 You must mark your own ballot unless you are unable to do so  
 877 because of blindness, disability, or inability to read or write.

878 3. Mark only the number of candidates or issue choices for  
 879 a race as indicated on the ballot. If you are allowed to "Vote  
 880 for One" candidate and you vote for more than one, your vote in  
 881 that race will not be counted.

882 4. Place your marked ballot in the enclosed secrecy  
 883 envelope and seal the envelope.

884 5. Insert the secrecy envelope into the enclosed envelope  
 885 bearing the Voter's Certificate. Seal the envelope and  
 886 completely fill out the Voter's Certificate on the back of the  
 887 envelope.

888 a. You must sign your name on the line above (Voter's  
 889 Signature).

890 b. If you are an overseas voter, you must include the date  
 891 you signed the Voter's Certificate on the line above (Date) or  
 892 your ballot may not be counted.

893 c. A vote-by-mail ~~An absentee~~ ballot will be considered  
 894 illegal and will not be counted if the signature on the Voter's  
 895 Certificate does not match the signature on record. The  
 896 signature on file at the start of the canvass of the vote-by-  
 897 mail ~~absentee~~ ballots is the signature that will be used to  
 898 verify your signature on the Voter's Certificate. If you need to  
 899 update your signature for this election, send your signature

Page 31 of 46

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

12-00204-16

2016112\_\_

900 update on a voter registration application to your supervisor of  
 901 elections so that it is received no later than the start of  
 902 canvassing of vote-by-mail ~~absentee~~ ballots, which occurs no  
 903 earlier than the 15th day before election day.

904 6. Unless you meet one of the exemptions in Item 7., you  
 905 must make a copy of one of the following forms of  
 906 identification:

907 a. Identification which must include your name and  
 908 photograph: United States passport; debit or credit card;  
 909 military identification; student identification; retirement  
 910 center identification; neighborhood association identification;  
 911 or public assistance identification; or

912 b. Identification which shows your name and current  
 913 residence address: current utility bill, bank statement,  
 914 government check, paycheck, or government document (excluding  
 915 voter identification card).

916 7. The identification requirements of Item 6. do not apply  
 917 if you meet one of the following requirements:

918 a. You are 65 years of age or older.

919 b. You have a temporary or permanent physical disability.

920 c. You are a member of a uniformed service on active duty  
 921 who, by reason of such active duty, will be absent from the  
 922 county on election day.

923 d. You are a member of the Merchant Marine who, by reason  
 924 of service in the Merchant Marine, will be absent from the  
 925 county on election day.

926 e. You are the spouse or dependent of a member referred to  
 927 in paragraph c. or paragraph d. who, by reason of the active  
 928 duty or service of the member, will be absent from the county on

Page 32 of 46

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



12-00204-16

2016112\_\_

929 election day.

930 f. You are currently residing outside the United States.

931 8. Place the envelope bearing the Voter's Certificate into  
932 the mailing envelope addressed to the supervisor. Insert a copy  
933 of your identification in the mailing envelope. DO NOT PUT YOUR  
934 IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR  
935 INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR  
936 BALLOT WILL NOT COUNT.

937 9. Mail, deliver, or have delivered the completed mailing  
938 envelope. Be sure there is sufficient postage if mailed.

939 10. FELONY NOTICE. It is a felony under Florida law to  
940 accept any gift, payment, or gratuity in exchange for your vote  
941 for a candidate. It is also a felony under Florida law to vote  
942 in an election using a false identity or false address, or under  
943 any other circumstances making your ballot false or fraudulent.

944 Section 28. Subsections (1) and (2) of section 101.6925,  
945 Florida Statutes, are amended to read:

946 101.6925 Canvassing special vote-by-mail ~~absentee~~ ballots.-

947 (1) The supervisor of the county where the absent elector  
948 resides shall receive the voted special vote-by-mail ~~absentee~~  
949 ballot, at which time the mailing envelope shall be opened to  
950 determine if the voter has enclosed the identification required  
951 or has indicated on the Voter's Certificate that he or she is  
952 exempt from the identification requirements.

953 (2) If the identification is enclosed or the voter has  
954 indicated that he or she is exempt from the identification  
955 requirements, the supervisor shall make the note on the  
956 registration records of the voter and proceed to canvass the  
957 vote-by-mail ~~absentee~~ ballot as provided in s. 101.68.

Page 33 of 46

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

12-00204-16

2016112\_\_

958 Section 29. Section 101.694, Florida Statutes, is amended  
959 to read:

960 101.694 Mailing of ballots upon receipt of federal postcard  
961 application.-

962 (1) Upon receipt of a federal postcard application for a  
963 vote-by-mail ~~an absentee~~ ballot executed by a person whose  
964 registration is in order or whose application is sufficient to  
965 register or update the registration of that person, the  
966 supervisor shall send the ballot in accordance with s.  
967 101.62(4).

968 (2) Upon receipt of a federal postcard application for a  
969 vote-by-mail ~~an absentee~~ ballot executed by a person whose  
970 registration is not in order and whose application is  
971 insufficient to register or update the registration of that  
972 person, the supervisor shall follow the procedure set forth in  
973 s. 97.073.

974 (3) Vote-by-mail ~~Absentee~~ envelopes printed for voters  
975 entitled to vote by mail ~~absentee~~ under the Uniformed and  
976 Overseas Citizens Absentee Voting Act shall meet the  
977 specifications as determined by the Federal Voting Assistance  
978 Program of the United States Department of Defense and the  
979 United States Postal Service.

980 (4) Cognizance shall be taken of the fact that vote-by-mail  
981 ~~absentee~~ ballots and other materials such as instructions and  
982 envelopes are to be carried via air mail, and, to the maximum  
983 extent possible, such ballots and materials shall be reduced in  
984 size and weight of paper. The same ballot shall be used,  
985 however, as is used by other vote-by-mail ~~absentee~~ voters.

986 Section 30. Subsections (1) and (4) of section 101.6951,

Page 34 of 46

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

12-00204-16

2016112\_\_

Florida Statutes, are amended to read:

101.6951 State write-in vote-by-mail ballot.—

(1) An overseas voter may request, not earlier than 180 days before a general election, a state write-in vote-by-mail ~~absentee~~ ballot from the supervisor of elections in the county of registration. In order to receive a state write-in ballot, the voter shall state that due to military or other contingencies that preclude normal mail delivery, the voter cannot vote a vote-by-mail ~~an absentee~~ ballot during the normal vote-by-mail ~~absentee~~ voting period. State write-in vote-by-mail ~~absentee~~ ballots shall be made available to voters 90 to 180 days prior to a general election. The Department of State shall prescribe by rule the form of the state write-in vote-by-mail ballot.

(4) The state write-in vote-by-mail ballot shall contain all offices, federal, state, and local, for which the voter would otherwise be entitled to vote.

Section 31. Section 101.6952, Florida Statutes, is amended to read:

101.6952 Vote-by-mail ~~Absentee~~ ballots for absent uniformed services and overseas voters.—

(1) If an absent uniformed services voter's or an overseas voter's request for an official vote-by-mail ~~absentee~~ ballot pursuant to s. 101.62 includes an e-mail address, the supervisor of elections shall:

(a) Record the voter's e-mail address in the vote-by-mail ~~absentee~~ ballot record;

(b) Confirm by e-mail that the vote-by-mail ~~absentee~~ ballot request was received and include in that e-mail the estimated

12-00204-16

2016112\_\_

date the vote-by-mail ~~absentee~~ ballot will be sent to the voter; and

(c) Notify the voter by e-mail when the voted vote-by-mail ~~absentee~~ ballot is received by the supervisor of elections.

(2) (a) An absent uniformed services voter or an overseas voter who makes timely application for but does not receive an official vote-by-mail ~~absentee~~ ballot may use the federal write-in absentee ballot to vote in any federal, state, or local election.

(b) 1. In an election for federal office, an elector may designate a candidate by writing the name of a candidate on the ballot. Except for a primary or special primary election, the elector may alternatively designate a candidate by writing the name of a political party on the ballot. A written designation of the political party shall be counted as a vote for the candidate of that party if there is such a party candidate in the race.

2. In a state or local election, an elector may vote in the section of the federal write-in absentee ballot designated for nonfederal races by writing on the ballot the title of each office and by writing on the ballot the name of the candidate for whom the elector is voting. Except for a primary, special primary, or nonpartisan election, the elector may alternatively designate a candidate by writing the name of a political party on the ballot. A written designation of the political party shall be counted as a vote for the candidate of that party if there is such a party candidate in the race. In addition, the elector may vote on any ballot measure presented in such election by identifying the ballot measure on which he or she

12-00204-16

2016112\_\_

desires to vote and specifying his or her vote on the measure.  
For purposes of this section, a vote cast in a judicial merit retention election shall be treated in the same manner as a ballot measure in which the only allowable responses are "Yes" or "No."

(c) In the case of a joint candidacy, such as for the offices of President/Vice President or Governor/Lieutenant Governor, a valid vote for one or both qualified candidates on the same ticket shall constitute a vote for the joint candidacy.

(d) For purposes of this subsection and except when the context clearly indicates otherwise, such as when a candidate in the election is affiliated with a political party whose name includes the word "Independent," "Independence," or a similar term, a voter designation of "No Party Affiliation" or "Independent," or any minor variation, misspelling, or abbreviation thereof, shall be considered a designation for the candidate, other than a write-in candidate, who qualified to run in the race with no party affiliation. If more than one candidate qualifies to run as a candidate with no party affiliation, the designation may not count for any candidate unless there is a valid, additional designation of the candidate's name.

(e) Any abbreviation, misspelling, or other minor variation in the form of the name of an office, the name of a candidate, the ballot measure, or the name of a political party must be disregarded in determining the validity of the ballot.

(3) (a) An absent uniformed services voter or an overseas voter who submits a federal write-in absentee ballot and later receives an official vote-by-mail ~~absentee~~ ballot may submit the

12-00204-16

2016112\_\_

official vote-by-mail ~~absentee~~ ballot. An elector who submits a federal write-in absentee ballot and later receives and submits an official vote-by-mail ~~absentee~~ ballot should make every reasonable effort to inform the appropriate supervisor of elections that the elector has submitted more than one ballot.

(b) A federal write-in absentee ballot may not be canvassed until 7 p.m. on the day of the election. A federal write-in absentee ballot from an overseas voter in a presidential preference primary or general election may not be canvassed until the conclusion of the 10-day period specified in subsection (5). Each federal write-in absentee ballot received by 7 p.m. on the day of the election shall be canvassed pursuant to ss. 101.5614(5) and 101.68, unless the elector's official vote-by-mail ~~absentee~~ ballot is received by 7 p.m. on election day. Each federal write-in absentee ballot from an overseas voter in a presidential preference primary or general election received by 10 days after the date of the election shall be canvassed pursuant to ss. 101.5614(5) and 101.68, unless the overseas voter's official vote-by-mail ~~absentee~~ ballot is received by 10 days after the date of the election. If the elector's official vote-by-mail ~~absentee~~ ballot is received by 7 p.m. on election day, or, for an overseas voter in a presidential preference primary or general election, no later than 10 days after the date of the election, the federal write-in absentee ballot is invalid and the official vote-by-mail ~~absentee~~ ballot shall be canvassed. The time shall be regulated by the customary time in standard use in the county seat of the locality.

(4) For vote-by-mail ~~absentee~~ ballots received from absent

12-00204-16

2016112\_\_

uniformed services voters or overseas voters, there is a presumption that the envelope was mailed on the date stated on the outside of the return envelope, regardless of the absence of a postmark on the mailed envelope or the existence of a postmark date that is later than the date of the election.

(5) A vote-by-mail ~~An absentee~~ ballot from an overseas voter in any presidential preference primary or general election which is postmarked or dated no later than the date of the election and is received by the supervisor of elections of the county in which the overseas voter is registered no later than 10 days after the date of the election shall be counted as long as the vote-by-mail ~~absentee~~ ballot is otherwise proper.

Section 32. Section 101.697, Florida Statutes, is amended to read:

101.697 Electronic transmission of election materials.—The Department of State shall determine whether secure electronic means can be established for receiving ballots from overseas voters. If such security can be established, the department shall adopt rules to authorize a supervisor of elections to accept from an overseas voter a request for a vote-by-mail ~~an absentee~~ ballot or a voted vote-by-mail ~~absentee~~ ballot by secure facsimile machine transmission or other secure electronic means. The rules must provide that in order to accept a voted ballot, the verification of the voter must be established, the security of the transmission must be established, and each ballot received must be recorded.

Section 33. Paragraph (a) of subsection (4) of section 102.031, Florida Statutes, is amended to read:

102.031 Maintenance of good order at polls; authorities;

Page 39 of 46

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

12-00204-16

2016112\_\_

persons allowed in polling rooms and early voting areas; unlawful solicitation of voters.—

(4) (a) No person, political committee, or other group or organization may solicit voters inside the polling place or within 100 feet of the entrance to any polling place, a polling room where the polling place is also a polling room, an early voting site, or an office of the supervisor of elections where vote-by-mail ~~absentee~~ ballots are requested and printed on demand for the convenience of electors who appear in person to request them. Before the opening of the polling place or early voting site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.

Section 34. Subsections (2), (3), and (4) of section 102.141, Florida Statutes, are amended to read:

102.141 County canvassing board; duties.—

(2) The county canvassing board shall meet in a building accessible to the public in the county where the election occurred at a time and place to be designated by the supervisor of elections to publicly canvass the absent ~~absentee~~ electors' ballots as provided for in s. 101.68 and provisional ballots as provided by ss. 101.048, 101.049, and 101.6925. Provisional ballots cast pursuant to s. 101.049 shall be canvassed in a manner that votes for candidates and issues on those ballots can be segregated from other votes. Public notice of the time and place at which the county canvassing board shall meet to canvass the absent ~~absentee~~ electors' ballots and provisional ballots shall be given at least 48 hours prior thereto by publication on the supervisor of elections' website and once in one or more newspapers of general circulation in the county or, if there is

Page 40 of 46

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

12-00204-16

2016112

no newspaper of general circulation in the county, by posting such notice in at least four conspicuous places in the county. As soon as the ~~absent~~ absentee electors' ballots and the provisional ballots are canvassed, the board shall proceed to publicly canvass the vote given each candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, as shown by the returns then on file in the office of the supervisor of elections.

(3) The canvass, except the canvass of absent ~~absentee~~ electors' returns and the canvass of provisional ballots, shall be made from the returns and certificates of the inspectors as signed and filed by them with the supervisor, and the county canvassing board shall not change the number of votes cast for a candidate, nominee, constitutional amendment, or other measure submitted to the electorate of the county, respectively, in any polling place, as shown by the returns. All returns shall be made to the board on or before 2 a.m. of the day following any primary, general, or other election. If the returns from any precinct are missing, if there are any omissions on the returns from any precinct, or if there is an obvious error on any such returns, the canvassing board shall order a retabulation of the returns from such precinct. Before canvassing such returns, the canvassing board shall examine the tabulation of the ballots cast in such precinct and determine whether the returns correctly reflect the votes cast. If there is a discrepancy between the returns and the tabulation of the ballots cast, the tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly.

(4) (a) The supervisor of elections shall upload into the

Page 41 of 46

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

12-00204-16

2016112

county's election management system by 7 p.m. on the day before the election the results of all early voting and vote-by-mail ~~absentee~~ ballots that have been canvassed and tabulated by the end of the early voting period. Pursuant to ss. 101.5614(9), 101.657, and 101.68(2), the tabulation of votes cast or the results of such uploads may not be made public before the close of the polls on election day.

(b) The canvassing board shall report all early voting and all tabulated vote-by-mail ~~absentee~~ results to the Department of State within 30 minutes after the polls close. Thereafter, the canvassing board shall report, with the exception of provisional ballot results, updated precinct election results to the department at least every 45 minutes until all results are completely reported. The supervisor of elections shall notify the department immediately of any circumstances that do not permit periodic updates as required. Results shall be submitted in a format prescribed by the department.

Section 35. Subsection (8) of section 102.168, Florida Statutes, is amended to read:

102.168 Contest of election.—

(8) In any contest that requires a review of the canvassing board's decision on the legality of a vote-by-mail ~~an absentee~~ ballot pursuant to s. 101.68 based upon a comparison of the signature on the voter's certificate and the signature of the elector in the registration records, the circuit court may not review or consider any evidence other than the signature on the voter's certificate and the signature of the elector in the registration records. The court's review of such issue shall be to determine only if the canvassing board abused its discretion

Page 42 of 46

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

12-00204-16

2016112\_\_

1219 in making its decision.

