

Tab 1	SB 118 by Hukill (CO-INTRODUCERS) Book, Mayfield ; (Identical to H 00975) Visitation of Schools by State Legislators					
495890	A	S	RCS	RC, Hukill	Delete L.18:	01/18 02:26 PM
Tab 2	SB 404 by Grimsley (CO-INTRODUCERS) Montford ; (Identical to H 00155) State Symbols					
Tab 3	CS/SB 510 by HP, Young (CO-INTRODUCERS) Mayfield ; (Similar to H 00673) Reporting of Adverse Incidents in Planned out-of-hospital Births					
318824	A	S	RCS	RC, Young	Delete L.47 - 48:	01/18 02:33 PM
773218	A	S	WD	RC, Young	Delete L.62:	01/18 02:33 PM
Tab 4	SB 7000 by CJ ; (Similar to H 07029) OGSR/Criminal History Records/Department of Law Enforcement					
Tab 5	SB 7002 by CJ ; (Identical to H 07031) OGSR/Active Criminal Intelligence or Criminal Investigative Information					
Tab 6	SB 7004 by JU ; OGSR/Petitioner Information/Notification of Service of an Injunction for Protection					
Tab 7	SB 7006 by JU ; (Identical to H 07013) OGSR/Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, January 18, 2018
TIME: 1:30—3:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Braynon, Vice Chair; Senators Book, Bradley, Brandes, Flores, Galvano, Lee, Montford, Perry, Rodriguez, Simpson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 118 Hukill (Identical H 975)	Visitation of Schools by State Legislators; Authorizing a member of the State Legislature to visit any district school in his or her legislative district, etc. ED 12/04/2017 Favorable RC 01/18/2018 Fav/CS	Fav/CS Yeas 13 Nays 0
2	SB 404 Grimsley (Identical H 155)	State Symbols; Abrogating the scheduled repeal of the state saltwater reptile designation; abrogating the scheduled repeal of the state horse designation; designating the Florida Cracker Cattle as the official state heritage cattle breed, etc. GO 11/07/2017 Favorable RC 01/18/2018 Favorable	Favorable Yeas 13 Nays 0
3	CS/SB 510 Health Policy / Young (Similar H 673)	Reporting of Adverse Incidents in Planned out-of-hospital Births; Defining the term "adverse incident"; requiring licensed physicians, certified nurse midwives, and licensed midwives to report an adverse incident and a medical summary of events to the Department of Health within a specified timeframe; requiring the department to review adverse incident reports and determine if conduct occurred that is subject to disciplinary action, etc. HP 11/07/2017 Fav/CS GO 12/05/2017 Favorable RC 01/18/2018 Fav/CS	Fav/CS Yeas 13 Nays 0
4	SB 7000 Criminal Justice (Similar H 7029)	OGSR/Criminal History Records/Department of Law Enforcement; Amending provisions relating to an exemption from public records requirements for certain criminal history records ordered expunged which are retained by the Department of Law Enforcement; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 01/10/2018 Favorable RC 01/18/2018 Favorable	Favorable Yeas 13 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, January 18, 2018, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 7002 Criminal Justice (Identical H 7031)	OGSR/Active Criminal Intelligence or Criminal Investigative Information; Amending provisions which provides an exemption from public meetings requirements for portions of a meeting of a duly constituted criminal justice commission at which active criminal intelligence information or active criminal investigative information being considered by, or which may foreseeably come before, the commission is discussed; removing the scheduled repeal of the exemption, etc. GO 01/10/2018 Favorable RC 01/18/2018 Favorable	Favorable Yeas 13 Nays 0
6	SB 7004 Judiciary	OGSR/Petitioner Information/Notification of Service of an Injunction for Protection; Amending provisions relating to the exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and for other court actions related to the injunction which are held by clerks of the court and law enforcement agencies; removing the scheduled repeal of the exemptions, etc. GO 12/05/2017 Favorable RC 01/18/2018 Favorable	Favorable Yeas 13 Nays 0
7	SB 7006 Judiciary (Identical H 7013)	OGSR/Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs; Amending provisions relating to an exemption from public record requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the Florida False Claims Act; abrogating the scheduled repeal of the exemption, etc. GO 12/05/2017 Favorable RC 01/18/2018 Favorable	Favorable Yeas 13 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: CS/SB 118

INTRODUCER: Rules Committee and Senator Hukill and others

SUBJECT: Visitation of Schools by State Legislators

DATE: January 18, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Olenick</u>	<u>Graf</u>	<u>ED</u>	Favorable
2.	<u>Olenick</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 118 authorizes an individual member of the State Legislature to visit any district school, including any charter school, in his or her legislative district, on any day and at any time at his or her pleasure, which is consistent with the authority extended in law to an individual member of a district school board and individual charter school governing board member to visit applicable schools.

The bill also clarifies that the district school superintendent's designee or the school principal's designee, in addition to the specified district employees in current law, may not limit the duration or scope of the visit or direct the visiting individual to leave the school premises.

The bill takes effect July 1, 2018.

II. Present Situation:

Florida law specifies the power and duties of the district school board which includes, but is not limited to, visiting of schools, observing, management and instruction, giving suggestions for improvement, and advising citizens with the view of promoting interest in education and improving the schools.¹ Additionally, an individual member of a district school board may, on any day and at any time at his or her pleasure, visit any district school in his or her respective school district.² Similarly, an individual charter school governing board member may, on any

¹ Section 1001.42(27), F.S.

² Section 1001.4205, F.S.

day and at any time at his or her pleasure, visit any charter school governed by the charter school's governing board.³

The following conditions apply regarding the visitation of schools by an individual school board member or a charter school governing board member:⁴

- The board member must sign in and sign out at the school's main office.
- The board member must wear his or her board identification badge at all times while present on school premises.
- The board, the school, or any other person or entity, including, but not limited to, the principal of the school, the school superintendent, or any other board member, may not require the visiting board member to provide notice before visiting the school.
- The school may offer, but may not require, an escort to accompany a visiting board member during the visit.
- Another board member or a district employee, including, but not limited to, the superintendent, the school principal, or his or her designee, may not limit the duration or scope of the visit or direct a visiting board member to leave the premises.
- A board, district, or school administrative policy or practice may not prohibit or limit the authority granted to a board member.

III. Effect of Proposed Changes:

CS/SB 118 authorizes an individual member of the State Legislature to visit any district school, including any charter school, in his or her legislative district, on any day and at any time at his or her pleasure, which is consistent with the authority extended in current law to district school board members and members of a charter school governing board to visit applicable schools. The bill extends to a member of the State Legislature the conditions for school visitation that currently apply to a board member.

Consistent with the requirements in current law regarding school visitation by individual members of the district school board and the charter school governing board, the bill requires a state legislator visiting a district school to sign in and sign out at the school's main office and wear his or her State Legislature identification badge at all times while present on the school premises. The bill also clarifies that the district school superintendent's designee or the school principal's designee, in addition to the specified district employees in current law, may not limit the duration or scope of the visit or direct the visiting individual to leave the school premises.

Florida law specifies that the Legislature must establish education policy, enact education laws, and appropriate and allocate education resources.⁵ Accordingly, the bill may assist individual state legislators to fulfill their statutory responsibilities.

Similarly, laws regarding the visitation of schools by members of the legislature are in place in at least two states, Pennsylvania and Maine. In Pennsylvania, official visitors, including the Governor, Lieutenant Governor, members of the Senate and the House of Representatives, the

³ Section 1001.4205, F.S.

⁴ *Id.*

⁵ Section 1000.03(2)(a), F.S.

Secretary of Education, and members of the State Board of Education, have access to any public school in the Commonwealth at any time.⁶ In Maine, January is designated as the “Invite Your Maine Legislator to School Month.”⁷ The Governor of Maine must annually issue a proclamation inviting and urging teachers, school administrators, and legislators to observe this month through appropriate activities, including inviting Legislators to visit school classrooms to meet with teachers, school administrators, and students to promote increased knowledge among Legislators about prekindergarten to grade 12 public education programs provided to students in their legislative districts.⁸

The bill takes effect July 1, 2018.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶ 24 Pa.C.S. Sections 1-102, and 110.

⁷ 1 M.R.S.A Section 150-J.

⁸ 1 M.R.S.A Section 150-J.

VIII. Statutes Affected:

This bill substantially amends section 1001.4205 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on January 18, 2018:

The committee substitute clarifies that the authority extended to the state legislators to visit any district school includes visits to charter schools in the state legislator's legislative district.

- B. **Amendments:**

None.



495890

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/18/2018	.	
	.	
	.	
	.	

The Committee on Rules (Hukill) recommended the following:

Senate Amendment (with title amendment)

Delete line 18
and insert:
pleasure, visit any district school, including any charter
school, in his or her legislative

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

And the title is amended as follows:

Delete line 5
and insert:



495890

12 district school, including any charter school, in his
13 or her legislative district;

By Senator Hukill

14-00044A-18

2018118__

A bill to be entitled

An act relating to the visitation of schools by state legislators; amending s. 1001.4205, F.S.; authorizing a member of the State Legislature to visit any district school in his or her legislative district; providing an effective date.

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

Section 1. Section 1001.4205, Florida Statutes, is amended to read:

1001.4205 Visitation of schools ~~by an individual school board or charter school governing board member~~.-An individual member of a district school board may, on any day and at any time at his or her pleasure, visit any district school in his or her school district. An individual member of the State Legislature may, on any day and at any time at his or her pleasure, visit any district school in his or her legislative district. An individual member of a charter school governing board member may, on any day and at any time at his or her pleasure, visit any charter school governed by the charter school's governing board.

(1) The visiting individual board member must sign in and sign out at the school's main office and wear his or her board or State Legislature identification badge, as applicable, at all times while present on school premises.

(2) The board, the school, or any other person or entity, including, but not limited to, the principal of the school, the school superintendent, or any ~~other~~ board member, may not

Page 1 of 2

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

14-00044A-18

2018118__

require the visiting individual board member to provide notice before visiting the school.

(3) The school may offer, but may not require, an escort to accompany ~~the~~ a visiting individual board member during the visit.

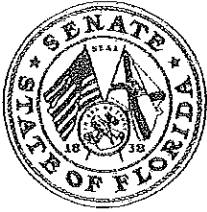
(4) ~~A~~ Another board member or a district employee, including, but not limited to, the superintendent, the school principal, or ~~the superintendent's or the principal's his or her~~ designee, may not limit the duration or scope of the visit or direct ~~the~~ a visiting individual board member to leave the premises.

(5) A board, district, or school administrative policy or practice may not prohibit or limit the authority granted to the visiting individual ~~a board member~~ under this section.

Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education, *Chair*
Appropriations Subcommittee on the
Environment and Natural Resources, *Vice Chair*
Regulated Industries, *Vice Chair*
Agriculture
Environmental Preservation and Conservation
Health Policy
Transportation

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
14th District

December 4, 2017

The Honorable Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 118 – Visitation of Schools by State Legislators

Dear Chairwoman Benacquisto:

Senate Bill 118, relating to Visitation of Schools by State Legislators, has been referred to the Senate Committee on Rules. I respectfully request that SB 118 be placed on the committee agenda at your earliest possible convenience.

Should you need any additional information, please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Dorothy L. Hukill".

Dorothy L. Hukill
State Senator, District 14

Cc: John B. Phelps, Staff Director, Senate Committee on Rules
Cynthia Futch, Administrative Assistant, Senate Committee on Rules

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- 434 Delannoy Avenue, Suite 204, Cocoa, Florida 32922 (321) 634-3549
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18

Meeting Date

118

Bill Number (if applicable)

495890

Amendment Barcode (if applicable)

Topic VISITATION of Schools by State legislators

Name Billie Anne Gay

Job Title

Address 203 S Monroe St

Street

Phone 850 414 2578

Tallahassee

City

FL

State

32301

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing Florida School Boards Association

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18

128

Meeting Date

Bill Number (if applicable)

Topic School Visits SB 1180

Amendment Barcode (if applicable)

Name Martina Brewer

Job Title Exec Dir FL School Nutrition Assoc

Address 124 Salem Ct.

Phone 850-878-1832

Street TCH, FL

32301

Email mbrewer@floridaschoolnutrition.org

City State

Zip

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

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

Representing

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/18/18
Meeting Date

118
Bill Number (if applicable)

Topic Visitation of Schools by State Legislators

Amendment Barcode (if applicable)

Name BillieAnne Gay

Job Title

Address 203 S Monroe St

Phone 850 414 2578

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: For Against Information

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

Representing Florida School Boards Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 404

INTRODUCER: Senator Grimsley

SUBJECT: State Symbols

DATE: January 17, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 404 removes from repeal the designation of the:

- Loggerhead Turtle as the official state saltwater reptile; and
- Florida Cracker Horse (Marshtackie) as the official Florida state horse.

The bill additionally designates the Florida Cracker Cattle as the official Florida heritage cattle breed.

The bill takes effect upon becoming a law.

II. Present Situation:

Designation of Official State Emblems

Chapter 15, F.S., designates official state emblems, including designations for a state tree, fruit, beverage, citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater and saltwater fish, marine and state saltwater mammal, butterfly, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad and transportation museums, flagship, soil, fiddle contest, band, Sports Hall of Fame, pie, and honey.¹

The 2008 Legislature designated the:

- Loggerhead Turtle as the official state saltwater reptile²; and
- Florida Cracker Horse (Marshtackie) as the official Florida state horse.³

¹ Ch. 15, F.S.

² Section 15.0526(1), F.S.

³ Section 15.0386(1), F.S.

