

<b>Tab 1</b>	<b>CS/SB 124</b> by <b>JU, Bean (CO-INTRODUCERS) Montford, Harrell</b> ; (Similar to CS/H 00115) Dependent Children
<b>Tab 2</b>	<b>CS/SB 142</b> by <b>IT, Perry (CO-INTRODUCERS) Brandes</b> ; (Similar to CS/H 00127) Permit Fees
<b>Tab 3</b>	<b>CS/CS/SB 248</b> by <b>GO, CJ, Hooper (CO-INTRODUCERS) Baxley, Simpson, Perry, Book</b> ; (Identical to CS/H 00203) Public Records/Civilian Personnel Employed by a Law Enforcement Agency
426328	A S L RCS RC, Simpson Delete L.340 - 341: 03/13 11:45 AM
<b>Tab 4</b>	<b>CS/SB 256</b> by <b>JU, Baxley</b> ; (Similar to H 00535) Child Protection Teams
<b>Tab 5</b>	<b>SB 7002</b> by <b>HP</b> ; (Identical to H 07003) OGSR/Alzheimer's Disease Research Grant Advisory Board
<b>Tab 6</b>	<b>SB 7004</b> by <b>HP</b> ; (Identical to H 07009) OGSR/Department of Health Personnel
<b>Tab 7</b>	<b>SB 7018</b> by <b>ED</b> ; (Identical to H 07005) OGSR/Public Research Facility/Animal Research
<b>Tab 8</b>	<b>SJR 74</b> by <b>Bradley (CO-INTRODUCERS) Simpson, Book, Rouson, Rodriguez, Mayfield, Baxley, Hooper</b> ; (Similar to H 00053) Single-subject Limitation for Constitution Revision Commission Proposals
<b>Tab 9</b>	<b>CS/SB 160</b> by <b>CJ, Book</b> ; (Identical to H 01107) Prohibited Acts in Connection with Obscene or Lewd Materials
<b>Tab 10</b>	<b>CS/CS/SB 322</b> by <b>HP, BI, Simpson</b> ; Preexisting Conditions
<b>Tab 11</b>	<b>SB 7008</b> by <b>JU</b> ; (Identical to H 07047) OGSR/Security Breach Information/Department of Legal Affairs
<b>Tab 12</b>	<b>SB 7034</b> by <b>IS</b> ; (Identical to H 07037) OGSR/Automated License Plate Recognition System
<b>Tab 13</b>	<b>CS/SB 7014</b> by <b>CA, GO</b> ; (Similar to H 07035) Government Accountability

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

**RULES**  
**Senator Benacquisto, Chair**  
**Senator Gibson, Vice Chair**

**MEETING DATE:** Wednesday, March 13, 2019  
**TIME:** 10:00 a.m.—12:00 noon  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Benacquisto, Chair; Senator Gibson, Vice Chair; Senators Book, Bradley, Brandes, Braynon, Farmer, Flores, Hutson, Lee, Montford, Passidomo, Rodriguez, Simmons, Simpson, Stargel, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 124</b> Judiciary / Bean (Similar CS/H 115)	Dependent Children; Specifying the venue in proceedings for the appointment of a guardian for a child or young adult who has been adjudicated dependent; authorizing a court to receive and consider any information provided by the Guardian Ad Litem Program and the child's attorney ad litem if a child is under the jurisdiction of a dependency court, etc.  CF     01/22/2019 Favorable JU     02/04/2019 Fav/CS RC     03/13/2019 Favorable	Favorable Yeas 16 Nays 0
2	<b>CS/SB 142</b> Innovation, Industry, and Technology / Perry (Similar CS/H 127)	Permit Fees; Requiring the governing bodies of counties and municipalities to post their permit and inspection fee schedules and building permit and inspection utilization reports on their websites; requiring certain governing bodies of local governments to create a building permit and inspection utilization report containing certain information and to post such report on their websites by a specified date, etc.  CA     02/05/2019 Favorable IT     03/06/2019 Fav/CS RC     03/13/2019 Favorable	Favorable Yeas 16 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, March 13, 2019, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>CS/CS/SB 248</b> Governmental Oversight and Accountability / Criminal Justice / Hooper (Identical CS/H 203, Compare H 7009, S 7004)	Public Records/Civilian Personnel Employed by a Law Enforcement Agency; Expanding exemptions from public records requirements for agency personnel information by defining the term “home addresses” for purposes of public records exemptions for personal identifying and location information of certain agency personnel and their family members; exempting personal identifying and location information of active or former civilian personnel employed by a law enforcement agency, and of spouses and children of such personnel, from public records requirements; providing for legislative review and repeal of the exemptions; providing statements of public necessity, etc.  CJ 02/04/2019 CJ 02/11/2019 Fav/CS GO 03/06/2019 Fav/CS RC 03/13/2019 Fav/CS	Fav/CS Yeas 16 Nays 0
4	<b>CS/SB 256</b> Judiciary / Baxley (Similar H 535)	Child Protection Teams; Revising the definition of the term “officer, employee, or agent,” as it applies to immunity from personal liability in certain actions, to include any member of a child protection team established by the Department of Health in certain circumstances, etc.  CF 02/04/2019 Favorable JU 02/19/2019 Not Considered JU 03/04/2019 Fav/CS RC 03/13/2019 Favorable	Favorable Yeas 17 Nays 0
5	<b>SB 7002</b> Health Policy (Identical H 7003)	OGSR/Alzheimer’s Disease Research Grant Advisory Board; Amending provisions relating to an exemption from the public records and meeting requirements for applications provided to the Alzheimer’s Disease Research Grant Advisory Board within the Department of Health and the review of such applications; removing the scheduled repeal of the exemption, etc.  GO 02/12/2019 Favorable RC 03/13/2019 Favorable	Favorable Yeas 17 Nays 0
6	<b>SB 7004</b> Health Policy (Identical H 7009, Compare CS/H 203, CS/CS/S 248)	OGSR/Department of Health Personnel; Amending provisions relating to an exemption from the public records requirements for personal identifying and location information and photographs of certain Department of Health personnel; removing the scheduled repeal of the exemption, etc.  GO 02/12/2019 Favorable RC 03/13/2019 Favorable	Favorable Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, March 13, 2019, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 7018</b> Education (Identical H 7005)	OGSR/Public Research Facility/Animal Research; Amending a provision which provides an exemption from public records requirements for the personal identifying information of a person employed by, under contract with, or volunteering for a public research facility that conducts or is engaged in activities related to animal research; removing the scheduled repeal of the exemption, etc.  GO 02/19/2019 Favorable RC 03/13/2019 Favorable	Favorable Yeas 17 Nays 0
8	<b>SJR 74</b> Bradley (Similar HJR 53, SJR 86)	Single-subject Limitation for Constitution Revision Commission Proposals; Proposing and amendment to the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Constitution Revision Commission be limited to a single subject, etc.  JU 01/07/2019 JU 01/22/2019 Favorable EE 02/05/2019 Favorable RC 03/13/2019 Favorable	Favorable Yeas 17 Nays 0
9	<b>CS/SB 160</b> Criminal Justice / Book (Identical H 1107)	Prohibited Acts in Connection with Obscene or Lewd Materials; Prohibiting a person from knowingly selling, lending, giving away, distributing, transmitting, showing, or transmuting; offering to commit such actions; having in his or her possession, custody, or control with the intent to commit such actions; or advertising in any manner an obscene, child-like sex doll; providing criminal penalties, etc.  CJ 02/11/2019 Fav/CS JU 03/04/2019 Favorable RC 03/13/2019 Favorable	Favorable Yeas 17 Nays 0
10	<b>CS/CS/SB 322</b> Health Policy / Banking and Insurance / Simpson	Preexisting Conditions; Defining the terms “operative date” and “preexisting medical condition” with respect to individual and group health insurance policies, respectively; requiring insurers, contingent upon the occurrence of either of two specified events, to make at least one comprehensive major medical health insurance policy available to all residents of this state within a specified timeframe; prohibiting such insurers from excluding, limiting, denying, or delaying coverage under such policies due to preexisting medical conditions, etc.  BI 02/19/2019 Fav/CS HP 03/04/2019 Fav/CS RC 03/13/2019 Favorable	Favorable Yeas 16 Nays 1

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, March 13, 2019, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	<b>SB 7008</b> Judiciary (Identical H 7047)	OGSR/Security Breach Information/Department of Legal Affairs; Amending provisions which provides a public records exemption for information received by the Department of Legal Affairs pursuant to a notification of a security breach or during the course of an investigation of such breach; removing the scheduled repeal of the exemption, etc.  GO 02/19/2019 Favorable RC 03/13/2019 Favorable	Favorable Yeas 17 Nays 0
12	<b>SB 7034</b> Infrastructure and Security (Identical H 7037)	OGSR/Automated License Plate Recognition System; Amending a specified provision which provides a public records exemption for certain images and data obtained through the use of an automated license plate recognition system and for personal identifying information of an individual in data generated from such images; removing the scheduled repeal of the exemption, etc.  GO 03/06/2019 Favorable RC 03/13/2019 Favorable	Favorable Yeas 17 Nays 0
13	<b>CS/SB 7014</b> Community Affairs / Governmental Oversight and Accountability (Similar H 7035, Compare H 861, S 1616)	Government Accountability; Specifying that the Governor, the Commissioner of Education, or the designee of the Governor or of the commissioner, may notify the Legislative Auditing Committee of an entity's failure to comply with certain auditing and financial reporting requirements; specifying that any person who willfully fails or refuses to provide access to an employee, officer, or agent of an entity under audit is subject to a penalty; revising the definition of the term "financial audit"; requiring each school district, Florida College System institution, and state university to establish and maintain certain internal controls, etc.  CA 03/05/2019 Fav/CS RC 03/13/2019 Favorable	Favorable Yeas 16 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 124

INTRODUCER: Judiciary Committee and Senator Bean and others

SUBJECT: Dependent Children

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 124 addresses the complications that arise when a dependent child or young adult is involved in legal proceedings in multiple courts and jurisdictions.

For example, the courts of the county having jurisdiction over a child's dependency case lose jurisdiction to appoint a guardian for the child if the child is placed in a living arrangement outside of that county. Similarly, the courts of the county having jurisdiction over an incapacitated young adult's dependency case lose jurisdiction to appoint a guardian for the young adult if he or she is placed in a specialized and supportive living arrangement outside of the county. The bill addresses this issue by creating an additional guardianship venue<sup>1</sup> provision that permits venue in the county with jurisdiction of the dependency case.

The bill also addresses issues concerning a dependent child who is involved in juvenile justice proceedings. In addressing these issues, the bill:

- Permits the court, before making a final disposition in juvenile proceedings, to receive and consider any information provided by the Guardian Ad Litem Program and the child's attorney ad litem, if appointed, when the child is also under the jurisdiction of a dependency court;

---

<sup>1</sup> Venue refers to the proper location for a lawsuit to proceed, generally because the location has a connection to the plaintiff, defendant, or the facts of the case. BLACK'S LAW DICTIONARY (10<sup>th</sup> ed. 2014).

- Requires the Department of Juvenile Justice to notify the dependency court, the Department of Children and Families, and if appointed, the Guardian Ad Litem Program and the child's attorney ad litem before transferring a dependent child who is in the custody of the Department of Juvenile Justice from one facility or program to another;
- Permits a court, when receiving a quarterly report in juvenile proceedings, to receive and consider any information provided by the Guardian Ad Litem Program or the child's attorney ad litem, if appointed, if the child is under the jurisdiction of a dependency court; and
- Adds the Guardian Ad Litem Program to the group of entities that may serve on a community reentry team that helps a youth transition from a residential commitment facility to adulthood.

The bill takes effect upon becoming a law.

## II. Present Situation:

### Venue, Guardianship Proceedings, and Dependency for Children and Young Adults

Children who are dependent and have developmental disabilities or other issues are often in need of a court-appointed guardian when they turn 18 years old.<sup>2</sup> To avoid a gap in available care or protections, the guardianship proceedings must begin in advance of the child's 18th birthday.<sup>3</sup> However, complications for guardianship proceedings arise when these children are placed in a living arrangement outside of the county of the child's dependency court. Another group adversely affected by these venue provisions are incapacitated young adults with a disability whose stay in foster care is extended up to the 22nd birthday and a guardian has not been appointed. Similarly, when the dependent young adult is living in a specialized and supportive placement outside of the county of his or her dependency court and a need for guardianship proceedings arises, venue is limited to the county of his or her foster care residence.

Due to the requirements of dependency statutes in chapter 39, F.S.,<sup>4</sup> and the guardianship statutes in chapter 744, F.S.,<sup>5</sup> the guardianship proceedings for a dependent child or young adult must occur in the county where the dependent child or young adult resides. When the dependent child or young adult resides outside of the county of the dependency court, the caseworkers often must locate an attorney in another circuit to handle the proceedings. Case managers must also be found in the other circuit who are willing to attend hearings.

---

<sup>2</sup> Without a guardianship, when the youth reaches the age of 18, he or she will be able to exercise all of the rights of adulthood but likely cannot manage those responsibilities. For example, he or she might decline a needed medical procedure because of a fear of surgery. If a guardian is appointed, the child's best interests will be better protected. Telephone interview with Tracy Ellis, General Magistrate, Dependency Division, Thirteenth Judicial Circuit, in Tampa, Fla. (Jan. 29, 2019).

<sup>3</sup> See s. 39.701(3)(c), F.S.

<sup>4</sup> Proceedings to appoint a guardian for a dependent child, which include proceedings for the determination of incapacity and proceedings for the appointment of a guardian, must be "conducted in a separate proceeding in the court division with jurisdiction over guardianship matters and pursuant to chapter 744." Section 39.701(3)(b)4., F.S.

<sup>5</sup> Under the guardianship statutes in chapter 744, F.S., the proper location or venue for incapacity proceedings is the county where the alleged incapacitated person resides or is found. However, the venue for proceedings to appoint a guardian is limited to the county where the incapacitated person resides. Section 744.1097, F.S.

If a court in a county having jurisdiction over the dependency case were allowed to hear the guardianship petition, those who know the child or young adult best will be in a better position to assist with the guardianship proceedings.<sup>6</sup>

## **Juvenile Justice and Dependency and Delinquency Proceedings**

### ***Procedure***

When a court determines that a child has committed a delinquent act<sup>7</sup> the court may order the Department of Juvenile Justice to prepare a predisposition report concerning the child's placement, priority needs, and plan for treatment. The juvenile probation officer then meets with the child's family, the guardian ad litem staff, and possibly others to gather information about the child and make a recommendation for the child's placement. If a residential commitment is anticipated or recommended, the court must order a comprehensive evaluation of the child's overall physical and mental health and related issues.

Before making a final disposition of the case, the court must consider the child's assessment, predisposition report, and previous records of earlier juvenile delinquency proceedings. The court may also order additional evaluations, studies, and educational needs assessments that will be included in the assessment and predisposition report.

### ***“Crossover” Children***

Children who have legal matters pending simultaneously in the juvenile justice system and dependency court, or who are dually served by the Department of Juvenile Justice and the Department of Children and Families, are commonly referred to as crossover children. According to the Department of Children and Families, there were 1,003 crossover children in November 2018.<sup>8</sup> Of those children, 36 percent are currently placed in a location that is outside of the county from which they were removed. Nineteen percent are currently placed outside of the judicial circuit from which they were removed, and 31 percent of children between the ages of 13 and 17 live in group care.<sup>9</sup>

When a child is living outside of the circuit that has dependency jurisdiction, it can be burdensome for the dependency judge to gather all of the pertinent information needed to make a decision about the child's best interests. It can also be difficult for the dependency court, guardians ad litem, and others to be aware of changes and accordingly advocate for the child's best interest. Moreover, if the dependency and delinquency case workers are not sharing their information, needed services for the child may be delayed. For example, when a child does not have an advocate and a delinquency case closes, it might be difficult to locate appropriate

---

<sup>6</sup> Telephone interview with Tracy Ellis, General Magistrate, Dependency Division, Thirteenth Judicial Circuit, in Tampa, Fla. (January 29, 2019).