1220 Section 36. Subsection (1) of section 104.047, Florida  
1221 Statutes, is amended to read:

1222 104.047 Vote-by-mail ~~Absentee~~ ballots and voting;  
1223 violations.—

1224 (1) Except as provided in s. 101.62 or s. 101.655, any  
1225 person who requests a vote-by-mail ~~an absentee~~ ballot on behalf  
1226 of an elector is guilty of a felony of the third degree,  
1227 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1228 Section 37. Paragraph (b) of subsection (2) of section  
1229 104.0515, Florida Statutes, is amended to read:

1230 104.0515 Voting rights; deprivation of, or interference  
1231 with, prohibited; penalty.—

1232 (2) No person acting under color of law shall:

1233 (b) Deny the right of any individual to vote in any  
1234 election because of an error or omission on any record or paper  
1235 relating to any application, registration, or other act  
1236 requisite to voting, if such error or omission is not material  
1237 in determining whether such individual is qualified under law to  
1238 vote in such election. This paragraph shall apply to vote-by-  
1239 mail ~~absentee~~ ballots only if there is a pattern or history of  
1240 discrimination on the basis of race, color, or previous  
1241 condition of servitude in regard to vote-by-mail ~~absentee~~  
1242 ballots.

1243 Section 38. Section 104.0616, Florida Statutes, is amended  
1244 to read:

1245 104.0616 Vote-by-mail ~~Absentee~~ ballots and voting;  
1246 violations.—

1247 (1) For purposes of this section, the term "immediate

12-00204-16

2016112\_\_

1248 family" means a person's spouse or the parent, child,  
1249 grandparent, or sibling of the person or the person's spouse.

1250 (2) Any person who provides or offers to provide, and any  
1251 person who accepts, a pecuniary or other benefit in exchange for  
1252 distributing, ordering, requesting, collecting, delivering, or  
1253 otherwise physically possessing more than two vote-by-mail  
1254 ~~absentee~~ ballots per election in addition to his or her own  
1255 ballot or a ballot belonging to an immediate family member,  
1256 except as provided in ss. 101.6105-101.694, commits a  
1257 misdemeanor of the first degree, punishable as provided in s.  
1258 775.082, s. 775.083, or s. 775.084.

1259 Section 39. Section 104.17, Florida Statutes, is amended to  
1260 read:

1261 104.17 Voting in person after casting vote-by-mail ~~absentee~~  
1262 ballot.—Any person who willfully votes or attempts to vote both  
1263 in person and by vote-by-mail ~~absentee~~ ballot at any election is  
1264 guilty of a felony of the third degree, punishable as provided  
1265 in s. 775.082, s. 775.083, or s. 775.084.

1266 Section 40. Paragraph (b) of subsection (2) of section  
1267 117.05, Florida Statutes, is amended to read:

1268 117.05 Use of notary commission; unlawful use; notary fee;  
1269 seal; duties; employer liability; name change; advertising;  
1270 photocopies; penalties.—

1271 (2)

1272 (b) A notary public may not charge a fee for witnessing a  
1273 vote-by-mail ~~an absentee~~ ballot in an election, and must witness  
1274 such a ballot upon the request of an elector, provided the  
1275 notarial act is in accordance with the provisions of this  
1276 chapter.

12-00204-16

2016112\_\_

1277 Section 41. Subsection (7) of section 394.459, Florida  
 1278 Statutes, is amended to read:  
 1279 394.459 Rights of patients.—  
 1280 (7) VOTING IN PUBLIC ELECTIONS.—A patient who is eligible  
 1281 to vote according to the laws of the state has the right to vote  
 1282 in the primary and general elections. The department shall  
 1283 establish rules to enable patients to obtain voter registration  
 1284 forms, applications for vote-by-mail ~~absentee~~ ballots, and vote-  
 1285 by-mail ~~absentee~~ ballots.

1286 Section 42. Section 741.406, Florida Statutes, is amended  
 1287 to read:

1288 741.406 Voting by program participant; use of designated  
 1289 address by supervisor of elections.—A program participant who is  
 1290 otherwise qualified to vote may request a vote-by-mail ~~an~~  
 1291 ~~absentee~~ ballot pursuant to s. 101.62. The program participant  
 1292 shall automatically receive vote-by-mail ~~absentee~~ ballots for  
 1293 all elections in the jurisdictions in which that individual  
 1294 resides in the same manner as vote-by-mail ~~absentee~~ voters. The  
 1295 supervisor of elections shall transmit the vote-by-mail ~~absentee~~  
 1296 ballot to the program participant at the address designated by  
 1297 the participant in his or her application as a vote-by-mail ~~an~~  
 1298 ~~absentee~~ voter. The name, address, and telephone number of a  
 1299 program participant may not be included in any list of  
 1300 registered voters available to the public.

1301 Section 43. Subsection (7) of section 916.107, Florida  
 1302 Statutes, is amended to read:

1303 916.107 Rights of forensic clients.—

1304 (7) VOTING IN PUBLIC ELECTIONS.—A forensic client who is  
 1305 eligible to vote according to the laws of the state has the

Page 45 of 46

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

12-00204-16

2016112\_\_

1306 right to vote in the primary and general elections. The  
 1307 department and agency shall establish rules to enable clients to  
 1308 obtain voter registration forms, applications for vote-by-mail  
 1309 ~~absentee~~ ballots, and vote-by-mail ~~absentee~~ ballots.

1310 Section 44. This act shall take effect July 1, 2016.

Page 46 of 46

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Commerce and Tourism, *Vice Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Ethics and Elections  
Transportation

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

**SENATOR GERALDINE F. THOMPSON**  
12th District

December 3, 2015

Committee on Rules  
404 S. Monroe Street  
Tallahassee, FL 32399

To Whom It May Concern:

Due to a conflict in my schedule Clifton Addison my Legislative Aide will present **SB 112 Absentee Voting** on my behalf.

Sincerely,

A handwritten signature in cursive script that reads "Geraldine F. Thompson".

Senator Geraldine Thompson  
District 12

### REPLY TO:

- ☐ 511 W. South Street, Suite 204, Orlando, Florida 32805 (407) 245-1511 FAX: (407) 245-1513
- ☐ 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore





The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules


**Subject:** Committee Agenda Request

**Date:** November 3, 2015

---

I respectfully request that **Senate Bill # 112**, relating to Absentee Voting, be placed on the:

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

  
Senator Geraldine F. Thompson  
Florida Senate, District 12

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

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

12-3-15

Meeting Date

SB 112

Bill Number (if applicable)

Topic Vote By Mail

Amendment Barcode (if applicable)

Name ALBERT E. CARROLL

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

Address 4945 37<sup>th</sup> AVE N  
Street

Phone 727-742-1640

ST. PETERSBURG FL 33710  
City State Zip

Email FLMAILMAN3@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA STATE ASSOCIATION OF LETTER CARRIERS

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)

12/3/15

Meeting Date

SB 112

Bill Number (if applicable)

Topic VOTE BY MAIL

Amendment Barcode (if applicable)

Name KEVIN BYRNE

Job Title LETTER CARRIER

Address 256 SE TODD AVENUE

Street

Phone 772-979-5899

PORT ST LUCIE

City

FL

State

34983

Zip

Email kevinjbyrne54@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing FLORIDA STATE ASSOCIATION OF LETTER CARRIERS

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

12/03/2015  
Meeting Date

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

SB0112  
Bill Number (if applicable)

Topic Absentee Voting

Amendment Barcode (if applicable)

Name Tammi King

Job Title Bus Operator

Address 4369 Creekside Boulevard  
Street  
Kissimmee, Orlando 34746  
City State Zip

Phone (407) 283-5548

Email Tammi.king41@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

12/3/15  
Meeting Date

SB 112  
Bill Number (if applicable)

Topic Vote By Mail

Amendment Barcode (if applicable)

Name Gloria Mowu

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

Address 36719 Jackson Ave

Phone \_\_\_\_\_

Dade City FL 33523  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

**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)

12/3/15  
Meeting Date

SB 112  
Bill Number (if applicable)

Topic Vote By Mail

Amendment Barcode (if applicable)

Name Angela Lewis-Bennett

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

Address 36712 Jefferson Ave  
Street

Phone \_\_\_\_\_

Dade City FL 33523  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

***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)

12-03-15.

Meeting Date

SB 6112.

Bill Number (if applicable)

Topic Absentee Voting

Amendment Barcode (if applicable)

Name ROSA I Bauza

Job Title Bus Operator.

Address 1935 S. Conway Rd Apt E7 Phone 407-394-6940

Street

Orlando Fl.

City

State

32812

Zip

Email rosiebauza@me.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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

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

Meeting Date

Bill Number (if applicable)

Topic SB 112

Amendment Barcode (if applicable)

Name Jasmyne Henderson

Job Title Associate

Address 1028 East Park Avenue

Phone 850/216-1002

Street

Tallahassee Florida 32301

City

State

Zip

Email jasmyne@pittman-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)



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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/CS/SB 344

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senators Bradley, Dean, and others

SUBJECT: Justifiable Use or Threatened Use of Defensive Force

DATE: December 7, 2015

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

| ANALYST              | STAFF DIRECTOR  | REFERENCE  | ACTION                      |
|----------------------|-----------------|------------|-----------------------------|
| 1. <u>Cellon</u>     | <u>Cannon</u>   | <u>CJ</u>  | <b>Fav/CS</b>               |
| 2. <u>Clodfelter</u> | <u>Sadberry</u> | <u>ACJ</u> | <b>Recommend: Favorable</b> |
| 3. <u>Cellon</u>     | <u>Phelps</u>   | <u>RC</u>  | <b>Fav/CS</b>               |

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 344 shifts the burden of proof from the defendant to the prosecution in justifiable use of force pre-trial immunity hearings.

These new statutory procedures allocate the clear and convincing evidence evidentiary standard to the prosecution to overcome a defendant's claim of immunity from criminal prosecution.

The bill deletes the term "attacked" from s. 776.013(3), F.S., the home protection statute.

The bill includes new language in s. 776.013(3), F.S., that requires a person who is in his or her dwelling, residence, or vehicle have a reasonable belief that the use or threat of force, nondeadly or deadly, is necessary to prevent imminent death or great bodily harm or the commission of a forcible felony. This requirement appears to be applicable in situations other than those where the presumptions<sup>1</sup> found in s. 776.013(1) and (2), F.S., would apply.

The bill deletes the requirement that a person who is attacked in his or her dwelling, residence, or vehicle use or threaten to use force "in accordance with s. 776.012(1) or (2), F.S. or s. 776.031 (1) or (2), F.S." A strict reading of s. 776.013(3), F.S. (2014), would have the defender who is

---

<sup>1</sup> See pg. 9-10 of the Present Situation section.

attacked in his or her dwelling, residence, or vehicle *not be engaged in criminal activity*<sup>2</sup> at the time deadly defensive force is threatened or used. Deleting the cross-references appears to have the practical effect of eliminating that the defender not be engaged in criminal activity when using or threatening defensive force under s. 776.013(3), F.S.

The bill is effective upon becoming law.

## II. Present Situation:

In 2005 the Justifiable Use of Force statutes (Self-Defense), were revised to expand a person's ability to lawfully defend himself, herself, or others, property, and the home.<sup>3</sup>

The 2005 changes in ch. 776, F.S., also created a new right to immunity from criminal prosecution or civil action.<sup>4</sup> Essentially the expanded self-defense statutes were no longer limited to application at the trial stage but also applied at the earliest stages of a criminal case. Under the 2005 revisions, if the facts of a case showed that a defendant used force *as permitted in the newly-expanded use of force statutes*, the defendant was immune from criminal prosecution or civil action related to that use of force.

Immunity from prosecution is different than the defense of justifiable use of force. Essentially, *immunity absolves* a person from criminal liability and the person has no risk of being convicted of the crime for which immunity has been granted.

In contrast, a defendant who is not immune from prosecution and who is presenting the affirmative defense of justifiable use of force is at risk of conviction. The *defense* of justifiable use of force requires some evidentiary showing to the judge or jury that criminal actions are justifiable and therefore excusable under the law.

The immunity law states:

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened....As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

---

<sup>2</sup> See ss. 776.012(2) and 776.031(2), F.S. (2014), which provide that a person may use *deadly* force to prevent imminent death or great bodily harm, or the imminent commission of a forcible felony, *if* the person (defender) is *not engaged in a criminal activity* and is in a place where he or she has a right to be.

<sup>3</sup> 2005-27, L.O.F. The statutory revisions came to be called the “Stand Your Ground” law because the common law duty to retreat applicable in places other than the home was abrogated whereby a person no longer had any duty to retreat, unless the person was in a place where he or she was not lawfully entitled to be.

<sup>4</sup> Section 776.032, F.S.; s. 4, ch. 2005-27, L.O.F.

(2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.

(3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

### **Application of the Immunity Statute**

Although s. 776.032, F.S., created immunity from criminal prosecution where a person justifiably uses force, it did not provide any *method* by which the immunity could be conferred. Therefore, it became the responsibility of the courts to craft a way to grant immunity from prosecution in cases where a defendant claims entitlement to immunity under s. 776.032, F.S.

### ***Pretrial Evidentiary Hearing on Defendant's Motion to Dismiss the Case Where Defendant has the Burden of Proof***

After many years of litigation the courts developed the following procedure for granting immunity in self-defense cases.

During the pretrial process the defendant may file a Motion to Dismiss<sup>5</sup> asking the court to dismiss the case against him or herself because the immunity statute applies to his or her actions. The courts have settled on the more general type of Motion to Dismiss,<sup>6</sup> rejecting the Rule 3.190(c)(4), FL R Cr.P, type of motion described in note 2 below. The trial court is required to conduct an evidentiary hearing on the motion to decide the facts as they relate to immunity.

[T]reating motions to dismiss pursuant to section 776.032 in the same manner as rule 3.190(c)(4) motions would not provide criminal defendants the opportunity to establish immunity and avoid trial that was contemplated by the Legislature. ... We conclude that where a criminal defendant files a motion to dismiss pursuant to section 776.032, the trial court should decide the factual question of the applicability of the statutory immunity.<sup>7</sup>

<sup>5</sup> The motion must be sworn to by the moving party. The Florida Rules of Criminal Procedure provide two principal ways of approaching the Motion to Dismiss in a self-defense situation.

- Under Rule 3.190(c)(4) the motion can allege that there are no materially disputed facts and that the undisputed facts do not establish a prima facie case of guilt against the defendant. The court is not supposed to decide issues of fact that may exist in a "(c)(4)" motion as the facts should not be materially disputed. (Note: If the State specifically alleges that the material facts are in dispute or that the facts refute the defendant's claim, the motion to dismiss must be denied. *Dennis v. State*, 51 So.3d 456 (Fla. 2010) citing *State v. Kalogeropolous*, 758 So.2d 110, 112 (Fla.2000).)
- Rule 3.190(b) provides for the more general type of Motion to Dismiss.

<sup>6</sup> Rule 3.190(b), FL R Cr. P.

<sup>7</sup> *Dennis v. State*, 51 So.3d 456 (Fla. 2010). See also Defendant's Memorandum on Burden of Proof in *State v. Yaquibie*, 2009 WL 6866287 (Case No. F08-18175, Fla. 11th Jud.Cir., April 29, 2009).

In *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008), a case that early-on established the trial court procedures for immunity hearings and that was adopted in three of the other four district courts of appeal, the First District Court determined that:

[A] defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches. As noted by the trial court, courts have imposed a similar burden for motions challenging the voluntariness of a confession. *See, e.g., McDole v. State*, 283 So.2d 553, 554 (Fla.1973). We reject any suggestion that the procedure established by rule 3.190(c) should control so as to require denial of a motion whenever a material issue of fact appears.

The case of *Bretherick v. State*, 170 So.3d 766 (Fla. 2015), finally and squarely addressed the issue of the burden of proof in the pretrial evidentiary hearing. In the *Bretherick* case, the court rejected the position that the State must disprove entitlement to immunity beyond a reasonable doubt at the pretrial evidentiary hearing. The court approved the *Peterson* court's view that the defendant should bear the burden of proof by a preponderance of the evidence.<sup>8</sup>

### **Justifiable Use of Force as an Affirmative Defense – Procedure; Applicable Burdens of Proof at Trial**

#### ***Trial Procedure***

A criminal defendant can raise and argue the issue of self-defense as an affirmative defense<sup>9</sup> to the criminal charges to which such a defense is applicable at a number of points during the criminal process. However, the defense is generally raised during the trial.