Each of these designations is scheduled for repeal July 1, 2018, unless the Legislature reviews and reenacts the designations before that date.⁴

Loggerhead Turtle

The loggerhead turtle is the most common sea turtle in the state. Adults, weighing between 200 and 350 pounds, are known for their large head. The world's largest loggerhead nesting aggregation takes place in the Southeastern United States. Of coastal areas in the Southeast, Florida represents 90 percent of the nesting aggregations. The majority of these loggerhead turtles nest in just five Florida counties, which are Brevard, Indian River, St. Lucie, Martin, and Palm Beach counties.⁵

The Federal Endangered Species Act protects the loggerhead sea turtle as a Threatened species pursuant to the Federal Endangered Species Act and as a Federally-designated Threatened species under Florida's Endangered and Threatened Species Rule and Florida's Marine Turtle Protection Act.⁶

Fishing poses the main threat to the loggerhead sea turtle's survival. Accidental capture in fish and shrimping nets traps the loggerhead sea turtle and results in eventual drowning. Coastal development in areas of large concentrations of nesting aggregation also threatens survival.⁷

Florida Cracker Horse (Marshstackie) and Florida Cracker Cattle

The Florida Cracker Horse and the Florida Cracker Cattle are the state's first livestock. In 1521, Juan Ponce de Leon brought Andalusian cattle and horses with him on his second exploration of the New World. He arrived with the livestock in Fort Myers, Florida. Caloosa Indians forced his expedition back to their ship, and historians speculate that livestock, left behind, to be the first to roam wild in the state.⁸

Florida Cracker Cattle

As stated above, Florida Cracker Cattle descend from cattle first brought to Florida by Spanish explorers in the 1500's.⁹ In the late 1800's, Florida breeders began to import purebred beef and dairy breeds from Northern Europe. These cattle, crossbred with the cattle imported from Spain in the 1500's, produced the Florida Cracker Cattle.¹⁰ Florida Cracker Cattle flourished in Florida. Considered a hardy breed, capable of surviving Florida's harsh conditions, Florida Cracker

⁴ Ch. 2008.34, L.O.F.

⁵ Florida Fish and Wildlife Conservation Commission, *Loggerhead Nesting in Florida*, available at <http://myfwc.com/research/wildlife/sea-turtles/nesting/loggerhead/> (last visited on Nov. 2, 2017).

⁶ Florida Fish and Wildlife Conservation Commission, *Wildlife Habitats*, available at <http://myfwc.com/wildlifehabitats/imperiled/profiles/reptiles/loggerhead-sea-turtle/> (last visited on Nov. 2, 2017).

⁷ *Id.*

⁸ Stephen Monroe, Dept. of Agriculture and Consumer Services, *The Florida Department of Agriculture and Consumer Services Florida Cracker Cattle and Horse Program*, available at http://www.floridacrackercattle.org/documents/Dept_Cracker_Cattle_&_Horse_Program.pdf. (last visited on Nov. 1, 2017).

⁹ Livestock Conservancy, *Florida Cracker Cattle*, available at <https://livestockconservancy.org/index.php/heritage/internal/florida-cracker-cattle> (last visited on Oct. 31, 2017).

¹⁰ Monroe, *supra* note 8.

Cattle are known for their horns which go up rather than out, as is typical of other breeds. Researchers surmise that the design of their horns likely aided the cattle as they ran through Florida habitat of heavy scrub and low lying tree limbs, in contrast to other cattle.¹¹

However, from the 1930's on, importing and crossbreeding other varieties of cattle threatened to eliminate the Florida Cracker Cattle:

The importation of Brahman and Brahman crossbred bulls ... significantly changed the genetic makeup of herds where they were introduced. Crossing the hardy cattle of old Florida "Cracker" cows with other breeds, especially Brahman, became very popular. Pure Cracker Cattle were quietly, almost without notice, being bred out of existence.¹²

By the late 1960's, few pure Cracker Cattle remained. In the 1970's, Doyle Conner, Sr., state Commissioner of Agriculture, implored cattle ranchers to preserve Cracker cattle as a heritage breed and requested contributions to start a state-owned herd of the cattle.¹³ Family members of pioneer cattleman James Durrance responded by donating five heifers and a bull to the state Department of Agriculture and Consumer Services (department). Industry experts consider the Durrance Line to be the purest of the pure Cracker Cattle. From this donation, the department rebuilt the herd:

The cattle were kept at the Agricultural Complex in Tallahassee and as numbers increased, a herd was established at the Withlacoochee State Forest near Brooksville in 1979. Separate herds of Cracker cattle were also established by the Department of Natural Resources on the Lake Kissimmee State Park and the Paynes Prairie State Preserve during the 1970's. The Lake Kissimmee State Park herd was established from cattle of Durrance bloodlines and cattle obtained from the Hal Chaires family of Old Town. The Paynes Prairie herd was established with animals from the herd of Woody Tilton in addition to cattle transferred from Lake Kissimmee. Also ... a few small privately owned herds were being maintained.¹⁴

To this day, industry experts consider the Florida Cracker Cattle a prized breed. As such, the department continues to preserve and maintain the Durrance line of Cracker cattle. Additionally, the American Livestock Breeds Conservancy maintains a registry of approved Florida Cracker cattle as descendants of the original cattle.¹⁵

Florida Cracker Horse (Marshackie)

In addition to the original herd brought to the state in 1521, subsequent Spanish explorers brought Andalusian horses to use in navigating expeditions and settlements. These horses had

¹¹ Florida Cracker Cattle Association, *What are Cracker Cattle?*, available at <http://www.floridacrackercattle.org/what.shtml> (last visited on Nov. 1, 2017).

¹² Monroe, *supra* note 8.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Florida Cracker Cattle Association, *supra* note 11.

been selectively bred and were of hardy stock and capable of travel and survival in the state's rough physical conditions.¹⁶

As a relief response to the Great Depression, herders moved cattle from the Dust Bowl into Florida. The cattle arrived infested with the parasitic screwworm, which led to widespread changes in ranching practice. Before the arrival of these cattle, ranchers used Florida Cracker Horses to herd and drive their cattle. After their arrival and to restrict the spread of screwworm, ranchers implemented fencing and dipping of cattle, which required them to rope cattle and hold them for treatment. Florida Cracker Horses fell into disfavor over the larger, stronger Quarter Horse. Like the original Florida Cracker Cattle, these horses almost became extinct.¹⁷

Several ranching families in the state held onto their pure Cracker Horses, narrowly preserving their survival. Notably, John Law Ayers maintained a herd of pure old Cracker stock, along with several other family ranchers, such as the Bronsons, Boals, Partins, and Sassers. In 1984, the Ayers family donated a small herd of Cracker Horses to the department.

Along with Florida Cracker Cattle, the department maintains Florida Cracker Horses (the Ayers line) at the Agricultural Complex in Tallahassee and the Withlacoochee State Forest near Brooksville.¹⁸

Florida Cracker Horses, small in stature, are known for their versatility in riding and work:

The ground covering gaits found in these horses include the flatfoot walk, running walk, trot and ambling gaits. Cracker Horses are willing workers whose actions show spirit, amazing stamina and endurance. Crackers have been used for trail, pleasure, reining, team roping, team penning, pulling wagons and always as working cow horses.¹⁹

To this day, industry experts consider Florida Cracker Horses a prized heritage breed. Like Florida Cracker Cattle, Cracker Horses are registered subject to a rigid test of qualifications. The registry originally consisted of thirty-one Cracker Horses. To date, over 800 horses have been registered.²⁰

III. Effect of Proposed Changes:

SB 404 removes from repeal the designation of the:

- Loggerhead Turtle as the official state saltwater reptile; and
- Florida Cracker Horse (Marshackie) as the official Florida state horse.

¹⁶ Monroe, *supra* note 8.

¹⁷ Florida Cracker Horse Association, *History of the Cracker Horse*, available at <http://www.floridacrackerhorses.com/history.htm> (last visited on Nov. 2, 2017).

¹⁸ Monroe, *supra* note 8.

¹⁹ Florida Cracker Horse Association, *Breed Characteristics*, available at <http://www.floridacrackerhorses.com/breed.htm> (last visited on Nov. 2, 2017).

²⁰ Florida Cracker Horse Association, *About the Association*, available at <http://www.floridacrackerhorses.com/breed.htm> (last visited on Nov. 2, 2017).

The bill additionally designates the Florida Cracker Cattle as the official Florida heritage cattle breed.

The bill takes effect 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:

To the extent that this bill increases the value of the Florida Cracker Cattle and Florida Cracker Horse, based on their designation as official state heritage breeds, private owners of Cracker livestock may financially benefit.

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: 15.0386 and 15.0526.

This bill creates section 15.0527 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 Grimsley

26-00480-18

2018404__

1 A bill to be entitled
 2 An act relating to state symbols; amending s. 15.0386,
 3 F.S.; abrogating the scheduled repeal of the state
 4 saltwater reptile designation; amending s. 15.0526,
 5 F.S.; abrogating the scheduled repeal of the state
 6 horse designation; creating s. 15.0527, F.S.;
 7 designating the Florida Cracker Cattle as the official
 8 state heritage cattle breed; providing an effective
 9 date.

10

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

12

13 Section 1. Section 15.0386, Florida Statutes, is amended to
 14 read:

15 15.0386 Official state saltwater reptile.—

16 ~~(1)~~ The Loggerhead Turtle is designated as the official
 17 Florida state saltwater reptile.

18 ~~(2) This section is repealed July 1, 2018, unless reviewed~~
 19 ~~and reenacted by the Legislature before that date.~~

20 Section 2. Section 15.0526, Florida Statutes, is amended to
 21 read:

22 15.0526 Official state horse.—

23 ~~(1)~~ The Florida Cracker Horse (Marshackie) is designated
 24 as the official Florida state horse.

25 ~~(2) This section is repealed July 1, 2018, unless reviewed~~
 26 ~~and reenacted by the Legislature before that date.~~

27 Section 3. Section 15.0527, Florida Statutes, is created to
 28 read:

29 15.0527 Official state heritage cattle breed.—The Florida

Page 1 of 2

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

26-00480-18

2018404__

30 Cracker Cattle is designated as the official Florida heritage
 31 cattle breed.

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: November 7, 2017

I respectfully request that **Senate Bill #404**, relating to State Symbols, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 26

cc: John Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

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 510

INTRODUCER: Rules Committee; Health Policy Committee; and Senator Young and Mayfield

SUBJECT: Reporting of Adverse Incidents in Planned Out-of-hospital Births

DATE: January 18, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Fav/CS
2.	Caldwell	Caldwell	GO	Favorable
3.	Rossitto-Van Winkle	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 510 requires physicians, certified advanced registered nurse midwives (ARNP-CNMs), and licensed midwives (LMs) to report to the Department of Health (DOH) adverse incidents occurring as a result of an attempted or completed, planned birthing center or out-of-hospital birth. The bill defines an adverse incident and, beginning July 1, 2018, requires the reporting within 15 days after the occurrence of the adverse incident. It further requires the DOH to review each adverse incident report and determine whether the incident involves conduct by the health care practitioner which is subject to disciplinary action, and to take disciplinary action if appropriate.

The bill takes effect upon becoming law.

II. Present Situation:

Childbirth Settings

The Legislature has recognized the need for a person to have the freedom to choose the manner, cost, and setting for childbirth.¹ There are three typical settings² from which a woman may

¹ See s. 467.002, F.S.

² See chs. 395, 383.30 – 383.335, and 467, F.S., and Rules 59A-11 and 64B24-7, F.A.C.

choose and plan for childbirth: at home, at a licensed birthing center, or at a hospital.^{3,4} There are also four types of licensed health care practitioners from which a woman may choose to attend to her prenatally and at childbirth: a physician, physician assistant (PA), certified nurse midwife (ARNP-CNM), and a licensed midwife (LM).

Hospitals

Hospitals are licensed and regulated under ch. 395, F.S., and part II of ch. 408, F.S., by the Agency for Health Care Administration (ACHA). As of November 2, 2017, 147 hospitals provide obstetrical services.⁵

Section 395.0191, F.S., requires a hospital to establish rules and procedures to grant clinical privileges to provide, among other services, obstetrical and gynecological services by a physician licensed under ch. 458 or ch. 459, F.S., his or her respective PAs, and ARNP-CNMs certified under part I of ch. 464, F.S., if the hospital provides obstetrical services. All health care providers, agents, and employees of a hospital have an affirmative duty to report all adverse incidents occurring in the hospital to the hospital's risk manager within three business days after the occurrence.⁶

An "adverse incident," which must be reported to the hospital's risk manager, is an event over which health care personnel could exercise control, which is associated with medical intervention, and which results in:

- One of the following injuries:
 - Death;
 - Brain or spinal damage;
 - Permanent disfigurement;
 - Fracture or dislocation of bones or joints;
 - A limitation of neurological, physical, or sensory function which continues after discharge from the facility;
 - Any condition that required specialized medical attention or surgical intervention resulting from nonemergency medical intervention to which the patient has not given his or her informed consent; or
 - Any condition that required the transfer of the patient, within or outside the facility, to a unit providing a more acute level of care due to the adverse incident, rather than the patient's condition prior to the adverse incident;
- The performance of a surgical procedure on the wrong patient, a wrong surgical procedure, a wrong-site surgical procedure, or a surgical procedure otherwise unrelated to the patient's diagnosis or medical condition;

³ Ambulatory Surgical Centers (ASCs) and hospitals are facilities that are licensed and regulated under ch. 395, F.S., similarly. Although an ASC is not prohibited from providing birthing services, it is not a typical birth setting because patients are not authorized to stay in the ASC overnight. Accordingly, this analysis refers to hospitals only.

⁴ See ss. 458.331(1)(t), 459.015(1)(w), 456.50(1)(g), and 766.202(7), F.S.; Rules 64B8-9.007 and 64B-15-14.006, F.A.C.

⁵ Agency for Health Care Administration, FloridaHealthFinder.gov, *Facility/Provider Search Results*, based on an advanced search of facilities providing emergency obstetrical services, available at <http://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited Nov. 2, 2017).

⁶ Section 395.0197(1)(e), F.S.

- Required surgical repair of damage to a patient from a planned surgical procedure, where the damage was not a recognized specific risk, as disclosed to the patient and documented through the informed-consent process; or
- A procedure to remove unplanned foreign objects left in a patient from a surgical procedure.⁷

Any of the following adverse incidents, whether occurring in the hospital or arising from health care prior to admission, must also be reported by the hospital to the AHCA within 15 calendar days after the occurrence:

- The death of a patient;
- Brain or spinal damage to a patient;
- The performance of a surgical procedure on the wrong patient;
- The performance of a wrong-site surgical procedure;
- The performance of a wrong surgical procedure;
- The performance of a surgical procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition;
- The surgical repair of damage resulting to a patient from a planned surgical procedure, in which the damage is not a recognized specific risk, as disclosed to the patient and documented through the informed-consent process; or
- The performance of procedures to remove unplanned foreign objects remaining from a surgical procedure.⁸

Birth Centers

Birth centers (not homes), ambulatory surgery centers, or hospitals, are places where women with normal, uncomplicated, low risk pregnancies may choose to have their babies.⁹ Birth centers are licensed and regulated by the AHCA under ch. 383, F.S., and part II of ch. 408, F.S.; but the clinical staff in the birth centers may be physicians, PAs, ARNP-CNMs, or LMs,¹⁰ who are licensed and regulated by the DOH.