<sup>7</sup> A “child who has been found to have committed a delinquent act” means a child who, under chapter 985, F.S., is found by a court to have committed a violation of law or is found to be in direct or indirect contempt of court except that it does not mean an act constituting contempt of court arising from a dependency proceeding or a proceeding concerning a child or family in need of services. Section 985.03(9), F.S.

<sup>8</sup> Florida Department of Children and Families, *Child Welfare Key Indicators Monthly Report*, Dually Served Youth, 53 (December 2018), [http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI\\_Monthly\\_Report\\_DEC\\_2018.pdf](http://centerforchildwelfare.fmhi.usf.edu/qa/cwkeyindicator/KI_Monthly_Report_DEC_2018.pdf).

<sup>9</sup> *Id.* at 47 and 50.



services or placement for the child which may cause the child to remain in a commitment facility longer than his or her sentence.<sup>10</sup>

### **Guardian Ad Litem Program**

The Guardian ad Litem program consists of more than 170 lawyers and 11,000 volunteer advocates who represent a child's best interest when the child is abused, abandoned, or neglected and cannot remain at home because it is not a healthy or safe environment. In 2018, 32,396 children were removed from their homes and placed under the jurisdiction of a dependency court.<sup>11</sup>

When a child is removed from the home, the legal proceedings begin in dependency court. The guardian ad litem program is then appointed by a judge to represent the child's best interest and advocate for things the child is legally entitled to receive. The program uses a team approach involving volunteers, Child Advocate Managers, and Best Interest Attorneys. Guardian ad Litem attorneys advocate for expedited permanency, compliance with time frames, stable placements in schools, healthcare, mental health services, and visitation. The guardian ad litem volunteers regularly visit the child to understand the child's needs, explain the legal process to the child, and appear in court when needed.<sup>12</sup>

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

### **Guardianship Venue (Section 1)**

Current law limits venue for guardianship proceedings for a dependent child or young adult living in foster care up to his or her 22nd birthday to the county where the child or young adult resides. Under the bill, the guardianship proceedings may be held either in the county where the child or young adult resides *or* in the county that has jurisdiction of the dependency case.

Similarly, the bill provides that the guardian does not have to transfer the guardianship case when the child or young adult moves to a different county. This is an exception to the guardianship statutes that generally require the venue of a guardianship case to be transferred to the ward's new county of residence.

These changes will allow the dependency court and case workers who know the child or young adult best to have more input and control over the guardianship process.

---

<sup>10</sup> Florida Statewide Guardian Ad Litem Office, *SB 124 Bill Analysis* (Jan. 4, 2019) (on file with the Senate Committee on Judiciary).

<sup>11</sup> *I Am for the Child*, Guardian ad Litem Program 2018 Annual Report, <https://guardianadlitem.org/wp-content/uploads/2018/01/FINAL-EDITED-GAL-2018-Annual-Report-1.pdf>.

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

## **Juvenile Justice and Children in Dependency and Delinquency Proceedings (Sections 2, 3, 4, and 5)**

### ***Predisposition Reports (Subsection 2)***

The bill expressly allows a court to receive and consider information from additional sources before making a final disposition of a juvenile justice case that involves a child under the jurisdiction of a dependency court. These information sources include the Guardian Ad Litem Program and the child's attorney ad litem, if appointed.

### ***Commitment and Transfers of a Child (Subsection 3)***

Before the Department of Juvenile Justice may transfer a dependent child from one facility or program to another, the Department must provide notice to the dependency court and the Department of Children and Families, and if either one is appointed, also to the Guardian Ad Litem Program and to the child's attorney ad litem.

### ***Other Dispositional Issues and Quarterly Reports (Subsection 4)***

The statute is amended to provide that the Guardian Ad Litem Program or the child's attorney ad litem may present information to the juvenile delinquency court when other parties present quarterly report information for a child who is also under the jurisdiction of a dependency court. For example, this input could include information provided by a guardian ad litem based upon visits with the child or might include options for a future placement based upon identifying a new relative of the child.<sup>13</sup> The current statute does not preclude them from offering information, but this clarifies that the two entities may provide information about the child to the court.

### ***Transitions from a Residential Facility to Adulthood (Section 5)***

This bill adds the Guardian Ad Litem Program to the list of representatives who may serve on a community reentry team. Community reentry teams develop life skills training to aid a youth's transition from residential commitment facilities to adulthood. The teams may currently include representatives from school districts, law enforcement agencies, workforce development services, community-based service providers, and the youth's family.<sup>14</sup>

### **Conforming Changes (Sections 6, 7, and 8)**

The remaining three sections of the bill (sections 322.051(9), 322.21(1)(f), and 382.0255(3), F.S.) republish provisions of the law for the purpose of incorporating changes made in a cross-reference. These are not substantive changes made to the statutes.

### **Effective Date**

The bill takes effect upon becoming a law.

---

<sup>13</sup> See *supra* note 11.

<sup>14</sup> Section 985.461(4)(b), F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Office of the State Courts Administrator states that the fiscal impact of the legislation cannot be accurately known because the data is not available to determine the effects this bill will have on judicial time and workload.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Florida Rules of Juvenile Procedure may need to be amended to address changes made by the bill.

---

<sup>15</sup> Office of the State Courts Administrator, *Senate Bill 124 Judicial Impact Statement* (Jan. 17, 2019) (on file with the Senate Committee on Judiciary).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 744.1097, 985.43, 985.441, 985.455, and 985.461.

This bill re-enacts the following sections of the Florida Statutes: 322.051, 322.21, and 382.0255.

**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 Judiciary on February 4, 2019:**

The committee substitute amends the venue provisions of the underlying bill to include the category of an incapacitated young adult who is under the jurisdiction of a dependency court. As such, venue for a guardianship proceeding for an incapacitated dependent young adult may be either in the county where the young adult resides or in the county having jurisdiction of the dependency case.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senators Bean, Montford, and Harrell

590-02166-19

2019124c1

1 A bill to be entitled  
 2 An act relating to dependent children; amending s.  
 3 744.1097, F.S.; specifying the venue in proceedings  
 4 for the appointment of a guardian for a child or young  
 5 adult who has been adjudicated dependent; conforming a  
 6 provision to changes made by the act; amending s.  
 7 985.43, F.S.; authorizing a court to receive and  
 8 consider any information provided by the Guardian Ad  
 9 Litem Program and the child's attorney ad litem if a  
 10 child is under the jurisdiction of a dependency court;  
 11 amending s. 985.441, F.S.; requiring the Department of  
 12 Juvenile Justice, if a child is under the jurisdiction  
 13 of a dependency court, to provide notice to the  
 14 dependency court and the Department of Children and  
 15 Families, and, if appointed, the Guardian Ad Litem  
 16 Program and the child's attorney ad litem; amending s.  
 17 985.455, F.S.; authorizing a court to receive and  
 18 consider any information provided by the Guardian Ad  
 19 Litem Program or the child's attorney ad litem if a  
 20 child is under the jurisdiction of a dependency court;  
 21 amending s. 985.461, F.S.; adding the Guardian Ad  
 22 Litem Program as an authorized entity of community  
 23 reentry teams under which the Department of Juvenile  
 24 Justice is authorized to provide transition-to-  
 25 adulthood services to certain children; reenacting ss.  
 26 322.051(9), 322.21(1)(f), and 382.0255(3), F.S.,  
 27 relating to identification cards, license fees, and  
 28 fees, respectively, to incorporate the amendment made  
 29 to s. 985.461, F.S., in references thereto; providing

Page 1 of 9

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

590-02166-19

2019124c1

30 an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Subsections (2) and (3) of section 744.1097,  
 35 Florida Statutes, are amended to read:  
 36 744.1097 Venue.—  
 37 (2) The venue in proceedings for the appointment of a  
 38 guardian shall be:  
 39 (a) If the incapacitated person is a resident of this  
 40 state, in the county where the incapacitated person resides.  
 41 (b) If the incapacitated person is not a resident of this  
 42 state, in any county in this state where property of the  
 43 incapacitated person is located.  
 44 (c) If the incapacitated person is not a resident of this  
 45 state and owns no property in this state, in the county where  
 46 any debtor of the incapacitated person resides.  
 47 (d) If the incapacitated person is a child or young adult  
 48 under the jurisdiction of a dependency court, in the county  
 49 where the child or young adult resides or in the county having  
 50 jurisdiction of the dependency case.  
 51 (3) When the residence of an incapacitated person is  
 52 changed to another county, the guardian shall petition to have  
 53 the venue of the guardianship changed to the county of the  
 54 acquired residence, except in cases where venue was established  
 55 under paragraph (2)(d) or as provided in s. 744.1098.  
 56 Section 2. Subsection (2) of section 985.43, Florida  
 57 Statutes, is amended to read:  
 58 985.43 Predisposition reports; other evaluations.—

Page 2 of 9

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

590-02166-19

2019124c1

59 (2) The court shall consider the child's entire assessment  
60 and predisposition report and shall review the records of  
61 earlier judicial proceedings ~~before~~ ~~prior~~ to making a final  
62 disposition of the case. If the child is under the jurisdiction  
63 of a dependency court, the court may receive and consider any  
64 information provided by the Guardian Ad Litem Program and the  
65 child's attorney ad litem, if appointed. The court may, by  
66 order, require additional evaluations and studies to be  
67 performed by the department; the county school system; or any  
68 social, psychological, or psychiatric agency of the state. The  
69 court shall order the educational needs assessment completed  
70 under s. 985.18(2) to be included in the assessment and  
71 predisposition report.

72 Section 3. Subsection (4) of section 985.441, Florida  
73 Statutes, is amended to read:

74 985.441 Commitment.—

75 (4) The department may transfer a child, when necessary to  
76 appropriately administer the child's commitment, from one  
77 facility or program to another facility or program operated,  
78 contracted, subcontracted, or designated by the department,  
79 including a postcommitment nonresidential conditional release  
80 program, except that the department may not transfer any child  
81 adjudicated solely for a misdemeanor to a residential program  
82 except as provided in subsection (2). The department shall  
83 notify the court that committed the child to the department and  
84 any attorney of record for the child, in writing, of its intent  
85 to transfer the child from a commitment facility or program to  
86 another facility or program of a higher or lower restrictiveness  
87 level. If the child is under the jurisdiction of a dependency

Page 3 of 9

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

590-02166-19

2019124c1

88 court, the department shall also provide notice to the  
89 dependency court and the Department of Children and Families,  
90 and, if appointed, the Guardian Ad Litem Program and the child's  
91 attorney ad litem. The court that committed the child may agree  
92 to the transfer or may set a hearing to review the transfer. If  
93 the court does not respond within 10 days after receipt of the  
94 notice, the transfer of the child shall be deemed granted.

95 Section 4. Subsection (3) of section 985.455, Florida  
96 Statutes, is amended to read:

97 985.455 Other dispositional issues.—

98 (3) Any commitment of a delinquent child to the department  
99 must be for an indeterminate period of time, which may include  
100 periods of temporary release; however, the period of time may  
101 not exceed the maximum term of imprisonment that an adult may  
102 serve for the same offense, except that the duration of a  
103 minimum-risk nonresidential commitment for an offense that is a  
104 misdemeanor of the second degree, or is equivalent to a  
105 misdemeanor of the second degree, may be for a period not to  
106 exceed 6 months. The duration of the child's placement in a  
107 commitment program of any restrictiveness level shall be based  
108 on objective performance-based treatment planning. The child's  
109 treatment plan progress and adjustment-related issues shall be  
110 reported to the court quarterly, unless the court requests  
111 monthly reports. If the child is under the jurisdiction of a  
112 dependency court, the court may receive and consider any  
113 information provided by the Guardian Ad Litem Program or the  
114 child's attorney ad litem, if appointed. The child's length of  
115 stay in a commitment program may be extended if the child fails  
116 to comply with or participate in treatment activities. The

Page 4 of 9

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

590-02166-19

2019124c1

117 child's length of stay in the program shall not be extended for  
 118 purposes of sanction or punishment. Any temporary release from  
 119 such program must be approved by the court. Any child so  
 120 committed may be discharged from institutional confinement or a  
 121 program upon the direction of the department with the  
 122 concurrence of the court. The child's treatment plan progress  
 123 and adjustment-related issues must be communicated to the court  
 124 at the time the department requests the court to consider  
 125 releasing the child from the commitment program. The department  
 126 shall give the court that committed the child to the department  
 127 reasonable notice, in writing, of its desire to discharge the  
 128 child from a commitment facility. The court that committed the  
 129 child may thereafter accept or reject the request. If the court  
 130 does not respond within 10 days after receipt of the notice, the  
 131 request of the department shall be deemed granted. This section  
 132 does not limit the department's authority to revoke a child's  
 133 temporary release status and return the child to a commitment  
 134 facility for any violation of the terms and conditions of the  
 135 temporary release.

136 Section 5. Paragraph (b) of subsection (4) of section  
 137 985.461, Florida Statutes, is amended to read:

138 985.461 Transition to adulthood.—

139 (4) As part of the child's treatment plan, the department  
 140 may provide transition-to-adulthood services to children  
 141 released from residential commitment. To support participation  
 142 in transition-to-adulthood services and subject to  
 143 appropriation, the department may:

144 (b) Use community reentry teams to assist in the  
 145 development of a list of age-appropriate activities and

590-02166-19

2019124c1

146 responsibilities to be incorporated in the child's written case  
 147 plan for any youth who is under the custody or supervision of  
 148 the department. Community reentry teams may include  
 149 representatives from school districts, law enforcement,  
 150 workforce development services, community-based service  
 151 providers, the Guardian Ad Litem Program, and the youth's  
 152 family. Such community reentry teams must be created within  
 153 existing resources provided to the department. Activities may  
 154 include, but are not limited to, life skills training, including  
 155 training to develop banking and budgeting skills, interviewing  
 156 and career planning skills, parenting skills, personal health  
 157 management, and time management or organizational skills;  
 158 educational support; employment training; and counseling.

159 Section 6. For the purpose of incorporating the amendment  
 160 made by this act to section 985.461, Florida Statutes, in a  
 161 reference thereto, subsection (9) of section 322.051, Florida  
 162 Statutes, is reenacted to read:

163 322.051 Identification cards.—

164 (9) Notwithstanding any other provision of this section or  
 165 s. 322.21 to the contrary, the department shall issue or renew a  
 166 card at no charge to a person who presents evidence satisfactory  
 167 to the department that he or she is homeless as defined in s.  
 168 414.0252(7), to a juvenile offender who is in the custody or  
 169 under the supervision of the Department of Juvenile Justice and  
 170 receiving services pursuant to s. 985.461, to an inmate  
 171 receiving a card issued pursuant to s. 944.605(7), or, if  
 172 necessary, to an inmate receiving a replacement card if the  
 173 department determines that he or she has a valid state  
 174 identification card. If the replacement state identification

590-02166-19

2019124c1

175 card is scheduled to expire within 6 months, the department may  
 176 also issue a temporary permit valid for at least 6 months after  
 177 the release date. The department's mobile issuing units shall  
 178 process the identification cards for juvenile offenders and  
 179 inmates at no charge, as provided by s. 944.605 (7) (a) and (b).

180 Section 7. For the purpose of incorporating the amendment  
 181 made by this act to section 985.461, Florida Statutes, in a  
 182 reference thereto, paragraph (f) of subsection (1) of section  
 183 322.21, Florida Statutes, is reenacted to read:

184 322.21 License fees; procedure for handling and collecting  
 185 fees.—

186 (1) Except as otherwise provided herein, the fee for:

187 (f) An original, renewal, or replacement identification  
 188 card issued pursuant to s. 322.051 is \$25, except that an  
 189 applicant who presents evidence satisfactory to the department  
 190 that he or she is homeless as defined in s. 414.0252(7); his or  
 191 her annual income is at or below 100 percent of the federal  
 192 poverty level; or he or she is a juvenile offender who is in the  
 193 custody or under the supervision of the Department of Juvenile  
 194 Justice, is receiving services pursuant to s. 985.461, and whose  
 195 identification card is issued by the department's mobile issuing  
 196 units is exempt from such fee. Funds collected from fees for  
 197 original, renewal, or replacement identification cards shall be  
 198 distributed as follows:

199 1. For an original identification card issued pursuant to  
 200 s. 322.051, the fee shall be deposited into the General Revenue  
 201 Fund.