If the defendant raises an affirmative defense at trial there must be *some proof presented* upon which the jury can lawfully base a decision on the verdict in the matter. This evidence may come from sources other than the defendant, such as other witnesses or physical evidence.

Because the prosecution has the burden of proof as to guilt, the State presents its evidence first. After the prosecution has presented its case in chief to the jury, the defendant typically moves the court to grant a Judgment of Acquittal finding that the evidence is not sufficient to require any further proceedings such as the defense presenting evidence.

At the point in the proceedings where all of the evidence has been presented, including any evidence offered by the defendant and any rebuttal evidence offered by the prosecution, the

---

<sup>8</sup> The court reasoned that s. 776.032, F.S., although an immunity provision, is not a blanket immunity, but “rather requires the establishment that the use of force was legally justified.” *Bretherick v. State*, 170 So.3d 766 (Fla. 2015). (“A ‘preponderance’ of the evidence is defined as ‘the greater weight of the evidence,’ or evidence that ‘more likely than not’ tends to prove a certain proposition.” *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000)).

<sup>9</sup> The affirmative defense of justifiable use of force is generally raised by a defendant when there are facts showing that the victim was killed or injured by the criminal act of the defendant *but* the defendant's act was factually and legally justifiable and therefore the defendant is not criminally liable.

defendant typically argues the weaknesses in the prosecution's case and the strength of the self-defense evidence to the court, again asking to have the case dismissed with a Judgment of Acquittal.

### ***Standards of Proof at Trial***

The standard of proof that must be met in order for the court to grant the defendant a Judgment of Acquittal at trial requires the defendant to present a prima facie case of self-defense that is not sufficiently rebutted by the prosecution.<sup>10</sup>

We recognize that the question of whether a defendant committed a homicide in justifiable self-defense is ordinarily one for the jury. However, when the State's evidence is legally insufficient to rebut the defendant's testimony establishing self-defense, the court must grant a motion for judgment of acquittal.<sup>11</sup>

It is important to remember that the burden of proof with regard to the question of the defendant's guilt *never leaves the prosecution*. The burden of proof requires that a defendant's guilt be proven beyond a reasonable doubt.

While the defendant may have the burden of going forward with evidence of self-defense, the burden of proving guilt beyond a reasonable doubt never shifts from the State, and this standard broadly includes the requirement that the State prove that the defendant did not act in self-defense beyond a reasonable doubt.<sup>12</sup>

---

<sup>10</sup> The term prima facie evidence is usually used to describe whether the proponent, having the duty to produce evidence, has fulfilled the duty and there is sufficient evidence so that the jury will be allowed to consider the fact or issue. See IX Wigmore, Evidence § 2494 (1940 ed.). See *State v. Rygwelski*, 899 So. 2d 498 (Fla. 2d DCA 2005) (collecting Florida decisions which hold that a statute which provides that certain evidence is prima facie evidence of another fact creates a permissible inference).

<sup>11</sup> *Fowler v. State*, 921 So.2d 708 (Fla. 4th DCA 2008), citing *State v. Rivera*, 719 So.2d 335, 337 (Fla. 5th DCA 1998); *Sneed v. State*, 580 So.2d 169, 170 (Fla. 4th DCA 1991); and *Hernandez Ramos*, 496 So.2d at 838 (Fla. 2d DCA 1986).

<sup>12</sup> *Brown v. State*, 454 So.2d 596, 598 (Fla. 5th DCA 1984), *superseded by statute on other grounds*, *Thomas v. State*, 918 So.2d 327 (Fla. 1st DCA 2005).

(For a full explanation of what constitutes "reasonable doubt," see Fla. Standard Crim. Jury Instr. 3.7, which is read to the jury at the close of a criminal trial. The instruction states:

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material allegation in the [information] [indictment] through each stage of the trial unless it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence, the State has the burden of proving the crime with which the defendant is charged was committed and the defendant is the person who committed the crime.

The defendant is not required to present evidence or prove anything.

Whenever the words "reasonable doubt" are used you must consider the following: A reasonable doubt is not a mere possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which

## Other States

Although other states have justifiable use of force immunity statutes, in deciding the *Bretherick* case, the Florida Supreme Court focused on five states:

### Colorado

Colorado appears to be the first state to pass a law providing for immunity in certain cases of self-defense.

In the 1987 case of *People v. Guenther*, 740 P.2d 971 (Colo. 1987), the Colorado Supreme Court found that the immunity statute does not prohibit a district attorney from initiating a criminal prosecution and therefore does not violate Colorado's separation of powers provision in the constitution.<sup>13</sup>

The court also decided that the *burden of proof* at the pretrial immunity hearing should be *upon the defendant*, who is seeking the benefit of the statute, and that he or she should establish by a *preponderance of the evidence* that the statute applies to the facts of the case.<sup>14</sup>

### South Carolina

The South Carolina courts implemented the statutory immunity provision<sup>15</sup> in reliance on the reasoning in the Florida *Dennis* and *Peterson* cases.<sup>16</sup> The South Carolina "Protection of Persons and Property Act" is virtually identical to the Florida statutes.<sup>17</sup>

### Georgia

The Georgia statutes related to self-defense are also virtually identical to the Florida statutes.

---

is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable.

It is to the evidence introduced in this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.)

<sup>13</sup> *Id.* at 977. It should be noted that Colorado's statute differs from Florida's in that the Colorado law does not impose a probable cause standard for arresting the defendant (probable cause is the standard for arrest in *any* case), as the Florida statute does. Compare C.R.S.A. 18-1-704.5 with s. 776.032, F.S.

<sup>14</sup> *Id.* at 980-981. Note that the *Peterson* court relied heavily on the Colorado court's reasoning in *Guenther*. *Peterson v. State*, 983 So.2d 27, (Fla. 1st DCA 2008). See also *Dennis v. State*, 51 So.3d 456 (Fla. 2010) which approved *Peterson*.

<sup>15</sup> Code 1976 § 16-11-450, SC ST § 16-11-450.

<sup>16</sup> "[W]e hold that when a party raises the question of statutory immunity prior to trial, the proper standard for the circuit court to use in determining immunity under the Act is a *preponderance of the evidence*." *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (S.C. 2011).

<sup>17</sup> 2006 Act No. 379, effective June 9, 2006.

The Georgia Supreme Court observed that: “As a potential bar to criminal proceedings which must be determined prior to a trial, immunity represents a far greater right than any encompassed by an affirmative defense, which may be asserted during trial but cannot stop a trial altogether.”<sup>18</sup> The Court decided that: “[T]o avoid trial, a *defendant bears the burden* of showing that he is entitled to immunity... by a *preponderance of the evidence*.”<sup>19</sup>

### ***Kentucky***

The immunity provision in Kentucky’s law is substantially the same as the Florida law.

In *Rodgers v. Commonwealth*, the Kentucky Supreme Court distinguished the immunity statute as being procedural, not substantive.<sup>20</sup> This issue has not been addressed in Florida as it relates to s. 776.032, F.S.

The *Rodgers* court arrived at a different conclusion than Florida, Colorado, South Carolina, or Georgia courts implementing very similar statutes.

Kentucky law differs from the Florida law in that the Kentucky application has *no evidentiary hearing* in matters of immunity, the *burden of proof is on the prosecution*, and the standard of proof is *probable cause* which may be reached by the admission of evidence in the form of witness statements, law enforcement reports, photos, and other documentation.<sup>21</sup>

### ***Kansas***

The Kansas immunity statute was interpreted and implemented to *require the State to negate a claim of immunity* by the *probable cause* standard or proof.<sup>22</sup>

The Florida statute is nearly identical to the Kansas law in that both statutes contain substantially the same phrases:

- “[C]riminal prosecution’ includes arrest, detention in custody and charging or prosecution of the defendant”; and
- A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used ... was unlawful.<sup>23</sup>

However, the Kansas statute contains the following phrase which does *not* appear in the Florida immunity statute:

- A prosecutor may commence a criminal prosecution upon a determination of probable cause.<sup>24</sup>

---

<sup>18</sup> *Bunn v. State*, 284 Ga. 410, 667 S.E.2d 605 (Ga. 2008).

<sup>19</sup> *Id.* at 608.

<sup>20</sup> *Rodgers v. Commonwealth*, 285 S.W.3d 740 (Ky. 2009).

<sup>21</sup> “Probable cause” means a reasonable ground of suspicion supported by circumstances strong enough to warrant a cautious person to believe that the named suspect is guilty of the charged offense. *Gould v. State*, App. 2 Dist., 974 So.2d 441 (2007).

<sup>22</sup> K.S.A. 21-5231; *State v. Ultreras*, 296 Kan. 828, 295 P.3d 1020 (Kan. 2013).

<sup>23</sup> K.S.A. 21-5231; s. 776.032, F.S.

<sup>24</sup> Compare K.S.A. 21-5231(c) with s. 776.032, F.S.

From this statutory language, the *Ultreras* court inferred that because the only burden and standard of proof mentioned in the Kansas statute rested with the prosecution, the prosecution should bear the burden of showing that the force used by the defendant was not justified “*as part of the probable cause determination*” already required for the issuance of an arrest warrant or summons under Kansas criminal procedures.<sup>25</sup>

In *State v. Hardy*, 51 Kan.App.2d 296, 347 P.3d 222 (Kan.App. 2015) the court determined that the immunity claim should be decided at the time of the Kansas system’s “preliminary hearing” and that the hearing should be evidentiary in nature.<sup>26</sup>

### **Role of State Attorney (Prosecutor) in the Criminal Justice System**

In Florida the prosecuting attorney makes case filing decisions – whether to file or not, and what charges to file – based upon the prosecutor’s assessment of the evidence known to him or her as it relates to the likelihood of meeting the beyond a reasonable doubt standard of proof.<sup>27</sup> These decisions are discretionary but the elected state attorney is answerable for them.<sup>28</sup>

Case evidence generally comes to the state attorney in the form of sworn law enforcement reports, witness statements, and forensic evidence. Sometimes the suspect or suspects, if they are located by law enforcement, may make a statement. A suspect has the right not to incriminate him or herself, therefore the state attorney may never know the suspect or defendant’s “side of the story.”

### **The Castle Doctrine, Justifiable Use of Force (Self-Defense), and Statutory Changes**

#### ***Castle Doctrine***

The essential policy behind the castle doctrine is that a person in his or her home or “castle” has satisfied his or her duty to retreat “to the wall.”<sup>29</sup> In *Weiland v. State*, the policy for the doctrine was explained as follows:

It is not now and never has been the law that a man assailed in his own dwelling is bound to retreat. If assailed there, he may stand his ground and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home. More than 200 years ago it was said by Lord Chief Justice Hale: In case a man “is assailed in his own house, he need not flee as far as he can, as in other cases of *se defendendo* [self-defense], for he hath the protection of his house to

<sup>25</sup> *State v. Ultreras*, 296 Kan. 828, at 844-845; 295 P.3d 1020 (Kan.2013).

<sup>26</sup> *State v. Hardy*, 51 Kan.App.2d 296, 303; 347 P.3d 222 (Kan.App. 2015). The preliminary hearing seems analogous to Florida’s first appearance hearing at which the court determines whether probable cause supports the defendant’s arrest and any terms of release of the defendant from custody.

<sup>27</sup> For a comprehensive explanation of this process, see Lawson, “A Fresh Cut in an Old Wound – A Critical Analysis of the Trayvon Martin Killing: The Public Outcry, The Prosecutors’ Discretion, and the Stand Your Ground Law,” 23 U.Fla.J.L.&Pub.Pol’y 271 (2012). The article suggests that beyond the legal issues in any given case, there are other factors that may be taken into account in filing decisions.

<sup>28</sup> “In each judicial circuit a state attorney shall be elected for a term of four years.” Article V, Section 17, Florida Constitution.

<sup>29</sup> *State v. James*, 867 So. 2d 414 (Fla. 3d DCA 2003).



excuse him from flying, as that would be to give up the protection of his house to his adversary by flight.” *Flight is for sanctuary and shelter, and shelter, if not sanctuary, is in the home .... The rule is the same whether the attack proceeds from some other occupant or from an intruder.*<sup>30</sup>

The castle doctrine is an exception to the common law duty to retreat before using deadly force reasonably believed necessary to prevent imminent death or great bodily harm. When a person is in his or her “castle,” the person has no duty to retreat before using deadly force against an intruder. A person’s castle is limited to his or her home and workplace.<sup>31</sup>

The castle doctrine is defined as:

the proposition that a person’s dwelling house is a castle of defense for himself and his family, and an assault on it with intent to injure him or any lawful inmate of it may justify the use of force as protection, and even deadly force if there exist reasonable and factual grounds to believe that unless so used, a felony would be committed.<sup>32</sup>

The jury instruction designed to be read to juries in home-defense cases before the 2005 statutory expansion of the justifiable use of force, stated:

If the defendant was attacked in [his] [her] own home or on [his] [her] own premises, [he] [she] had no duty to retreat and had the lawful right to stand [his] [her] ground and meet force with force, even to the extent of using force likely to cause death or great bodily harm if it was necessary to prevent: [death or great bodily harm to [himself] [herself] [another]. [the commission of a forcible felony].<sup>33</sup>

The castle-doctrine exception to the duty to retreat only applies to those “lawfully residing in the premises.”<sup>34</sup> Visitors or invitees of a resident must attempt to retreat before using deadly force against an intruder.<sup>35</sup>

### ***Amendments to Justifiable Use of Force Statutes***

In **2005** the justifiable use of force statutes were revised to expand a person’s ability to lawfully defend himself, herself, or others, property, and the home.<sup>36</sup>

<sup>30</sup> *Weiland v. State*, 732 So. 2d 1044, note 5 (citing *Falco v. State*, 407 So. 2d 203, 208 (Fla. 1981)).

<sup>31</sup> *James*, 867 So. 2d at 416.

<sup>32</sup> *Weiland v. State*, 732 So. 2d 1044, 1049-1050 (emphasis original).

<sup>33</sup> Instruction 3.6(f), Florida Standard Jury Instructions in Criminal Cases (2000).

<sup>34</sup> *James*, 867 So. 2d at 417.

<sup>35</sup> *Id.* (holding that the castle doctrine did not apply to the resident’s new boyfriend in a shooting of the resident’s violent exboyfriend).

<sup>36</sup> 2005-27, *L.O.F.* The statutory revisions came to be called the “Stand Your Ground” law because the common law duty to retreat applicable in places other than the home was abrogated whereby a person no longer had any duty to retreat, unless the person was in a place where he or she was not lawfully entitled to be.

In s. 776.013, F.S. (2005), the definition of one's home or "castle" was expanded to include a dwelling, residence or vehicle.<sup>37</sup>

Section 776.013, F.S. (2005), created a *presumption* that a defender in his or her home, in a place of temporary lodging, as a guest in the home or temporary lodging of another, or in a vehicle has a reasonable fear of imminent death or great bodily harm when an intruder is in the process of unlawfully and forcibly entering or enters.

The statute also created a *presumption* that the intruder intends to commit an unlawful act involving force or violence.

These presumptions about the intent of the intruder, however, do not apply when the intruder:

- Has a right to be in the home, place of temporary lodging, or vehicle, unless there is a domestic violence injunction or written pretrial supervision order of no contact against that person;
- Is seeking to remove a person lawfully under his or her care from a home, place of temporary lodging, or vehicle; or
- Is a law enforcement officer, acting lawfully, and the defender knew or had reason to know that the intruder was a law enforcement officer.

A defender is not entitled to the benefit of the presumptions created by the law if:

- The defender was engaged in unlawful activity at the time of the unlawful and forcible entry or
- The defender was using his or her home, place of temporary lodging, place of temporary lodging of another, or vehicle to further unlawful activity.