Sections 383.330 through 383.335, F.S., establish minimum standards of care for birth centers. Standards require that, among other things:¹¹

- Clinical staff is present during the entire labor and delivery at a licensed birthing center, at a ratio of 2 to 1;¹²
- A pregnant woman accepted for childbirth by a birth center is initially determined to be at low maternal risk and be regularly evaluated throughout the pregnancy;¹³
- The women receive specific prenatal,¹⁴ intrapartum,^{15,16} and postpartum care;¹⁷

⁷ Section 395.0197(5), F.S. An annual report summarizing the adverse incidents must be submitted to the AHCA.

⁸ Section 395.0197(7), F.S.

⁹ Section 383.302(2), F.S.

¹⁰ Section 383.302(3), F.S.

¹¹ Section 383.309, F.S.

¹² Rule 59A-11.005, F.A.C.

¹³ Rule 59A-11.009, F.A.C.

¹⁴ Rule 59A-11.012, F.A.C.

¹⁵ Rule 59A-11.013, F.A.C.

¹⁶ Merriam-Webster On-line Dictionary, *intrapartum* is defined as occurring during labor and delivery. Available at: <https://www.merriam-webster.com/medical/intrapartum>, (last visited Nov. 2, 2017). See also s. 467.003(5), F.S.

¹⁷ Rule 59A-11.016, F.A.C.

- The mother and infant are discharged within 24 hours after birth, except in an unusual circumstance;^{18,19}
- A postpartum examination of the mother is performed within 72 hours after delivery;
- The client is transferred to a hospital if unforeseen complications occur during labor;²⁰ and
- Each maternal death, newborn death, and stillbirth is reported to the medical examiner.²¹

There are no requirements for a birthing center to report adverse incidents to the AHCA or other regulatory entity. However, the birth center is required to audit clinical records at least every three months to evaluate the process and outcome of care;²² and at least semiannually, to analyze statistics on the following:

- Maternal and perinatal morbidity and mortality;
- Maternal risk;
- Consultant referrals; and
- Transfers.²³

The birthing center's governing body must examine the results of the record audits and statistical analyses and make such reports available for inspection by the public and licensing authorities.²⁴

A written report of all transfers must be maintained and available for quality assurance review and agency inspection. The clinical staff, consultants, and governing body must review and evaluate the criteria, protocols, and emergency transfer reports annually. The findings of the evaluation shall be documented.²⁵ A report must also be submitted annually to the AHCA that includes:

- Number of deliveries, including birth weight;
- Number of clients accepted and length of stay;
- Number and type of surgical procedures performed;
- Maternal transfers, including reason and length of hospital stay;
- Infant transfers, including weight, days in hospital, and APGAR score at five and ten minutes;
- Newborn deaths; and
- Still/Fetal deaths.²⁶

A birthing center's clinical records are confidential under s. 456.057, F.S., and exempt from disclosure under s. 119.07(1), F.S., except:

- Upon a signed patient release; or

¹⁸ Section 383.318, F.S.

¹⁹ See Rule 59A-11.016(6), F.A.C., The mother and infant are to be discharged from the birth center within 24 hours after the birth occurs except when the mother is in a deep sleep when the 24 hour period is completed; or the 24 hour period is completed during the middle of the night.

²⁰ Section 383.316, F.S.

²¹ Section 383.327, F.S.

²² Section 383.32, F.S.

²³ *Id.*

²⁴ Section 383.32(3) and (4), F.S., Rule 59A-11.005(8)(b), F.A.C. Clinical records that identify a patient are confidential in accord with s. 456.057, F.S.

²⁵ Section 383.316, F.S.

²⁶ Rule 59A-11.019, F.A.C., and the ACHA Form 3130-3004 (Feb. 2015).

- An AHCA review is made for a licensure survey or complaint investigation.²⁷

Home Delivery for Childbirth

The home delivery setting for childbirth is not regulated. Nonetheless, the practices of the physicians, PAs,²⁸ ARNP-CNMs,²⁹ and LMs,³⁰ who may attend a women during an out-of-hospital or home delivery, are required to be licensed and are regulated by the DOH.³¹

Health Care Practitioners Who May Provide Childbirth Services

Physicians and PAs

A licensed physician may attend any childbirth in any setting, including home delivery, if he or she can do so with reasonable skill and safety, and within the standard of care. It is the physician's responsibility to determine whether a home delivery is appropriate, explain the procedure to the patient, and obtain the patient's informed consent.³² A physician may also delegate any home delivery to his or her PA under his or her written protocol.³³ There are no specific laws or administrative rules that address the required perinatal care required, or adverse incident reporting, for a patient choosing home delivery by a physician or PA.³⁴

Sections 458.351 and 459.026, F.S., require an allopathic and osteopathic physician, and his or her respective PAs, to report to the DOH, any adverse incident in an office practice setting within 15 days after the occurrence. The DOH reviews the incident and makes a determination of whether or not the conduct potentially involves conduct that may be subject to disciplinary action under s. 456.073, F.S.

Sections 458.351 and 459.026, F.S., define an "adverse incident" as an event over which a physician or licensee could exercise control and which is associated with a medical intervention which results in any of the following patient injuries:

- The death of a patient;
- Brain or spinal damage to a patient;
- The performance of a surgical procedure on the wrong patient;
- The performance of a:
 - Wrong-site surgical procedure;
 - Wrong surgical procedure; or
 - The surgical repair of damage to a patient from a planned surgical procedure where the damage is not a recognized specific risk as disclosed to the patient and documented in the informed-consent process; if it results in death; brain or spinal damage; permanent disfigurement not including the incision scar; fracture or dislocation of bones or joints; a

²⁷ Section 383.32(3), F.S.

²⁸ See ss. 458.347 and 459.022, F.S.

²⁹ Section 464.012, F.S.

³⁰ See ch.467, F.S.

³¹ See chs. 383 and 467, F.S., and Rules 59A-11 and 64B24-7, F.A.C.

³² See *supra* note 3.

³³ See *supra* note 3; See also Rules 64B8-30.001 and 64B15-6.001, F.A.C.

³⁴ See chs. 458 and 459, F.S., and Rules 64B8-9 and 64B15-14, F.A.C.

- limitation of neurological, physical, or sensory function; or any condition that required the transfer of the patient.
- A procedure to remove foreign objects remaining from a surgical procedure; or
 - Any condition that required the transfer of a patient to a hospital from an ambulatory surgical center or any facility or any office maintained by a physician for the practice of medicine which is not licensed under ch. 395, F.S.

Physicians and PAs are also required to report adverse incidents that occur in a health care facility licensed under ch. 395, F.S.,³⁵ to the facility's risk manager.

ARNP-CNMs and LMs

An ARNP-CNM's scope of practice for pre-natal care, childbirth, and post-partum care is governed by his or her written protocol with the supervising physician.³⁶ Section 467.015, F.S., specifically defines a midwife's responsibilities as follows:

- Only accept and provide care for those mothers who are expected to have a normal pregnancy, labor, and delivery;
- Obtain a signed informed consent from the patient;
- Determine if the home is safe and hygienic for a home delivery, if applicable;
- Administer prophylactic ophthalmic medication, oxygen, postpartum oxytocin, vitamin K, rho immune globulin (human), and local anesthetic pursuant to a prescription issued by a doctor, and administer such other medicinal drugs as prescribed by a doctor;
- Prepare a written plan of action with the family to ensure continuity of medical care throughout labor and delivery, and provide for immediate medical care if an emergency arises;
- Instruct the patient and family regarding the preparation of the environment and ensure availability of equipment and supplies needed for delivery and infant care, if a home birth is planned;
- Instruct the patient in the hygiene of pregnancy and nutrition as it relates to prenatal care;
- Maintain appropriate equipment and supplies as defined by rule;
- Determine the progress of labor and, when birth is imminent, be immediately available until delivery is accomplished, including:
 - Maintaining a safe and hygienic environment;
 - Monitoring the progress of labor and the status of the fetus;
 - Recognizing early signs of distress or complications; and
 - Activating the written emergency plan when indicated; and
- Remain with the postpartal mother until the conditions of the mother and the neonate are stabilized.

A midwife may also provide collaborative prenatal and postpartal care to pregnant women not at low risk in their pregnancy, labor, and delivery, within a written protocol with a physician currently licensed under ch. 458 or ch. 459, F.S., if the physician maintains supervision for directing the specific course of medical treatment.³⁷

³⁵ Section 395.0197(1)(e), F.S.

³⁶ See ss. 458.347(4), 459.022(4), and 464.012(4), F.S., and ch. 467, F.S.

³⁷ *Id.*.

An ARNP-CNM may also perform a home delivery under a written protocol with a supervising physician. Specific authorities in s. 464.012, F.S., relating to childbirth include:

- Managing a patient’s labor and delivery, including performing an amniotomy, episiotomy, and perineal repair;
- Ordering, initiating, and performing appropriate anesthetic procedures;
- Performing postpartum examinations;
- Ordering appropriate medications;
- Providing family-planning services and well-woman care; and
- Managing the medical care of the normal obstetrical patient and the initial care of a newborn patient.

Section 467.015, F.S., permits LMs to accept mothers for prenatal, intrapartal, and postpartal care, but only if the mothers are expected to have a normal pregnancy, labor, and delivery; and for home delivery, only if the home is safe, hygienic, and meets the DOH standards.³⁸

Section 467.019, F.S., requires a midwife to immediately report maternal and newborn deaths, and still births, to the medical examiner.

III. Effect of Proposed Changes:

CS/CS/SB 510 creates s. 456.0495, F.S., and defines the term “adverse incident” for this section to mean:

- An event over which a physician, ARNP-CNM, or LM could exercise control; and
- Which is associated with an attempted or completed planned out-of-hospital birth, that results in:
 - A maternal death that occurs during delivery or within 42 days after delivery;
 - The transfer of a maternal patient to a hospital intensive care unit;
 - A maternal patient who experiences hemorrhagic shock or who requires a transfusion of more than 4 units of blood or blood products;
 - A fetal or newborn death, including a stillbirth, associated with an obstetrical delivery;
 - A transfer of a newborn to a neonatal intensive care unit due to a traumatic physical or neurological birth injury, including any degree of a brachial plexus injury;
 - A transfer of a newborn to a neonatal intensive care unit within the first 72 hours after birth if the newborn remains in such unit for more than 72 hours; or
 - Any other injury as determined by department rule.

The bill requires a physician, ARNP-CNM, or LM who performs an attempted or completed planned out-of-hospital birth to report an adverse incident to the DOH within 15 days after the adverse incident occurs. The report must include a medical summary. This requirement begins July 1, 2018, to allow the DOH time to adopt rules, including developing the form for reporting.

The bill further requires the DOH to review each incident report to determine whether the incident involves conduct by a practitioner which subjects the practitioner to disciplinary action by the appropriate board or if there is no board, the DOH. The applicable board, or the DOH if

³⁸ Section 467.015, F.S., and Rule 64B24-7, F.A.C.

no such board exists, is required to take disciplinary action, if appropriate. The DOH must adopt rules to implement the section and develop a form for the reporting of adverse incidents.

The bill takes effect upon becoming law.

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 bill requires physicians, ARNP-CNMs, and LMs to report adverse incidents during consensual private home births to a government agency which may violate the State and Federal Constitutions' Right to Privacy contained in Article I, section 23, of the Florida Constitution and inferred in Amendments IV and XIV of the U.S. Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Health care practitioners may experience administrative and potentially other costs as a result of reporting adverse incidents to the department.

C. Government Sector Impact:

The DOH may incur costs related to rulemaking.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 456.0495 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on January 18, 2018:

The CS/CS delays the start date for the required reporting of adverse incidents to July 1, 2018.

CS by Health Policy on November 7, 2017:

The CS:

- Defines an adverse incident that is required to be reported to the DOH, rather than requiring the DOH to define adverse incidents by rule;
- Limits the professionals required to report adverse incidents associated with an attempted or completed, planned out-of-hospital birth to the DOH to physicians, ARNP-CNMs, and LMs;
- Substitutes the term newborn for infant as a technical correction; and
- Requires the DOH to review each incident report to determine if it involves conduct that might subject the practitioner to disciplinary action by the appropriate board or the DOH, and to take disciplinary action, if appropriate.

- B. **Amendments:**

None.



318824

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/18/2018	.	
	.	
	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Amendment

Delete lines 47 - 48
and insert:

(2) Beginning July 1, 2018, a physician licensed under
chapter 458 or chapter 459, a nurse midwife certified under part
I of chapter 464, or a



773218

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/18/2018	.	
	.	
	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Amendment

Delete line 62

and insert:

Section 2. This act shall take effect October 1, 2018.

By the Committee on Health Policy; and Senator Young

588-01108-18

2018510c1

A bill to be entitled

An act relating to reporting of adverse incidents in planned out-of-hospital births; creating s. 456.0495, F.S.; defining the term "adverse incident"; requiring licensed physicians, certified nurse midwives, and licensed midwives to report an adverse incident and a medical summary of events to the Department of Health within a specified timeframe; requiring the department to review adverse incident reports and determine if conduct occurred that is subject to disciplinary action; requiring the appropriate regulatory board or the department to take disciplinary action under certain circumstances; requiring the department to adopt rules; requiring the department to develop a form to be used for the reporting of adverse incidents; providing an effective date.

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

Section 1. Section 456.0495, Florida Statutes, is created to read:

456.0495 Reporting adverse incidents occurring in planned out-of-hospital births.—

(1) For purposes of this section, the term "adverse incident" means an event over which a physician licensed under chapter 458 or chapter 459, a nurse midwife certified under part I of chapter 464, or a midwife licensed under chapter 467 could exercise control and which is associated with an attempted or completed planned out-of-hospital birth, and results in one or

Page 1 of 3

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

588-01108-18

2018510c1

more of the following injuries or conditions:

- (a) A maternal death that occurs during delivery or within 42 days after delivery;
- (b) The transfer of a maternal patient to a hospital intensive care unit;
- (c) A maternal patient who experiences hemorrhagic shock or who requires a transfusion of more than 4 units of blood or blood products;
- (d) A fetal or newborn death, including a stillbirth, associated with an obstetrical delivery;
- (e) A transfer of a newborn to a neonatal intensive care unit due to a traumatic physical or neurological birth injury, including any degree of a brachial plexus injury;
- (f) A transfer of a newborn to a neonatal intensive care unit within the first 72 hours after birth if the newborn remains in such unit for more than 72 hours; or
- (g) Any other injury as determined by department rule.
- (2) A physician licensed under chapter 458 or chapter 459, a nurse midwife certified under part I of chapter 464 or, a midwife licensed under chapter 467 who performs an attempted or completed planned out-of-hospital birth must report an adverse incident, along with a medical summary of events, to the department within 15 days after the adverse incident occurs.
- (3) The department shall review each incident report and determine whether the incident involves conduct by a health care practitioner which is subject to disciplinary action under s. 456.073. Disciplinary action, if any, must be taken by the appropriate regulatory board or by the department if no such board exists.