202 2. For a renewal identification card issued pursuant to s.  
 203 322.051, \$6 shall be deposited into the Highway Safety Operating

590-02166-19

2019124c1

204 Trust Fund, and \$19 shall be deposited into the General Revenue  
 205 Fund.

206 3. For a replacement identification card issued pursuant to  
 207 s. 322.051, \$9 shall be deposited into the Highway Safety  
 208 Operating Trust Fund, and \$16 shall be deposited into the  
 209 General Revenue Fund. Beginning July 1, 2015, or upon completion  
 210 of the transition of the driver license issuance services, if  
 211 the replacement identification card is issued by the tax  
 212 collector, the tax collector shall retain the \$9 that would  
 213 otherwise be deposited into the Highway Safety Operating Trust  
 214 Fund and the remaining revenues shall be deposited into the  
 215 General Revenue Fund.

216 Section 8. For the purpose of incorporating the amendment  
 217 made by this act to section 985.461, Florida Statutes, in a  
 218 reference thereto, subsection (3) of section 382.0255, Florida  
 219 Statutes, is reenacted to read:

220 382.0255 Fees.—

221 (3) Fees shall be established by rule. However, until rules  
 222 are adopted, the fees assessed pursuant to this section shall be  
 223 the minimum fees cited. The fees established by rule must be  
 224 sufficient to meet the cost of providing the service. All fees  
 225 shall be paid by the person requesting the record, are due and  
 226 payable at the time services are requested, and are  
 227 nonrefundable, except that, when a search is conducted and no  
 228 vital record is found, any fees paid for additional certified  
 229 copies shall be refunded. The department may waive all or part  
 230 of the fees required under this section for any government  
 231 entity. The department shall waive all fees required under this  
 232 section for a certified copy of a birth certificate issued for



590-02166-19

2019124c1

233 purposes of an inmate acquiring a state identification card  
234 before release pursuant to s. 944.605(7) and for a juvenile  
235 offender who is in the custody or under the supervision of the  
236 Department of Juvenile Justice and receiving services under s.  
237 985.461.

238 Section 9. This act shall take effect upon becoming a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** February 6, 2019

---

I respectfully request that **Senate Bill # 124**, relating to Dependent Children, be placed on the:

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

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

---

Senator Aaron Bean  
Florida Senate, District 4

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

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

3/12/2019  
Meeting Date

SB 0124  
Bill Number (if applicable)

Topic Dependent Children

Amendment Barcode (if applicable)

Name Eric STERN

Job Title Legislative Committee Member

Address 1747 Orlando Central Parkway

Phone (407) 855-7604

Orlando FL 32809  
City State Zip

Email resolutions@floridapta.org

Speaking:  For  Against  Information

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

Representing Florida PTA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2019

Meeting Date

Topic \_\_\_\_\_

Bill Number 124

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/14

Meeting Date

124

Bill Number (if applicable)

Topic Dependent Child

Amendment Barcode (if applicable)

Name ALAN ABRAMOWITZ

Job Title Executive Director

Address 600 S. Calhoun

Phone 855 241-3232

Street

Tallah

FL

32399

City

State

Zip

Email alan.abramowitz@cal.hi.gov

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

3.13.19

*Meeting Date*

124

*Bill Number (if applicable)*

Topic Dependent Children

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

**BILL:** CS/SB 142

**INTRODUCER:** Innovation, Industry, and Technology Committee and Senator Perry

**SUBJECT:** Permit Fees

**DATE:** March 12, 2019      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	<b>Fav/CS</b>
3.	<u>Toman</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 142 requires the governing body of a local government to post its building permit and inspection fee schedules on its website. The bill also requires that by December 31, 2020, the governing body will post a newly required building permit and inspection utilization report. The report will include costs incurred and revenues derived from the enforcement of the Florida Building Code. After December 31, 2020, a local government must update the utilization report prior to amending its building permit and inspection fee schedule.

**II. Present Situation:**

**Florida Building Code**

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act.” The purpose and intent of the Florida Building Codes Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.<sup>1</sup> The Florida Building Code must be applied, administered and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>2</sup> The Florida Building Commission develops and maintains the Florida Building Code.<sup>3</sup>

---

<sup>1</sup> Section 553.72(1), F.S.

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

<sup>3</sup> Section 553.74, F.S. The Florida Building Commission is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Florida Building Code.

## Florida Fire Prevention Code

The State Fire Marshall must adopt, by rule, the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.<sup>4</sup> The FFPC operates in conjunction with the Florida Building Code. Conflicts between the FFPC and the Florida Building Code are resolved through coordination and cooperation between the State Fire Marshall and the Florida Building Commission in favor of requirements offering the greatest degree of life safety.<sup>5</sup>

## Enforcement of the Florida Building Code: Permits and Inspections

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.<sup>6</sup> Authorized state and local government agencies enforce the Florida Building Code and issue building permits.<sup>7</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>8</sup> It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local enforcing agency upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>9</sup> A local enforcement agency must post each type of building permit application on its website.<sup>10</sup>

A building official is a local government employee who supervises building code activities, including plan review, enforcement, and inspection.<sup>11</sup> Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Florida Building Code,<sup>12</sup> including certain required building, electrical, plumbing, mechanical, and gas inspections.<sup>13</sup>

---

<sup>4</sup> Section 633.202(1), F.S.

<sup>5</sup> See ss. 553.72(5), 553.73(1)(d), and 633.104(5), F.S.

<sup>6</sup> Section 553.72(2), F.S.

<sup>7</sup> See ss. 125.01(1)(bb), 125.56(1), 553.72(3), and 553.80(1), F.S.

<sup>8</sup> Section 202, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-2-definitions> (last visited February 26, 2019). Section 553.79(1)(b), F.S. requires a local enforcement agency of the Florida Building Code to post each type of building permit application on its website.

<sup>9</sup> See ss. 125.56(4)(a) and 553.79(1), F.S. Other entities may, by resolution or regulation, be directed to issue permits.

<sup>10</sup> Section 553.79(1)(b), F.S.

<sup>11</sup> Section 468.603(2), F.S.

<sup>12</sup> Section 553.79(2), F.S.

<sup>13</sup> Section 110.3, 2017 Florida Building Code – Building, Sixth Edition (July 2017) available at <https://codes.iccsafe.org/content/FBC2017/chapter-1-scope-and-administration> (last visited February 26, 2019).



## **Local Government Building Code Permitting Fees**

### ***Determination and Usage***

A local government entity may provide a schedule of reasonable inspection fees in order to defer the costs of inspection and enforcement of the Florida Building Code.<sup>14</sup> The local government entity's fees must be used solely for carrying out that local government entity's responsibilities in enforcing the Florida Building Code.<sup>15</sup> The basis for the fee structure must relate to the level of service provided by the local government.<sup>16</sup> The total estimated annual revenue derived from fees, and fines and investment earnings related to the fees, may not exceed the total estimated annual costs of allowable activities.<sup>17</sup> Fees charged must be consistently applied.<sup>18</sup> The funding of certain general government activities and programs from fee revenues is expressly prohibited. Examples of these include planning and zoning activities or the enforcement of local ordinances unrelated to the Florida Building Code.<sup>19</sup>

### ***Fiscal Tracking and Accountability***

A local government must use recognized management, accounting, and oversight practices to ensure that any building permitting and inspection fees, fines, and investment earnings are maintained and allocated or used solely for the purposes of enforcing building codes.<sup>20</sup> Any unexpended fee balances are carried forward to future years for allowable activities or are refunded at the discretion of the local government.<sup>21</sup>

The most recent information on building permit fee revenues provided by the Office of Economic and Demographic Research captures data from 2016. For that year, 64 counties reported building permit fee revenues totaling \$258,489,279; while 318 municipalities reported revenues totaling \$447,863,533.<sup>22</sup>

## **Local Government Annual Financial Audit Reports and Web Postings**

Sections 218.32 and 218.39, F.S., provide requirements for local governments regarding submissions of annual financial reports and audits. Local governments must submit an annual financial report to the Department of Financial Services (DFS) covering their operations for the

---

<sup>14</sup> See ss. 125.56(2), 166.222, and 553.80(7), F.S. While not required by Florida Statutes, it appears that many local governments currently post fee schedules on their websites.

<sup>15</sup> The phrase "enforcing the Florida Building Code" includes the direct costs and reasonable indirect costs associated with review of building plans, building inspections, reinspections, and building permit processing; building code enforcement; and fire inspections associated with new construction. The phrase may also include training costs associated with the enforcement. See s. 553.80(7)(a), F.S.

<sup>16</sup> Section 553.80(7), F.S.

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

<sup>18</sup> *Id.*

<sup>19</sup> Section 553.80(7)(b), F.S. Additional activities that may not be funded by permit fees include public information requests, community functions, boards, and any program not directly related to enforcement of the Florida Building Code.

<sup>20</sup> Section 553.80(7)(b), F.S.

<sup>21</sup> Section 553.80(7), F.S.

<sup>22</sup> Office of Economic and Demographic Research, The Florida Legislature, *Building Permit Fees*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm> (last visited February 26, 2019).

preceding fiscal year.<sup>23</sup> Each local governmental entity's website must provide a link to the DFS website to view the entity's submitted financial report.<sup>24</sup> If the local government does not have an official website, the county government's website must provide the required link.<sup>25</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 125.56, F.S., to require the governing body of a county that charges permit and inspection fees to enforce the Florida Building Code and Florida Fire Prevention Code to post on its website both its permit and inspection fee schedules and a building permit and inspection utilization report.

**Section 2** amends s. 166.222, F.S., to require the governing body of a municipality that charges building code inspection or enforcement fees to post on its website both its permit and inspection fee schedules and a building permit and inspection utilization report.

**Section 3** amends s. 553.80, F.S., to require the governing body of a local government that provides a schedule of Florida Building Code enforcement fees to create and post a building permit and inspection utilization report on its website by December 31, 2020. The information in the report must be derived from relevant information available in the most recently completed financial audit. After December 31, 2020, before the governing body can make any changes to its fee schedule, it must update its building permit and inspection utilization report.

The report must include:

- Direct and indirect costs incurred by the local government to enforce the Florida Building Code, including costs related to:
  - Personnel services costs, including salary and related employee benefit costs incurred by the local government to enforce the Florida Building Code; and
  - Operating expenditures and expenses.
- Permit and inspection utilization information, including:
  - Number of building permit applications submitted;
  - Number of building permits issued or approved;
  - Number of building inspections and reinspections requested;
  - Number of building inspections and reinspections conducted;
  - Number of building inspections conducted by a private provider;
  - Number of building audits conducted by the local government of the building inspection conducted by a private provider;
  - Number of positions dedicated by the local government to enforce the Florida Building Code, issue building permits, and conduct inspections; and
  - Other permissible activities for enforcing the Florida Building Code as described in s. 553.80(7)(a), F.S.
- Revenue information, including:
  - Revenue derived from fees;
  - Revenue derived from fines;

<sup>23</sup> It is possible that smaller municipalities (those with annual revenues or total expenditures and expenses between \$100,000 and \$250,000) may go three years between financial audit submissions. *See* s. 218.39(1)(g), F.S.

<sup>24</sup> Section 218.32(1)(g), F.S.

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

- When applicable, investment earnings from the local government's investment of revenue derived from fees and fines;
- Balances carried forward by the local government;
- Balances refunded by the local government and
- Other revenue sources, including local government general revenue.

**Section 4** provides an effective date of July 1, 2019.

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

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

**A. Tax/Fee Issues:**

Eligible local governments are authorized to charge reasonable, level-of-service building permit fees to enforce the Florida Building Code. This bill does not abrogate that authority. The proposed building permit and inspection utilization report should capture the extent of existing fees as well as any fee adjustments going forward.

**B. Private Sector Impact:**

Requiring local governments to post their permit and inspection fee schedules as well as a building permit and inspection utilization report on their websites will help applicants for building permits assess the associated costs of the permits.

C. Government Sector Impact:

Some local governments may require an initial expenditure of funds to revise their existing websites to include the ability to post permit and inspection fee schedules as well as expenditures to create and then post a building permit and inspection utilization report.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.56, 166.222, and 553.80.

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 Innovation, Industry, and Technology on March 6, 2019:**

The committee substitute revises the list of information that must be contained in the building permit and inspection utilization report, making it more detailed and specific.

- B. Amendments:

None.

By the Committee on Innovation, Industry, and Technology; and  
Senators Perry and Brandes

580-02755-19

2019142c1

1 A bill to be entitled  
2 An act relating to permit fees; amending ss. 125.56  
3 and 166.222, F.S.; requiring the governing bodies of  
4 counties and municipalities to post their permit and  
5 inspection fee schedules and building permit and  
6 inspection utilization reports on their websites;  
7 amending s. 553.80, F.S.; requiring certain governing  
8 bodies of local governments to create a building  
9 permit and inspection utilization report containing  
10 certain information and to post such report on their  
11 websites by a specified date; providing reporting  
12 requirements; providing an effective date.  
13  
14 Be It Enacted by the Legislature of the State of Florida:  
15  
16 Section 1. Paragraph (c) is added to subsection (4) of  
17 section 125.56, Florida Statutes, to read:  
18 125.56 Enforcement and amendment of the Florida Building  
19 Code and the Florida Fire Prevention Code; inspection fees;  
20 inspectors; etc.—  
21 (4)  
22 (c) The governing body of a county authorized under this  
23 section or s. 553.80 to issue fees shall post its permit and  
24 inspection fee schedules and its building permit and inspection  
25 utilization report required under s. 553.80(7) on its website.  
26 Section 2. Section 166.222, Florida Statutes, is amended to  
27 read:  
28 166.222 Building code inspection fees.—  
29 (1) The governing body of a municipality may provide a

Page 1 of 5

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

580-02755-19

2019142c1

30 schedule of reasonable inspection fees in order to defer the  
31 costs of inspection and enforcement of the provisions of its  
32 building code.  
33 (2) The governing body of a municipality authorized under  
34 s. 553.80 to issue fees shall post its permit and inspection fee  
35 schedules and its building permit and inspection utilization  
36 report required under s. 553.80(7) on its website.  
37 Section 3. Subsection (7) of section 553.80, Florida  
38 Statutes, is amended to read:  
39 553.80 Enforcement.—  
40 (7) (a) The governing bodies of local governments may  
41 provide a schedule of reasonable fees, as authorized by s.  
42 125.56(2) or s. 166.222 and this section, for enforcing this  
43 part. These fees, and any fines or investment earnings related  
44 to the fees, shall be used solely for carrying out the local  
45 government's responsibilities in enforcing the Florida Building  
46 Code. When providing a schedule of reasonable fees, the total  
47 estimated annual revenue derived from fees, and the fines and  
48 investment earnings related to the fees, may not exceed the  
49 total estimated annual costs of allowable activities. Any  
50 unexpended balances shall be carried forward to future years for  
51 allowable activities or shall be refunded at the discretion of  
52 the local government. The basis for a fee structure for  
53 allowable activities shall relate to the level of service  
54 provided by the local government and shall include consideration  
55 for refunding fees due to reduced services based on services  
56 provided as prescribed by s. 553.791, but not provided by the  
57 local government. Fees charged shall be consistently applied.  
58 1. (a) As used in this subsection, the phrase "enforcing the

Page 2 of 5

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

580-02755-19

2019142c1

59 Florida Building Code" includes the direct costs and reasonable  
60 indirect costs associated with review of building plans,  
61 building inspections, reinspections, and building permit  
62 processing; building code enforcement; and fire inspections  
63 associated with new construction. The phrase may also include  
64 training costs associated with the enforcement of the Florida  
65 Building Code and enforcement action pertaining to unlicensed  
66 contractor activity to the extent not funded by other user fees.

67 ~~2.(b)~~ The following activities may not be funded with fees  
68 adopted for enforcing the Florida Building Code:

69 a.1. Planning and zoning or other general government  
70 activities.

71 ~~b.2.~~ Inspections of public buildings for a reduced fee or  
72 no fee.