The statute does not require any connection between the defender's unlawful activity and the unlawful and forcible entry by the intruder.<sup>38</sup>

In **2014** the Legislature reconsidered the "Stand Your Ground" aspects of ch. 776, F.S. The 2014 bills and resulting law focused on two main issues:

- Providing a way for a court to sentence a defendant outside the minimum mandatory sentences for "10-20-Life" in aggravated assault cases; and
- Including *threatened* use of force (not just the actual *use* of force) in the justifiable use of force laws.<sup>39</sup>

---

<sup>37</sup> As used in this section, the term:

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property. s. 776.013(5), F.S.

(Also note that the "categories" or legal status of persons who may justifiably use defensive force in relation to the defined locations is expanded. For example, temporary residents and visitors have the same status as the homeowner under the definitions.)

<sup>38</sup> s. 776.013(1),(2) and (4), F.S. (2005).

<sup>39</sup> CS/CS/HB 89; ch. 2014-195, *L.O.F.*

The 2014 revisions amended ss. 776.012, 776.013(3), and 776.031, F.S., to remove and clarify statutory inconsistencies identified by various courts of appeal since the enactment of the 2005 laws.<sup>40</sup> Specifically, the 2014 revisions did the following:

- Changed “unlawful” activity to “criminal” activity in **ss. 776.012, 776.013, and 776.031, F.S. (2014)**.
- Dedicated **s. 776.031, F.S. (2014)**, to the defense of *property*; this section of law was previously entitled “use of force in defense of *others*” however the actual language only pertained to defense of property; specified that a person who threatens to use or uses nondeadly force under subsection (1) does not have a duty to retreat; reorganized the section by creating a subsection (2) containing pre-existing language from s. 776.031, F.S., permitting *deadly force* to prevent the imminent commission of a forcible felony; included language and concepts from s. 776.013(3) F.S. (2005), shown in italics below.<sup>41</sup>
- Amended **s. 776.012, F.S. (2005)**, the section of ch. 776 dedicated to the use of force in defense of person (self or another); specified that a person who threatens to use or uses nondeadly force under subsection (1) does not have a duty to retreat; reorganized the section by creating a subsection (2) containing pre-existing language from s. 776.012, F.S., permitting *deadly force* to prevent imminent death or great bodily harm or to prevent the imminent commission of a forcible felony; included language and concepts from s. 776.013(3) F.S. (2005).<sup>42</sup>
- Amended **s. 776.013, F.S. (2005)**, in subsection (3) to limit its application to a person who is attacked in his or her dwelling, residence, or vehicle; although most provisions of subsection (3) are deleted by the amendment as superfluous the term “*attacked in*” remains. This appears to be due to the fact that an outright attack presents a situation that is different from the situations that give rise to the presumptions included in this section, specifically where an intruder is “in the process of unlawfully and forcefully entering, or had unlawfully and forcefully entered” the dwelling, residence or occupied vehicle. The 2014 amendment specifies that under the circumstances where a person is attacked in his or her dwelling, residence or vehicle, the person must use or threaten to use force “in accordance with” s. 776.012(1) or (2) or s. 776.031(1) or (2), F.S. It should be noted that both s. 776.012(2) and s. 776.031(2), F.S. (2014) (*deadly force*) require the defender *not be engaged in a criminal activity*.

<sup>40</sup>See, e.g., *Pages v. Seliman-Tapia*, 2014 WL 950167 (Fla. 3d DCA 2014); *State v. Wonder*, 128 So.3d 867 (Fla. 4th DCA 2013); and *Little v. State*, 111 So.2d 214 (Fla. 2d DCA 2013).

<sup>41</sup> (3) A person who is *not engaged in an unlawful activity* and who is attacked in any other place\* *where he or she has a right to be* has no duty to retreat and has the right to *stand his or her ground* and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony. (emphasis added)

\*NOTE: The phrase “in any **other** place” appears to mean ‘any place **other than** a dwelling, residence or vehicle.’ Therefore logic dictates that the language and concepts shown in italics above would apply in places a person has the right to be such as property he or she is defending under s. 776.031, F.S.

<sup>42</sup> See note 39.

\*NOTE: The phrase “in any **other** place” found in s. 776.031(3), F.S., appears to mean ‘any place **other than** a dwelling, residence or vehicle.’ Therefore logic dictates that the language and concepts shown in italics in footnote 39 above would be intended to apply in *all* other places a person has the right to be.

### III. Effect of Proposed Changes:

#### Immunity

The bill amends s. 776.032, F.S., to create a procedure for implementing the justifiable use of force immunity provisions therein.

The procedure set forth in the bill differs from the one settled on by the courts in the absence of legislative provisions on the implementation of the 2005 expansion of the justifiable use of force law in ch. 776, F.S.<sup>43</sup>

The bill eliminates a defendant's burden of showing by a preponderance of the evidence<sup>44</sup> that he or she is entitled to immunity from arrest, detention, charges being filed against him or her, or prosecution in a situation where the defendant justifiably used or threatened to use force.

Instead, under the bill, once a defendant has made a prima facie<sup>45</sup> claim of self-defense immunity, the burden falls on the party seeking to overcome the claim. The bill diminishes the defendant's standard of proof because a prima facie claim is a lower standard of proof than the current preponderance of the evidence standard.<sup>46</sup>

The bill limits these allocations of the burden and standard of proof to claims of immunity from criminal prosecution. They do not apply to civil cases that may be brought against a defendant.

The bill requires that once the defendant has made a prima facie claim of immunity, the state bears the burden of proving by clear and convincing evidence, at a pretrial evidentiary hearing, whether the defendant is entitled to self-defense immunity.

#### “Stand Your Ground”

The bill deletes the term “attacked” from s. 776.013(3), F.S., the home protection statute. This term appeared in the original 2005 law and despite the fact that it was located in the home protection statute, the term appears to have applied to persons who were not necessarily in their dwelling, residence or vehicle, but rather “in any *other place* where he or she has the right to be.”<sup>47</sup>

It also deletes the requirement that a person who is attacked in his or her dwelling, residence, or vehicle use or threaten to use force “in accordance with s. 776.012(1) or (2), F.S. or s. 776.031 (1) or (2), F.S.” Although the use of this phrase in the 2014 amendment may have been viewed as a way of requiring adherence to certain aspects of the 2014 amendments to ss. 776.012 or 776.031, F.S., the phrase may have swept in unintended requirements. For example, a strict

---

<sup>43</sup> See *Bretherick v. State*, 170 So.3d 766 (Fla. 2015); *Dennis v. State*, 51 So.3d 456 (Fla. 2010); *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008).

<sup>44</sup> “A ‘preponderance’ of the evidence is defined as ‘the greater weight of the evidence,’ or evidence that ‘more likely than not’ tends to prove a certain proposition.” *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000).

<sup>45</sup> Prima facie evidence is that evidence which is legally sufficient to establish a fact or a case unless disproved. <http://www.merriam-webster.com/dictionary/prima%20facie>.

<sup>46</sup> See notes 28 and 29.

<sup>47</sup> s. 776.031(3), F.S. (2005).

reading of s. 776.013(3), F.S. (2014), would have the defender who is attacked in his or her dwelling, residence, or vehicle *not be engaged in criminal activity*<sup>48</sup> at the time deadly defensive force is threatened or used.

The bill includes new language in s. 776.013(3), F.S., that requires a person who is in his or her dwelling, residence, or vehicle have a reasonable belief that the use or threat of force, nondeadly or deadly, is necessary to prevent imminent death or great bodily harm or the commission of a forcible felony. This requirement appears to be applicable in situations other than those where the presumptions<sup>49</sup> found in s. 776.013(1) and (2), F.S., would apply.

As amended by the bill, therefore, in addition to the presumptions a person may rely upon in the lawful use of defensive force under s. 776.013, F.S., a person need not be *attacked* in his or her dwelling, residence, or vehicle to lawfully use deadly or nondeadly defensive force so long as he or she has a reasonable belief such defense is necessary in order to prevent the grave consequences of another's conduct.

The bill is effective upon becoming a law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Dismissal of a case at the pre-trial immunity hearing stage will save the defendant's costs of defending the case at trial, however any cost savings will be offset by the expense related to the pre-trial hearing.

---

<sup>48</sup> See ss. 776.012(2) and 776.031(2), F.S. (2014), which provide that a person may use *deadly* force to prevent imminent death or great bodily harm, or the imminent commission of a forcible felony, *if* the person (defender) is *not engaged in a criminal activity* and is in a place where he or she has a right to be.

<sup>49</sup> See pg. 9-10 of the Present Situation section above.

**C. Government Sector Impact:**

The change to give the prosecution the burden of proof at the hearing stage could result in a reduction in the number of cases that proceed to trial. Dismissal at the pre-trial hearing stage would save the costs and expenses of a trial however the cost savings will be offset by the cost of the hearing.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 776.013 and 776.032.

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

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

**CS/CS by Rules on December 3, 2015:**

- Changes the burden of proof assigned to the prosecution in a pre-trial immunity hearing from “beyond a reasonable doubt” to “clear and convincing evidence” which is a lower standard of proof.
- Eliminates the legislative findings and intent language from Section 1 of CS/SB 344 along with the directive to the Division of Law Revision in Section 2.
- Deletes Section 3 of CS/SB 344 which provided for the possibility of the payment of a prevailing defendant’s costs, fees, and expenses from the state attorney’s operating trust fund.

**CS by Criminal Justice on October 20, 2015:**

Limits the award of costs, fees, and expenses to the defendant who has his or her case dismissed under s. 776.032, F.S., to cases where the court finds:

- The prosecution willfully or substantially violated the rules of discovery; or,
- The prosecution’s filing of the case violates the court’s sense of fundamental fairness.

**B. Amendments:**

None.



185450

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: FAV  | . |       |
| 12/07/2015 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

The Committee on Rules (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 776.032, Florida Statutes, is amended to  
read:

776.032 Immunity from criminal prosecution and civil action  
for justifiable use or threatened use of force.—

(1) A person who uses or threatens to use force as  
permitted in s. 776.012, s. 776.013, or s. 776.031 is justified



185450

12 in such conduct and is immune from criminal prosecution and  
13 civil action for the use or threatened use of such force by the  
14 person, personal representative, or heirs of the person against  
15 whom the force was used or threatened, unless the person against  
16 whom force was used or threatened is a law enforcement officer,  
17 as defined in s. 943.10(14), who was acting in the performance  
18 of his or her official duties and the officer identified himself  
19 or herself in accordance with any applicable law or the person  
20 using or threatening to use force knew or reasonably should have  
21 known that the person was a law enforcement officer. As used in  
22 this subsection, the term "criminal prosecution" includes  
23 arresting, detaining in custody, and charging or prosecuting the  
24 defendant.

25 (2) A law enforcement agency may use standard procedures  
26 for investigating the use or threatened use of force as  
27 described in subsection (1), but the agency may not arrest the  
28 person for using or threatening to use force unless it  
29 determines that there is probable cause that the force that was  
30 used or threatened was unlawful.

31 (3) The court shall award reasonable attorney's fees, court  
32 costs, compensation for loss of income, and all expenses  
33 incurred by the defendant in defense of any civil action brought  
34 by a plaintiff if the court finds that the defendant is immune  
35 from liability ~~prosecution~~ as provided in subsection (1).

36 (4) In a criminal prosecution, once a prima facie claim of  
37 self-defense immunity from criminal prosecution has been raised  
38 by the defendant at a pre-trial immunity hearing, the burden of  
39 proof by clear and convincing evidence shall be on the party  
40 seeking to overcome the immunity from criminal prosecution





185450

provided in subsection (1).

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

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to justifiable use or threatened use  
of defensive force; amending s. 776.032, F.S.;  
providing that once a defendant raises a prima facie  
claim of self-defense immunity at a pre-trial hearing,  
the burden is on the prosecuting authority to overcome  
the immunity by clear and convincing evidence;  
providing an effective date.



956336

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 12/07/2015 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

The Committee on Rules (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (2) of section 776.012, Florida  
Statutes, is amended to read:

776.012 Use or threatened use of force in defense of  
person.—

(1) A person is justified in using or threatening to use  
force, except deadly force, against another when and to the  
extent that the person reasonably believes that such conduct is



956336

necessary to defend himself or herself or another against the other's imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.

(2) A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who is attacked and uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if such ~~the~~ person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

Section 2. Subsection (3) of section 776.013 is amended to read:

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or



956336

41 was attempting to remove another against that person's will from  
42 the dwelling, residence, or occupied vehicle; and

43 (b) The person who uses or threatens to use defensive force  
44 knew or had reason to believe that an unlawful and forcible  
45 entry or unlawful and forcible act was occurring or had  
46 occurred.

47 (2) The presumption set forth in subsection (1) does not  
48 apply if:

49 (a) The person against whom the defensive force is used or  
50 threatened has the right to be in or is a lawful resident of the  
51 dwelling, residence, or vehicle, such as an owner, lessee, or  
52 titleholder, and there is not an injunction for protection from  
53 domestic violence or a written pretrial supervision order of no  
54 contact against that person; or

55 (b) The person or persons sought to be removed is a child  
56 or grandchild, or is otherwise in the lawful custody or under  
57 the lawful guardianship of, the person against whom the  
58 defensive force is used or threatened; or

59 (c) The person who uses or threatens to use defensive force  
60 is engaged in a criminal activity or is using the dwelling,  
61 residence, or occupied vehicle to further a criminal activity;  
62 or

63 (d) The person against whom the defensive force is used or  
64 threatened is a law enforcement officer, as defined in s.  
65 943.10(14), who enters or attempts to enter a dwelling,  
66 residence, or vehicle in the performance of his or her official  
67 duties and the officer identified himself or herself in  
68 accordance with any applicable law or the person using or  
69 threatening to use force knew or reasonably should have known



956336

that the person entering or attempting to enter was a law enforcement officer.

(3) A person who is ~~attacked~~ in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force, if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another, or to prevent the commission of a forcible felony ~~uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2).~~

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

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

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Section 3. Subsection (2) of section 776.031, Florida Statutes, is amended to read:



956336

776.031 Use or threatened use of force in defense of property.—

(1) A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.

(2) A person is justified in using or threatening to use deadly force only if he or she reasonably believes that such conduct is necessary to prevent the imminent commission of a forcible felony. A person who is attacked and uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

Section 4. Section 776.032, Florida Statutes, is amended to read:

776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.—

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified



956336

in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom force was used or threatened is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.

(3) The court shall award reasonable attorney's fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from liability ~~prosecution~~ as provided in subsection (1).

(4) In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pre-trial immunity hearing, the burden of proof by clear and convincing evidence shall be on the party seeking to overcome the immunity from criminal prosecution



956336

provided in subsection (1).

Section 5. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to justifiable use or threatened use  
of defensive force; amending s. 776.012, F.S.;  
providing that a law-abiding person who is attacked  
has no duty to retreat and may use or threaten to use  
necessary force to prevent imminent death or great  
bodily harm to self or another, or the imminent  
commission of a forcible felony; amending s. 776.013,  
F.S; providing that a person in his or her dwelling,  
residence, or vehicle has no duty to retreat and may  
use necessary force, upon reasonable belief that such  
force is necessary to prevent imminent death, great  
bodily harm, or the imminent commission of a forcible  
felony; amending s. 776.031, F.S.; providing that a  
law-abiding person who is in a place where he or she  
has a right to be and who is attacked may only use or  
threaten to use deadly force if he or she reasonably  
believes it is necessary to prevent the imminent  
commission of a forcible felony; amending s. 776.032,  
F.S.; providing that once a defendant raises a prima  
facie claim of self-defense immunity at a pre-trial  
hearing, the burden is on the prosecuting authority to





956336

186       overcome the immunity by clear and convincing  
187       evidence; providing an effective date.



539570

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 12/07/2015 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

The Committee on Rules (Simmons) recommended the following:

**Senate Amendment to Amendment (956336) (with title amendment)**

Delete lines 5 - 121

and insert:

Section 1. Subsection (3) of section 776.013 is amended to read:

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or



539570

herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2) The presumption set forth in subsection (1) does not apply if:

(a) The person against whom the defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used or threatened; or

(c) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or



539570

(d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(3) A person who is ~~attacked~~ in his or her dwelling, residence, or vehicle has no duty to retreat and has the right to stand his or her ground and use or threaten to use force, including deadly force, if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another, or to prevent the commission of a forcible felony ~~uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2).~~

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

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

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) "Residence" means a dwelling in which a person resides



539570

either temporarily or permanently or is visiting as an invited guest.