Page 2 of 3

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

588-01108-18

2018510c1

59 (4) The department shall adopt rules to implement this
60 section and shall develop a form to be used for the reporting of
61 adverse incidents.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

December 5, 2017

The Honorable Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Benacquisto,

My Senate Bill 510 relating to reporting of Adverse Incidents in Planned out-of-hospital Births has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,

A handwritten signature in cursive script that reads "Dana Young".

Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Senate Rules Committee

REPLY TO:

1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

APPEARANCE RECORD

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

1/18/18

Meeting Date

510

Bill Number (if applicable)

318824

Amendment Barcode (if applicable)



Topic Adverse Incident Reporting

Name Ron Watson

Job Title Lobbyist

Address 3738 Mardon Way

Phone 850 567-1202

Street

Tallahassee

FL

32309

City

State

Zip

Email Watson.Studies@comcast.net

Speaking: For Against Information

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

Representing Midwife Association 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.

APPEARANCE RECORD

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

1/18/18

Meeting Date

510

Bill Number (if applicable)

Topic Adverse Incident Reporting

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Mardon Way

Phone 850 567-1202

Street Tallahassee

City

FL

State

32309

Zip

Email watson.strategies@comcast.net

Speaking: For Against Information

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

Representing Midwife Association of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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 7000

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Criminal History Records/Department of Law Enforcement

DATE: January 17, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Jones</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	<u>Jones</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7000 provides an Open Government Sunset Review of a public records exemption that protects from disclosure certain criminal history records of victims of human trafficking.

The original public necessity statement for the bill provides that victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crimes. Moreover, without the public records exemption, these victims face barriers to employment and other life opportunities. The justification upon which the public records exemption is based remains valid. Additionally, since the time that the law passed enabling victims of human trafficking to seek an expunction of a criminal record, FDLE has processed 33 orders of expunction. Therefore, for these reasons, the bill reenacts the public records exemption.

This bill deletes the scheduled repeal of the current public records exemption for court-ordered expunged criminal history records of human trafficking victims. If the bill passes, these records will continue to be confidential and exempt from public disclosure.

The bill requires a majority vote for passage.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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

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

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

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

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *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.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ 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.²²

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking, ranging from young children to adults, are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. An estimated 20.9 million adults and children in the world are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent are children. Based on 2010 data, researchers estimate that as many as 300,000 children in the United States are at risk for exploitation each year.²³

Section 787.06, F.S., Florida's human trafficking statute, defines "human trafficking" as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person. A victim of human trafficking is a person subjected to coercion,²⁴ for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.²⁵

Open Government Sunset Review of the Public Records Exemption for Expunged Criminal History Record of a Victim of Human Trafficking

In 2013, the Legislature created s. 943.0583, F.S.²⁶ Section 943.0583, F.S., allows a victim of human trafficking to petition the court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (Dec. 2011), available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited Dec. 14, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited Dec. 14, 2017).

²⁴ "Coercion" means using or threatening to use physical force against any person; restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; causing or threatening to cause financial harm to any person; enticing or luring any person by fraud or deceit; or providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

²⁵ Section 943.0583(1)(c), F.S.

²⁶ Section 943.0583(3), F.S.; Chapter 2013-99, L.O.F.

or at the direction of an operator of the scheme.²⁷ The standard of proof in a petition for expungement is a preponderance of the evidence.

The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.²⁸ A criminal history record ordered expunged under s. 943.0583, F.S., is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.²⁹

Section 943.0583(10), F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

The Legislature finds that it is a public necessity that a criminal history record ordered expunged under s. 943.0583, Florida Statutes, that is retained by the Department of Law Enforcement be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.³⁰

During the 2017 interim, Senate and House professional staff contacted the Florida Department of Law Enforcement (FDLE), the Florida Court Clerks and Comptrollers, and the Florida Prosecuting Attorney's Association as part of its review of s. 943.0583, F.S.

A total of 33 orders for expunction have been processed by the FDLE since 2014.³¹ Specifically, the orders, by year, processed by the FDLE were:

- 1 in 2014;
- 12 in 2015;
- 6 in 2016; and
- 14 to date in 2017.³²

²⁷ Section 943.0583(3), F.S., does not allow the following offenses to be expunged: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

²⁸ Section 943.045(16), F.S.

²⁹ Section 943.0583(10), F.S.

³⁰ Chapter 2013-99, L.O.F.

³¹ Email from Ronald E. Draa, Director of External Affairs, Florida Department of Law Enforcement, to Senate Criminal Justice Staff (Oct. 19, 2017) (on file with the Senate Criminal Justice Committee and the Senate Governmental Oversight and Accountability Committee).

³² *Id.*

Professional staff from the Senate and the House attempted to ascertain if any victims of human trafficking were experiencing hurdles in the petition process. The Florida Court Clerks and Comptrollers and the Florida Prosecuting Attorney's Association were unaware of any issues.

III. Effect of Proposed Changes:

SB 7000 provides an Open Government Sunset Review of a public records exemption that protects from disclosure certain criminal history records of victims of human trafficking.

The original public necessity statement for the bill provides that victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crimes. Moreover, without the public records exemption, these victims face barriers to employment and other life opportunities. The justification upon which the public records exemption is based remains valid. Additionally, since the time that the law passed enabling victims of human trafficking to seek an expunction of a criminal record, FDLE has processed 33 orders of expunction. Therefore, for these reasons the bill reenacts the public records exemption.

This bill deletes the scheduled repeal of the current public records exemption for court-ordered expunged criminal history records of human trafficking victims. If the bill passes, these records will continue to be confidential and exempt from public disclosure.

The bill requires a majority vote for passage.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0583 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Criminal Justice

591-01288-18

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 943.0583, F.S.,
 4 relating to an exemption from public records
 5 requirements for certain criminal history records
 6 ordered expunged which are retained by the Department
 7 of Law Enforcement; saving the exemption from repeal
 8 under the Open Government Sunset Review Act; providing
 9 an effective date.

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

11 Section 1. Section 943.0583, Florida Statutes, is amended
 12 to read:

13 943.0583 Human trafficking victim expunction.—

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

15 (a) "Human trafficking" has the same meaning as provided in
 16 s. 787.06.

17 (b) "Official documentation" means any documentation issued
 18 by a federal, state, or local agency tending to show a person's
 19 status as a victim of human trafficking.

20 (c) "Victim of human trafficking" means a person subjected
 21 to coercion, as defined in s. 787.06, for the purpose of being
 22 used in human trafficking, a child under 18 years of age
 23 subjected to human trafficking, or an individual subjected to
 24 human trafficking as defined by federal law.

25 (2) Notwithstanding any other provision of law, upon the
 26 filing of a petition as provided in this section, any court in
 27 the circuit in which the petitioner was arrested, so long as the
 28
 29

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30 court has jurisdiction over the class of offense or offenses
 31 sought to be expunged, may order a criminal justice agency to
 32 expunge the criminal history record of a victim of human
 33 trafficking who complies with the requirements of this section.
 34 A petition need not be filed in the court where the petitioner's
 35 criminal proceeding or proceedings originally occurred. This
 36 section does not confer any right to the expunction of any
 37 criminal history record, and any request for expunction of a
 38 criminal history record may be denied at the discretion of the
 39 court.

40 (3) A person who is a victim of human trafficking may
 41 petition for the expunction of a criminal history record
 42 resulting from the arrest or filing of charges for an offense
 43 committed or reported to have been committed while the person
 44 was a victim of human trafficking, which offense was committed
 45 or reported to have been committed as a part of the human
 46 trafficking scheme of which the person was a victim or at the
 47 direction of an operator of the scheme, including, but not
 48 limited to, violations under chapters 796 and 847, without
 49 regard to the disposition of the arrest or of any charges.
 50 However, this section does not apply to any offense listed in s.
 51 775.084(1)(b)1. Determination of the petition under this section
 52 should be by a preponderance of the evidence. A conviction
 53 expunged under this section is deemed to have been vacated due
 54 to a substantive defect in the underlying criminal proceedings.
 55 If a person is adjudicated not guilty by reason of insanity or
 56 is found to be incompetent to stand trial for any such charge,
 57 the expunction of the criminal history record may not prevent
 58 the entry of the judgment or finding in state and national

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 60 databases for use in determining eligibility to purchase or
 61 possess a firearm or to carry a concealed firearm, as authorized
 62 in s. 790.065(2)(a)4.c. and 18 U.S.C. s. 922(t), nor shall it
 63 prevent any governmental agency that is authorized by state or
 64 federal law to determine eligibility to purchase or possess a
 65 firearm or to carry a concealed firearm from accessing or using
 66 the record of the judgment or finding in the course of such
 67 agency's official duties.

68 (4) A petition under this section must be initiated by the
 69 petitioner with due diligence after the victim has ceased to be
 70 a victim of human trafficking or has sought services for victims
 71 of human trafficking, subject to reasonable concerns for the
 72 safety of the victim, family members of the victim, or other
 73 victims of human trafficking that may be jeopardized by the
 74 bringing of such petition or for other reasons consistent with
 75 the purpose of this section.

76 (5) Official documentation of the victim's status creates a
 77 presumption that his or her participation in the offense was a
 78 result of having been a victim of human trafficking but is not
 79 required for granting a petition under this section. A
 80 determination made without such official documentation must be
 81 made by a showing of clear and convincing evidence.

82 (6) Each petition to a court to expunge a criminal history
 83 record is complete only when accompanied by:

84 (a) The petitioner's sworn statement attesting that the
 85 petitioner is eligible for such an expunction to the best of his
 86 or her knowledge or belief and does not have any other petition
 87 to expunge or any petition to seal pending before any court.

(b) Official documentation of the petitioner's status as a

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 89 victim of human trafficking, if any exists.

90 Any person who knowingly provides false information on such
 91 sworn statement to the court commits a felony of the third
 92 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 93 775.084.

94 (7) (a) In judicial proceedings under this section, a copy
 95 of the completed petition to expunge shall be served upon the
 96 appropriate state attorney or the statewide prosecutor and upon
 97 the arresting agency; however, it is not necessary to make any
 98 agency other than the state a party. The appropriate state
 99 attorney or the statewide prosecutor and the arresting agency
 100 may respond to the court regarding the completed petition to
 101 expunge.

102 (b) The petitioner or the petitioner's attorney may appear
 103 at any hearing under this section telephonically, via video
 104 conference, or by other electronic means.

105 (c) The court shall allow an advocate from a state
 106 attorney's office, law enforcement agency, safe house or safe
 107 foster home as defined in s. 409.1678(1), or a residential
 108 facility offering services to adult victims of human trafficking
 109 to be present with the petitioner during any court proceedings
 110 or hearings under this section, if the petitioner has made such
 111 a request and the advocate is able to be present.

112 (d) If relief is granted by the court, the clerk of the
 113 court shall certify copies of the order to the appropriate state
 114 attorney or the statewide prosecutor and the arresting agency.
 115 The arresting agency is responsible for forwarding the order to
 116 any other agency listed in the court order to which the

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 117 arresting agency disseminated the criminal history record
 118 information to which the order pertains. The department shall
 119 forward the order to expunge to the Federal Bureau of
 120 Investigation. The clerk of the court shall certify a copy of
 121 the order to any other agency that the records of the court
 122 reflect has received the criminal history record from the court.

123 (8) (a) Any criminal history record of a minor or an adult
 124 that is ordered expunged pursuant to this section must be
 125 physically destroyed or obliterated by any criminal justice
 126 agency having custody of such record, except that any criminal
 127 history record in the custody of the department must be retained
 128 in all cases.

129 (b) The person who is the subject of a criminal history
 130 record that is expunged under this section may lawfully deny or
 131 fail to acknowledge the arrests covered by the expunged record,
 132 except when the subject of the record is a candidate for
 133 employment with a criminal justice agency or is a defendant in a
 134 criminal prosecution.

135 (c) Subject to the exceptions in paragraph (b), a person
 136 who has been granted an expunction under this section may not be
 137 held under any law of this state to commit perjury or to be
 138 otherwise liable for giving a false statement by reason of such
 139 person's failure to recite or acknowledge an expunged criminal
 140 history record.

141 (9) Any reference to any other chapter, section, or
 142 subdivision of the Florida Statutes in this section constitutes
 143 a general reference under the doctrine of incorporation by
 144 reference.

145 (10) ~~(a)~~ A criminal history record ordered expunged under

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 146 this section that is retained by the department is confidential
 147 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 148 Constitution, except that the record shall be made available to
 149 criminal justice agencies for their respective criminal justice
 150 purposes and to any governmental agency that is authorized by
 151 state or federal law to determine eligibility to purchase or
 152 possess a firearm or to carry a concealed firearm for use in the
 153 course of such agency's official duties. Otherwise, such record
 154 shall not be disclosed to any person or entity except upon order
 155 of a court of competent jurisdiction. A criminal justice agency
 156 may retain a notation indicating compliance with an order to
 157 expunge.

158 ~~(b) This subsection is subject to the Open Government~~
 159 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 160 ~~repealed on October 2, 2018, unless reviewed and saved from~~
 161 ~~repeal through reenactment by the Legislature.~~

162 (11) (a) The following criminal intelligence information or
 163 criminal investigative information is confidential and exempt
 164 from s. 119.07(1) and s. 24(a), Art. I of the State
 165 Constitution:

166 1. Any information that reveals the identity of a person
 167 who is a victim of human trafficking whose criminal history
 168 record has been expunged under this section.

169 2. Any information that may reveal the identity of a person
 170 who is a victim of human trafficking whose criminal history
 171 record has been ordered expunged under this section.

172 (b) Criminal investigative information and criminal
 173 intelligence information made confidential and exempt under this
 174 subsection may be disclosed by a law enforcement agency:

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175 1. In the furtherance of its official duties and
176 responsibilities.