73 ~~c.3.~~ Public information requests, community functions,  
74 boards, and any program not directly related to enforcement of  
75 the Florida Building Code.

76 ~~d.4.~~ Enforcement and implementation of any other local  
77 ordinance, excluding validly adopted local amendments to the  
78 Florida Building Code and excluding any local ordinance directly  
79 related to enforcing the Florida Building Code as defined in  
80 subparagraph 1 paragraph (a).

81 ~~3.(e)~~ A local government shall use recognized management,  
82 accounting, and oversight practices to ensure that fees, fines,  
83 and investment earnings generated under this subsection are  
84 maintained and allocated or used solely for the purposes  
85 described in subparagraph 1 paragraph (a).

86 ~~4.(d)~~ The local enforcement agency, independent district,  
87 or special district may not require at any time, including at

580-02755-19

2019142c1

88 the time of application for a permit, the payment of any  
89 additional fees, charges, or expenses associated with:

90 ~~a.1.~~ Providing proof of licensure pursuant to chapter 489;  
91 ~~b.2.~~ Recording or filing a license issued pursuant to this  
92 chapter; or

93 ~~c.3.~~ Providing, recording, or filing evidence of workers'  
94 compensation insurance coverage as required by chapter 440.

95 (b) By December 31, 2020, the governing body of a local  
96 government that provides a schedule of fees shall create a  
97 building permit and inspection utilization report and post the  
98 report on its website. The information in the report shall be  
99 derived from relevant information available in the most recently  
100 completed financial audit. After December 31, 2020, the  
101 governing body of a local government that provides a schedule of  
102 fees shall update its building permit and inspection utilization  
103 report before making any adjustments to the fee schedule. The  
104 report shall include:

105 1. Direct and indirect costs incurred by the local  
106 government to enforce the Florida Building Code, including costs  
107 related to:

108 a. Personnel services costs, including salary and related  
109 employee benefit costs incurred by the local government to  
110 enforce the Florida Building Code.

111 b. Operating expenditures and expenses.

112 2. Permit and inspection utilization information,  
113 including:

114 a. Number of building permit applications submitted.

115 b. Number of building permits issued or approved.

116 c. Number of building inspections and reinspections

580-02755-19

2019142c1

117 requested.

118 d. Number of building inspections and reinspections

119 conducted.

120 e. Number of building inspections conducted by a private

121 provider.

122 f. Number of building audits conducted by the local

123 government of the building inspection conducted by a private

124 provider.

125 g. Number of positions dedicated by the local government to

126 enforce the Florida Building Code, issue building permits, and

127 conduct inspections.

128 h. Other permissible activities for enforcing the Florida

129 Building Code as described in subparagraph (a)1.

130 3. Revenue information, including:

131 a. Revenue derived from fees pursuant to paragraph (a).

132 b. Revenue derived from fines pursuant to paragraph (a).

133 c. When applicable, investment earnings from the local

134 government's investment of revenue derived from fees and fines

135 pursuant to paragraph (a).

136 d. Balances carried forward by the local government

137 pursuant to paragraph (a).

138 e. Balances refunded by the local government pursuant to

139 paragraph (a).

140 f. Other revenue sources, including local government

141 general revenue.

142 Section 4. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Lizbeth Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 6, 2019

---

I respectfully request that **Senate Bill #142**, relating to Permit Fees, be placed on the:

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

*W. Keith Perry*

---

Senator Keith Perry  
Florida Senate, District 8



THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/19  
Meeting Date

142  
Bill Number (if applicable)

Topic Permit Fees

Amendment Barcode (if applicable)

Name Scott Jenkins

Job Title Lobbyist

Address 113 E. College Ave Ste 200  
Street

Phone 850-661-0829

TLH FL 32301  
City State Zip

Email scott@wilsonnynt.com

Speaking:  For  Against  Information

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

Representing FL Homebuilders Assoc & National Utility Contractors

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/19

Meeting Date

142

~~142~~

Bill Number (if applicable)

Topic Permits

Amendment Barcode (if applicable)

Name Chris Carmody

Job Title Attorney

Address 301 E. Pine St

Phone 407-843-8881

Street Orlando State FL Zip 32801

Email ccarmody@gray-robinson.com

Speaking:  For  Against  Information

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

Representing Associated Builders + Contractors

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/2019  
Meeting Date

SB 142  
Bill Number (if applicable)

Topic PERMIT FEES

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title DIRECTOR OF COALITIONS

Address 200 W COLLEGE AVE

Phone 786.260.9283

TALLAHASSEE FL 323  
City State Zip

Email cgrajales@belibtre.org

Speaking:  For  Against  Information

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

Representing AMERICANS FOR PROSPERITY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**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/CS/SB 248

**INTRODUCER:** Rules Committee; Governmental Oversight and Accountability Committee; Criminal Justice Committee and Senator Hooper and others

**SUBJECT:** Public Records/Civilian Personnel Employed by a Law Enforcement Agency

**DATE:** March 13, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/CS/SB 248 amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families.

Current law provides an exemption from public disclosure for certain personal and location identification information, including home addresses, for various public employees, such as law enforcement officers, firefighters, judges, state attorneys, public defenders, and various investigators. However, the term “home addresses” is currently undefined and has been interpreted differently by the various custodians of the public records. The bill defines the term “home addresses” to include various location information, including the physical address, the mailing address, the street address, the parcel identification number, the plot identification number, the legal description of the property, GPS coordinates, and other descriptive property information that may reveal the location of the residence. This definition only applies to the exemptions codified in s. 119.091(4)(d), F.S., relating to public employees.

The bill also amends s. 119.071(4)(d)2.a., F.S., to create a new public records exemption for:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and

- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides that those persons whose information is protected by the public records exemption may, in writing, request that information be released.

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

Current law repeals various exemptions codified in s. 119.071(4)(d), F.S., in 2019 through 2022, and subjects those exemptions to the Open Government Sunset Review Act. The bill eliminates all currently scheduled repeals of those exemptions and repeals all exemptions codified in s. 119.071(4)(d) on October 2, 2024, subject to the Open Government Sunset Review Act.

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

The bill takes effect July 1, 2019.

## II. Present Situation:

### Public Records Law

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

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

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

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

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

---

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

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

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

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

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

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

Only the Legislature may create an exemption to public records requirements.<sup>10</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>11</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>13</sup>

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

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

---

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

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

<sup>8</sup> Section 119.07(1)(a), F.S.

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

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

<sup>11</sup> *Id.*

<sup>12</sup> The bill may, however, contain multiple exemptions that relate to one subject.

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

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

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

<sup>16</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the

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

**Public Records Exemptions for Specified Agency Personnel and Their Families**  
**(s. 119.071(4)(d), F.S.)**

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;<sup>20</sup>
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;<sup>21</sup>
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;<sup>22</sup>
- Current or former certified firefighters;<sup>23</sup>
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;<sup>24</sup>
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;<sup>25</sup>
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;<sup>26</sup>
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;<sup>27</sup>
- Current or former code enforcement officers;<sup>28</sup>

---

Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

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

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

<sup>20</sup> Section 119.071(4)(d)2.a., F.S.

<sup>21</sup> Section 119.071(4)(d)2.b., F.S.

<sup>22</sup> Section 119.071(4)(d)2.c., F.S.

<sup>23</sup> Section 119.071(4)(d)2.d., F.S.

<sup>24</sup> Section 119.071(4)(d)2.e., F.S.

<sup>25</sup> Section 119.071(4)(d)2.f., F.S.

<sup>26</sup> Section 119.071(4)(d)2.g., F.S.

<sup>27</sup> Section 119.071(4)(d)2.h., F.S.

<sup>28</sup> Section 119.071(4)(d)2.i., F.S.

- Current or former guardians ad litem;<sup>29</sup>
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;<sup>30</sup>
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;<sup>31</sup>
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;<sup>32</sup>
- County tax collectors;<sup>33</sup>
- Certain current or former personnel of the Department of Health;<sup>34</sup>
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;<sup>35</sup>
- Current or former certified emergency medical technicians and paramedics;<sup>36</sup>
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;<sup>37</sup>
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;<sup>38</sup> and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.<sup>39</sup>

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.<sup>40</sup> Further, all of these exemptions have retroactive application.<sup>41</sup>

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

---

<sup>29</sup> Section 119.071(4)(d)2.j., F.S.

<sup>30</sup> Section 119.071(4)(d)2.k., F.S.

<sup>31</sup> Section 119.071(4)(d)2.l., F.S.

<sup>32</sup> Section 119.071(4)(d)2.m., F.S.

<sup>33</sup> Section 119.071(4)(d)2.n., F.S.

<sup>34</sup> Section 119.071(4)(d)2.o., F.S.

<sup>35</sup> Section 119.071(4)(d)2.p., F.S.

<sup>36</sup> Section 119.071(4)(d)2.q., F.S.

<sup>37</sup> Section 119.071(4)(d)2.r., F.S.

<sup>38</sup> Section 119.071(4)(d)2.s., F.S.

<sup>39</sup> Section 119.071(4)(d)2.t., F.S.

<sup>40</sup> Section 119.071(4)(d)3., F.S.

<sup>41</sup> Section 119.071(4)(d)4., F.S.



Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of family members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the State Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different Open Government Sunset Review sunset dates.

### **Law Enforcement and Other Specified Personnel (s. 119.071(4)(d)2.a., F.S.)**

The public record exemption in s. 119.071(4)(d)2.a., F.S., covers current or former personnel from several agencies engaged in law enforcement, corrections, certain crime-related investigations or child abuse or neglect investigations, revenue collection, and revenue and child support enforcement. Specifically, the exemption covers:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including:
  - Correctional and correctional probation officers,
  - Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities,
  - Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and
  - Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

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

The bill amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families. The term "home addresses" is currently undefined. The bill expands these exemptions by defining the term "home addresses" to include various location information.

The bill defines the term "home addresses" to mean "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."

The bill also amends s. 119.071(4)(d)2.a., F.S., to create a new public records exemption for:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill allows an officer, employee, justice, judge, or other person covered by the public records exemption to file a written request for release with the custodial agency. The written request must be notarized and must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency must release the specified information to the party authorized to receive such information.

The bill provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure home addresses of certain agency personnel and their families. The public necessity statement states that the term “home addresses” needs to be defined “so that the safety and privacy of various personnel and their family members are not compromised.” This statement notes

[t]he Legislature has previously recognized that such personnel and their family members are at a heightened risk of physical and emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel, or whose business or professional practices have come under scrutiny of such personnel, and, as a result, has enacted various public records exemptions.<sup>42</sup>

Further, the public necessity statement indicates “the current exemptions do not provide protection for various forms of descriptive property information that may be used on its own, or in conjunction with other information, to reveal the home addresses that otherwise should be protected from public disclosure.”

The public necessity statement also identifies a similar public safety rationale for exempting various identifying information and location information (see discussion, *supra*) regarding civilian personnel of law enforcement agencies and their families:

The civilian personnel of law enforcement agencies perform a variety of important duties that ensure public safety and welfare and encourage safe and secure communities. As a result of such duties, these civilian personnel often come into close contact with individuals who not only may be a threat to those personnel, but who might also seek to take revenge against them by harming their spouses and children.

---

<sup>42</sup> For example, s. 119.071(4)(d), F.S., exempts from public disclosure telephone numbers of certain agency personnel and their families. In 2012, the Legislature defined “telephone number” to include personal pager numbers because personnel and their families “could potentially be identified, located, and put at risk” if personal pager numbers were subject to public disclosure. Ch. 2012-149, Laws of Fla.

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.<sup>43</sup>

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

The bill takes effect on July 1, 2019.

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

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

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

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

###### ***Vote Requirement***

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill expands several existing exemptions and creates a new exemption. Therefore, the bill requires a two-thirds vote to be enacted.

###### ***Public Necessity Statement***

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

###### ***Breadth of Exemption***

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

The public necessity statement identifies the public safety rationales for defining "home addresses" for purposes of the exemptions in s. 119.071(4)(d), F.S., and for creating an exemption in this paragraph for various identifying information and location information regarding civilian personnel of law enforcement agencies and their families. (See "Effect of Proposed Changes" section of this analysis.) The exemptions are based upon public safety rationales which have supported previous exemptions relating to information identifying agency personnel and their families. Further, an exemption only occurs upon written request of a covered employee or his or her agency. For these reasons, the

---

<sup>43</sup> The bill also removes current sunset dates relevant to particular exemptions in s. 119.071(4)(d), F.S.

exemptions do not appear broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Any individual or business that currently obtains location information that is covered by the definition of “home addresses” in the bill will not be able to obtain that information from the records custodian if the employee or the employee’s agency requests that the home address information be exempted.

C. Government Sector Impact:

Indeterminate. Agencies or records custodians may incur costs to comply with requests to remove location information covered by the definition of “home addresses” in the bill if that information is currently available to the public on their websites. If a record requested by the public contains information that is subject to public disclosure and home address information that cannot be publicly disclosed, the records custodian may incur costs in redacting the home address information.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS/CS by Rules on March 13, 2019:**

The Committee Substitute:

- Requires notarization of a written request to release specified information protected by the public records exemption to a party authorized to receive such information.

**CS/CS by Governmental Oversight and Accountability on March 6, 2019:**

The Committee Substitute:

- Allows certain people whose information is protected by the public records exemption to, in writing, request that information be released; and
- Requires that a custodial agency release the requested information when they receive such a request.

**CS by Criminal Justice on February 11, 2019:**

The Committee Substitute:

- Clarifies in the title of the bill that the bill is expanding exemptions from public records requirements for agency personnel information by defining the term “home addresses.”
- Changes the year of the sunset date for the public records exemptions from 2023 to 2024.

- B. **Amendments:**

None.



426328

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2019	.	
	.	
	.	
	.	

---

The Committee on Rules (Simpson) recommended the following:

**Senate Amendment**

Delete lines 340 - 341  
and insert:  
custodial agency. The written request must be notarized and must  
specify the information to be released and the party that is  
authorized to

By the Committees on Governmental Oversight and Accountability;  
and Criminal Justice; and Senators Hooper, Baxley, Simpson, and  
Perry

585-02749-19

2019248c2

1 A bill to be entitled  
2 An act relating to public records; amending s.  
3 119.071, F.S.; expanding exemptions from public  
4 records requirements for agency personnel information  
5 by defining the term "home addresses" for purposes of  
6 public records exemptions for personal identifying and  
7 location information of certain agency personnel and  
8 their family members; exempting personal identifying  
9 and location information of active or former civilian  
10 personnel employed by a law enforcement agency, and of  
11 spouses and children of such personnel, from public  
12 records requirements; authorizing certain persons to  
13 request the release of exempt information in a  
14 specified manner; requiring a custodial agency to  
15 release such information upon receipt of such a  
16 request; providing for retroactive application;  
17 providing for legislative review and repeal of the  
18 exemptions; providing statements of public necessity;  
19 providing an effective date.  
20  
21 Be It Enacted by the Legislature of the State of Florida:  
22  
23 Section 1. Paragraph (d) of subsection (4) of section  
24 119.071, Florida Statutes, is amended to read:  
25 119.071 General exemptions from inspection or copying of  
26 public records.—  
27 (4) AGENCY PERSONNEL INFORMATION.—  
28 (d)1. For purposes of this paragraph, the term:  
29 a. "Home addresses" means the dwelling location at which an

Page 1 of 14

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

585-02749-19

2019248c2

30 individual resides and includes the physical address, mailing  
31 address, street address, parcel identification number, plot  
32 identification number, legal property description, neighborhood  
33 name and lot number, GPS coordinates, and any other descriptive  
34 property information that may reveal the home address.  
35 b. "Telephone numbers" includes home telephone numbers,  
36 personal cellular telephone numbers, personal pager telephone  
37 numbers, and telephone numbers associated with personal  
38 communications devices.  
39 2.a. The home addresses, telephone numbers, dates of birth,  
40 and photographs of active or former sworn ~~or civilian~~ law  
41 enforcement personnel or of active or former civilian personnel  
42 employed by a law enforcement agency, including correctional and  
43 correctional probation officers, personnel of the Department of  
44 Children and Families whose duties include the investigation of  
45 abuse, neglect, exploitation, fraud, theft, or other criminal  
46 activities, personnel of the Department of Health whose duties  
47 are to support the investigation of child abuse or neglect, and  
48 personnel of the Department of Revenue or local governments  
49 whose responsibilities include revenue collection and  
50 enforcement or child support enforcement; the names, home  
51 addresses, telephone numbers, photographs, dates of birth, and  
52 places of employment of the spouses and children of such  
53 personnel; and the names and locations of schools and day care  
54 facilities attended by the children of such personnel are exempt  
55 from s. 119.07(1) and s. 24(a), Art. I of the State  
56 Constitution. ~~This sub-subparagraph is subject to the Open~~  
57 ~~Government Sunset Review Act in accordance with s. 119.15 and~~  
58 ~~shall stand repealed on October 2, 2022, unless reviewed and~~

Page 2 of 14

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

585-02749-19

2019248c2

59 ~~saved from repeal through reenactment by the Legislature.~~

60 b. The home addresses, telephone numbers, dates of birth,  
61 and photographs of current or former nonsworn investigative  
62 personnel of the Department of Financial Services whose duties  
63 include the investigation of fraud, theft, workers' compensation  
64 coverage requirements and compliance, other related criminal  
65 activities, or state regulatory requirement violations; the  
66 names, home addresses, telephone numbers, dates of birth, and  
67 places of employment of the spouses and children of such  
68 personnel; and the names and locations of schools and day care  
69 facilities attended by the children of such personnel are exempt  
70 from s. 119.07(1) and s. 24(a), Art. I of the State  
71 Constitution. This sub subparagraph is subject to the Open  
72 Government Sunset Review Act in accordance with s. 119.15 and  
73 shall stand repealed on October 2, 2021, unless reviewed and  
74 saved from repeal through reenactment by the Legislature.