(c) "Vehicle" means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

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

And the title is amended as follows:

Delete lines 166 - 182

and insert:

of defensive force; amending s. 776.013, F.S;  
providing that a person in his or her dwelling,  
residence, or vehicle has no duty to retreat and may  
use necessary force, upon reasonable belief that such  
force is necessary to prevent imminent death, great  
bodily harm, or the imminent commission of a forcible  
felony; amending s. 776.032,

By the Committee on Criminal Justice; and Senator Bradley

591-00896-16

2016344c1

A bill to be entitled

An act relating to justifiable use or threatened use of defensive force; amending s. 776.032, F.S.; providing legislative findings and intent; providing for retroactive application; specifying that once a prima facie claim of self-defense immunity has been raised, the burden of proof shall be on the party seeking to overcome the immunity from criminal prosecution; providing a directive to the Division of Law Revision and Information; creating s. 939.061, F.S.; entitling criminal defendants who successfully claim immunity under s. 776.032, F.S., to an award of specified costs, attorney fees, and related expenses if a court makes specified determinations; specifying a procedure for submitting reimbursement requests; requiring the Justice Administrative Commission to review and approve the reimbursement request if the requested costs, fees, and related expenses are reasonable and supported by valid documentation; requiring reimbursements to be paid from the operating trust fund of the state attorney who prosecuted the defendant; limiting the amount of the award; providing an effective date.

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

Section 1. Section 776.032, Florida Statutes, is amended to read:  
776.032 Immunity from criminal prosecution and civil action

Page 1 of 4

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

591-00896-16

2016344c1

for justifiable use or threatened use of force.—

(1) The Legislature finds that imposing the burden of proof on a person who uses or threatens to use defensive force as permitted by general law at a pretrial evidentiary hearing substantially curtails the benefit of the immunity from trial provided by this section. The Legislature intends to make it explicit that the state shall bear the burden of proof in establishing beyond a reasonable doubt whether a defendant is entitled to a prima facie claim of self-defense immunity at a pretrial evidentiary hearing. The Legislature has never intended that a person who acts in defense of self, others, or property be denied immunity and subjected to trial when that person would be entitled to acquittal at trial. The amendments to this section made by this act are intended to correct misinterpretations of legislative intent made by the courts and shall apply retroactively to proceedings pending at the time this act becomes a law.

(2)(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom force was used or threatened is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer. As used in

Page 2 of 4

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

591-00896-16

2016344c1

this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

~~(3)(2)~~ A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection ~~(2)(1)~~, but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.

~~(4)(3)~~ The court shall award reasonable attorney ~~attorney's~~ fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection ~~(2)(1)~~.

(5) Once a prima facie claim of self-defense immunity from criminal prosecution has been raised, the burden of proof shall be on the party seeking to overcome the immunity from criminal prosecution provided in subsection (2).

Section 2. The Division of Law Revision and Information is directed to replace the phrase "this act" wherever it occurs in the amendments to s. 776.032, Florida Statutes, made by this act, with the chapter law number of this act, if it becomes a law.

Section 3. Section 939.061, Florida Statutes, is created to read:

939.061 Motion to dismiss; costs.-

(1) If a defendant files, and the court grants, a motion to dismiss claiming immunity from criminal prosecution under s.

591-00896-16

2016344c1

776.032, and the court determines that the state willfully or substantially violated the rules of discovery or that the state's filing of an information violates the court's sense of fundamental fairness, the defendant shall be reimbursed for court costs, reasonable private attorney fees, and related expenses incurred in defending the criminal prosecution, up to the limit specified in subsection (4).

(2) To receive reimbursement under this section, a defendant must submit a written request for reimbursement to the Justice Administrative Commission within 6 months after the issuance of the order granting the motion to dismiss. The defendant must include with the reimbursement request an order from the court granting the motion to dismiss and documentation of any court costs or private attorney fees and related expenses paid or owed.

(3) The Justice Administrative Commission shall review each request and make a determination within 30 days after receiving the request. If the requested court costs are supported by valid documentation and the requested private attorney fees and related expenses are reasonable and supported by valid documentation, the commission must approve the reimbursement request. Approved reimbursement requests must be paid to the defendant from the operating trust fund of the state attorney who prosecuted the defendant within 60 days after receipt of the approved reimbursement request.

(4) A reimbursement request under this section may not exceed \$200,000.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** November 18, 2015

---

I respectfully request that **Senate Bill # 344**, relating to Justifiable Use or Threatened Use of Defensive Force, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley  
Florida Senate, District 7



## THE FLORIDA SENATE

**APPEARANCE RECORD**

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

12-3-15

*Meeting Date*

344

*Bill Number (if applicable)*

185450

*Amendment Barcode (if applicable)*Topic Justifiable use of forceName Eric FridayJob Title General Counsel, Florida Carry, Inc.Address 541 E. Monroe St.*Street*Jacksonville*City*FL*State*32202*Zip*Phone 904-353-7733Email efriday@fletcherandphillips.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Carry, Inc.Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

Dec 3, 2015  
Meeting Date

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

CS/SB 344  
Bill Number (if applicable)

Topic Justifiable Use of Defensive Force  
Name Don Lamonica

Amendment Barcode (if applicable)

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

Address 1205 MIMOSA DRIVE  
Street  
Tallahassee FLORIDA 32312  
City State Zip

Phone 850-545-9691

Email d.lamonica@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA Public Defenders Assn.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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

12-3-15

*Meeting Date*

344

*Bill Number (if applicable)*

Topic Justifiable use of force

*Amendment Barcode (if applicable)*

Name Eric Friday

Job Title General Counsel, Florida Carry, Inc.

Address 541 E. Monroe St.

Phone 904-353-7733

*Street*

Jacksonville

FL

32202

Email efriday@fletcherandphillips.com

*City*

*State*

*Zip*

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Carry, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

12-3-15  
Meeting Date

SB 344  
Bill Number (if applicable)

Topic Self-Defense Immunity

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Phone 352.682.2542

Street

Gainesville  
City

FL  
State

32608  
Zip

Email gnewburn@famnm.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Families Against Mandatory Minimums (FAMM)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

*SPEAK ON*  
*ALL AMENDMENTS*

**12-3-15**

Meeting Date

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

Topic

**BURDEN OF PROOF**

Bill Number

**SB-344**

(if applicable)

Name

**MARION P. HAMMER**

Amendment Barcode

(if applicable)

Job Title

Address

**P.O. BOX 1387**

Street

**TALLAHASSEE**

City

**FL**

State

**32302**

Zip

Phone

**850-222-9518**

E-mail

Speaking:



For



Against



Information

Representing

**NRA (NATIONAL RIFLE ASSOCIATION) UNITED SPORTSMEN OF FLORIDA**

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/20/11)

## THE FLORIDA SENATE

## APPEARANCE RECORD

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

12-3-15

Meeting Date

344

Bill Number (if applicable)

539570

Amendment Barcode (if applicable)

Topic Justifiable use of force

Name Eric Friday

Job Title General Counsel, Florida Carry, Inc.

Address 541 E. Monroe St.

Street

Jacksonville

City

FL

State

32202

Zip

Phone 904-353-7733

Email efriday@fletcherandphillips.com

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

Representing Florida Carry, Inc.

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

12-3-15

*Meeting Date*

344

*Bill Number (if applicable)*

956336

*Amendment Barcode (if applicable)*

Topic Justifiable use of force

Name Eric Friday

Job Title General Counsel, Florida Carry, Inc.

Address 541 E. Monroe St.

*Street*

Jacksonville

*City*

FL

*State*

32202

*Zip*

Phone 904-353-7733

Email efriday@fletcherandphillips.com

Speaking: ☒ For ☒ Against ☐ Information

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

Representing Florida Carry, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**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 Rules

---

BILL: SB 396

INTRODUCER: Senator Bradley

SUBJECT: Nonresident Plaintiffs in Civil Actions

DATE: December 1, 2015

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

|    | ANALYST      | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Brown</u> | <u>Cibula</u>  | <u>JU</u> | <b>Favorable</b> |
| 2. | <u>Brown</u> | <u>Phelps</u>  | <u>RC</u> | <b>Favorable</b> |

---

**I. Summary:**

SB 396 repeals a requirement that a nonresident plaintiff in a civil action post a bond in the amount of \$100 to secure the payment of court costs that may be adjudged against the plaintiff. The requirement applies to plaintiffs who live out of state at the time of filing a lawsuit and plaintiffs who become nonresidents of this state after filing a lawsuit.

**II. Present Situation:**

Florida law requires nonresident plaintiffs to file a bond in the amount of \$100.<sup>1</sup> The bond requirement applies to plaintiffs who are not residents of this state when they file a lawsuit, and to plaintiffs who become nonresidents after filing a lawsuit.<sup>2</sup> The bond is required as a surety for costs adjudged to the plaintiff.<sup>3</sup>

If a plaintiff does not file the bond within 30 days after being required to do so, the defendant may move to dismiss the action. However, before filing a motion to dismiss, the defendant must give 20-days' notice to the plaintiff, during which time the plaintiff may file the bond.<sup>4</sup>

The bond requirement dates back to 1828, when the state was still a territory.<sup>5</sup>

**III. Effect of Proposed Changes:**

The bill repeals a requirement that a nonresident plaintiff in a civil action post a \$100 bond with the clerk of court as security for costs that may be adjudged against the plaintiff.

---

<sup>1</sup> Section 57.011, F.S.

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 8, Nov. 23, 1828, Acts of the Legislative Council of the Territory of Fla.



Nonresident plaintiffs will be treated the same as resident plaintiffs by not having to post a bond for costs. Nonresident plaintiffs will also not be subject to a motion to dismiss by the defendant for a failure to post a bond for costs.

The bill takes effect July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Plaintiffs who either reside out-of-state at the time of filing a petition in civil court or after filing a petition will not have to post a bond for costs. Additionally, plaintiffs who reside out-of-state will not be subject to dismissal of the case for failure to post a bond for costs.

C. Government Sector Impact:

The Florida Association of Court Clerks and Comptrollers indicates that they expect an insignificant, if any, fiscal impact from this bill.<sup>6</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

<sup>6</sup> Email from Fred Baggett, General Counsel of the Florida Association of Court Clerks & Comptrollers (Nov. 10, 2015) (on file with the Senate Committee on Judiciary).

**VIII. Statutes Affected:**

This bill repeals section 57.011 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 Bradley

7-00438-16

2016396\_\_

1                           A bill to be entitled  
2       An act relating to nonresident plaintiffs in civil  
3       actions; repealing s. 57.011, F.S., relating to  
4       requirements for a nonresident plaintiff in a civil  
5       action to post security for costs; providing an  
6       effective date.  
7  
8   Be It Enacted by the Legislature of the State of Florida:  
9  
10       Section 1. Section 57.011, Florida Statutes, is repealed.  
11       Section 2. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** November 18, 2015

---

I respectfully request that **Senate Bill # 396**, relating to Nonresident Plaintiffs in Civil Actions, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", is written over a horizontal line.

Senator Rob Bradley  
Florida Senate, District 7

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

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

12-3  
Meeting Date

396  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Peter Dunbar

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

Address 215 S. Monroe #815  
Street  
Tallahassee, FL  
City State Zip

Phone 999-4100

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Real Property, Probate & Trust Law Section

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)

12/3/15  
Meeting Date

396  
Bill Number (if applicable)

Topic Nonresident Cost Bond

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.  
Street  
Tallahassee, FL 32303  
City State Zip

Phone 850 556 3121

Email alicevickers@fla.cp.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bar Public Interest Law Section

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: SM 630

INTRODUCER: Senator Bean

SUBJECT: Article V Convention for Congressional Term Limits

DATE: December 1, 2015

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Fox     | Roberts        | EE        | <b>Favorable</b> |
| 2. | Fox     | Phelps         | RC        | <b>Favorable</b> |

---

**I. Summary:**

SM 630 is a memorial to the United States Congress calling upon it to convene an Article V convention for the sole purpose of proposing an amendment to the U.S. Constitution to limit the terms of office for members of Congress.

The memorial serves as a continuing application, in accordance with the requirements for calling a constitutional convention, until the legislatures of at least two-thirds of states (34) make such a request.

**II. Present Situation:**

As discussed in the memorial's *WHEREAS* clauses, voters in 1992 overwhelmingly approved an amendment to the Florida Constitution limiting the terms of Florida's congressional members, as well as other Florida statewide officers and state legislators.<sup>1</sup> The subsequent U.S. Supreme Court decision in *U.S. Term Limits, Inc. v. Thornton*,<sup>2</sup> however, effectively invalidated *the congressional term limits portion* of the amendment; the Court held that a state's attempt to limit congressional terms prescribed additional requirements for office in violation of the Qualifications Clauses of the U.S. Constitution.<sup>3</sup>

Article V of the U.S. Constitution provides two mechanisms for proposing amendments to the U.S. Constitution:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be

---

<sup>1</sup> FLA. CONST., art. VI, s. 4(b).

<sup>2</sup> 514 U.S. 779 (1995).

<sup>3</sup> *Id.*

valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress...

First, an amendment may be proposed upon a two-thirds vote of the U.S. House of Representatives and the Senate.<sup>4</sup> Second, Congress must call an amendments convention upon the applications of two-thirds of the state legislatures (34 out of 50).<sup>5</sup>

Congress is authorized to choose the method by which states must ratify the proposed amendments. Congress may require ratification by ad hoc conventions in three-fourths of the states (38 out of 50) for the specific purpose of the consideration of amendments, or it may require that an amendment be ratified by three-fourths of the legislatures of the states.<sup>6</sup>

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

SM 630 is a state application to the United States Congress calling upon it to convene an Article V convention for the *sole* purposes of proposing an amendment to the U.S. Constitution to limit the terms of office for members of Congress. It serves as a continuing application, in accordance with the requirements for calling a constitutional convention, until the legislatures of at least two-thirds of states (34) also apply to call for a convention on the issue of congressional term limits.

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

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

None.

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

None.

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

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

---

<sup>4</sup> Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (Apr. 11, 2014) p.1, available at <http://www.fas.org/sgp/crs/misc/R42589.pdf> (last accessed 11.12.2015) [hereinafter, Neale, *Article V Convention*].

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

<sup>6</sup> *Id.*



**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****Previous Memorials on Term Limits**

In 2014, the Florida Legislature passed a memorial to Congress (SM 476) calling for an Article V convention to, among other things, limit the terms of office for “*federal officials* and members of Congress.”<sup>7</sup> While SM 476 continues as a request to Congress, the removal of the term “*federal officials*” in the memorial under consideration may be viewed as a more limited, separate request *solely* for consideration of an amendment on *congressional* term limits.

**Article V Constitutional Amendments Conventions**

Because an Article V convention has never been conducted, what might actually occur procedurally or substantively is unclear.

Diverse scholars have raised, but not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention is limited in its focus or expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether it is the role of Congress to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.<sup>8</sup>

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, that endeavored to develop a procedural framework

---

<sup>7</sup> See SM 476 (2014). The memorial also sought a convention for amendments on the following issues: 1) imposing fiscal restraints on the federal government; and, 2) limiting the power and jurisdiction of the federal government. *Id.* Each of the proposed amendment categories was severable from one another and designed to be counted individually to satisfy the requirement that 34 state legislatures apply to Congress to call a constitutional convention. *Id.*

<sup>8</sup> See generally, Neale, *Article V Convention*; see also, James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L. & PUB. POL’Y 1005, 1009-1010 (2007), available at [http://www.law.harvard.edu/students/orgs/jlpp/Vol30\\_No3\\_Rogersonline.pdf](http://www.law.harvard.edu/students/orgs/jlpp/Vol30_No3_Rogersonline.pdf) (last accessed 11.12.2015).

that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.<sup>9</sup>

**VIII. Statutes Affected:**

None.

**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.

---

---

<sup>9</sup> Neale, *Article V Convention*, at 26.

By Senator Bean

4-00537A-16

2016630\_\_

Senate Memorial

A memorial to the Congress of the United States, applying to Congress to call a convention under Article V of the Constitution of the United States with the sole agenda of proposing an amendment to the Constitution of the United States to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and to set a limit on the number of terms that a person may be elected as a member of the United States Senate.