177 2. For print, publication, or broadcast if the law
178 enforcement agency determines that such release would assist in
179 locating or identifying a person that the agency believes to be
180 missing or endangered. The information provided should be
181 limited to that needed to identify or locate the victim.

182 3. To another governmental agency in the furtherance of its
183 official duties and responsibilities.

184 (c) This exemption applies to such confidential and exempt
185 criminal intelligence information or criminal investigative
186 information held by a law enforcement agency before, on, or
187 after the effective date of the exemption.

188 (d) This subsection is subject to the Open Government
189 Sunset Review Act in accordance with s. 119.15 and shall stand
190 repealed on October 2, 2020, unless reviewed and saved from
191 repeal through reenactment by the Legislature.

192 Section 2. This act shall take effect July 1, 2018.

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 7002

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Active Criminal Intelligence or Criminal Investigative Information

DATE: January 17, 2018

REVISED: 1/10/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Erickson</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7002 provides an Open Government Sunset Review for certain portions of a meeting held by a duly constituted criminal justice commission. Specifically, the current public meetings exemption applies to those portions of a meeting at which members discuss active criminal intelligence information or active criminal investigative information that could foreseeably be considered, or is currently being considered by the commission. A duly constituted criminal justice commission is an advisory commission created by local ordinance to examine local criminal justice issues.

The original public necessity statement for the bill provides that without the public meetings exemption, the purpose of the public records exemption for criminal investigative information could be defeated. Further, members must be able to freely discuss exempt information to make sound recommendations on strategies and actions that best protect public welfare. Although only two surveyed counties indicate that they have a duly constituted criminal justice commission, the justification upon which the public records exemption is based remains valid. For this reason, the bill reenacts the public meetings exemption.

If the bill passes, this information will continue to be exempt from public meetings.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Law

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

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

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

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

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *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

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule

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.
¹² 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).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ FLA. CONST., art. I, s. 24(b).

¹⁶ 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.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.²⁵ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³¹
- 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;³² or
- It protects trade or business secrets.³³

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ *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.

²⁸ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.³⁴ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁵ 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.³⁶

Open Government Sunset Review of the Public Meetings Exemption for a Closed Portion of a Designated Criminal Justice Commission

Active criminal intelligence information³⁷ and active criminal investigative information³⁸ are exempt from public disclosure.³⁹

In 2013, the Legislature created s. 286.01141, F.S.⁴⁰ Section 286.01141(2), F.S., closes from the public the portion of a meeting of a duly constituted criminal justice commission⁴¹ at which members of the commission discuss active criminal intelligence information or active criminal

³⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁵ FLA. CONST. art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(a), F.S. Section 119.011(3)(c), F.S., provides that certain information is not criminal intelligence information, such as the time, date, location, and nature of a reported crime. Criminal intelligence information is “active”: (1) as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities; or (2) while such information is directly related to pending prosecutions or appeals. Section 119.011(3)(d), F.S. The word “active” does not apply to information in cases which are barred from prosecution under the applicable statute of limitation. *Id.*

³⁸ “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance (s. 119.011(3)(b), F.S.). Section 119.011(3)(c), F.S., provides that certain information is not criminal investigative information, such as the time, date, location, and nature of a reported crime. Criminal investigative information is “active”: (1) as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future; or (2) while such information is directly related to pending prosecutions or appeal (s. 119.011(3)(d), F.S.). The term “active” does not apply to information in cases which are barred from prosecution under the applicable statute of limitation. *Id.*

³⁹ Section 119.071(2)(c)1., F.S.

⁴⁰ Chapter 2013-196, L.O.F.

⁴¹ A “Duly constituted criminal justice commission” is an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues (s. 286.01141(1)(a), F.S.).

investigative information that is currently being considered by, or which may foreseeably come before the commission. Section 286.01141(2), F.S., also requires a criminal justice commission to publicly disclose that it discussed this type of information in the closed portion of a public meeting. This public meetings exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.⁴²

In creating the exemption, the Legislature articulated the following reasons for the exemption:

It is the finding of the Legislature that it is a public necessity that the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the criminal justice commission be made exempt from public meeting requirements. If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.⁴³

Open Government Sunset Review Survey

In conducting the OGSR, staff with the Senate Committee on Criminal Justice and the House Oversight, Transparency & Administration Subcommittee distributed a survey to counties and municipalities.⁴⁴ Twenty survey responses were received. Two respondents, Miami-Dade County and Palm Beach County indicated in their survey responses that they have a “duly constituted criminal justice commission” as defined in s. 286.01141(1)(a), F.S.

The Dade-Miami Criminal Justice Council was created in 1978 and codified via ordinance in February 2014⁴⁵:

⁴² Section 286.01141(3), F.S.

⁴³ Section 2, ch. 2013-196, L.O.F.

⁴⁴ The survey and responses are on file with the Senate Committees on Criminal Justice and Governmental Oversight and Accountability. Unless otherwise indicated, all information relevant to duly constituted criminal justice commissions is from the survey responses. The Florida Association of Counties and the Florida League of Cities assisted legislative staff by distributing the surveys. Counties responding to the survey: Brevard; DeSoto; Escambia; Madison; Miami-Dade; Monroe; Okaloosa; Okeechobee; Palm Beach; Pinellas; Seminole; St. Lucie; Sumter; and Walton. Municipalities responding to the survey: Hampton; Inverness; Lake Helen; Long Boat Key; Sanibel; and St. Petersburg. Staff also contacted the Broward County Crime Commission and determined that the commission was not created by ordinance, and therefore not a “duly constituted criminal justice commission” as defined in s. 286.01141(1)(a), F.S. The commission is organized as a Florida 501 C-4, non-profit corporation. See <http://www.browardcrime.org/aboutus.html> (last visited on Dec. 14, 2017).

⁴⁵ Miami Dade County Ord. No. 14-17, ss. 1-8, adopted February 4, 2014, did not specify provisions intended for use. For purposes of classification, these provisions were included as Miami-Dade County Code of Ordinances, ch. 2, art. CXLIX,

The general purpose of [the council] is to encourage and facilitate the coordination and cooperation among various agencies and municipalities within Miami-Dade County with crime prevention/intervention strategies, criminal and juvenile justice activities, and other activities related to criminal justice.⁴⁶

The Palm Beach County Criminal Justice Commission was created in 1988 pursuant to an ordinance adopted in 1988.⁴⁷ The commission:

prioritizes its projects at its Annual Planning Meeting in February of each year. The issues discussed at the meetings center around the progress on these priorities which in the past few years have been our reentry program, community engagement, behavioral health issues in the system, body worn camera deployment amongst our local law enforcement agencies, the implementation of a validated risk assessment instrument for pretrial detention decision-making, our jail population and efforts to reduce it, law enforcement information sharing systems, and the Batterers' Intervention Program. In addition, other topics include current legislation and countywide crime statistics.⁴⁸

Neither of the two councils has closed any portion of their meetings to discuss active criminal intelligence information or active criminal investigation information. Because the Dade-Miami Criminal Justice Council has not used the exemption, Miami-Dade County did not render an opinion on whether the exemption should be reenacted. In contrast, Palm Beach County does support reenactment:

While the [Criminal Justice Commission] has never needed to use the exemption, there are always new issues to address. The [Criminal Justice Commission] is committed to data-driven policy-making and may require the exemption for future meetings.⁴⁹

Attorney General Opinion on Exempt Status of Meetings of County Criminal Justice Commission

When asked for an advisory opinion on whether active criminal intelligence and investigative information is exempt from discussions in public meetings, the Attorney General concluded that the exempt status of this information under public records law does not imply an exemption from

ss. 2-2166—2-2173. See https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTCXLIxDAAMCRJUCO_S2-2166CRPU (last visited on Dec. 11, 2017).

⁴⁶ Response from Miami-Dade County to the Staff OGSR Survey.

⁴⁷ Palm Beach County Ord. No. 88-16, adopted Aug. 16, 1988, effective Aug. 29, 1988, amended the Palm Beach County Code of Ordinances by adding provisions designated as Palm Beach Code of Ordinances, ch. 2, art. V, div. 5, ss. 2-216—2-221. See <http://discover.pbcgov.org/criminaljustice/PDF/CJC%20Ordinance.pdf> (last visited on Dec. 14, 2017).

⁴⁸ Response from Palm Beach County to the Staff OGSR Survey.

⁴⁹ *Id.* Subsequent to its survey response, the Palm Beach County Criminal Justice Commission confirmed that the commission approved the recommendation to reenact the exemption, which was pending approval by the commission at the time the survey response was received. E-mail from Kristina Henson, Executive Director of the Palm Beach County Criminal Justice Commission (Oct. 2, 2017) (on file with the Senate Committees on Criminal Justice and Governmental Oversight and Accountability).

the public meetings requirement of s. 286.011, F.S. As such, an exemption from the public meetings requirement must be expressly provided.⁵⁰

III. Effect of Proposed Changes:

The bill provides an Open Government Sunset Review for certain portions of a meeting held by a duly constituted criminal justice commission. Specifically, the current public meetings exemption applies to those portions of a meeting at which members discuss active criminal intelligence information or active criminal investigative information that could foreseeably be considered, or is currently being considered by the commission. A duly constituted criminal justice commission is an advisory commission created by local ordinance to examine local criminal justice issues.

The original public necessity statement for the bill provides that without the public meetings exemption, the purpose of the public records exemption for criminal investigative information could be defeated. Further, members must be able to freely discuss exempt information to make sound recommendations on strategies and actions that best protect public welfare.

Reenacting the public meetings exemption would allow for a duly constituted criminal justice commission to discuss active criminal intelligence information or active criminal investigation should the need arise for such discussion; repeal of the exemption would preclude such discussion because the commission would not be able to reveal the contents of this type of exempt information in a public meeting.

Although only two surveyed counties indicate that they have a duly constituted criminal justice commission, the justification upon which the public records exemption is based remains valid. For these reasons, the bill reenacts the public meetings exemption.

If the bill passes, this information will continue to be exempt from public meetings.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill reenacts an existing public records exemption for the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission. A simple majority vote of the members present in each house of the Legislature is required for passage of the bill.

⁵⁰ Fla. AGO 93-41 (June 7, 1993).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 286.01141 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Criminal Justice

591-01287-18

20187002__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 286.01141, F.S., which
 4 provides an exemption from public meetings
 5 requirements for portions of a meeting of a duly
 6 constituted criminal justice commission at which
 7 active criminal intelligence information or active
 8 criminal investigative information being considered
 9 by, or which may foreseeably come before, the
 10 commission is discussed; removing the scheduled repeal
 11 of the exemption; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 286.01141, Florida Statutes, is amended
 16 to read:
 17 286.01141 Criminal justice commissions; public meetings
 18 exemption.—
 19 (1) As used in this section, the term:
 20 (a) "Duly constituted criminal justice commission" means an
 21 advisory commission created by municipal or county ordinance
 22 whose membership is comprised of individuals from the private
 23 sector and the public sector and whose purpose is to examine
 24 local criminal justice issues.
 25 (b) "Active" has the same meaning as provided in s.
 26 119.011.
 27 (c) "Criminal intelligence information" has the same
 28 meaning as provided in s. 119.011.
 29 (d) "Criminal investigative information" has the same

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

591-01287-18

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30 meaning as provided in s. 119.011.
 31 (2) That portion of a meeting of a duly constituted
 32 criminal justice commission at which members of the commission
 33 discuss active criminal intelligence information or active
 34 criminal investigative information that is currently being
 35 considered by, or which may foreseeably come before, the
 36 commission is exempt from s. 286.011 and s. 24(b), Art. I of the
 37 State Constitution, provided that at any public meeting of the
 38 criminal justice commission at which such matter is being
 39 considered, the commission members publicly disclose the fact
 40 that the matter has been discussed.
 41 ~~(3) This section is subject to the Open Government Sunset~~
 42 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 43 ~~on October 2, 2018, unless reviewed and saved from repeal~~
 44 ~~through reenactment by the Legislature.~~
 45 Section 2. This act shall take effect October 1, 2018.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7004

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Petitioner Information/Notification of Service of an Injunction for Protection

DATE: January 17, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Brown</u>	<u>Cibula</u>		JU Submitted as Committee Bill
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7004 is based on an Open Government Sunset Review of two public records exemptions. These exemptions prohibit the disclosure of contact information maintained on a database by the Florida Association of Court Clerks and Comptrollers for a petitioner who is granted an injunction for protection against domestic violence or repeat, sexual, or dating violence. The exemptions are scheduled for repeal on October 2, 2018.

The clerks are currently updating their database. Once completed, the database will include a process by which a petitioner is automatically notified that an injunction has been served. Although the automatic notification process is not yet in operation, the justification for the original exemption remains valid. Additionally, other public records exemptions protect this contact information. For these reasons, the bill repeals the automatic repeal of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S.

Accordingly, the Open Government Sunset Review Act does not require another review of the exemptions unless they are broadened or expanded.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

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

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

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

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

² FLA. CONST., art. I, s. 24(a).

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *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.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² 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).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ 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.²²

Injunction for Protection

A person may file a petition for an injunction for protection against domestic violence,²³ or repeat, sexual, or dating violence.²⁴

Filing a petition for a protective injunction is a civil cause of action.²⁵

Process for Injunction for Petition

Filing of the Petition

A person wishing to initiate an injunction for protection against domestic violence must file a sworn petition for the injunction at the clerk's office for the circuit court.²⁶ Clerks' offices must provide a simplified petition form for the injunction for protection, including instructions for the petitioner to follow.²⁷ A sample form for a petition for injunction for protection against domestic violence is provided in statute and requires:

- A detailed description of the respondent;
- The residential and employment address of the respondent;
- The relationship between the respondent and the petitioner;
- A detailed description of the violence or threat of violence;
- An indication of prior or pending attempts by the petitioner to obtain an injunction;

-
- 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?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Section 741.30(1), F.S., creates a cause of action for an injunction for protection against domestic violence.

Section 741.30(1)(a), F.S., requires a petitioner to either be the victim of domestic violence or reasonably believe he or she is in imminent danger of becoming a victim.