75 c. The home addresses, telephone numbers, dates of birth,  
76 and photographs of current or former nonsworn investigative  
77 personnel of the Office of Financial Regulation's Bureau of  
78 Financial Investigations whose duties include the investigation  
79 of fraud, theft, other related criminal activities, or state  
80 regulatory requirement violations; the names, home addresses,  
81 telephone numbers, dates of birth, and places of employment of  
82 the spouses and children of such personnel; and the names and  
83 locations of schools and day care facilities attended by the  
84 children of such personnel are exempt from s. 119.07(1) and s.  
85 24(a), Art. I of the State Constitution. ~~This sub subparagraph~~  
86 ~~is subject to the Open Government Sunset Review Act in~~  
87 ~~accordance with s. 119.15 and shall stand repealed on October 2,~~

Page 3 of 14

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

585-02749-19

2019248c2

88 ~~2022, unless reviewed and saved from repeal through reenactment~~  
89 ~~by the Legislature.~~

90 d. The home addresses, telephone numbers, dates of birth,  
91 and photographs of current or former firefighters certified in  
92 compliance with s. 633.408; the names, home addresses, telephone  
93 numbers, photographs, dates of birth, and places of employment  
94 of the spouses and children of such firefighters; and the names  
95 and locations of schools and day care facilities attended by the  
96 children of such firefighters are exempt from s. 119.07(1) and  
97 s. 24(a), Art. I of the State Constitution. ~~This sub-~~  
98 ~~subparagraph is subject to the Open Government Sunset Review Act~~  
99 ~~in accordance with s. 119.15, and shall stand repealed on~~  
100 ~~October 2, 2022, unless reviewed and saved from repeal through~~  
101 ~~reenactment by the Legislature.~~

102 e. The home addresses, dates of birth, and telephone  
103 numbers of current or former justices of the Supreme Court,  
104 district court of appeal judges, circuit court judges, and  
105 county court judges; the names, home addresses, telephone  
106 numbers, dates of birth, and places of employment of the spouses  
107 and children of current or former justices and judges; and the  
108 names and locations of schools and day care facilities attended  
109 by the children of current or former justices and judges are  
110 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
111 Constitution. ~~This sub-subparagraph is subject to the Open~~  
112 ~~Government Sunset Review Act in accordance with s. 119.15 and~~  
113 ~~shall stand repealed on October 2, 2022, unless reviewed and~~  
114 ~~saved from repeal through reenactment by the Legislature.~~

115 f. The home addresses, telephone numbers, dates of birth,  
116 and photographs of current or former state attorneys, assistant

Page 4 of 14

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



585-02749-19

2019248c2

117 state attorneys, statewide prosecutors, or assistant statewide  
 118 prosecutors; the names, home addresses, telephone numbers,  
 119 photographs, dates of birth, and places of employment of the  
 120 spouses and children of current or former state attorneys,  
 121 assistant state attorneys, statewide prosecutors, or assistant  
 122 statewide prosecutors; and the names and locations of schools  
 123 and day care facilities attended by the children of current or  
 124 former state attorneys, assistant state attorneys, statewide  
 125 prosecutors, or assistant statewide prosecutors are exempt from  
 126 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

127 g. The home addresses, dates of birth, and telephone  
 128 numbers of general magistrates, special magistrates, judges of  
 129 compensation claims, administrative law judges of the Division  
 130 of Administrative Hearings, and child support enforcement  
 131 hearing officers; the names, home addresses, telephone numbers,  
 132 dates of birth, and places of employment of the spouses and  
 133 children of general magistrates, special magistrates, judges of  
 134 compensation claims, administrative law judges of the Division  
 135 of Administrative Hearings, and child support enforcement  
 136 hearing officers; and the names and locations of schools and day  
 137 care facilities attended by the children of general magistrates,  
 138 special magistrates, judges of compensation claims,  
 139 administrative law judges of the Division of Administrative  
 140 Hearings, and child support enforcement hearing officers are  
 141 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 142 Constitution. ~~This sub-subparagraph is subject to the Open  
 143 Government Sunset Review Act in accordance with s. 119.15 and  
 144 shall stand repealed on October 2, 2022, unless reviewed and  
 145 saved from repeal through reenactment by the Legislature.~~

Page 5 of 14

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

585-02749-19

2019248c2

146 h. The home addresses, telephone numbers, dates of birth,  
 147 and photographs of current or former human resource, labor  
 148 relations, or employee relations directors, assistant directors,  
 149 managers, or assistant managers of any local government agency  
 150 or water management district whose duties include hiring and  
 151 firing employees, labor contract negotiation, administration, or  
 152 other personnel-related duties; the names, home addresses,  
 153 telephone numbers, dates of birth, and places of employment of  
 154 the spouses and children of such personnel; and the names and  
 155 locations of schools and day care facilities attended by the  
 156 children of such personnel are exempt from s. 119.07(1) and s.  
 157 24(a), Art. I of the State Constitution.

158 i. The home addresses, telephone numbers, dates of birth,  
 159 and photographs of current or former code enforcement officers;  
 160 the names, home addresses, telephone numbers, dates of birth,  
 161 and places of employment of the spouses and children of such  
 162 personnel; and the names and locations of schools and day care  
 163 facilities attended by the children of such personnel are exempt  
 164 from s. 119.07(1) and s. 24(a), Art. I of the State  
 165 Constitution.

166 j. The home addresses, telephone numbers, places of  
 167 employment, dates of birth, and photographs of current or former  
 168 guardians ad litem, as defined in s. 39.820; the names, home  
 169 addresses, telephone numbers, dates of birth, and places of  
 170 employment of the spouses and children of such persons; and the  
 171 names and locations of schools and day care facilities attended  
 172 by the children of such persons are exempt from s. 119.07(1) and  
 173 s. 24(a), Art. I of the State Constitution. ~~This sub-  
 174 subparagraph is subject to the Open Government Sunset Review Act~~

Page 6 of 14

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

585-02749-19

2019248c2

175 ~~in accordance with s. 119.15 and shall stand repealed on October~~  
 176 ~~2, 2022, unless reviewed and saved from repeal through~~  
 177 ~~reenactment by the Legislature.~~

178 k. The home addresses, telephone numbers, dates of birth,  
 179 and photographs of current or former juvenile probation  
 180 officers, juvenile probation supervisors, detention  
 181 superintendents, assistant detention superintendents, juvenile  
 182 justice detention officers I and II, juvenile justice detention  
 183 officer supervisors, juvenile justice residential officers,  
 184 juvenile justice residential officer supervisors I and II,  
 185 juvenile justice counselors, juvenile justice counselor  
 186 supervisors, human services counselor administrators, senior  
 187 human services counselor administrators, rehabilitation  
 188 therapists, and social services counselors of the Department of  
 189 Juvenile Justice; the names, home addresses, telephone numbers,  
 190 dates of birth, and places of employment of spouses and children  
 191 of such personnel; and the names and locations of schools and  
 192 day care facilities attended by the children of such personnel  
 193 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 194 Constitution.

195 l. The home addresses, telephone numbers, dates of birth,  
 196 and photographs of current or former public defenders, assistant  
 197 public defenders, criminal conflict and civil regional counsel,  
 198 and assistant criminal conflict and civil regional counsel; the  
 199 names, home addresses, telephone numbers, dates of birth, and  
 200 places of employment of the spouses and children of current or  
 201 former public defenders, assistant public defenders, criminal  
 202 conflict and civil regional counsel, and assistant criminal  
 203 conflict and civil regional counsel; and the names and locations

585-02749-19

2019248c2

204 of schools and day care facilities attended by the children of  
 205 current or former public defenders, assistant public defenders,  
 206 criminal conflict and civil regional counsel, and assistant  
 207 criminal conflict and civil regional counsel are exempt from s.  
 208 119.07(1) and s. 24(a), Art. I of the State Constitution.

209 m. The home addresses, telephone numbers, dates of birth,  
 210 and photographs of current or former investigators or inspectors  
 211 of the Department of Business and Professional Regulation; the  
 212 names, home addresses, telephone numbers, dates of birth, and  
 213 places of employment of the spouses and children of such current  
 214 or former investigators and inspectors; and the names and  
 215 locations of schools and day care facilities attended by the  
 216 children of such current or former investigators and inspectors  
 217 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 218 Constitution. ~~This sub-subparagraph is subject to the Open~~  
 219 ~~Government Sunset Review Act in accordance with s. 119.15 and~~  
 220 ~~shall stand repealed on October 2, 2022, unless reviewed and~~  
 221 ~~saved from repeal through reenactment by the Legislature.~~

222 n. The home addresses, telephone numbers, and dates of  
 223 birth of county tax collectors; the names, home addresses,  
 224 telephone numbers, dates of birth, and places of employment of  
 225 the spouses and children of such tax collectors; and the names  
 226 and locations of schools and day care facilities attended by the  
 227 children of such tax collectors are exempt from s. 119.07(1) and  
 228 s. 24(a), Art. I of the State Constitution. ~~This sub-~~  
 229 ~~subparagraph is subject to the Open Government Sunset Review Act~~  
 230 ~~in accordance with s. 119.15 and shall stand repealed on October~~  
 231 ~~2, 2022, unless reviewed and saved from repeal through~~  
 232 ~~reenactment by the Legislature.~~

585-02749-19

2019248c2

233 o. The home addresses, telephone numbers, dates of birth,  
 234 and photographs of current or former personnel of the Department  
 235 of Health whose duties include, or result in, the determination  
 236 or adjudication of eligibility for social security disability  
 237 benefits, the investigation or prosecution of complaints filed  
 238 against health care practitioners, or the inspection of health  
 239 care practitioners or health care facilities licensed by the  
 240 Department of Health; the names, home addresses, telephone  
 241 numbers, dates of birth, and places of employment of the spouses  
 242 and children of such personnel; and the names and locations of  
 243 schools and day care facilities attended by the children of such  
 244 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 245 the State Constitution. This sub-subparagraph is subject to the  
 246 Open Government Sunset Review Act in accordance with s. 119.15  
 247 and shall stand repealed on October 2, 2019, unless reviewed and  
 248 saved from repeal through reenactment by the Legislature.

249 p. The home addresses, telephone numbers, dates of birth,  
 250 and photographs of current or former impaired practitioner  
 251 consultants who are retained by an agency or current or former  
 252 employees of an impaired practitioner consultant whose duties  
 253 result in a determination of a person's skill and safety to  
 254 practice a licensed profession; the names, home addresses,  
 255 telephone numbers, dates of birth, and places of employment of  
 256 the spouses and children of such consultants or their employees;  
 257 and the names and locations of schools and day care facilities  
 258 attended by the children of such consultants or employees are  
 259 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 260 Constitution. This sub-subparagraph is subject to the Open  
 261 Government Sunset Review Act in accordance with s. 119.15 and

585-02749-19

2019248c2

262 ~~shall stand repealed on October 2, 2020, unless reviewed and~~  
 263 ~~saved from repeal through reenactment by the Legislature.~~

264 q. The home addresses, telephone numbers, dates of birth,  
 265 and photographs of current or former emergency medical  
 266 technicians or paramedics certified under chapter 401; the  
 267 names, home addresses, telephone numbers, dates of birth, and  
 268 places of employment of the spouses and children of such  
 269 emergency medical technicians or paramedics; and the names and  
 270 locations of schools and day care facilities attended by the  
 271 children of such emergency medical technicians or paramedics are  
 272 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 273 Constitution. This sub-subparagraph is subject to the Open  
 274 Government Sunset Review Act in accordance with s. 119.15 and  
 275 shall stand repealed on October 2, 2021, unless reviewed and  
 276 saved from repeal through reenactment by the Legislature.

277 r. The home addresses, telephone numbers, dates of birth,  
 278 and photographs of current or former personnel employed in an  
 279 agency's office of inspector general or internal audit  
 280 department whose duties include auditing or investigating waste,  
 281 fraud, abuse, theft, exploitation, or other activities that  
 282 could lead to criminal prosecution or administrative discipline;  
 283 the names, home addresses, telephone numbers, dates of birth,  
 284 and places of employment of spouses and children of such  
 285 personnel; and the names and locations of schools and day care  
 286 facilities attended by the children of such personnel are exempt  
 287 from s. 119.07(1) and s. 24(a), Art. I of the State  
 288 Constitution. This sub-subparagraph is subject to the Open  
 289 Government Sunset Review Act in accordance with s. 119.15 and  
 290 shall stand repealed on October 2, 2021, unless reviewed and

585-02749-19

2019248c2

291 ~~saved from repeal through reenactment by the Legislature.~~  
 292 s. The home addresses, telephone numbers, dates of birth,  
 293 and photographs of current or former directors, managers,  
 294 supervisors, nurses, and clinical employees of an addiction  
 295 treatment facility; the home addresses, telephone numbers,  
 296 photographs, dates of birth, and places of employment of the  
 297 spouses and children of such personnel; and the names and  
 298 locations of schools and day care facilities attended by the  
 299 children of such personnel are exempt from s. 119.07(1) and s.  
 300 24(a), Art. I of the State Constitution. For purposes of this  
 301 sub-subparagraph, the term "addiction treatment facility" means  
 302 a county government, or agency thereof, that is licensed  
 303 pursuant to s. 397.401 and provides substance abuse prevention,  
 304 intervention, or clinical treatment, including any licensed  
 305 service component described in s. 397.311(26). ~~This sub-~~  
 306 ~~subparagraph is subject to the Open Government Sunset Review Act~~  
 307 ~~in accordance with s. 119.15 and shall stand repealed on October~~  
 308 ~~2, 2023, unless reviewed and saved from repeal through~~  
 309 ~~reenactment by the Legislature.~~  
 310 t. The home addresses, telephone numbers, dates of birth,  
 311 and photographs of current or former directors, managers,  
 312 supervisors, and clinical employees of a child advocacy center  
 313 that meets the standards of s. 39.3035(1) and fulfills the  
 314 screening requirement of s. 39.3035(2), and the members of a  
 315 child protection team as described in s. 39.303 whose duties  
 316 include supporting the investigation of child abuse or sexual  
 317 abuse, child abandonment, child neglect, and child exploitation  
 318 or to provide services as part of a multidisciplinary case  
 319 review team; the names, home addresses, telephone numbers,

Page 11 of 14

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

585-02749-19

2019248c2

320 photographs, dates of birth, and places of employment of the  
 321 spouses and children of such personnel and members; and the  
 322 names and locations of schools and day care facilities attended  
 323 by the children of such personnel and members are exempt from s.  
 324 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This~~  
 325 ~~sub-subparagraph is subject to the Open Government Sunset Review~~  
 326 ~~Act in accordance with s. 119.15 and shall stand repealed on~~  
 327 ~~October 2, 2023, unless reviewed and saved from repeal through~~  
 328 ~~reenactment by the Legislature.~~  
 329 3. An agency that is the custodian of the information  
 330 specified in subparagraph 2. and that is not the employer of the  
 331 officer, employee, justice, judge, or other person specified in  
 332 subparagraph 2. shall maintain the exempt status of that  
 333 information only if the officer, employee, justice, judge, other  
 334 person, or employing agency of the designated employee submits a  
 335 written request for maintenance of the exemption to the  
 336 custodial agency.  
 337 4. An officer, an employee, a justice, a judge, or other  
 338 person specified in subparagraph 2. may submit a written request  
 339 for the release of his or her exempt information to the  
 340 custodial agency. The written request must specify the  
 341 information to be released and the party that is authorized to  
 342 receive the information. Upon receipt of the written request,  
 343 the custodial agency shall release the specified information to  
 344 the party authorized to receive such information.  
 345 5. The exemptions in this paragraph apply to information  
 346 held by an agency before, on, or after the effective date of the  
 347 exemption.  
 348 6. This paragraph is subject to the Open Government Sunset

Page 12 of 14

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

585-02749-19

2019248c2

349 Review Act in accordance with s. 119.15 and shall stand repealed  
 350 on October 2, 2024, unless reviewed and saved from repeal  
 351 through reenactment by the Legislature.