WHEREAS, Article V of the Constitution of the United States requires Congress to call a convention for the sole purpose of proposing amendments to the Constitution upon application of two-thirds of the states, and

WHEREAS, a continuous and growing concern has been expressed that the best interests of the nation will be served by limiting the terms of members of Congress, and

WHEREAS, the voters of the State of Florida, by the gathering of petition signatures, placed on the general election ballot of 1992 a measure to limit the consecutive years of service for several offices, including the offices of United States Representative and United States Senator, and

WHEREAS, the voters of Florida incorporated this limitation into the State Constitution as Section 4 of Article VI, by an approval vote that exceeded 76 percent in the general election of 1992, and

WHEREAS, in 1995, the United States Supreme Court ruled in

Page 1 of 4

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

4-00537A-16

2016630\_\_

*U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), a five-to-four decision, that the individual states did not possess the requisite authority to establish term limits, or additional qualifications, for persons elected to the United States House of Representatives or the United States Senate, and

WHEREAS, upon reflecting on the intent of the voters of this state and their overwhelming support for congressional term limits, the Legislature, in its 114th Regular Session since statehood in 1845, did express through a memorial to Congress the desire to receive an amendment to the Constitution of the United States to limit the number of consecutive terms that a person may serve in the United States House of Representatives or the United States Senate, and

WHEREAS, the Legislature, in its 118th Regular Session since statehood in 1845, does desire to see a convention called under Article V of the Constitution of the United States with the sole agenda of proposing an amendment to the Constitution of the United States on the subject of congressional term limits as specified in this memorial, NOW, THEREFORE,

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

(1) That the Legislature of the State of Florida does hereby make application to Congress, pursuant to Article V of the Constitution of the United States, to call an Article V convention with the sole agenda of proposing an amendment to the Constitution of the United States to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and to set a limit on the number

Page 2 of 4

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

4-00537A-16

2016630

of terms that a person may be elected as a member of the United States Senate.

(2) That this application does not revoke or supersede Senate Memorial 476 as passed by the 2014 Florida Legislature, but constitutes a separate, independent application addressing congressional term limits as specified in this application.

(3) That this application is revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the Constitution of the United States with any agenda other than to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and to set a limit on the number of terms that a person may be elected as a member of the United States Senate.

(4) That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made application on the subject of congressional term limits as specified in this application.

(5) That this application be aggregated with the applications from other states on the same subject for the purpose of attaining the two-thirds majority needed to require Congress to call a limited Article V convention as specified in this application, but not be aggregated with any other applications on any other subject.

BE IT FURTHER RESOLVED that copies of this application be dispatched to the President of the United States, to the

Page 3 of 4

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

4-00537A-16

2016630

President of the United States Senate, to the Speaker of the United States House of Representatives, to each member of the Florida delegation to the United States Congress, and to the presiding officer of each house of the legislature of each state.

Page 4 of 4

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



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** November 18, 2015

---

I respectfully request that **Senate Bill # 630**, relating to Convention of States, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

\_\_\_\_\_  
Senator Aaron Bean  
Florida Senate, District 4

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

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

12/3/15

Meeting Date

SM 630

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Pound

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

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

harso

City

FL

State

33773

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Health Policy, *Chair*  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Fiscal Policy  
Judiciary  
Regulated Industries

**JOINT COMMITTEE:**

Joint Administrative Procedures Committee

**SENATOR AARON BEAN**  
4th District

December 3, 2015

Senator David Simmons  
Chair, Committee on Rules  
400 South Office Building  
404 South Monroe Street  
Tallahassee 32399-1100

Dear Chairman Simmons:

This letter is to let you know that my Legislative Aide, Joseph Endicott, will be presenting my bill SM 630 relating to Article V Convention for Congressional Term Limits at today's meeting in my absence. Meeting Date: Thursday, December 3, 2015.

Thanks for your review.

Sincerely,

A handwritten signature in cursive script that reads "Aaron Bean".

Aaron Bean  
State Senator | 4<sup>th</sup> District

/JE

Cc: John Phelps, Staff Director

**REPLY TO:**

- ☐ 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- ☐ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 180

INTRODUCER: Commerce and Tourism Committee and Senator Richter

SUBJECT: Trade Secrets

DATE: December 1, 2015

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Harmsen | McKay          | CM        | <b>Fav/CS</b>    |
| 2. | Kim     | McVane         | GO        | <b>Favorable</b> |
| 3. | Harmsen | Phelps         | RC        | <b>Favorable</b> |

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

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

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

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

The bill takes effect on October 1, 2016.

**II. Present Situation:**

**Trade Secret**

Section 812.081, F.S., defines a “trade secret” as information<sup>1</sup> used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, and adopted by Florida

---

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



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

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

## Penalties

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

- Section 815.04, F.S., makes it a third degree felony<sup>4</sup> for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.<sup>5</sup>
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article that represents a trade secret, when done with an intent to:
  - Deprive or withhold from the trade secret's owner the control of a trade secret, or
  - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it unlawful for a designated employee, inspector, or collaborator of the Florida Department of Agriculture and Consumer Services' Division of Plant Industry or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

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

## Related Definitions and Law

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

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

<sup>3</sup> Section 812.081(1)(c), F.S.

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

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

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

<sup>7</sup> Sections 721.071 and 812.035, F.S.

<sup>8</sup> 5 USC s. 552(b)(4).

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

Florida law also defines “trade secret” in the Florida Uniform Trade Secrets Act<sup>11</sup> as a “formula, pattern, compilation, program, device, method, technique, or process” that derives actual or potential economic independent economic value from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use when it is the subject of reasonable efforts under the circumstances to maintain its secrecy.

### III. Effect of Proposed Changes:

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

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

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

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

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

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

### IV. Constitutional Issues:

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

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

---

<sup>9</sup> 110 Am. Jur, Trials 367, Pt. 3 (August 2015).

<sup>10</sup> *Id.*

<sup>11</sup> Section 688.002(4), F.S.

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

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

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

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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

**VIII. Statutes Affected:**

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

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

**IX. Additional Information:**

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

**CS by Commerce and Tourism on October 5, 2015:**

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

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Richter

577-00706-16

2016180c1

A bill to be entitled

An act relating to trade secrets; amending s. 812.081, F.S.; including financial information in provisions prohibiting the theft, embezzlement, or unlawful copying of trade secrets; providing criminal penalties; reenacting ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., relating to confidential business information, trade secret information filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation, civil remedies, and offenses against intellectual property, respectively, to incorporate changes made by this act to the definition of the term "trade secret" in s. 812.081, F.S., in references thereto; providing an effective date.

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

Section 1. Section 812.081, Florida Statutes, is amended to read:

812.081 Trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.—

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

(a) "Article" means any object, device, machine, material, substance, or composition of matter, or any mixture or copy thereof, whether in whole or in part, including any complete or partial writing, record, recording, drawing, sample, specimen, prototype model, photograph, microorganism, blueprint, map, or

Page 1 of 8

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

577-00706-16

2016180c1

copy thereof.

(b) "Representing" means completely or partially describing, depicting, embodying, containing, constituting, reflecting, or recording.

(c) "Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term "Trade secret" includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;

2. Of value;

3. For use or in use by the business; and

4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(d) "Copy" means any facsimile, replica, photograph, or other reproduction in whole or in part of an article and any

Page 2 of 8

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

577-00706-16

2016180c1

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

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

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

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

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

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

721.071 Trade secrets.—

577-00706-16

2016180c1

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

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

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

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

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

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

577-00706-16

2016180c1

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

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

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

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

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

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

577-00706-16

2016180c1

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

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

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

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

577-00706-16

2016180c1

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

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

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

815.04 Offenses against intellectual property; public records exemption.-

577-00706-16

2016180c1

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

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





The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** November 19, 2015

---

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

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

A handwritten signature in cursive script, appearing to read "Garrett Richter", is written over a horizontal line.

Senator Garrett Richter  
Florida Senate, District 23

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

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

12/3/2015

Meeting Date

180

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 \_\_\_\_\_

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/3/15

Meeting Date

180

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Cynthia Henderson

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

Address 108 E. Jefferson St - Suite A

Phone 850 559 0855

Street

Tallahassee

FL

32303

City

State

Zip

Email cynthenderson@me.

Speaking: ☐ For ☐ Against ☐ Information

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

LCM

Representing Linebarger

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/CS/SB 182

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

SUBJECT: Public Records and Meetings/Trade Secrets

DATE: December 1, 2015

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

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

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

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

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

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

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

## II. Present Situation:

### Public Records and Open Meetings Requirements

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

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

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

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

---

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

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

<sup>3</sup> 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.

<sup>4</sup> Section 119.01(1), F.S.

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

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

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

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

The Legislature may, by two-thirds votes of the House and the Senate,<sup>10</sup> create an exemption to public records or open meetings requirements.<sup>11</sup> An exemption must explicitly state the public necessity of the exemption<sup>12</sup> and must be tailored to accomplish the stated purpose of the law.<sup>13</sup> A statutory exemption which does not meet these two criteria may be found unconstitutional, and efforts may not be made by the court to preserve the exemption.<sup>14</sup>

### **Open Government Sunset Review Act**

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

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

---

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

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

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

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

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

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

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

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

<sup>16</sup> Section 119.15(3), F.S.

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

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

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

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

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

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

## Trade Secrets

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

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

<sup>17</sup> Section 119.15(6)(a), F.S.

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

<sup>19</sup> Section 119.15(6)(b)1., F.S.

<sup>20</sup> Section 119.15(6)(b)2., F.S.

<sup>21</sup> Section 119.15(6)(b)3., F.S.

<sup>22</sup> Section 119.15(6)(b), F.S.

<sup>23</sup> FLA. CONST., art. I, s. 24(c).

<sup>24</sup> Section 119.15(7), F.S.

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

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

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

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

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

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

---

<sup>25</sup> Section 812.081(1)(c), F.S.

<sup>26</sup> 839 So. 2d 781 (Fla. 1st DCA 2003).

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



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

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

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

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

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

### III. Effect of Proposed Changes:

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

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

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

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

### IV. Constitutional Issues:

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

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

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

---

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

<sup>30</sup> FLA. CONST. art. 1, s. 24.

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

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

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

**Vote Requirement**

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

**Public Necessity Statement**

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

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

**Breadth of Exemption**

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

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

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

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

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

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

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

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

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

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

---

<sup>32</sup> Section 119.01(1), F.S.

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

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

## **VIII. Statutes Affected:**

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

## **IX. Additional Information:**

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

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

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

### **CS by Commerce and Tourism on October 5, 2015:**

The committee substitute:

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

- B. **Amendments:**

None.

---

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

---

---

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

By the Committees on Governmental Oversight and Accountability;  
and Commerce and Tourism; and Senator Richter

585-01303-16

2016182c2

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

Page 1 of 24

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

585-01303-16

2016182c2

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

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Paragraph (f) of subsection (1) of section  
53 119.071, Florida Statutes, is amended to read:  
54 119.071 General exemptions from inspection or copying of  
55 public records.—  
56 (1) AGENCY ADMINISTRATION.—  
57 (f) Data processing software obtained by an agency under a  
58 licensing agreement that prohibits its disclosure and which

Page 2 of 24

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

585-01303-16

2016182c2

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

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

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

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

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

1. Information given to a county tourism promotion agency which, if released, would reveal the identity of persons or entities who provide data or other information as a response to a sales promotion effort, an advertisement, or a research project or whose names, addresses, meeting or convention plan information or accommodations or other visitation needs become booking or reservation list data, is exempt from s. 119.07(1)

585-01303-16

2016182c2

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

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

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

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

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

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

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

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

(8) PUBLIC RECORDS EXEMPTION.—The identity of any person who responds to a marketing project or advertising research project conducted by the corporation in the performance of its duties on behalf of Enterprise Florida, Inc., or trade secrets as defined by s. 812.081 obtained pursuant to such activities, are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand

585-01303-16

2016182c2

repealed on October 2, 2021, unless reviewed and saved from  
 repeal through reenactment by the Legislature.

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

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

Section 5. Section 365.174, Florida Statutes, is amended to  
 read:

585-01303-16

2016182c2

365.174 Proprietary confidential business information.—

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

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

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

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

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

(3) As used in this section, the term "proprietary  
 confidential business information" means customer lists,  
 customer numbers, individual or aggregate customer data by  
 location, usage and capacity data, network facilities used to  
 serve subscribers, technology descriptions, technical



585-01303-16

2016182c2

information, or trade secrets, including trade secrets as defined in s. 812.081, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.

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

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

381.83 Trade secrets; confidentiality.—

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

585-01303-16

2016182c2

request, to other governmental entities in order for them to properly perform their duties, or when relevant in any proceeding under this chapter. Authorized representatives and other governmental entities receiving such trade secret information shall retain its confidentiality. Those involved in any proceeding under this chapter, including a hearing officer or judge or justice, shall retain the confidentiality of any trade secret information revealed at such proceeding.

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

Section 7. Subsection (2) and paragraph (b) of subsection (3) of section 403.7046, Florida Statutes, are amended to read:

403.7046 Regulation of recovered materials.—

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

(3) Except as otherwise provided in this section or

585-01303-16

2016182c2

pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government, nor may the local government restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has satisfied the requirements of this section. A local government may not enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

(b)1. Before engaging in business within the jurisdiction of the local government, a recovered materials dealer must provide the local government with a copy of the certification provided for in this section. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government before engaging in business within the jurisdiction of the local government. Such registration process is limited to requiring the dealer to register its name, including the owner or operator of the dealer, and, if the dealer is a business entity, its general or limited partners, its corporate officers and directors, its permanent place of business, evidence of its certification under this section, and a certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section. The local government may not use the information provided in the

585-01303-16

2016182c2

registration application to compete unfairly with the recovered materials dealer until 90 days after receipt of the application. All counties, and municipalities whose population exceeds 35,000 according to the population estimates determined pursuant to s. 186.901, may establish a reporting process that must ~~which shall~~ be limited to the regulations, reporting format, and reporting frequency established by the department pursuant to this section, which must ~~shall~~, at a minimum, include requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period; the approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and the locations where any recovered materials were disposed of as solid waste. ~~Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s. 812.081(1)(c), is confidential and exempt from the provisions of s. 24(a), Art. I of the State Constitution and s. 119.07(1).~~ The local government may charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program. Registration program costs are limited to those costs associated with the activities described in this subparagraph ~~paragraph~~. Any reporting or registration process established by a local government with regard to recovered materials is ~~shall be~~ governed by ~~the provisions of~~ this section and department rules adopted pursuant thereto.

2. Information reported under this subsection which, if disclosed, would reveal a trade secret, as defined in s.

585-01303-16

2016182c2

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

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

299 403.73 Trade secrets; confidentiality.—

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

Page 11 of 24

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

585-01303-16

2016182c2

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

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

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

332 499.012 Permit application requirements.—

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

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

345 2. For an application to renew a permit, the total dollar  
 346 volume of prescription drug sales in the previous year, the  
 347 total dollar volume of prescription drug sales made in the  
 348 previous 6 months, the percentage of total company sales that

Page 12 of 24

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

585-01303-16

2016182c2

were prescription drugs in the previous year, the total dollar volume of purchases of prescription drugs in the previous year, and the total dollar volume of prescription drug purchases directly from manufacturers in the previous year.

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

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

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

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

3.a. The name and address of all financial institutions in

585-01303-16

2016182c2

which the applicant has an account that ~~which~~ is used to pay for the operation of the establishment or to pay for drugs purchased for the establishment, together with the names of all persons who that are authorized signatories on such accounts.

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

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

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

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

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

(7) PRESCRIPTION DRUG PURCHASE LIST.—

585-01303-16

2016182c2

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

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

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

499.051 Inspections and investigations.—

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

(b) ~~Information that constitutes a trade secret, as defined in s. 812.081, contained in the complaint or obtained by the department pursuant to the investigation must information contained therein as defined by s. 812.081(1)(e) shall remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, as long as the information is held by retained by the department. This~~

585-01303-16

2016182c2

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

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

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

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

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

502.222 Information relating to trade secrets confidential.—The records of the department regarding matters encompassed by this chapter are public records, subject to ~~the provisions of~~ chapter 119, except that any information that

585-01303-16

2016182c2

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

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

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

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

(a) A disclosure necessary to enforcement procedures.

(b) The department from releasing information to other governmental agencies. Other governmental agencies that receive confidential information from the department under this

585-01303-16

2016182c2

subsection shall maintain the confidentiality of that information.