²⁴ Section 784.046(2), F.S., creates a cause of action for an injunction for protection individually against repeat violence, dating violence, and sexual violence. Section 784.046(2)(a), F.S., requires a petitioner to either be the victim or the parent or guardian of a minor child who is a victim of repeat violence. Section 784.046(2)(b), F.S., requires a petitioner to either have reasonable cause to believe he or she is in imminent danger to another act of dating violence, whether or not he or she has previously been the victim of dating violence, or if a minor, be the parent or guardian of the minor. Section 784.046(2)(c), F.S., requires the petitioner to either be the victim of sexual violence, or a parent or legal guardian of a child victim living at home provided that the petitioner reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding against the respondent or that the respondent was sentenced to prison for the sexual violence and the term of imprisonment has, or is about to expire within 90 days after the filing of the petition.

²⁵ *H.K. by & Through Colton v. Vocelle*, 667 So. 2d 892 (Fla. 4th DCA 1996).

²⁶ Sections 741.30(1) and 784.046(2), F.S.

²⁷ Sections 741.30(2)(c)2, and 784.046(3)(a), F.S.

- An indication that minor children reside with the petitioner or that the petitioner needs the exclusive use and possession of the dwelling that is shared with the respondent; and
- The address of the petitioner.²⁸

The form addresses whether the petitioner seeks an injunction providing a temporary parenting plan, including a temporary time-sharing schedule and temporary support for minor children.²⁹

The form for the petition for injunction provides language authorizing a petitioner to provide his or her address to the court in a separate confidential filing, if necessary for safety reasons.³⁰ The clerk of the court must, to the extent possible, ensure the petitioner's privacy while completing the form for injunction for protection against domestic violence.³¹

A similar form, though more streamlined, is authorized for a petition for injunction for protection against repeat violence, sexual violence, or dating violence.³² A petitioner may file a separate confidential filing of his or her address, just as for petitions based on domestic violence.³³

Service of the Petition

The clerk of the court must furnish a copy of the petition, notice of hearing, and temporary injunction, if any, to the sheriff or law enforcement agency of the county where the respondent resides or can be found.³⁴ The sheriff or other law enforcement agency must then personally serve the respondent the petition and other documents as soon as possible.³⁵

The Court Process

Upon the filing of the petition, the court must hold a hearing as soon as possible.³⁶ If the court determines that an immediate and present danger of violence exists, the court may grant a temporary injunction. The temporary injunction may be granted in an ex parte hearing, pending a full hearing.³⁷ A temporary injunction is effective only for a period of up to 15 days, during which time the court generally must hold a full hearing.³⁸

²⁸ Section 741.30(3)(b), F.S.

²⁹ *Id.*

³⁰ *Id.*

³¹ Section 741.30(2)(c)4., F.S.

³² Section 784.046(4)(b), F.S., requires the petition to include the residential address of the respondent, a description of the violence perpetrated by the respondent, and an affirmation that the petitioner genuinely fears repeat violence by the respondent.

³³ *Id.*

³⁴ Sections 741.30(8)(a)1., and 784.046(8)(a)1., F.S.

³⁵ Section 741.30(4), F.S.

³⁶ Sections 741.30(4) and 784.046(5), F.S.

³⁷ Sections 741.30(5)(a) and 784.046(6)(a), F.S. A temporary injunction is authorized in instances in which it appears to the court that an immediate and present danger of violence exists. If so, the court, may grant a temporary injunction at an ex parte hearing. Sections 741.30(5)(a) and 784.046(6)(a), F.S.

³⁸ Sections 741.30(5)(c) and 784.046(5)(c), F.S.

Service of the Injunction for Petition

Within 24 hours after the court issues an injunction for protection, the clerk of the court must forward a copy of the injunction to the sheriff to serve the petitioner.³⁹ Within 24 hours after the injunction is served on the respondent, the law enforcement officer must forward the written proof of service of process to the sheriff who has jurisdiction over the residence of the petitioner.⁴⁰

Public Records Exemptions and Protections from Disclosure of Contact Information

A general public records exemption protects from disclosure any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime.⁴¹ In addition to this general exemption, other public records exemptions protect the contact information of a petitioner who files a petition for an injunction for protection.

Separate Confidential Filing of Address with Injunction for Protective

The exemption that protects the contact information of a petitioner seeking an injunction applies if the person, for safety reasons, submits his or her address to the court in a separate confidential filing.⁴²

Address Confidentiality Program

The Legislature enacted the Address Confidentiality Program (Program) to protect a victim of domestic violence by keeping his or her address confidential.⁴³ The program allows:

[a]n adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of a person adjudicated incapacitated [to] apply to the Attorney General to have an address designated by the Attorney General serve as the person's address or the address of the minor or incapacitated person.⁴⁴

An application must include all of the following:

- A sworn statement by the applicant that the applicant has good reason to believe that the applicant, minor, or incapacitated person is a victim of domestic violence in fear of his or her safety.
- A designation of the Attorney General as agent for purposes of service of process and receipt of mail.

³⁹ Sections 741.30(8)(c)1., and 784.046(8)(c)1., F.S. The Legislature created both a Domestic and Repeat Violence Injunction Statewide Verification System and a Domestic, Dating, Sexual and Repeat Violence Injunction Statewide System (Systems) within the Florida Department of Law Enforcement (FDLE). The Systems require the FDLE to maintain a statewide communication system to electronically transmit information on protective injunctions to and between criminal justice agencies. Sections 741.30(8)(b), and 784.046(8)(b), F.S.

⁴⁰ Sections 741.30(8)(c)2., and 784.046(8)(c)2., F.S.

⁴¹ Section 119.071(2)(j)1., F.S.

⁴² The language authorizing a petitioner to submit his or her address in a separate confidential filing is contained in the actual petition form provided in sections 741.30(3)(b) and 784.046(4)(b), F.S.

⁴³ Section 741.403, F.S. Victims of stalking or aggravated stalking are also eligible to receive the benefit of the Address Confidentiality Program (s. 741.4651, F.S.).

⁴⁴ Section 741.403(1), F.S.

- The mailing address where the applicant can be contacted by the Attorney General and the phone number or numbers where the applicant can be called by the Attorney General.
- A statement that the new address that the applicant requests must not be disclosed as disclosure will increase the risk of domestic violence.
- The signature of the applicant, and any person who assisted with the application, and the date of signature.⁴⁵

A public records exemption for the Program makes exempt from disclosure addresses, telephone numbers, and social security numbers of program participants.⁴⁶ A limited exception authorizes disclosure of the information:

- To a law enforcement agency to assist in executing a valid arrest warrant;
- If directed by a court order, including to a person identified in the order; or
- After the certification has been cancelled.⁴⁷

The public records exemption under the Program also protects contact information for participants maintained by the supervisor of elections and the Department of State in voter registration and voting records. An exception is provided for disclosure to:

- A law enforcement agency to assist in serving an arrest warrant; or
- A person identified in a court order, if directed by the court order.⁴⁸

The Office of the Attorney General provides training on the availability of the Program to local governments and non-profit organizations. The office estimates that it has trained individuals from approximately 100 local entities or organizations.⁴⁹

Automated Process for the Clerk of the Court

In 2011, the Legislature required the Florida Association of Court Clerks and Comptrollers to establish, subject to available funding, an automated process to provide notice to a petitioner that the injunction for protection has been served on the respondent.⁵⁰ Once the automated process is established, the petitioner may request an automated notice that the protective injunction has been served on the respondent. The notice will be sent within 12 hours after service and include the date, time, and location where the officer served the injunction.

⁴⁵ Section 741.403(1)(a) through (e), F.S.

⁴⁶ Section 741.465(1), F.S.

⁴⁷ *Id.*

⁴⁸ Section 741.465(2), F.S.

⁴⁹ The Office of the Attorney General notes that 1,176 victims of domestic violence, stalking, or aggravated stalking are currently participating in the Program. Under the Program, participants may use a mailing address established by the office. Mail received at the office for a participant is diverted to the Office of Victim Services, which then forwards the mail to an address of the participant. Once a person qualifies to participate, based on the office finding a reasonable belief that domestic violence, stalking, or aggravated stalking has occurred, the person may receive services for up to 4 years. After that time, the person may reapply for another 4-year eligibility. Email and phone conference with Andrew Fay, Office of the Attorney General (Aug. 16, 2017).

⁵⁰ Chapter 2011-187 (CS/CS HB 563); Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S.

In 2012, the Legislature created a public records exemption relating to the automated process to protect the petitioner's contact information listed on the request to receive an automated notice.⁵¹ The specific information protected from disclosure includes the petitioner's:

- Home, cellular, or employment telephone number;
- Home or employment address;
- Electronic mail address; or
- Other electronic means of identification.⁵²

The exemption protects the contact information from disclosure for 5 years.

In its statement of public necessity justifying the exemption, the Legislature explained that the contact information,

if publicly available, could expose the victims of domestic violence, repeat violence, sexual violence, and dating violence to public humiliation and shame and could inhibit the victim from availing herself or himself of relief provided under state law. Additionally ... it could be used by the partner or former partner of the victim of domestic violence, repeat violence, sexual violence, or dating violence to determine the location of the victim, thus placing the victim in jeopardy.⁵³

In 2017, the Legislature reviewed the exemptions in this bill pursuant to the Open Government Sunset Review Act.⁵⁴ As a result of the review, the Legislature delayed the automatic repeal of the exemption by 1 year to October 2, 2018.⁵⁵

III. Effect of Proposed Changes:

This bill is based on a review by the staff of the Senate Judiciary Committee of two public records exemptions that are scheduled for repeal on October 2, 2018. The exemptions protect from public disclosure the contact information of a petitioner who requests an automated notice of the service of an injunction for protection against domestic violence, or repeat, sexual, or dating violence.

The Florida Association of Court Clerks and Comptrollers has not yet implemented the automated notification system.⁵⁶ Regardless, the justification for the exemption as is stated in the public necessity statement of the original public records bill remains valid. Additionally, other public records exemptions protect the contact information of a petitioner of an injunction for domestic violence, or repeat, sexual, or dating violence. For these reasons, the bill repeals the automatic repeal of the public records exemptions provided in ss. 741.30(8)(c)5.b. and 784.046(8)(c)5.b., F.S.

⁵¹ Chapter 2012-154, L.O.F. (HB 1193).

⁵² Sections 741.30(8)(c)5.b., and 784.046(8)(c)5.b., F.S.

⁵³ Chapter 2012-154, L.O.F.

⁵⁴ See SPB 7028 (2017).

⁵⁵ Chapter 2017-65 L.O.F.

⁵⁶ The Florida Association of Court Clerks and Comptroller say that although planning for the development of the new system continues, the system has not yet been developed. E-mail from Melvin Cox, forwarded by Fred Baggett, Sept. 26, 2017.

By repealing the automatic repeal of the exemptions, the exemptions are no longer subject to a review under the Open Government Sunset Review Act, unless the exemptions are broadened or expanded.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

This bill continues a current exemption but does not expand the scope of an existing public records exemption. Therefore, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Current law requires automated notice to be provided to a petitioner who has requested notification within 12 hours after the law enforcement officer has served the injunction upon the

respondent.⁵⁷ Representatives from the clerks of the court and the Florida Sheriffs Association indicate that the 12-hour requirement may be impossible to meet, given that a delay exists between the time a law enforcement officer serves a respondent and delivers a copy of the served petition to the clerk. Moreover, if a law enforcement officer serves an injunction just before the weekend, a clerk may not be able to input the information on the Comprehensive Case Information System until the following week. These potential causes of delays in providing notifications may be resolved with the activation of the CCIS, particularly if law enforcement agencies are granted access to the system to upload notice that an injunction has been served, which will then cause an automated notice to be sent to the petitioner. If law enforcement agencies are not given access to CCIS, the Legislature may wish to revise the 12-hour requirement after the CCIS is implemented.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 741.30 and 784.046.

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.

⁵⁷ Sections 741.30(8)(c)5.a., and 784.046(8)(c)5.a., F.S., provide, “The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent.”

By the Committee on Judiciary

590-00931-18

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 741.30 and 784.046, F.S., relating to the exemptions from public records requirements for personal identifying and location information of a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, and dating violence and for other court actions related to the injunction which are held by clerks of the court and law enforcement agencies; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The

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injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information relating to the service available to other law enforcement agencies by electronically transmitting such information to the department.

5.a. Subject to available funding, the Florida Association of Court Clerks and Comptrollers shall develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence and other court actions related to the injunction for protection. The automated notice shall be made within 12 hours after the sheriff or other law enforcement officer serves the injunction upon the respondent. The notification must include, at a minimum, the date, time, and location where the injunction for protection against domestic violence was served. When a petitioner makes a request for notification, the clerk must apprise the petitioner of her or his right to request in writing

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59 that the information specified in sub-subparagraph b. be held
60 exempt from public records requirements for 5 years. The Florida
61 Association of Court Clerks and Comptrollers may apply for any
62 available grants to fund the development of the automated
63 process.

64 b. Upon implementation of the automated process,
65 information held by clerks and law enforcement agencies in
66 conjunction with the automated process developed under sub-
67 subparagraph a. which reveals the home or employment telephone
68 number, cellular telephone number, home or employment address,
69 electronic mail address, or other electronic means of
70 identification of a petitioner requesting notification of
71 service of an injunction for protection against domestic
72 violence and other court actions related to the injunction for
73 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of
74 the State Constitution, upon written request by the petitioner.
75 Such information shall cease to be exempt 5 years after the
76 receipt of the written request. Any state or federal agency that
77 is authorized to have access to such documents by any provision
78 of law shall be granted such access in the furtherance of such
79 agency's statutory duties, notwithstanding this sub-
80 subparagraph. ~~This sub-subparagraph is subject to the Open
81 Government Sunset Review Act in accordance with s. 119.15 and
82 shall stand repealed on October 2, 2018, unless reviewed and
83 saved from repeal through reenactment by the Legislature.~~

84 6. Within 24 hours after an injunction for protection
85 against domestic violence is vacated, terminated, or otherwise
86 rendered no longer effective by ruling of the court, the clerk
87 of the court must notify the sheriff receiving original

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88 notification of the injunction as provided in subparagraph 2.
89 That agency shall, within 24 hours after receiving such
90 notification from the clerk of the court, notify the department
91 of such action of the court.

92 Section 2. Paragraph (c) of subsection (8) of section
93 784.046, Florida Statutes, is amended to read:

94 784.046 Action by victim of repeat violence, sexual
95 violence, or dating violence for protective injunction; dating
96 violence investigations, notice to victims, and reporting;
97 pretrial release violations; public records exemption.-

98 (8)

99 (c)1. Within 24 hours after the court issues an injunction
100 for protection against repeat violence, sexual violence, or
101 dating violence or changes or vacates an injunction for
102 protection against repeat violence, sexual violence, or dating
103 violence, the clerk of the court must forward a copy of the
104 injunction to the sheriff with jurisdiction over the residence
105 of the petitioner.