352 Section 2. (1) The Legislature finds that it is a public  
 353 necessity to define the term "home addresses" for purposes of  
 354 the public records exemptions for agency personnel information  
 355 under s. 119.071(4)(d), Florida Statutes. The public records  
 356 exemptions for agency personnel information protect identifying  
 357 and location information of numerous types of personnel,  
 358 including, but not limited to, current or former law enforcement  
 359 officers, investigative personnel, state attorneys and  
 360 prosecutors, public defenders, guardians ad litem, Supreme Court  
 361 justices, various judges, and the spouses and children of such  
 362 personnel. The Legislature has previously recognized that such  
 363 personnel and their family members are at a heightened risk of  
 364 physical and emotional harm from disgruntled individuals who  
 365 have contentious reactions to actions taken by such personnel,  
 366 or whose business or professional practices have come under  
 367 scrutiny of such personnel, and, as a result, has enacted  
 368 various public records exemptions. While home addresses of such  
 369 personnel and their family members are already exempt from s.  
 370 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 371 State Constitution, the current exemptions do not provide  
 372 protection for various forms of descriptive property information  
 373 that may be used on its own, or in conjunction with other  
 374 information, to reveal the home addresses that otherwise should  
 375 be protected from public disclosure. Therefore, the Legislature  
 376 finds that it is a public necessity to specifically define the  
 377 term "home addresses" so that the safety and privacy of various

Page 13 of 14

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

585-02749-19

2019248c2

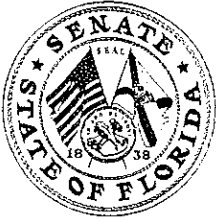
378 personnel and their family members are not compromised.

379 (2) The Legislature further finds that it is a public  
 380 necessity that the home addresses, telephone numbers, dates of  
 381 birth, and photographs of active or former civilian personnel  
 382 employed by a law enforcement agency; the names, home addresses,  
 383 telephone numbers, photographs, dates of birth, and places of  
 384 employment of the spouses and children of such personnel; and  
 385 the names and locations of schools and day care facilities  
 386 attended by the children of such personnel be exempt from public  
 387 records requirements. Existing law already provides that the  
 388 identifying and location information of active or former  
 389 civilian law enforcement personnel and their spouses and  
 390 children are exempt from public records requirements. The  
 391 amendment made by this act further specifies that any active or  
 392 former civilian personnel employed by a law enforcement agency  
 393 and their spouses and children are entitled to the protections  
 394 of the public records exemption. The civilian personnel of law  
 395 enforcement agencies perform a variety of important duties that  
 396 ensure public safety and welfare and encourage safe and secure  
 397 communities. As a result of such duties, these civilian  
 398 personnel often come into close contact with individuals who not  
 399 only may be a threat to those personnel, but who might also seek  
 400 to take revenge against them by harming their spouses and  
 401 children. The Legislature finds that modifying the public  
 402 records exemption to apply to all active or former civilian  
 403 personnel employed by a law enforcement agency and their spouses  
 404 and children will serve the public interest by further ensuring  
 405 the safety of such personnel.

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

Page 14 of 14

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR ED HOOPER**  
16th District

**COMMITTEES:**  
Governmental Oversight and Accountability, Chair  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Appropriations Subcommittee on Health and  
Human Services  
Health Policy  
Infrastructure and Security  
Joint Select Committee on Collective Bargaining,  
Alternating Chair  
Joint Administrative Procedures Committee

March 6<sup>th</sup>, 2019

The Honorable Lizbeth Benacquisto, Chair  
Rules Committee  
402 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Benacquisto:

I am writing to request that Senate Bill 248, Public Records, be placed on the agenda of the next Rules Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink, appearing to read "Ed Hooper".

Ed Hooper

Cc: John B. Phelps, Staff Director  
Cynthia Futch, Administrative Assistant

**REPLY TO:**

- 3450 East Lake Road, Suite 305, Palm Harbor, Florida 34685-2411 (727) 771-2102
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/19

Meeting Date

248

Bill Number (if applicable)

426328

Amendment Barcode (if applicable)

Topic Public Records / Law Enforcement

Name Chase Daniels

Job Title Assistant Executive Director

Address 8700 Citrus Dr

Street

Phone 727-277-6226

New Port Kelsey

City

FL

State

32654

Zip

Email cdaniels@p21coastal.org

Speaking:  For  Against  Information

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

Representing Parks Sheriff's Office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

3-13-19

Meeting Date

SB 0248

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name MICHAEL CRABB

Job Title LIEUTENANT

Address 2500 W. COLONIAL DR  
Street

Phone 321-436-4447

ORLANDO  
City

FL  
State

32804  
Zip

Email MICHAEL.CRABB@OCFL.NET

Speaking:  For  Against  Information

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

Representing ORANGE COUNTY SHERIFF'S OFFICE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



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

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

248

Bill Number (if applicable)

Meeting Date

Topic Public Records Exemption

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Legislative Director

Address 242 Office Plaza Dr

Phone 850-766-8808

Tallahassee, FL 32301  
City State Zip

Email lhenning@legislative@aol.com

Speaking:  For  Against  Information

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

Representing Fraternal Order of Police

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3/13/19

248

*Meeting Date*

*Bill Number (if applicable)*

Topic Public Records/Civilian Personnel Employed by a LE Agency

*Amendment Barcode (if applicable)*

Name Chief Gary Hester

Job Title Government Affairs

Address 2636 Mitcham Drive

Phone 850-219-3631

*Street*

Tallahassee

FL

32308

Email ghester@fpca.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3/13/19  
Meeting Date

248  
Bill Number (if applicable)

Topic Public Records/Law Enforcement

Amendment Barcode (if applicable)

Name Chase Daniels

Job Title Assistant Executive Director

Address 8700 Citrus Dr  
Street

Phone 727-277-6226

New Port Kaley FL 34654  
City State Zip

Email cdaniels@pscosheriff.org

Speaking:  For  Against  Information

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

Representing Psco Sheriff's Office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3.13.19

*Meeting Date*

248

*Bill Number (if applicable)*

Topic DPublic Records Exemption Civilian Employees of Law Enforcement Agency

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 256

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Child Protection Teams

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 256 extends sovereign immunity protections to any member of a child protection team when the team member is carrying out her or his duties under the control, direction, and supervision of the state or any of its agencies or subdivisions. A child protection team is a group of professionals who receive referrals, primarily from child protective investigators and sheriff's offices, when child abuse, abandonment, or neglect is alleged. The team, directed by a physician, evaluates the allegations, assesses risks, and provides recommendations for child safety and support services.

The bill takes effect July 1, 2019.

**II. Present Situation:**

**Sovereign Immunity**

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of those governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state.

Under this statute, officers, employees, and agents of the state may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. Instead, the state steps in as the party litigant and defends against the claim. However, people may be held personally liable for acts committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.<sup>1</sup> The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff is not entitled to recover the excess damages without action by the Legislature.<sup>2</sup>

## **Child Protection Teams**

### ***Description***

The Department of Health currently contracts with 22 independent, community-based organizations that serve as child protection teams.<sup>3</sup> A child protection team is a group of professionals, directed by a physician, who receive referrals from the investigators of the Department of Children and Families (DCF) and sheriff's offices when child abuse or neglect is alleged.<sup>4</sup> The teams perform medical evaluations, assess risks, and provide recommendations for child safety and support services.

### ***Composition and Responsibilities***

Each of the 22 teams operates under the oversight of a medical director who is a board-certified pediatrician with special training in child abuse and neglect. In the case of a large geographical areas, some may have an associate medical director to ensure adequate coverage. The physician must be approved by Children's Medical Services at the Department of Health (DOH). Teams consist of additional physicians, attorneys, advanced registered nurse practitioners, psychologists, physician assistants,<sup>5</sup> registered nurses, team coordinators, support staff, case coordinators, and support and data personnel.<sup>6</sup>

Each office must be available 24 hours per day, every day, to provide immediate medical diagnosis and evaluation, for consultations by phone, or for other assessment services. The

---

<sup>1</sup> Section 768.28(5), F.S.

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

<sup>3</sup> Florida Department of Health, *Senate Bill 256 Agency Legislative Bill Analysis* (Jan. 8, 2019) (on file with the Senate Committee on Judiciary).

<sup>4</sup> Department of Health, Children's Medical Services, *Child Protection Teams*, [http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child\\_protection\\_safety/child\\_protection\\_teams.html](http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html) and s. 39.303(3), F.S.

<sup>5</sup> Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, 6-7 (June 2015) [http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook\\_cpt.pdf](http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook_cpt.pdf).

<sup>6</sup> See note 3, *supra*.

groups that the teams target for assessments are children who may be physically abused, sexually abused, and those who lack health care, including medically neglected children.<sup>7</sup>

### ***Services***

When a child protection team accepts a referral from DCF or law enforcement, the team may provide these services:

- Medical diagnosis and evaluation services;
- Nursing assessments;
- Child and family social assessments;
- Multidisciplinary case staffings;
- Psychological and psychiatric diagnosis and evaluations;
- Specialized and forensic interviews; and
- Expert medical, psychological, and related professional testimony in court cases.<sup>8</sup>

### ***Cases that must be referred to a Child Protection Team***

The following cases involving child abuse, abandonment, or neglect that are reported to the Child Abuse Hotline must be referred to a child protection team:

- Head injuries, bruises to the head or neck, burns, or fractures in a child, regardless of age.
- Bruises that appear anywhere on a child who is five years old or younger.
- Alleged child sexual abuse.
- A sexually transmitted disease that occurs in a prepubescent child.
- Reported malnutrition or failure to thrive.
- Medical neglect.
- Instances of a child or sibling remaining in a home where a child has been pronounced dead on arrival at a hospital or a child has been injured and then died due to suspected abuse, abandonment, or neglect.
- Symptoms of serious emotional issues occurring in a child where emotional or other forms of abuse, abandonment, or neglect are suspected.<sup>9</sup>

### ***Funding***

The Child Protection Team Program receives funding through the Department of Health, Division of Children's Medical Services.<sup>10</sup>

---

<sup>7</sup> Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, 4 (June 2015) [http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook\\_cpt.pdf](http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook_cpt.pdf)

<sup>8</sup> See note 4, *supra*, and s. 39.303, F.S.

<sup>9</sup> Section 39.303(4), F.S.

<sup>10</sup> Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, 4 (June 2015) [http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook\\_cpt.pdf](http://www.floridahealth.gov/AlternateSites/CMS-Kids/providers/prevention/documents/handbook_cpt.pdf). The Department of Health, Division of Children's Medical Services, Bureau of Child Protection and Special Technologies staff oversees the statewide Child Protection Team system.

### ***Employees and Sovereign Immunity***

According to the Department of Health, the state's child protection teams have approximately 364 team members<sup>11</sup> who are employed by private, non-profit entities. Of the 22 child protection teams, five teams are employees of a governmental entity and *are covered* by sovereign immunity. Those teams, composed of 126 members, are: the University of Florida in Gainesville team, the University of Florida in Jacksonville team, the University of Miami team, the University of South Florida team, and the Broward County team, whose members are employees of the Broward County Sheriff's Office. The remaining 238 employees who make up the other 17 teams are independent contractors and *are not* covered by sovereign immunity in tort actions.<sup>12</sup> The teams that do not receive sovereign immunity protection must purchase their own liability coverage.

### ***Lawsuits Filed Against Child Protection Teams***

The Division of Risk Management within the Chief Financial Officer's office queried its files for recent lawsuits involving child protection teams. For fiscal years 2016-2017, 2017-2018, and the current year to date, the Division of Risk Management was not able to identify a lawsuit filed against a government employed child protection team.<sup>13</sup>

### ***Sovereign Immunity and Child Protection Team Physicians***

It is not definitively settled whether all child protection team *physicians* are covered under sovereign immunity. Whether sovereign immunity applies depends on the degree of control that the state maintains over the agent. In *Stoll v. Noel*,<sup>14</sup> the Florida Supreme Court explained that, under the appropriate circumstances, independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.<sup>15</sup>

The *Stoll* Court examined the employment contract between the Children's Medical Services (CMS) physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did. The manuals and guides given to physician

---

<sup>11</sup> According to the Department of Health, the 364 employees figure does not include the child protection team medical directors.

<sup>12</sup> See note 3, *supra*.

<sup>13</sup> Email prepared by Molly C. Merry, CPA, Director, Division of Risk Management, and forwarded by Chase Mitchell, Office of Legislative Affairs, Office of the Chief Financial Officer (Feb. 16, 2019) (on file with the Senate Committee on Judiciary). Risk Management noted that it did not have a specific code in its system that identified child protection teams that were involved in lawsuits. In updating a 2016 report, the workers queried all cases against DCF since July 1, 2012, and used cause codes such as child abuse, failure to protect, wrongful death by a foster parent, or similar category. The liability adjusters found no reported cases related to child protection teams in fiscal years 2016-2017 to the present. In fiscal years 2013-2014 through 2015-2016 notices were filed that litigation might ensue, but no lawsuits have been filed based upon those notices. The email shows that earlier lawsuits were filed dating back to fiscal year 2006-2007, but it is not readily apparent the extent to which child protections teams were named in the litigation.

<sup>14</sup> *Stoll v. Noel*, 694 So. 2d 701 (Fla. 1997).

<sup>15</sup> *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).



consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons. Furthermore, the Court's conclusion was supported by the state's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and the state acknowledged full financial responsibility for the physicians' actions. The Court noted that the state's interpretation of its manual is entitled to judicial deference and great weight.<sup>16</sup>

### III. Effect of Proposed Changes:

The bill amends s. 768.28(9)(b), F.S., by expanding the definition of "officer, employee, or agent" to include "any member of a child protection team, as defined in s. 39.01, when carrying out her or his duties as a team member under the control, direction, and supervision of the state or any of its agencies or subdivisions" As a result, a member of a child protection team will receive sovereign immunity protection in a tort action only when the team member is determined to have acted under the control, direction, and supervision of the state or one of its entities. If the child protection team member is found to be acting outside of that control, then sovereign immunity will not protect the team member in a tort lawsuit.

This amendatory language appears to focus on the agency role of the team member in a manner similar to the Supreme Court's *Stoll* decision discussed in the Present Situation above. To receive sovereign immunity, the team member cannot be acting independently and separate from the supervision of the state or one of its entities. In the *Stoll* decision, the Court held that physician consultants were agents of the state and entitled to sovereign immunity because the state had to authorize the physician's services in advance and maintain supervisory authority over the physician. Additionally, final authority for the treatment of the patients did not reside with the physician consultants, but with the employing state entity.