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

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

573.123 Maintenance and production of records.—

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

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

601.10 Powers of the Department of Citrus.—The department shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but are not limited to, the

585-01303-16

2016182c2

523 following:

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

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

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

585-01303-16

2016182c2

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

554 601.15 Advertising campaign; methods of conducting;  
 555 assessments; emergency reserve fund; citrus research.—

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

562 (d) 1. The pro rata portion of moneys allocated to each type  
 563 of citrus product in noncommodity programs shall be used by the  
 564 department to encourage substantial increases in the  
 565 effectiveness, frequency, and volume of noncommodity  
 566 advertising, merchandising, publicity, and sales promotion of  
 567 such citrus products through rebates and incentive payments to  
 568 handlers and trade customers for these activities. The  
 569 department shall adopt rules providing for the use of such  
 570 moneys. The rules shall establish alternate incentive programs,  
 571 including at least one incentive program for product sold under  
 572 advertised brands, one incentive program for product sold under  
 573 private label brands, and one incentive program for product sold  
 574 in bulk. For each incentive program, the rules must ~~shall~~  
 575 establish eligibility and performance requirements and must  
 576 ~~shall~~ provide appropriate limitations on amounts payable to a  
 577 handler or trade customer for a particular season. Such  
 578 limitations may relate to the amount of citrus assessments  
 579 levied and collected on the citrus product handled by such  
 580 handler or trade customer during a 12-month representative

585-01303-16

2016182c2

581 period.

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

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

594       601.152 Special marketing orders.—

595       (8)

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

607       2. Information that, if disclosed, would reveal a trade  
608 secret, as defined in s. 812.081, of any person subject to a  
609 marketing order is confidential and exempt from s. 119.07(1) and

585-01303-16

2016182c2

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

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

617       601.76 Manufacturer to furnish formula and other  
618 information.—Any formula required to be filed with the  
619 Department of Agriculture shall be deemed a trade secret as  
620 defined in s. 812.081, is confidential and exempt from s.  
621 119.07(1) and s. 24(a), Art. I of the State Constitution, and  
622 may ~~shall only~~ be divulged only to the Department of Agriculture  
623 or to its duly authorized representatives or upon court order  
624 ~~orders of a court of competent jurisdiction~~ when necessary in  
625 the enforcement of this law. A person who receives such a  
626 formula from the Department of Agriculture under this section  
627 shall maintain the confidentiality of the formula. This section  
628 is subject to the Open Government Sunset Review Act in  
629 accordance with s. 119.15 and shall stand repealed on October 2,  
630 2021, unless reviewed and saved from repeal through reenactment  
631 by the Legislature.

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

634       815.04 Offenses against intellectual property; public  
635 records exemption.—

636       (3) Data, programs, or supporting documentation that is a  
637 trade secret as defined in s. 812.081, that is held by an agency  
638 as defined in chapter 119, and that resides or exists internal



585-01303-16

2016182c2

or external to a computer, computer system, computer network, or electronic device is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

~~(6) Subsections (3) and (4) are 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 21. The Legislature finds that it is a public necessity that financial information comprising a trade secret as defined in s. 812.081, Florida Statutes, be made exempt or confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that it is a public necessity that any portion of a meeting in which a trade secret as defined in s. 812.081, Florida Statutes, is discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The Legislature recognizes that, in many instances, businesses are required to provide financial information for regulatory or other purposes to public entities and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. The Legislature's intent is to protect trade secret information of a confidential nature which includes, but is not limited to, a formula, a pattern, a device, a combination of devices, or a compilation of information used to protect or further a business

585-01303-16

2016182c2

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

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



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** November 19, 2015

---

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

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

A handwritten signature in black ink, appearing to read "Garrett Richter", is written over a horizontal line.

Senator Garrett Richter  
Florida Senate, District 23

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

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

12/3/2015

Meeting Date

182

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 \_\_\_\_\_

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)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

12/31/15

Meeting Date

182

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Cynthia Henderson

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

Address 108 E. Jefferson St. Suite A

Phone 850 559 0855

Street

Tallahassee

FL

32303

City

State

Zip

Email cynthenderson@me.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Line barger

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: SB 320

INTRODUCER: Senator Richter

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

DATE: December 1, 2015

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

| ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION           |
|----------|----------------|-----------|------------------|
| 1. Looke | Stovall        | HP        | <b>Favorable</b> |
| 2. Kim   | McVaney        | GO        | <b>Favorable</b> |
| 3. Looke | Phelps         | RC        | <b>Favorable</b> |

---

## **I. Summary:**

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

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

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

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

## **II. Present Situation:**

### **Public Records Law**

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

---

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

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

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

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

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

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

---

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

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

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

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

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

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

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

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

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

### **EMTs and Paramedics**

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

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

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

### **Threats to EMTs and Paramedics**

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

---

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

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

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

<sup>16</sup> *Id.*

<sup>17</sup> EMT and Paramedic certification criteria are established in ch. 401, F.S.

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

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

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

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

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

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

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

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

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

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

##### **Vote Requirement**

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

##### **Public Necessity Statement**

---

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



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

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Richter

23-00371-16

2016320\_\_

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; creating an exemption from public records requirements for certain identifying and location information of current or former emergency medical technicians or paramedics certified under ch. 401, F.S., and the spouses and children of such emergency medical technicians or paramedics, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a.(I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including

Page 1 of 11

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

23-00371-16

2016320\_\_

correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.408; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1).

Page 2 of 11

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

23-00371-16

2016320\_\_

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

d. (I) The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

23-00371-16

2016320\_\_

saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.

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

23-00371-16

2016320\_\_

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

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

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

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

23-00371-16

2016320\_\_

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

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

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

23-00371-16

2016320\_\_

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.

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

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

23-00371-16

2016320\_\_

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

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph 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.

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

23-00371-16

2016320\_\_

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

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

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

23-00371-16

2016320\_\_

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

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

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

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

23-00371-16

2016320

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

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

### SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

November 17, 2015

The Honorable David Simmons, Chair  
Committee on Rules  
402 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Simmons:

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

Sincerely,

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

Garrett Richter

cc: John Phelps, Staff Director

**REPLY TO:**

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

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



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

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

12-3-15

Meeting Date

SB 320

Bill Number (if applicable)

Topic Public Records Exemption for EMT's & Paramedics

Amendment Barcode (if applicable)

Name Mac Kemp

Job Title Deputy Chief

Address 911 Eastwood Drive

Street

Phone 850 606 2100

Tallahassee, FL

City

State

32311

Zip

Email Kempm@leoncountyfl.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Council of EMS Chiefs

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)

12/3/15

Meeting Date

320

Bill Number (if applicable)

Topic Paramedics Public Records

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 345 W. Madison St

Phone 850-224-7333

Street

Tallahassee

State

32301

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters and Paramedics

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: SB 340

INTRODUCER: Senator Latvala

SUBJECT: Vision Care Plans

DATE: December 1, 2015

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Johnson | Knudson        | BI        | <b>Favorable</b> |
| 2. | Lloyd   | Stovall        | HP        | <b>Favorable</b> |
| 3. | Johnson | Phelps         | RC        | <b>Favorable</b> |

---

## **I. Summary:**

SB 340 prohibits an insurer, a prepaid limited health service organization (PLHSO), or a health maintenance organization (HMO) from requiring a licensed ophthalmologist or optometrist to join a network solely for credentialing the licensee for another insurer's, PLHSO's, or HMO's vision network, respectively. The bill would not prevent an insurer, PLHSO, or HMO from entering into a contract with another insurer's, PLHSO's, or HMO's vision care plan to use the vision network. Additionally, plans are prohibited from restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical labs. The bill provides that this provision does not restrict an insurer, PLHSO, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or labs.

The bill provides that a knowing violation of either of these provisions, as described above, constitutes an unfair insurance trade practice under s. 626.9541(1)(d), F.S.

Under the bill, insurers, PLHSOs, and HMOs must update their online vision care network directory monthly to reflect currently participating providers in their respective network.

## **II. Present Situation:**

### **State Regulation of Insurance**

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations, and other risk-bearing entities. The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency pursuant to part III of ch. 641, F.S.

***Prepaid Limited Health Service Organizations Contracts***

Prepaid limited health service organizations (PLHSO) provide limited health services to enrollees through an exclusive panel of providers in exchange for a prepayment authorized under ch. 636, F.S. Limited health services include ambulance, dental, vision, mental health, substance abuse, chiropractic, podiatric, and pharmaceutical. Provider arrangements for prepaid limited health service organizations are authorized in s. 636.035, F.S., and must comply with the requirements in that section.

***Health Maintenance Organization Provider Contracts***

An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area. Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO's network generally results in the HMO limiting or denying payment of the member's benefits. Section 641.315, F.S., specifies requirements for the HMO provider contracts with providers.

***Prohibition against "All Products" Clauses in Health Care Provider Contracts***

Section 627.6474(1), F.S., prohibits a health insurer from requiring that a contracted health care practitioner accept the terms of other practitioner contracts (including Medicare and Medicaid practitioner contracts) with the insurer or with an insurer, HMO, exclusive provider organization, or preferred provider organization that is under common management and control with the contracting insurer. The statute exempts practitioners in group practices who must accept the contract terms negotiated by the group.

***Unfair Insurance Trade Practices***

Part IX of ch. 626, F.S., regulates practices relating to the business of insurance by defining practices that constitute unfair methods of competition or unfair or deceptive acts or practices and prohibits those activities. Section 626.9541(1)(d), F.S., provides that the following acts are an unfair insurance trade practice:

Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

Section 626.9521, F.S., provides administrative fines and criminal penalties for violations under s. 626.9541, F.S. Generally, the potential fines under the Unfair Insurance Trade Practices Act includes an amount not greater than \$5,000 for each non-willful violation and not greater than \$40,000 for each willful violation. Such fines imposed against an insurer may not exceed an aggregate amount of \$20,000 for all non-willful violations arising out of the same action; or an aggregate amount of \$200,000 for all willful violations arising out of the same action. The fines may be imposed in addition to any other applicable penalty. Further, the OIR is authorized to issue cease and desist orders and suspend or revoke an entity's certificate of authority for engaging in an unfair insurance trade practice.<sup>1</sup>

---

<sup>1</sup> Section 626.9581, F.S.

### ***Credentialing***

Section 641.495(6), F.S., provides that each HMO must have a system for verification and examination of the credentials of each of its providers. If the organization has delegated the credentialing process to a contracted provider or entity, it must verify that the policies and procedures of the delegated provider or entity are consistent with the policies and procedures of the organization and there is evidence of oversight activities of the organization to determine that required standards are maintained. Preferred provider organizations also subject providers to credentialing.<sup>2</sup>

Credentialing is a process for the collection and verification of a provider's professional qualifications. The qualifications that are reviewed and verified include, but are not limited to, relevant training, licensure, certification or registration to practice in a health care field, experience, and academic background. A credentialing process is used by healthcare facilities as part of its process to allow practitioners to provide services at its facilities; health plans to allow providers to participate in its network (provider enrollment); medical groups when hiring new providers; and other healthcare entities that have a need to hire or otherwise engage providers.

### **State Group Insurance Program**

Under the authority of s. 110.123, F.S., the Department of Management Services (department), through the Division of State Group Insurance, administers the State Group Insurance Program. The program provides employee benefits under a cafeteria plan consistent with Section 125, Internal Revenue Code.<sup>3</sup> The Division of State Group Insurance offers a fully-insured vision insurance plan to eligible employees and their eligible dependents.

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

**Sections 1, 2, and 3** amend ss. 627.6474, 636.035, and 641.315, F.S., to prohibit an insurer, PLHSO, and HMO from requiring a licensed ophthalmologist or optometrist to join a network solely for the purpose of credentialing the licensee for another insurer's, PLHSO's, or HMO's network, respectively. The bill would not prevent an insurer, PLHSO, or HMO from entering into a contract with another insurer's, PLHSO's, or HMO's vision care plan to use the vision network.

Further, the bill prohibits these plans from restricting a licensed ophthalmologist, optometrist, or optician to specific suppliers of material or optical laboratories. This provision does not restrict an insurer, PLHSO, or HMO in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

---

<sup>2</sup> Agency for Health Care Administration, *Interpretative Guidelines for Initial Health Care Provider Certificate for Health Maintenance Organizations and Prepaid Health Clinics*, p. 49. (2010), [https://ahca.myflorida.com/MCHO/Health\\_Facility\\_Regulation/Commercial\\_Managed\\_Care/docs/CHMO/Initial-IGs-withProbesJune2010.pdf](https://ahca.myflorida.com/MCHO/Health_Facility_Regulation/Commercial_Managed_Care/docs/CHMO/Initial-IGs-withProbesJune2010.pdf) (last visited: Nov. 5, 2015).

<sup>3</sup> 26 U.S.C. s. 125. A cafeteria plan is a plan maintained by an employer under which all participants are employees, and all participants may choose among two or more benefits consisting of cash and qualified benefits. A qualified benefit is any benefit, which with the application of 26 U.S.C. s. 125(a), is not includable in the gross income of the employee with certain exceptions.

Additionally, the bill provides that a knowing violation of either of these provisions described above constitutes an unfair insurance trade practice under s. 626.9541(1)(d), F.S., which relates to any act of boycott, coercion, or intimidation resulting in, or tending to result in, unreasonable restraint of, or monopoly in, the business of insurance.

Insurers, PLHSOs, or HMOs are also required to update their online vision care network directories monthly to reflect currently participating providers in their respective networks.

**Section 4** provides an effective date of July 1, 2016.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The general rule of law is that legislation applies prospectively and not retrospectively. In other words, this bill will not apply retroactively to impair the effectiveness of contracts already in existence on the date this legislation becomes effective. It will apply only to contracts signed on or after the effective date of the bill.

The State Constitution provides that “No.... law impairing the obligation of contracts shall be passed.”<sup>4</sup> The Florida Supreme Court<sup>5</sup> has noted that “Virtually no degree of contract impairment has been tolerated in this state” and strongly favors the sanctity of contracts. Accordingly, contracts already in existence on the date this bill becomes effective will remain in effect between the parties to the contracts, regardless of the language in this bill. However, to avoid confusion, the Legislature may wish to expressly state in the bill that it does not apply to existing contracts.

#### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

---

<sup>4</sup> FLA. CONST. art. I, s. 10.

<sup>5</sup> *Yamaha Part Distributors Inc., et al, v. Ehrman et al.*, 316 So. 2d 557, 559 (Fla 1975).

**B. Private Sector Impact:**

The bill provides that a licensed ophthalmologist, optometrist or optician contracting with an insurer, PLHSO, or HMO is not required to purchase materials and services from specific suppliers or optical labs. This would give the provider the ability to be competitive and responsive to local market conditions regarding the cost and quality of such materials and services provided to consumers. Currently, the approved lab lists of some vision plans can be limited and may require a provider to send all orders to a plan-owned lab in another city or state, which may result in delays for the consumer in receiving their eyeglasses. If such a lab is performing poorly, this can cause additional delays and frustrations for consumers.

Further, an insurer, PLHSO, or HMO could not require a licensed ophthalmologist or optometrist to join a network solely for credentialing the licensee for another plan's vision network.

Consumers will have online access to more timely and accurate network directories for vision care providers, which will assist them in evaluating plans or selecting network providers.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 627.6474, 636.035, and 641.315.

**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 Latvala

20-00036A-16

2016340\_\_

1 A bill to be entitled  
 2 An act relating to vision care plans; amending ss.  
 3 627.6474, 636.035, and 641.315, F.S.; providing that a  
 4 health insurer, a prepaid limited health service  
 5 organization, and a health maintenance organization,  
 6 respectively, may not require a licensed  
 7 ophthalmologist or optometrist to join a network  
 8 solely for the purpose of credentialing the licensee  
 9 for another vision network; providing that such  
 10 insurers and organizations are not prevented by the  
 11 act from entering into a contract with another vision  
 12 care plan; providing that such insurers and  
 13 organizations may not restrict a licensed  
 14 ophthalmologist, optometrist, or optician to specific  
 15 suppliers of materials or optical laboratories;  
 16 providing that such insurers and organizations are not  
 17 restricted by the act in determining certain amounts  
 18 of coverage or reimbursement; requiring such insurers'  
 19 and organizations' online vision care network provider  
 20 directories to be updated monthly; providing that a  
 21 violation of certain prohibitions in the act  
 22 constitutes a specified unfair insurance trade  
 23 practice; providing an effective date.