106 2. Within 24 hours after service of process of an
107 injunction for protection against repeat violence, sexual
108 violence, or dating violence upon a respondent, the law
109 enforcement officer must forward the written proof of service of
110 process to the sheriff with jurisdiction over the residence of
111 the petitioner.

112 3. Within 24 hours after the sheriff receives a certified
113 copy of the injunction for protection against repeat violence,
114 sexual violence, or dating violence, the sheriff must make
115 information relating to the injunction available to other law
116 enforcement agencies by electronically transmitting such

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117 information to the department.

118 4. Within 24 hours after the sheriff or other law
119 enforcement officer has made service upon the respondent and the
120 sheriff has been so notified, the sheriff must make information
121 relating to the service available to other law enforcement
122 agencies by electronically transmitting such information to the
123 department.

124 5.a. Subject to available funding, the Florida Association
125 of Court Clerks and Comptrollers shall develop an automated
126 process by which a petitioner may request notification of
127 service of the injunction for protection against repeat
128 violence, sexual violence, or dating violence and other court
129 actions related to the injunction for protection. The automated
130 notice shall be made within 12 hours after the sheriff or other
131 law enforcement officer serves the injunction upon the
132 respondent. The notification must include, at a minimum, the
133 date, time, and location where the injunction for protection
134 against repeat violence, sexual violence, or dating violence was
135 served. When a petitioner makes a request for notification, the
136 clerk must apprise the petitioner of her or his right to request
137 in writing that the information specified in sub-subparagraph b.
138 be held exempt from public records requirements for 5 years. The
139 Florida Association of Court Clerks and Comptrollers may apply
140 for any available grants to fund the development of the
141 automated process.

142 b. Upon implementation of the automated process,
143 information held by clerks and law enforcement agencies in
144 conjunction with the automated process developed under sub-
145 subparagraph a. which reveals the home or employment telephone

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146 number, cellular telephone number, home or employment address,
147 electronic mail address, or other electronic means of
148 identification of a petitioner requesting notification of
149 service of an injunction for protection against repeat violence,
150 sexual violence, or dating violence and other court actions
151 related to the injunction for protection is exempt from s.
152 119.07(1) and s. 24(a), Art. I of the State Constitution, upon
153 written request by the petitioner. Such information shall cease
154 to be exempt 5 years after the receipt of the written request.
155 Any state or federal agency that is authorized to have access to
156 such documents by any provision of law shall be granted such
157 access in the furtherance of such agency's statutory duties,
158 notwithstanding this sub-subparagraph. This sub-subparagraph is
159 subject to the Open Government Sunset Review Act in accordance
160 with s. 119.15 and shall stand repealed on October 2, 2018,
161 unless reviewed and saved from repeal through reenactment by the
162 Legislature.

163 6. Within 24 hours after an injunction for protection
164 against repeat violence, sexual violence, or dating violence is
165 lifted, terminated, or otherwise rendered no longer effective by
166 ruling of the court, the clerk of the court must notify the
167 sheriff or local law enforcement agency receiving original
168 notification of the injunction as provided in subparagraph 2.
169 That agency shall, within 24 hours after receiving such
170 notification from the clerk of the court, notify the department
171 of such action of the court.

172 Section 3. This act shall take effect October 1, 2018.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 7006

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Investigation of a Violation of the Florida False Claims Act/Department of Legal Affairs

DATE: January 17, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Davis</u>	<u>Cibula</u>		JU Submitted as Committee Bill
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 7006 is based on an Open Government Sunset Review of a public records exemption that is contained in the Florida False Claims Act. The exemption is scheduled for repeal on October 2, 2018.

The exemption places under seal and protects from public disclosure the legal complaint filed in circuit court by a private citizen who initiates a false claim proceeding. The exemption also protects from disclosure the detailed information and documents that the private citizen provides to the Department of Legal Affairs which support the claim that a violation of the act has occurred.

In addition to helping the state recover monies and property, the broader reasons for maintaining the exemption are to:

- Protect the identity of a person who initiates a false claim action, often an employee of a defendant, while the claim is being investigated;
- Allow the department to privately investigate the merits of the claim to determine if the government will intervene, decline, or dismiss the case before any evidence is destroyed or any information becomes public that could unnecessarily harm the business reputation of the defendant; and
- Maintain the confidentiality of state information that is similarly shielded under a federal public records exemption, which, if disclosed in Florida, would compromise the confidentiality of the federal investigation.

Additionally, maintaining the exemption encourages a private citizen to report fraud and facilitates the recovery of state funds and property that are taken by false claims or fraud.

For these reasons, the bill repeals the automatic repeal of the public records exemption.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Law

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

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

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

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

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

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

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

⁹ FLA. CONST., art. I, s. 24(c).

the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *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.

¹² 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).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ 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.²²

The Florida False Claims Act

Qui Tam Actions and the Relator

The Florida False Claims Act²³ authorizes two entities, either a private individual or the state,²⁴ to sue someone who allegedly files a false claim seeking payment or approval for payment from the state. The person who brings a false claims suit is referred to as the “relator.” The action filed by the relator on behalf of the state is referred to as a “qui tam” proceeding.²⁵ Relators are entitled to a significant share of the settlement or proceeds when a recovery is made against a defendant.

The relator does not need to demonstrate that he or she has been harmed by the violator’s actions to adequately state a cause of action. Quite often, the relator is aware of the false claim because he or she was employed by the defendant or has knowledge of industry standards that were violated.

Once the department receives the complaint and accompanying information as discussed below, the department may intervene, decline to intervene, dismiss the action, or settle the case while the information is under seal without making a decision to intervene.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

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

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Sections 68.081-68.092, F.S.

²⁴ For purposes of this act, the Department of Legal Affairs is authorized to bring an action, and in some limited circumstances, the Division of Financial Services may bring an action. See s. 68.083(1), (2), and (4), F.S.

²⁵ “Qui tam” is an abbreviated phrase from the larger Latin phrase “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*.” According to Black’s Law Dictionary, it means “who as well for the king as for himself sues in this matter.” A qui tam action is a statutory action that permits a private individual to sue for a penalty, which will be divided between the government or some other public institution and the person who initiates the suit. BLACK’S LAW DICTIONARY (10th ed. 2014).

Filings

All qui tam actions for the state are filed in the Circuit Court of the Second Judicial Circuit, Leon County.²⁶ According to the clerk of court, 37 qui tam cases have been filed in Leon County since June 2013. There were 21 qui tam cases pending as of September 2017.²⁷

Since the Legislature enacted the public records exemption for qui tam actions in 2013, the Department of Legal Affairs estimates that it intervened in 10-20 cases, dismissed a small number of cases, and settled a number of cases before announcing a decision to intervene. The department's most common response is to decline to intervene in a case, which occurs in approximately 90 percent of the cases. The department estimates that more than 400 active qui tam cases have been filed on behalf of the state and are pending in either the Second Judicial Circuit of Leon County or any of the federal district courts across the nation. Medicaid fraud cases represent approximately 95 percent of the Florida False Claims Act cases.²⁸ In non-Medicaid cases, Florida received \$38,087,788 under both the Florida and Federal False Claims Act between 2010 and 2016. This amount represents the total recovery before deductions were paid for the relator's share.²⁹

History

The Legislature enacted the Florida False Claims Act in 1994 and modeled it after the Federal Civil False Claims Act.³⁰ The Florida act has been amended several times, most recently in 2013, to closely follow the Federal False Claims Act. The federal law was first enacted in 1863, partially because of bad mules and putrid provisions. While the Civil War was being fought, nascent defense contractors "sold the Union Army decrepit horses and mules in ill health, faulty rifles and ammunition, and rancid rations and provisions among other unscrupulous actions."³¹ President Lincoln urged Congress to pass the earliest version of the federal false claim law, which became known as an "Informer's Law" or "Lincoln's Law" in an effort to prevent the Union Army from being defrauded.

Recoverable Awards, Costs, and Fees

At the core of the Florida Act is the relator's right to earn a substantial portion of the recovery against a defendant. This provides a relator tremendous financial incentive to report misconduct. It also provides the state an opportunity to be made whole when damaged by fraudulent actions it did not know were occurring.

²⁶ Section 68.083(3), F.S.

²⁷ Email from John Mickler, Office of Gwen Marshall, Clerk of the Circuit Court and Comptroller for Leon County, Florida, (Sept. 6, 2017) (on file with the Senate Committee on Judiciary).

²⁸ Email from the Department of Legal Affairs (Sept. 7, 2017) (on file with the Senate Committee on Judiciary).

²⁹ Department of Legal Affairs, *Non-Medicaid FFCA Recoveries, Before Relator's Share* (Aug. 2017) (on file with the Senate Committee on Judiciary).

³⁰ 31 U.S.C. ss. 3729-3733. According to the Department of Justice, the statute has been amended by Congress several times and has been interpreted by federal courts on hundreds of occasions. U.S. Department of Justice, *The False Claims Act: A Primer*, https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf (last visited Nov. 15, 2017).

³¹ Larry D. Lahman, "Bad Mules: A Primer on the Federal False Claims Act", 76 Okla. B. J. 901, 901 (2005), available at <http://www.okbar.org/members/BarJournal/archive2005/Aprarchive05/obj7612fal.aspx> (last visited Nov. 15, 2017).

An individual who successfully brings an action is entitled to receive a portion of the proceeds or settlement of the claim. The relator will receive at least 15 percent, but no more than 25 percent, of the proceeds of the action or a settlement of the claim if the department proceeds with the action.³² A court may not award more than 10 percent of the proceeds if the action is based primarily upon publicly disclosed information.³³ If the department does not intervene and the relator proceeds alone, the relator may receive between 25 and 30 percent of the proceeds, as well as reasonable expenses incurred, plus reasonable attorney fees and costs. These amounts will be awarded against the defendant.³⁴ The awards might be substantial, but that is viewed as compensation to the relator who risks a job or possibly a career to bring a qui tam action.

In contrast, a violator is liable for a civil penalty of not less than \$5,500 and not more than \$11,000 and treble the amount of damages the state sustains because of the violator's actions.³⁵ Under limited circumstances, a court may reduce the damages to twice the amount of damages sustained by the state.³⁶ If the department does not intervene, the state files a notice of declination. At that point, the relator can then serve the complaint and proceed with an action and conduct discovery. If the defendant prevails, a court may award reasonable attorney fees and expenses if the court finds that the claim was "clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment."³⁷ The state is not liable for those costs if it does not prevail.

It is not essential that a relator be involved in a case in order for the state to proceed with an investigation and a lawsuit under the Florida act.³⁸ However, an action is characterized as a qui tam proceeding only when a private individual, and not the state, files the complaint. The department is not required to investigate a violation but "may" diligently investigate a violation.³⁹

Pertinent Provisions

A person violates the Florida False Claims Act if he or she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made a false record or statement that is material to a false or fraudulent claim;
- Conspires to make a false claim;
- Possesses property or money to be used by the state and knowingly delivers or causes to be delivered less than the total property or money;
- Is authorized to make or deliver a document that certifies receipt of property for the state and with the intent to defraud the state, makes or delivers the receipt without knowledge that the information on the receipt is true;

³² Section 68.085(1)(a), F.S.

³³ Section 68.085(1)(b), F.S.

³⁴ Section 68.085(2), F.S.

³⁵ Section 68.082(2), F.S.

³⁶ Section 68.082(3), F.S.

³⁷ Section 68.086(2), F.S.

³⁸ Section 68.083(1), F.S.

³⁹ *Id.*

- Knowingly buys or receives, as a pledge or obligation of a debt, public property from an officer or employee of the state who may not sell or pledge the property; or
- Knowingly makes a false record or statement that is material to an obligation to pay the state or knowingly conceals or improperly avoids or decreases an obligation to pay or transmit money or property to the state.⁴⁰

Relevant Portions for Sunset Review Purposes

In 2013, the Legislature enacted a public records exemption relating to a qui tam action.⁴¹ Specifically:

Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.⁴²

Accordingly, and for purposes of this sunset review, it is necessary to focus on the two areas that involve the confidential and exempt provision: first, the complaint that is filed by a private individual who initiates the lawsuit; and second, the information, or supporting evidence, held by the department during an investigation.

Complaint

When the relator files a complaint, the statute requires that it be identified as a qui tam action and be filed in the Circuit Court of the Second Judicial Circuit, in and for Leon County.⁴³ The seal provision applies only to complaints filed by private citizens in qui tam actions. The seal does not apply to a complaint filed by the Department of Legal Affairs or the Department of Financial Services. Once the complaint is filed, a copy of the complaint and any written disclosure of substantially all material evidence and information the relator possesses must be immediately served on the Attorney General and on the Chief Financial Officer. The Department of Legal Affairs, or in limited circumstances, the Department of Financial Services,⁴⁴ may elect to intervene and proceed with the action on behalf of the state within 60 days after it receives both the complaint and the material evidence and information.⁴⁵ The department also has the authority to voluntarily dismiss an action over the objections of the relator.⁴⁶

⁴⁰ Section 68.082(2), F.S.

⁴¹ Chapter 2013-105, L.O.F.

⁴² Section 68.083(8)(a), F.S.

⁴³ Section 68.083(3), F.S.

⁴⁴ The Department of Financial Services is authorized to take over a case when a person brings an action based upon the facts of a pending investigation conducted by the Department of Financial Services. When that happens, the Department of Financial Services must notify the Department of Legal Affairs in writing that it is conducting the investigation and will take over the action. This does not happen often. The Department of Legal Affairs is generally the “department” mentioned in this statute.

⁴⁵ Section 68.083(3), F.S.

⁴⁶ Section 68.084(2)(a), F.S.

While the Florida False Claims Act assumes that a complaint is filed under seal, there is no directive in the statute to do so. A later reference in the statute mentions a 60-day seal and assumes that a 60-day seal period has been authorized. In contrast, the federal act states that the complaint is filed in camera and will remain under seal for 60 days.⁴⁷ To remedy this situation, Judge Jonathan Sjostrum, Chief Judge of the Second Judicial Circuit, issued an administrative order in 2016 addressing and clarifying the initial state sealing. The administrative order provides that the clerk will seal the entire case file for 90 days. There is no need for an initial motion to seal the case file. If the Attorney General's Office does not request an extension of the seal within that 90-day period after the case is filed, the clerk will make public the entire case file unless the court has previously entered an order sealing all or part of the case file. If the Attorney General's Office files a timely motion to extend the seal period, the clerk will keep the entire file sealed pending the ruling on the motion. This complaint is placed under seal when it is filed.⁴⁸ If a false claim action is filed by the Attorney General or the Chief Financial Officer and no relator is involved, the complaint is not filed under seal.