The bill takes effect July 1, 2019.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

---

<sup>16</sup> *Id.*

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce the need for child protection teams to purchase liability insurance.

C. Government Sector Impact:

The Department of Health estimates that the fiscal impact of providing sovereign immunity coverage to child protection teams cannot be determined but might be significant. Potential costs to the Department could include legal representation, the cost to settle a suit, and related litigation expenses. Because 126 of the 364 statewide CPT employees are already covered by sovereign immunity, the number of additional persons contributing to any potential fiscal impact is approximately 238.<sup>17</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 768.28 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 Judiciary on March 4, 2019:**

The underlying bill broadly granted sovereign immunity to any member of a child protection team when she or he was carrying out duties as a team member. The

---

<sup>17</sup>Florida Department of Health, *Senate Bill 256 Agency Legislative Bill Analysis* (Jan. 8, 2019) (on file with the Senate Committee on Judiciary).

committee substitute limits the scope of that grant. For a team member to receive liability protection under the committee substitute, he or she must have acted under the control, direction, and supervision of the state or one of its agencies or subdivisions.

**B. Amendments:**

None.

---

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

---

By the Committee on Judiciary; and Senator Baxley

590-02662-19

2019256c1

1 A bill to be entitled  
 2 An act relating to child protection teams; amending s.  
 3 768.28, F.S.; revising the definition of the term  
 4 "officer, employee, or agent," as it applies to  
 5 immunity from personal liability in certain actions,  
 6 to include any member of a child protection team  
 7 established by the Department of Health in certain  
 8 circumstances; providing an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Paragraphs (a) and (b) of subsection (9) of  
 13 section 768.28, Florida Statutes, are amended to read:  
 14 768.28 Waiver of sovereign immunity in tort actions;  
 15 recovery limits; limitation on attorney fees; statute of  
 16 limitations; exclusions; indemnification; risk management  
 17 programs.—  
 18 (9) (a) An ~~Ne~~ officer, employee, or agent of the state or of  
 19 any of its subdivisions may not ~~shall~~ be held personally liable  
 20 in tort or named as a party defendant in any action for any  
 21 injury or damage suffered as a result of any act, event, or  
 22 omission of action in the scope of her or his employment or  
 23 function, unless such officer, employee, or agent acted in bad  
 24 faith or with malicious purpose or in a manner exhibiting wanton  
 25 and willful disregard of human rights, safety, or property.  
 26 However, such officer, employee, or agent shall be considered an  
 27 adverse witness in a tort action for any injury or damage  
 28 suffered as a result of any act, event, or omission of action in  
 29 the scope of her or his employment or function. The exclusive

Page 1 of 3

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

590-02662-19

2019256c1

30 remedy for injury or damage suffered as a result of an act,  
 31 event, or omission of an officer, employee, or agent of the  
 32 state or any of its subdivisions or constitutional officers is  
 33 ~~shall be~~ by action against the governmental entity, or the head  
 34 of such entity in her or his official capacity, or the  
 35 constitutional officer of which the officer, employee, or agent  
 36 is an employee, unless such act or omission was committed in bad  
 37 faith or with malicious purpose or in a manner exhibiting wanton  
 38 and willful disregard of human rights, safety, or property. The  
 39 state or its subdivisions are ~~shall not be~~ liable in tort for  
 40 the acts or omissions of an officer, employee, or agent  
 41 committed while acting outside the course and scope of her or  
 42 his employment or committed in bad faith or with malicious  
 43 purpose or in a manner exhibiting wanton and willful disregard  
 44 of human rights, safety, or property.  
 45 (b) As used in this subsection, the term:  
 46 1. "Employee" includes any volunteer firefighter.  
 47 2. "Officer, employee, or agent" includes, but is not  
 48 limited to, any health care provider when providing services  
 49 pursuant to s. 766.1115; any nonprofit independent college or  
 50 university located and chartered in this state which owns or  
 51 operates an accredited medical school, and its employees or  
 52 agents, when providing patient services pursuant to paragraph  
 53 (10)(f); ~~and~~ any public defender or her or his employee or  
 54 agent, including, ~~among others,~~ an assistant public defender or  
 55 ~~and~~ an investigator; and any member of a child protection team,  
 56 as defined in s. 39.01, when carrying out her or his duties as a  
 57 team member under the control, direction, and supervision of the  
 58 state or any of its agencies or subdivisions.

Page 2 of 3

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

590-02662-19

2019256c1

59

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/19 Meeting Date

256 Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant Gen. Counsel

Address 1436 Piedmont Dr E

Phone 850 224 6496

TLH FL 32308 City State Zip

Email MThomas@jmedical.org

Speaking: For Against Information

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

Representing Florida Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/19

Meeting Date

256

Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street, suite 200

Phone 850-205-9000

Street

Tallahassee FL 32309

City

State

Zip

Email aimee.diazlyon@mhdfhm.com

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

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

Representing Florida Chapter American Academy of Pediatrics

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

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/19

Meeting Date

256

Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr

Phone 878-7364

Street

Tallahassee FL 32301

Email winnsr@earthlink.net

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)



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

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

3.13.19

*Meeting Date*

256

*Bill Number (if applicable)*

Topic Child Protection Teams

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: SB 7002

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Alzheimer's Disease Research Grant Advisory Board

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Rossitto-Van Winkle	Brown		<b>HP Submitted as Committee Bill</b>
1.	Ponder	McVaney	GO	<b>Favorable</b>
2.	Rossitto-Van Winkle	Phelps	RC	<b>Favorable</b>

---

**I. Summary:**

SB 7002 amends s. 381.82(3)(d), F.S., to save from repeal the public records exemptions for information related to the Alzheimer's Disease Research Grant Advisory Board's (the board) receipt and review of research grant applications. The documents received, and those generated by the board during the review process, except final recommendations, are designated as confidential and exempt but may be disclosed under certain circumstances.

The bill also saves from repeal the public meetings exemption for those portions of the board's meetings at which the grant applications are discussed.

The exemptions are subject to the Open Government Sunset Review Act (OGSR) and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill takes effect October 1, 2019.

**II. Present Situation:**

**Public Records Law**

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

---

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

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

legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

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

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.<sup>9</sup> 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.<sup>10</sup> A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

---

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

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

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

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

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

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

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

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

<sup>11</sup> *Halifax Hosp. Medical Center v. News-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 public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

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

Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

### Open Meetings Laws

The Florida Constitution also provides that the public has a right to access governmental meetings.<sup>14</sup> 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.<sup>15</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>16</sup>

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”<sup>17</sup> or the “Sunshine Law,”<sup>18</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken, to be open to the public.<sup>19</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>20</sup> 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.<sup>21</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>22</sup>

Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>23</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>24</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.<sup>25</sup> 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.<sup>26</sup> A statutory

---

<sup>13</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

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

<sup>15</sup> *Id.*

<sup>16</sup> FLA. CONST. art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

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

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

<sup>19</sup> Section 286.011(1)-(2), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 286.011(6), F.S.

<sup>22</sup> Section 286.011(2), F.S.

<sup>23</sup> Section 286.011(1), F.S.

<sup>24</sup> Section 286.011(3), F.S.

<sup>25</sup> FLA. CONST. art. I, s. 24(c).

<sup>26</sup> *Id.*

exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>27</sup>

### **Open Government Sunset Review Act**

The OGSR prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>28</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>29</sup> 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.<sup>30</sup> 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;<sup>31</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>32</sup> or
- It protects trade or business secrets.<sup>33</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>34</sup> 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 or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>35</sup> If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then

<sup>27</sup> See *supra*, note 11.

<sup>28</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. 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.

<sup>29</sup> Section 119.15(3), F.S.

<sup>30</sup> Section 119.15(6)(b), F.S.

<sup>31</sup> Section 119.15(6)(b)1., F.S.

<sup>32</sup> Section 119.15(6)(b)2., F.S.

<sup>33</sup> Section 119.15(6)(b)3., F.S.

<sup>34</sup> 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?

<sup>35</sup> FLA. CONST. art. I, s. 24(c).

a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>36</sup>

### **Ed and Ethel Moore Alzheimer's Disease Research Program**

The Ed and Ethel Moore Alzheimer's Research Program is established within the Florida Department of Health to fund research to help prevent or cure Alzheimer's disease.<sup>37</sup> Applications for research funding under the program are submitted from universities and established research institutes in the state.<sup>38</sup> Awards must be made through a competitive, peer-reviewed process in any of the following categories:

- Investigator-initiated research;
- Institutional research;
- Predoctoral and postdoctoral research fellowships; and
- Collaborative research.

The board annually provides the State Surgeon General input on the scope of the research program and its recommendations for proposals to be funded.<sup>39</sup> The State Surgeon General, in turn, awards grants, after consulting with the board, on the basis of scientific merit. The board may also advise on program priorities, assist in developing linkages with nonacademic entities, and develop and provide oversight of mechanisms for disseminating research results.

Applicants must apply through an online system that includes the following items of information:

- Principal Investigator information: name, address, telephone number, email address, suffix/academic or professional title, institution name, and mailing address;
- Names of other research personnel;
- Name, address, telephone number, and email address of the Sponsored Research Official;
- Lead organization;
- Collaborating institutions and collaborating research personnel, if any;
- Project information, including descriptive title of proposed research, research priority area, grant category, grant funds requested, general audience abstract, scientific abstract, research site, survey instruments, and disclosure of research activities involving human subjects, vertebrate animals, recombinant DNA molecules, and stem cells;
- Key words;
- Collaborator information;
- Signed approval letter from the Principal Investigator's Office of Sponsored Research;
- Budget and budget narrative; and
- Biographical sketch.<sup>40</sup>

---

<sup>36</sup> Section 119.15(7), F.S.

<sup>37</sup> Section 381.82(1), F.S.

<sup>38</sup> Section 381.82(1)(b), F.S.

<sup>39</sup> Section 381.82(3), F.S.

<sup>40</sup> The Department of Health, *Open Government Sunset Review Questionnaire*, (Aug. 6, 2018), at p. 2 (on file with the Senate Committee on Health Policy).

The board holds an annual, in-person meeting to review and select the grant proposals by December 15 of each year to be recommended to the state surgeon general for funding.<sup>41</sup> Those portions of the meeting are “closed” and exempt from public meeting requirements. The records generated by the board relating to review of the grant applications are also exempt from public records law and may include:

- A recommended list of research grants to receive funding;<sup>42</sup>
- Assessment of Alzheimer’s disease relatedness;
- Health impact;
- Budget request and narrative; and
- Research category.<sup>43</sup>

Other responsibilities of the board may include, but are not limited to, providing advice on program priorities and emphases; assisting in the development of appropriate linkages to nonacademic entities, such as voluntary organizations, health care delivery institutions, industry, government agencies, and public officials; and developing and providing oversight regarding mechanisms for the dissemination of research results.<sup>44</sup>

The board reports annually to the Governor, President of the Senate, Speaker of the House of Representatives, and the State Surgeon General on elements of the program’s implementation, its impact on leveraging additional funding, progress towards its goals, and recommendations to further its mission.<sup>45</sup> The annual meetings are not publicly noticed. The only information discussed during the meetings pertains to the research grant applications for the purpose of selecting the list of recommended grant recipients.

Section 381.82(3)(d), F.S., creates a public records exemption for grant applications submitted to the board and the records generated by the board during its review, except the final recommendations. The information is confidential and exempt.<sup>46</sup> The records may be released, however, with the express written consent of the person to whom the information pertains or the person’s legally authorized representative, or by court order upon a showing of good cause.

Section 381.82(3)(d), F.S., also provides that those portions of the board’s meetings at which the grant applications are discussed are exempt from the public meetings law. The statute requires

---

<sup>41</sup> The Department of Health, Provider and Partner Resources, *Alzheimer’s Disease Research Grant Advisory Board*, available at: <http://www.floridahealth.gov/%5C/provider-and-partner-resources/adrgab/index.html> (last visited Dec. 17, 2018).

<sup>42</sup> *Id.*. This list with peer review scores and abstracts is forwarded to the state surgeon general for finalizing the research grant awards.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*.

<sup>45</sup> Section 381.82, F.S.

<sup>46</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

that the closed portions of the meetings be recorded, and the recordings may be released under the same circumstances as apply to the exempt records.

While the Department of Health (DOH) has not received any requests for exempt records or meeting recordings from 2014 through the present, related to the Ed and Ethel Moore Alzheimer's Disease Research Grant Program, the public record and public meeting exemption ensures that the Principal Investigators' personal information is kept confidential, personal reputation is protected, and that the integrity of the research is not compromised. Research grants awarded through this program often include proprietary information such as information relating to patents, investigational new drugs, and investigational new equipment. The exemptions enable the board to openly discuss and evaluate each research grant submitted. The DOH requests the reenactment of the exemption.<sup>47</sup>

Section 381.82(3)(d), F.S., provides for the repeal of the exemptions pursuant to the OGSR on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

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

This bill saves from repeal the public records exemption for information received by, or created by, the board relating to its review of research grant applications. Grant applications and supporting documentation provided to the board for Alzheimer's disease research, and any records generated by the board relating to review of such applications, except final recommendations, will continue to be confidential and exempt from public disclosure.

This bill also saves from repeal the public meeting exemption for those closed portions of a meeting of the board during which applications for Alzheimer's disease research grants are discussed.

The effective date of the bill is October 1, 2019.

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

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

None.

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

##### ***Vote Requirement***

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

---

<sup>47</sup> The Department of Health, *Open Government Sunset Review Questionnaire*, (Aug. 6, 2018), at p. 2 (on file with the Senate Committee on Health Policy).



***Public Necessity Statement***

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

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of this law is to maintain keep confidential research grant applications, and records generated by the board related to review of the applications, which contain information of a confidential nature, including ideas and processes, the disclosure of which could injure the affected researchers. Further, closing access to those portions of the meetings of the board during which the Alzheimer's disease research grant applications are discussed serves the purpose of ensuring decisions are based upon merit without bias or undue influence. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**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 381.82(3)(d), Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

---

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

---

By the Committee on Health Policy

588-00835-19

20197002\_\_

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 381.82, F.S., relating  
 4 to an exemption from the public records and meeting  
 5 requirements for applications provided to the  
 6 Alzheimer's Disease Research Grant Advisory Board  
 7 within the Department of Health and the review of such  
 8 applications; removing the scheduled repeal of the  
 9 exemption; providing an effective date.

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

11  
 12  
 13 Section 1. Paragraph (d) of subsection (3) of section  
 14 381.82, Florida Statutes, is amended to read:

15 381.82 Ed and Ethel Moore Alzheimer's Disease Research  
 16 Program.—

17 (3) There is created within the Department of Health the  
 18 Alzheimer's Disease Research Grant Advisory Board.

19 (d)1. Applications provided to the board for Alzheimer's  
 20 disease research grants under this section, and any records  
 21 generated by the board relating to review of such applications,  
 22 except final recommendations, are confidential and exempt from  
 23 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

24 2. Those portions of a meeting of the board during which  
 25 applications for Alzheimer's disease research grants under this  
 26 section are discussed are exempt from s. 286.011 and s. 24(b),  
 27 Art. I of the State Constitution. The closed portion of a  
 28 meeting must be recorded. The recording shall be maintained by  
 29 the board and shall be subject to disclosure in accordance with

Page 1 of 2

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

588-00835-19

20197002\_\_

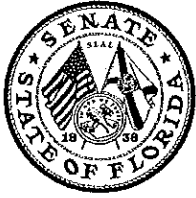
30 subparagraph 3.  
 31 3. Information that is held confidential and exempt under  
 32 this paragraph may be disclosed with the express written consent  
 33 of the individual to whom the information pertains or the  
 34 individual's legally authorized representative, or by court  
 35 order upon a showing of good cause.