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

27 Section 1. Subsection (3) is added to section 627.6474,  
 28 Florida Statutes, to read:  
 29 627.6474 Provider contracts.—

Page 1 of 4

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

20-00036A-16

2016340\_\_

30 (3) (a) A health insurer may not require an ophthalmologist  
 31 licensed pursuant to chapter 458 or chapter 459 or an  
 32 optometrist licensed pursuant to chapter 463 to join a network  
 33 solely for the purpose of credentialing the licensee for another  
 34 insurer's vision network. This paragraph does not prevent a  
 35 health insurer from entering into a contract with another  
 36 insurer's vision care plan to use the vision network.

37 (b) A health insurer may not restrict an ophthalmologist  
 38 licensed pursuant to chapter 458 or chapter 459, an optometrist  
 39 licensed pursuant to chapter 463, or an optician licensed  
 40 pursuant to part I of chapter 484 to specific suppliers of  
 41 materials or optical laboratories. This paragraph does not  
 42 restrict a health insurer in determining specific amounts of  
 43 coverage or reimbursement for the use of network or out-of-  
 44 network suppliers or laboratories.

45 (c) A health insurer's online vision care network provider  
 46 directory must be updated monthly to reflect the vision care  
 47 providers currently participating in the health insurer's  
 48 network.

49 (d) A knowing violation of paragraph (a) or paragraph (b)  
 50 constitutes an unfair insurance trade practice under s.  
 51 626.9541(1) (d).

52 Section 2. Subsection (14) is added to section 636.035,  
 53 Florida Statutes, to read:

54 636.035 Provider arrangements.—

55 (14) (a) A prepaid limited health service organization may  
 56 not require an ophthalmologist licensed pursuant to chapter 458  
 57 or chapter 459 or an optometrist licensed pursuant to chapter  
 58 463 to join a network solely for the purpose of credentialing

Page 2 of 4

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



20-00036A-16

2016340\_\_

the licensee for another organization's vision network. This paragraph does not prevent such organization from entering into a contract with another organization's vision care plan to use the vision network.

(b) A prepaid limited health service organization may not restrict an ophthalmologist licensed pursuant to chapter 458 or chapter 459, an optometrist licensed pursuant to chapter 463, or an optician licensed pursuant to part I of chapter 484 to specific suppliers of materials or optical laboratories. This paragraph does not restrict such organization in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

(c) A prepaid limited health service organization's online vision care network provider directory must be updated monthly to reflect the vision care providers currently participating in the organization's network.

(d) A knowing violation of paragraph (a) or paragraph (b) constitutes an unfair insurance trade practice under s. 626.9541(1)(d).

Section 3. Subsection (12) is added to section 641.315, Florida Statutes, to read:

641.315 Provider contracts.—

(12)(a) A health maintenance organization may not require an ophthalmologist licensed pursuant to chapter 458 or chapter 459 or an optometrist licensed pursuant to chapter 463 to join a network solely for the purpose of credentialing the licensee for another organization's vision network. This paragraph does not prevent such organization from entering into a contract with another organization's vision care plan to use the vision

20-00036A-16

2016340\_\_

network.

(b) A health maintenance organization may not restrict an ophthalmologist licensed pursuant to chapter 458 or chapter 459, an optometrist licensed pursuant to chapter 463, or an optician licensed pursuant to part I of chapter 484 to specific suppliers of materials or optical laboratories. This paragraph does not restrict such organization in determining specific amounts of coverage or reimbursement for the use of network or out-of-network suppliers or laboratories.

(c) A health maintenance organization's online vision care network provider directory must be updated monthly to reflect the vision care providers currently participating in the organization's network.

(d) A knowing violation of paragraph (a) or paragraph (b) constitutes an unfair insurance trade practice under s. 626.9541(1)(d).

Section 4. This act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**

20th District

November 17, 2015

The Honorable David Simmons, Chair  
Senate Committee on Rules  
402 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Simmons:

I respectfully request consideration of Senate Bill 340/Vision Insurance by the Senate Committee on Rules at your earliest convenience. The bill successfully passed the Senate Health Policy Committee on November 17, 2015.

This bill will prohibit insurance companies from requiring a licensed ophthalmologist or optometrist to provide vision care services under specified circumstances or to purchase certain materials or services as a condition for participating as a provider.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Latvala".

Jack Latvala  
State Senator  
District 20

Cc: John B. Phelps, Staff Director; Cissy DuBose, Administrative Assistant

**REPLY TO:**

- ☐ 28133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- ☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

12/3/15

Meeting Date

340

Bill Number (if applicable)

Topic VISION CARE PLANS

Amendment Barcode (if applicable)

Name DAVID RAMBA

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

Address 120 S. MONROE ST.

Phone 850.727.7087

Street

TAMPA, FL 32301

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA OPTOMETRIC ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



## THE FLORIDA SENATE

### SENATE DEMOCRATIC OFFICE

*Location*

228 Senate Office Building

*Mailing Address*

404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5833

David Cox, Staff Director  
Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Arthenia L. Joyner**  
*Democratic Leader*

**Oscar Braynon II**  
*Democratic Leader Pro Tempore*

December 2, 2015

Chairman David Simmons  
Senate Rules Committee

Dear Chairman Simmons,

Please excuse my absence from tomorrow's Rules Committee meeting as I am unable to attend.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arthenia L. Joyner".

12/3/15  
OK  
A handwritten signature, possibly "Oscar Braynon II", written over the word "OK".

**ANDY GARDINER**

**President of the Senate**

**GARRETT RICHTER**

**President Pro Tempore**

# CourtSmart Tag Report

Room: EL 110  
Caption: Senate Rules Committee

Case No.:  
Judge:

Type:

Started: 12/3/2015 1:04:26 PM  
Ends: 12/3/2015 3:00:16 PM Length: 01:55:51

|            |  |
|------------|--|
| 1:04:25 PM | Meeting called to order  |
| 1:04:28 PM | Roll call  |
| 1:04:36 PM | Quorum present   |
| 1:05:10 PM | Senator Gaetz designated Vice Chair in absence of Senator Soto           |
| 1:06:10 PM | CS/SB 344 presented by Senator Bradley                                   |
| 1:06:36 PM | Amendment 185450 presented by Senator Simmons                            |
| 1:16:28 PM | Senator Bradley recognized to speak                                      |
| 1:17:31 PM | Senator Soto with question on the amendment                              |
| 1:18:02 PM | Senator Simmons with response  |
| 1:18:11 PM | Senator Negron recognized with question                                  |
| 1:18:23 PM | Senator Simmons with response  |
| 1:18:51 PM | Senator Bradley recognized to speak                                      |
| 1:19:52 PM | Senator Negron with follow-up question                                   |
| 1:20:36 PM | Senator Bradley with response to Senator Negron                          |
| 1:20:47 PM | Senator Gibson with a question   |
| 1:21:50 PM | Senator Simmons recognized to respond                                    |
| 1:23:58 PM | Senator Bradley recognized to speak                                      |
| 1:24:58 PM | Senator Lee recognized with question                                     |
| 1:25:26 PM | Senator Bradley with series of clarifications to Senator Lee's questions |
| 1:26:25 PM | Senator Bradley with response  |
| 1:26:29 PM | Senator Lee with follow-up   |
| 1:26:50 PM | Senator Bradley with response  |
| 1:26:59 PM | Senator Lee with question  |
| 1:27:06 PM | Senator Bradley with response  |
| 1:27:49 PM | Senator Lee with follow-up   |
| 1:28:48 PM | Senator Galvano with question  |
| 1:29:11 PM | Senator Bradley with response  |
| 1:29:24 PM | Senator Soto with question on the amendment                              |
| 1:29:49 PM | Senator Bradley with response  |
| 1:29:56 PM | Senator Soto with follow-up question                                     |
| 1:30:28 PM | Senator Bradley with response  |
| 1:30:45 PM | Senator Soto with clarification  |
| 1:30:51 PM | Senator Bradley with response  |
| 1:30:57 PM | Senator Soto with another question                                       |
| 1:31:37 PM | Senator Bradley with response  |
| 1:31:50 PM | Senator Galvano recognized to respond                                    |
| 1:32:21 PM | Senator Gibson with another question                                     |
| 1:32:33 PM | Senator Bradley with response  |
| 1:32:54 PM | Senator Simmons recognized to respond to Senator Gibson                  |
| 1:33:44 PM | Eric Friday recognized to speak on the amendment waiving in support      |
| 1:34:44 PM | Marion Hammer of the NRA waives in support of the amendment              |
| 1:35:03 PM | Senator Negron recognized  |
| 1:35:53 PM | Senator Bradley recognized to close on Amendment 185450                  |
| 1:38:28 PM | Amendment 185450 adopted   |
| 1:39:28 PM | Amendment 956336 presented by Senator Simmons                            |
| 1:44:03 PM | Senator Benacquisto recognized to speak with an announcement             |
| 1:45:03 PM | Senator Latvala with question on the amendment                           |
| 1:45:37 PM | Senator Simmons with response to Senator Latvala                         |
| 1:48:37 PM | Senator Latvala with clarification of his question                       |
| 1:49:37 PM | Senator Simmons with response  |
| 1:50:31 PM | Senator Latvala with follow-up   |
| 1:51:31 PM | Senator Simmons with response to Senator Latvala                         |
| 1:52:18 PM | Senator Diaz de la Portilla recognized                                   |
| 1:53:17 PM | Senator Simmons with response to Senator Diaz de la Portilla             |
| 1:54:43 PM | Senator Diaz de la Portilla with follow-up question                      |
| 1:55:42 PM | Senator Simmons with response  |
| 1:57:05 PM | Senator Diaz de la Portilla with follow-up question                      |
| 1:58:05 PM | Senator Simmons with response for Senator Diaz de la Portilla            |
| 1:59:55 PM | Senator Lee recognized with question on the amendment                    |
| 2:01:54 PM | Senator Simmons recognized for response                                  |
| 2:03:00 PM | Senator Soto with question on the amendment                              |
| 2:03:59 PM | Senator Simmons with response to Senator Soto                            |
| 2:04:38 PM | Senator Gibson with question on the amendment                            |
| 2:05:38 PM | Senator Simmons recognized to respond                                    |
| 2:08:02 PM | Senator Negron with question on the amendment                            |
| 2:09:01 PM | Senator Simmons with response to Senator Negron                          |
| 2:09:38 PM | Senator Montford recognized with question                                |

2:10:08 PM Senator Simmons with response to Senator Montford  
 2:10:27 PM Eric Friday of Florida Carry, Inc. recognized to speak  
 2:11:33 PM Marion Hammer of NRA Unified Sportsmen of Florida recognized to speak  
 2:11:51 PM Senator Simmons with procedural question  
 2:12:31 PM Senator Gaetz with response  
 2:12:37 PM Senator Simmons with clarification  
 2:12:44 PM Senator Gaetz with response  
 2:12:47 PM Amendment 539570 to the amendment presented by Senator Simmons  
 2:13:22 PM Senator Latvala recognized with a question  
 2:14:16 PM Senator Simmons with response  
 2:14:22 PM Senator Latvala with follow-up question  
 2:14:38 PM Senator Simmons with response  
 2:14:48 PM Senator Latvala with clarification  
 2:15:00 PM Senator Simmons with response  
 2:15:04 PM Eric Friday Florida Carry waives in support  
 2:15:46 PM Marion Hammer with NRA waives in support  
 2:15:52 PM Amendment to the amendment adopted  
 2:16:01 PM Amendment 956336 as amended  
 2:16:21 PM Amendment 956336 as amended is adopted  
 2:16:35 PM Senator Lee recognized to speak on the strike-all as amended  
 2:16:51 PM Senator Soto recognized with question  
 2:17:15 PM Senator Bradley recognized to respond  
 2:18:57 PM Senator Gibson recognized with question on the bill as amended  
 2:19:56 PM Senator Bradley recognized to respond  
 2:20:29 PM Marion Hammer of NRA Unified Sportsmen of Florida recognized to speak  
 2:21:45 PM Don LAmonica with Florida Public Defenders waives in support  
 2:22:47 PM Eric Friday with Florida Carry recognized to speak  
 2:22:59 PM Senator Diaz de la Portilla with question for Eric Friday  
 2:23:57 PM Eric Friday with response  
 2:24:36 PM Senator Latvala with question for Eric Friday  
 2:25:22 PM Eric Friday of Florida Carry, Inc. with response to Senator Latvala  
 2:25:40 PM Senator Latvala with follow-up  
 2:26:13 PM Greg Newburn of Families Against Mandatory Minimums waives in support  
 2:26:44 PM Senator Lee recognized in debate  
 2:28:44 PM Senator Diaz de la Portilla recognized in debate  
 2:32:11 PM Senator Bradley recognized to close on CS/SB 344  
 2:33:31 PM Roll call on CS/SB 344  
 2:34:31 PM CS/SB 344 reported favorably  
 2:34:51 PM Chair returned to Senator Simmons  
 2:35:00 PM SB 396 presented by Senator Bradley  
 2:35:43 PM Alice Vickers of FL Bar Public Interest Law Section recognized to speak on the bill  
 2:36:40 PM Peter Dunbar of Real Property, Probate, and Trust Law Section recognized to speak  
 2:37:09 PM Senator Bradley recognized to close on the bill  
 2:38:04 PM Roll Call on SB 3986  
 2:38:13 PM SB 396 reported favorably  
 2:38:35 PM SB 112 presented by Senator Thompson's legislative assistant  
 2:39:31 PM Albert Carroll waives in support  
 2:40:32 PM Kevin Byrne waives in support  
 2:40:37 PM Tammi King waives in support  
 2:40:42 PM Gloria Mouw  
 2:41:07 PM Angela Lewis Bennett  
 2:41:13 PM Rosa Bauza  
 2:41:24 PM Jasmyne Henderson waives in support Miami-Dade County  
 2:41:38 PM Senator Soto recognized in debate  
 2:41:51 PM Mr. Addison recognized to close  
 2:42:09 PM Roll call on SB 112  
 2:42:18 PM SB 112 reported favorably  
 2:42:48 PM SM 630 presented by Senator Bean's aide  
 2:43:11 PM Senator Lee with question  
 2:43:52 PM Response  
 2:44:01 PM Senator Benacquisto recognized with question  
 2:44:16 PM Senator Bean's aide recognized for response  
 2:44:34 PM Greg Pound recognized to speak  
 2:45:52 PM Mr. Endicott recognized to close on the bill  
 2:46:52 PM Roll call on SM 630  
 2:47:07 PM SM 630 reported favorably  
 2:47:25 PM CS/SB 180 presented by Senator Richter  
 2:47:47 PM Cynthia Henderson of Linebarger waives in support  
 2:48:24 PM Brian with Justice-2-Jesus recognized to speak  
 2:49:54 PM Senator Richter waives close on CS/SB 180  
 2:50:57 PM Roll call on CS/SB 180  
 2:51:03 PM CS/SB 180 reported favorably  
 2:51:15 PM CS/CS/SB 182 presented by Senator Richter  
 2:51:33 PM Cynthia Henderson of Linebarger waives in support  
 2:51:55 PM Brian Pitts with Justice-2-Jesus recognized  
 2:52:09 PM Senator Richter waives close on CS/CS/SB 182  
 2:52:46 PM Roll call on CS/CS/SB 182  
 2:52:50 PM CS/CS/SB 182 reported favorably

|            |   |
|------------|---|
| 2:53:11 PM | SB 320 presented by Senator Richter   |
| 2:53:37 PM | Mac Kemp with FL Council of EMS Chiefs recognized to speak                  |
| 2:54:12 PM | Rocco Salvatori with FL Prof. Firefighters and Paramedics waives in support |
| 2:55:07 PM | Senator Richter waives close on SB 320                                      |
| 2:55:27 PM | Roll call on SB 320   |
| 2:55:36 PM | SB 320 reported favorably   |
| 2:56:00 PM | SB 340 presented by Senator Latvala   |
| 2:56:13 PM | David Ramba with FL Optometric Association waives in support of the bill    |
| 2:57:00 PM | Senator Latvala waives close on SB 340                                      |
| 2:57:19 PM | Roll call on SB 340   |
| 2:57:23 PM | SB 340 reported favorably   |
| 2:57:54 PM | Senator Negron would like to be shown voting affirmative on 396 and 112     |
| 2:58:16 PM | Senator Simmons closing remarks   |
| 2:59:11 PM | Meeting adjourned   |