Information

The "information held by the department pursuant to an investigation" refers to information held by the Department of Legal Affairs but not the Department of Financial Services.⁴⁹ The information is derived from two sources. The first source is the information or supporting documents that the relator's attorney serves on the department as proof of fraud. This is often referred to as a disclosure statement. The disclosure statement is a narrative detailing what the relator knows. In practical terms, it is a specific and particular road map full of information that the state may follow in establishing the government's case for fraud. Some examples include fraudulent billing records or inflated medical billing codes that are overstated in an effort to obtain a higher diagnosis code in order to receive greater reimbursement from Medicaid. The disclosure statement is not provided to the clerk when the complaint is filed.

The second source of material is the information discovered by the department during the course of its investigation. Only the Department of Legal Affairs may conduct discovery proceedings and the relator is not authorized to take discovery during the investigation by the department. Similarly, the authority to request an extension of the 90-day seal while pursuing an investigation is given to department, not the relator, although the relator may object.

Time Periods for Seal and Exemption

Qui tam actions are protected from public access as long as false claim violations are being investigated by the department to determine whether the state should intervene in the relator's case. During this period, the complaint is under seal and the information is confidential and exempt. At this point, the defendant should have no knowledge that it is being investigated for fraudulent behavior. As mentioned above, the Second Judicial Circuit administrative order provides that the complaint is initially under seal for 90 days. For good cause shown, the

⁴⁷ 31 U.S.C. 3730(b)(2).

⁴⁸ *In Re: Qui Tam Cases Under the Florida False Claims Act*, Admin. Order No. 2016-01 (Fla. 2nd Cir. Ct., Jan. 26, 2016) (on file with the Senate Committee on Judiciary).

⁴⁹ The Department of Financial Services relies on s. 17.0401, F.S., to maintain the confidentiality and exemptions for its work. When Medicaid fraud is being investigated, the Department of Legal Affairs relies on the confidential and exempt provisions found in s. 409.913(12), F.S.

department may request the court to extend the seal period. Extensions of the seal period are often requested by the department and granted by the court. The extensions are generally requested to grant the department additional time to investigate possible fraud charges.

Either the Department of Legal Affairs or the Department of Financial Services, whichever is appropriate, may elect to intervene and proceed with a suit on behalf of the state within 60 days after it receives the complaint and the material evidence and information.⁵⁰ Before the 60-day period or any extensions expire, the department must proceed with an action, which is conducted by the department on behalf of the state or notify the court that it declines to take over the action which allows the relator to conduct the action on behalf of the state.⁵¹ When the state chooses not to intervene, it is often because the evidence in the case is not strong enough, the existing workload and limited resources prevent it, or the amount of the recovery does not justify pursuing the case. As a practical matter, very few relators proceed of their own accord because the costs of conducting an investigation and underwriting an extensive lawsuit are prohibitive.

Information made confidential and exempt is no longer confidential and exempt after the investigation is complete unless the information is protected in some other way by a different statute. An investigation is considered complete and the information becomes public when the department files an action or closes its investigation without filing an action or the qui tam action is unsealed or voluntarily dismissed before it is unsealed.⁵²

Jurisdiction and Subject Matter Areas

While a few cases arise solely under the Florida False Claims Act and are filed in Leon County, the majority of cases are filed in federal district court and the Florida claim is a state pendent claim.⁵³ By adding the Florida count in the federal complaint, the relator is allowed to access money awarded to the state if a recovery is made.

Many false claim cases arise in the healthcare industry and involve Medicare and Medicaid fraud⁵⁴ as well as in the pharmaceutical industry. Other fraudulent schemes involve fraudulent billing, issues involving durable medical equipment, illegally marketing prescription drugs and kickbacks, defective testing, misrepresenting the value of imported goods for tariff purposes, inflated billing for work performed, failing to report known product defects, winning a contract by using kickbacks or bribes, and forging signatures.⁵⁵

⁵⁰ Section 68.083(3), F.S.

⁵¹ Section 68.083(6), F.S.

⁵² Section 68.083(8)(c) and (d), F.S.

⁵³ Black's Law Dictionary explains that "pendent jurisdiction" arises when a plaintiff brings a lawsuit in federal court and claims that the defendant, in a single transaction, violated both federal and state law. The federal court has jurisdiction over the federal claim but also has jurisdiction to hear the state claim that is pendent to the federal claim. But for the federal claim, the court would not have jurisdiction over the state claim. BLACK'S LAW DICTIONARY (10th ed. 2014).

⁵⁴ The Department of Legal Affairs has a Medicaid Fraud Control Unit that exclusively investigates violations of the Medicaid statutes. The public records exemption for those investigations are controlled by a separate statute, s. 409.913(12), F.S. Similarly, when the Chief Financial Officer conducts an investigation of fraud allegations, the office also relies on a separate public records exemption to maintain the confidentiality of its work, s. 17.0401, F.S.

⁵⁵ Taxpayers Against Fraud, *What is the False Claims Act?* Available at https://taf.org/Resources_by_Topic/FAC_False_Claims_Act/Overview/Public/Resources_by_Topic/FCA_False_Claims_Act/Overview.aspx?hkey=661e1890-336d-42e9-bbb6-f4933a685435.

Staff Research of Practitioners and Interested Parties

In an effort to survey people for this report who have experience with these confidential and exempt qui tam provisions, staff contacted 22 individuals and organizations. Contacts included members of the Attorney General's office, the Chief Financial Officer's staff, Second Judicial Circuit judges, attorneys who litigate in this area and represent the relator or the defendant, a former U.S. Attorney, and several former assistant U.S. Attorneys who once litigated for the federal government but currently work in private practice representing relators and defendants.⁵⁶ Of that total, 14 supported continuing the exemption, 1 supported repeal, 1 judge was neutral due to a lack of experience, 1 organization was neutral, and 5 either expressed no opinion or did not respond.

Reasons Given for Continuing the Exemptions

The most common reasons given for continuing the exemption are that the exemption:

- Protects the identity of a person who reports a false claim, often an employee of a defendant, while the claim is being investigated.
- Encourages more relators to come forward with allegations of fraudulent conduct because they know that their identity is protected and their risk of retaliation from the defendant is reduced.
- Provides a financial incentive for people with unique inside knowledge of an industry to expose fraud and assist the state in recovering damages caused by a defendant.
- Delays service of process on a potential defendant during the seal period so that the defendant is not alerted to the allegations before a thorough investigation is conducted by the department.
- Avoids alerting the defendant that the department is conducting an investigation, thereby reducing the likelihood that the defendant will misplace or destroy incriminating evidence or flee the jurisdiction.
- Encourages witnesses to give full and accurate statements of their knowledge when given confidentiality.
- Allows the government to privately investigate the merits of a claim, without public pressure, before deciding whether to intervene or dismiss a case.
- Protects the reputation of a defendant while a claim is being investigated because there is no public accusation of wrongdoing and no public stigma that could negatively impact the defendant's business. Some have suggested that publicly disclosing that a defendant is being investigated often amounts to using the law as an economic weapon.
- Deters future misconduct by demonstrating that fraudulent behavior can be reported and cost the defendant thousands and even millions in fines and penalties.
- Maintains the reciprocal shield of federal and state public records exemptions which protects sensitive information from disclosure during an investigation.

According to several respondents, this last point is extremely important. If Florida's act did not have the two public records exemptions that the federal act contains, the federal government would not be inclined to permit the state to join in cases that involve violations of both federal

⁵⁶ It appears that the majority of Florida attorneys who represent relators in these actions reside in South Florida while a smaller number reside in central or north Florida.

and Florida law. While the federal exemptions would protect certain confidential information, the state would be compelled to turn over the state information if there were no seal or exemption. The information under federal seal would be breached and the investigation damaged. This would be harmful to a federal or multi-state investigation. Additionally, if Florida were not permitted to join in federal suits, Florida would not be allowed to share in the financial recovery, thereby potentially losing millions of dollars in revenue.

From a procedural standpoint, it is difficult to understand how the state statute would work in federal-state cases if only the federal information was protected but the state information was open for inspection. The disclosure of state information would negatively affect the federal claims. Repealing the Florida public records exemption would likely render state-federal cooperation impossible. The situation would be equally complicated if other states were joined in a lawsuit and those states had confidentiality provisions. To repeal the Florida public records exemption would make information that is confidential in other states available to the public in this state.

Reason Given for Repealing the Exemptions

The survey respondent who supports repealing the public records exemption stated that the exemption places the defendant at a distinct disadvantage. While the state may spend months secretly investigating a claim and gathering evidence, the defendant is unaware that a legal action is being prepared against it. This secrecy is disconcerting to a defense lawyer. It is then an uphill battle for the defendant to gather information and gain equal footing with the state.

The respondent said that it would seem a fair balance to allow the defendant to be made aware of the proceedings when the complaint is filed under seal and the claim is being investigated. This would put the parties on equal terms and allow an exchange of information while an investigation is occurring. The playing field would then be level.

Conclusion and Recommendation

Based upon a review of this public records exemption under the Open Government Sunset Review Act and discussions with interested parties and offices, the professional staff of the Judiciary Committee recommends that the Legislature retain the public records exemption established in s. 68.083(8)(a), F.S. It is in the state's best interests to continue the exemption to encourage private citizens to report fraud and facilitate the recovery of state funds or property. The exemption protects the identity of the relator and preserves the integrity of the false claims investigation while the facts are being reviewed by the department. Maintaining the exemption also keeps Florida law consistent with the confidentiality provisions of the Federal False Claims Act.

If this exemption is not reenacted, information would be disclosed which would jeopardize the state's ability to investigate false claims against the state. The identities of both the relator who brings the suit and the defendant who is being investigated would be revealed.

Finally, this public records exemption is narrowly tailored and sufficiently limited in its duration to meet the state's interest. The seal period is not indefinite. Under the judicial administrative order mentioned earlier, the initial seal period is 90 days and can be extended only by an order of

the court. When the Department of Legal Affairs notifies the court of its decision to intervene or decline, the clerk of the court will make the entire file public.

III. Effect of Proposed Changes:

This bill is based on an Open Government Sunset Review of a public records exemption that is contained in the Florida False Claims Act. The exemption is scheduled for repeal on October 2, 2018.

The exemption places under seal and protects from public disclosure the legal complaint filed in circuit court by a private citizen who initiates a false claim proceeding. The exemption also protects from disclosure the detailed information and documents that the private citizen provides to the Department of Legal Affairs which support the claim that a violation of the act has occurred.

The reasons provided as justification for the public records exemption remain valid. Therefore, the bill removes the scheduled repeal of the public records exemption. By repealing the automatic repeal of the exemption, the exemption is no longer subject to a review under the Open Government Sunset Review Act, unless the exemption is broadened or expanded.

The bill takes effect October 1, 2018.

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:

The bill, by preserving the public records exemption, will continue to protect the identity of relators who seek to recover state funds or property under the Florida False Claims Act. This protection appears to be a key financial feature that encourages relators to file suits.

C. **Government Sector Impact:**

By preserving the public records exemption and protecting the identity of relators, the state will continue to recover funds or property under the Florida False Claims Act. If the exemption were not continued, the state might recover less money.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 68.083, Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.

By the Committee on Judiciary

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 68.083, F.S., relating to an exemption from public record requirements for the complaint and information held by the Department of Legal Affairs pursuant to an investigation of a violation of the Florida False Claims Act; abrogating the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 68.083, Florida Statutes, is amended to read:

68.083 Civil actions for false claims.—

(8) (a) Except as otherwise provided in this subsection, the complaint and information held by the department pursuant to an investigation of a violation of s. 68.082 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2018.

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Rules Committee

Judge:

Started: 1/18/2018 1:34:38 PM

Ends: 1/18/2018 1:55:39 PM Length: 00:21:02

1:34:45 PM Roll Call
1:35:05 PM Quorum present
1:35:20 PM Tab 6 by Senator Steube SB
1:35:46 PM Senator Steube closes on SB 7004
1:36:22 PM Roll call on SB 7004 reported favorably
1:36:37 PM Tab 7 by Senator Steube SB 7006
1:36:55 PM Senator Steube closes on SB 7006
1:38:01 PM Roll call vote for SB 7006
1:38:15 PM Tab 1 by Senator Hukill SB 118
1:38:16 PM Senator Hukill explains bill
1:38:43 PM amendment 495890
1:39:55 PM amendment is adopted
1:40:16 PM Senator Hukill closes on bill
1:41:12 PM roll call vote for SB 118 reported favorably
1:41:38 PM Tab 3 SB 510 by Senator Young
1:41:51 PM Senator Young explains bill
1:42:11 PM amendment 318824 is adopted
1:42:54 PM amendment 773218 is withdrawn
1:43:06 PM Senator Young waives close
1:43:17 PM roll call on SB 510 reported favorably
1:43:43 PM Tab 4 SB 7000 by Senator Bracy
1:43:45 PM Senator Bracy explains bill
1:44:04 PM Senator Bracy waives close
1:44:41 PM roll call vote on SB 7000 reported favorably
1:45:02 PM tab 5 SB 7002 by Senator Bracy
1:45:15 PM Senator Bracy closes on bill
1:45:39 PM roll call vote on SB 7002 reported favorably
1:46:11 PM tab 2 SB 404 by Senator Grimsley to be explained by Senator Montford
1:46:52 PM Senator Galvano ask question
1:49:07 PM Senator Montford explains bill further
1:49:26 PM follow up by Senator Galvano
1:49:40 PM Senator Montford responds
1:49:52 PM Senator Brandes has questions regarding state bird
1:50:30 PM Senator Montford responds
1:51:14 PM Senator Galvano follow up
1:52:18 PM Senator Flores with additional information
1:52:35 PM Senator Rodriguez debates bill
1:53:23 PM Chair comments on bill
1:53:31 PM Senator Montford waives close
1:53:50 PM roll call vote on SB 404 reported favorably
1:54:16 PM Senator Bradley makes closing comments
1:54:40 PM Senator Perry moves we adjourn