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

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

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Health Policy, *Chair*  
Appropriations Subcommittee on Health  
and Human Services, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Children, Families, and Elder Affairs  
Military and Veterans Affairs and Space

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL  
25th District

February 13, 2019

Senator Lizbeth Benacquisto  
402 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 7002 – OGSR/Alzheimer’s Disease Research Grant Advisory Board** be placed on the next available agenda for the Committee on Rules. SB 7002 passed its last committee stop unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell  
Senate District 25

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

### REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: SB 7004

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Department of Health Personnel

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Rossitto-Van Winkle	Brown		<b>HP Submitted as Committee Bill</b>
1.	Ponder	McVaney	GO	<b>Favorable</b>
2.	Rossitto-Van Winkle	Phelps	RC	<b>Favorable</b>

---

**I. Summary:**

SB 7004 amends s. 119.071(4)(d)2.o., F.S., to save from repeal a public records exemption for certain personal identification and location information of certain Department of Health (DOH) personnel, their spouses, and children. The exemption applies to records of DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities.

The exemption is subject to the Open Government Sunset Review Act (OGSR) and will stand repealed on October 2, 2019, unless saved from repeal by the Legislature.

The bill takes effect October 1, 2019.

**II. Present Situation:**

**Public Records Law**

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

---

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

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

legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

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

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.<sup>9</sup> 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.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). See also *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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

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

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

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

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

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

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

<sup>11</sup> *Halifax Hosp. Medical Center v. News-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 public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

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

Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

### **Open Government Sunset Review Act**

The OGSR prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>14</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>15</sup> 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.<sup>16</sup> 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;<sup>17</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

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

<sup>13</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>14</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. 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.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> 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?

## Public Records Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for identification and location information of certain current or former government personnel and their spouses and children.<sup>21</sup> Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;
- Firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;<sup>22</sup>
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;<sup>23</sup>
- Specified Department of Juvenile Justice personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Investigators or inspectors of the Department of Business and Professional Regulation; and
- County tax collectors.

Although the types of exempt information vary, the following information is exempt<sup>24</sup> from public records requirements for all personnel listed above:

- Home addresses and telephone numbers<sup>25</sup> of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and
- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency<sup>26</sup> that is not the employer of the protected person, he or she must submit a written request to that agency to maintain the public records exemption.<sup>27</sup>

---

<sup>21</sup> See s. 119.071(4)(d), F.S.

<sup>22</sup> See s. 119.071(4)(d)2.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

<sup>23</sup> See s. 119.071(4)(d)2.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. A guardian ad litem may be a public employee, volunteer, or contract or appointed attorney. See s. 39.820(1), F.S.

<sup>24</sup> See *supra* note 6.

<sup>25</sup> The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

<sup>26</sup> Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>27</sup> Section 119.071(4)(d)3., F.S.



## Department of Health

### *Regulation of Professions*

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.<sup>28</sup> Practitioner regulation is conducted by the Division of Medical Quality Assurance (MQA) and includes the following professions:

- Emergency Medical Technicians and Paramedics (part III of ch. 401, F.S.);
- Acupuncture (ch. 457, F.S.);
- Allopathic Medicine, (ch. 458, F.S.);
- Osteopathic Medicine, (ch. 459, F.S.);
- Chiropractic Medicine, (ch. 460, F.S.);
- Podiatric Medicine (ch. 461, F.S.);
- Naturopathy (ch. 462, F.S.);
- Optometry (ch. 463, F.S.);
- Nursing, including Certified Nursing Assistants (ch. 464, F.S.);
- Pharmacy (ch. 465, F.S.);
- Dentistry (ch. 466, F.S.);
- Midwifery (ch. 467, F.S.);
- Speech-Language Pathology and Audiology (part I of ch. 468, F.S.);
- Nursing Home Administration (part II of ch. 468, F.S.);
- Occupational Therapy (part III of ch. 468, F.S.);
- Radiology (part IV of ch. 468, F.S.);
- Respiratory Therapy (part V of ch. 468, F.S.);
- Dietetics and Nutrition (part X of ch. 468, F.S.);
- Athletic Training (part XIII of ch. 468, F.S.);
- Orthotics, Prosthetics, and Pedorthics (part XIV of ch. 468, F.S.);
- Electrolysis (ch. 478, F.S.);
- Massage Therapy, (ch. 480, F.S.);
- Clinical Laboratory Personnel (part III of ch. 483, F.S.);
- Medical Physicists (part IV of ch. 483, F.S.);
- Opticianry (part I of ch. 484, F.S.);
- Hearing Aid Specialists (part II of ch. 484, F.S.);
- Physical Therapy Practice (ch. 486, F.S.);
- Psychology (ch. 490, F.S.); and
- Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (ch. 491, F.S.).

The following facilities are also regulated or inspected by MQA:<sup>29</sup>

- Body Piercing Establishments (s. 381.0075, F.S.);
- Brain and Spinal Cord Injury Programs (ss. 381.739 - 381.79, F.S.);
- Counterfeit-proof Prescription Vendors (s. 456.42(2), F.S.);

<sup>28</sup> Section 20.43(1)(g), F.S.

<sup>29</sup> Other entities regulated by the DOH, although not the MQA, include tanning facilities, X-ray sites, and radioactive materials users, among others.

- Dental Laboratories (ch. 466, F.S.);
- Electrology Facilities (ch. 478, F.S.);
- Electrolysis Training Programs (ch. 478, F.S.);
- EMS Education Programs (ch. 401, F.S.);
- EMS Vehicle Permittees (ch. 401, F.S.);
- Environmental Testing Laboratories (s. 403.0625, F.S.);
- Massage Establishments (ch. 480, F.S.);
- Massage Schools (ch. 480, F.S.);
- Nursing Education Programs (ch. 464, F.S.);
- Office Surgery Sites (ch. 458 and ch. 459, F.S.);
- Optical Establishments (part I of ch. 484, F.S.);
- Pain Management Clinics (ch. 458 and ch. 459, F.S.);
- Pharmacies (ch. 465, F.S.); and
- Trauma Centers (part II of ch. 395, F.S.).

As part of its enforcement responsibilities, the DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant,<sup>30</sup> and legally sufficient,<sup>31</sup> and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.<sup>32</sup> The DOH also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.<sup>33</sup>

The Consumer Services Unit (CSU) within MQA is the central intake for all complaints. The CSU includes investigators and analysts assigned to specific professions. Staff reviews each complaint for possible violations of laws and rules and forwards only those complaints that are legally sufficient for investigation.<sup>34</sup>

The Investigative Services Unit (ISU) is the investigative arm of MQA. Generally, an investigation includes the following steps:

- Obtaining medical records, documentation, and evidence related to the complaint;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses;

---

<sup>30</sup> The DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. *See* s. 456.073(1), F.S.

<sup>31</sup> A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred. *See* s. 456.073(1), F.S.

<sup>32</sup> Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board. *See* s. 456.073(2), F.S. If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee. If the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. *See* s. 456.073(4), F.S.

<sup>33</sup> Section 456.066, F.S.

<sup>34</sup> Florida Department of Health, *Consumer Services*, (last modified May 25, 2017), available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Dec. 12, 2018).

- Drafting and serving subpoenas for necessary information; and
- Drafting the investigative report.

The ISU also conducts the required initial health care facility inspections before a facility begins operation and re-inspects on a periodic basis.<sup>35</sup>

### ***Disability Determinations***

The Division of Disability Determinations (DDD) within DOH is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). The DDD is also responsible for the periodic Continuing Disability Review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.

Applications for Social Security disability benefits are filed at the claimant's local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant's medical sources.

If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant's alleged disability. The claimant is also contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information.

After the claim file is documented and a determination of medical eligibility is made, the DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due to the claimant.<sup>36</sup>

### ***Personal Identification and Location Information of DOH Personnel***

Section 119.071(4)(d)2.o., F. S., created a public records exemption for identification and location information of certain current and former personnel of the DOH, their spouses, and their children. The exemption applies to records of those personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities. The information that is exempt includes:

- The home addresses, telephone numbers, dates of birth, and photographs of the DOH personnel;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and

---

<sup>35</sup> Florida Department of Health, *Investigative Services Unit Brochure*, (updated March 18, 2015) available at [http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/\\_documents/isu-brochure.pdf](http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/_documents/isu-brochure.pdf) (last visited Dec. 12, 2018).

<sup>36</sup> Social Security Disability Resource Center, *Applying for Disability in Florida*, available at: <https://www.ssdrc.com/state-florida-fl-getting-started.html> (last visited Dec. 17, 2018).

- The names and locations of schools and day care facilities attended by the children of the DOH personnel.

The DOH reports that it currently has 2,711 personnel that meet the criteria of s. 119.071(4)(d)2.o., F.S., and has received 210 public record requests for information about those personnel via phone, email, written, online, and in person since the statute's enactment. Exempt information has been released pursuant only to subpoena or court order, or if authorized by the individual with written consent and/or a signed disclosure form.

The DOH also indicates that the exemptions should continue for all listed personnel to ensure their safety in the workplace and prevent injury violence or harassment from disgruntled regulated individuals at home. The DOH further suggests an additional exemption for the same information for parents of listed personnel but does not cite any specific basis or need for the additional information exemption.<sup>37</sup>

Section 119.071(4)(d)2.o., F.S., is subject to the OGSR and will stand repealed on October 2, 2019, unless saved from repeal by the Legislature.

### III. Effect of Proposed Changes:

The bill saves from repeal the public records exemptions in s. 119.071(4)(d)2.o., F.S., which makes confidential and exempt from s. 119.07(1), F.S., and s. 24, Art. I of the State Constitution, the following agency personnel's information:

- The home addresses, telephone numbers, dates of birth, and photographs;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by the children of the DOH personnel.

The bill takes effect October 1, 2019.

### IV. Constitutional Issues:

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

None.

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

##### *Vote Requirement*

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption

---

<sup>37</sup> The Department of Health, *Response to Open Government Sunset Review Questionnaire* (Aug. 13, 2018) (on file with the Senate Committee on Health Policy).

beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

***Public Necessity Statement***

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

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of this law to protect certain personal identifying and location information of current or former DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071(4)(d)2.o., 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 Health Policy

588-00836-19

20197004\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., relating to an exemption from the public records requirements for personal identifying and location information and photographs of certain Department of Health personnel; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and

Page 1 of 12

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

588-00836-19

20197004\_\_

personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative

Page 2 of 12

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

588-00836-19

20197004\_\_

59 personnel of the Office of Financial Regulation's Bureau of  
 60 Financial Investigations whose duties include the investigation  
 61 of fraud, theft, other related criminal activities, or state  
 62 regulatory requirement violations; the names, home addresses,  
 63 telephone numbers, dates of birth, and places of employment of  
 64 the spouses and children of such personnel; and the names and  
 65 locations of schools and day care facilities attended by the  
 66 children of such personnel are exempt from s. 119.07(1) and s.  
 67 24(a), Art. I of the State Constitution. This sub-subparagraph  
 68 is subject to the Open Government Sunset Review Act in  
 69 accordance with s. 119.15 and shall stand repealed on October 2,  
 70 2022, unless reviewed and saved from repeal through reenactment  
 71 by the Legislature.

72 d. The home addresses, telephone numbers, dates of birth,  
 73 and photographs of current or former firefighters certified in  
 74 compliance with s. 633.408; the names, home addresses, telephone  
 75 numbers, photographs, dates of birth, and places of employment  
 76 of the spouses and children of such firefighters; and the names  
 77 and locations of schools and day care facilities attended by the  
 78 children of such firefighters are exempt from s. 119.07(1) and  
 79 s. 24(a), Art. I of the State Constitution. This sub-  
 80 subparagraph is subject to the Open Government Sunset Review Act  
 81 in accordance with s. 119.15, and shall stand repealed on  
 82 October 2, 2022, unless reviewed and saved from repeal through  
 83 reenactment by the Legislature.

84 e. The home addresses, dates of birth, and telephone  
 85 numbers of current or former justices of the Supreme Court,  
 86 district court of appeal judges, circuit court judges, and  
 87 county court judges; the names, home addresses, telephone

Page 3 of 12

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

588-00836-19

20197004\_\_

88 numbers, dates of birth, and places of employment of the spouses  
 89 and children of current or former justices and judges; and the  
 90 names and locations of schools and day care facilities attended  
 91 by the children of current or former justices and judges are  
 92 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 93 Constitution. This sub-subparagraph is subject to the Open  
 94 Government Sunset Review Act in accordance with s. 119.15 and  
 95 shall stand repealed on October 2, 2022, unless reviewed and  
 96 saved from repeal through reenactment by the Legislature.

97 f. The home addresses, telephone numbers, dates of birth,  
 98 and photographs of current or former state attorneys, assistant  
 99 state attorneys, statewide prosecutors, or assistant statewide  
 100 prosecutors; the names, home addresses, telephone numbers,  
 101 photographs, dates of birth, and places of employment of the  
 102 spouses and children of current or former state attorneys,  
 103 assistant state attorneys, statewide prosecutors, or assistant  
 104 statewide prosecutors; and the names and locations of schools  
 105 and day care facilities attended by the children of current or  
 106 former state attorneys, assistant state attorneys, statewide  
 107 prosecutors, or assistant statewide prosecutors are exempt from  
 108 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

109 g. The home addresses, dates of birth, and telephone  
 110 numbers of general magistrates, special magistrates, judges of  
 111 compensation claims, administrative law judges of the Division  
 112 of Administrative Hearings, and child support enforcement  
 113 hearing officers; the names, home addresses, telephone numbers,  
 114 dates of birth, and places of employment of the spouses and  
 115 children of general magistrates, special magistrates, judges of  
 116 compensation claims, administrative law judges of the Division

Page 4 of 12

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



588-00836-19

20197004\_\_

117 of Administrative Hearings, and child support enforcement  
 118 hearing officers; and the names and locations of schools and day  
 119 care facilities attended by the children of general magistrates,  
 120 special magistrates, judges of compensation claims,  
 121 administrative law judges of the Division of Administrative  
 122 Hearings, and child support enforcement hearing officers are  
 123 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 124 Constitution. This sub-subparagraph is subject to the Open  
 125 Government Sunset Review Act in accordance with s. 119.15 and  
 126 shall stand repealed on October 2, 2022, unless reviewed and  
 127 saved from repeal through reenactment by the Legislature.

128 h. The home addresses, telephone numbers, dates of birth,  
 129 and photographs of current or former human resource, labor  
 130 relations, or employee relations directors, assistant directors,  
 131 managers, or assistant managers of any local government agency  
 132 or water management district whose duties include hiring and  
 133 firing employees, labor contract negotiation, administration, or  
 134 other personnel-related duties; the names, home addresses,  
 135 telephone numbers, dates of birth, and places of employment of  
 136 the spouses and children of such personnel; and the names and  
 137 locations of schools and day care facilities attended by the  
 138 children of such personnel are exempt from s. 119.07(1) and s.  
 139 24(a), Art. I of the State Constitution.

140 i. The home addresses, telephone numbers, dates of birth,  
 141 and photographs of current or former code enforcement officers;  
 142 the names, home addresses, telephone numbers, dates of birth,  
 143 and places of employment of the spouses and children of such  
 144 personnel; and the names and locations of schools and day care  
 145 facilities attended by the children of such personnel are exempt

588-00836-19

20197004\_\_

146 from s. 119.07(1) and s. 24(a), Art. I of the State  
 147 Constitution.

148 j. The home addresses, telephone numbers, places of  
 149 employment, dates of birth, and photographs of current or former  
 150 guardians ad litem, as defined in s. 39.820; the names, home  
 151 addresses, telephone numbers, dates of birth, and places of  
 152 employment of the spouses and children of such persons; and the  
 153 names and locations of schools and day care facilities attended  
 154 by the children of such persons are exempt from s. 119.07(1) and  
 155 s. 24(a), Art. I of the State Constitution. This sub-  
 156 subparagraph is subject to the Open Government Sunset Review Act  
 157 in accordance with s. 119.15 and shall stand repealed on October  
 158 2, 2022, unless reviewed and saved from repeal through  
 159 reenactment by the Legislature.

160 k. The home addresses, telephone numbers, dates of birth,  
 161 and photographs of current or former juvenile probation  
 162 officers, juvenile probation supervisors, detention  
 163 superintendents, assistant detention superintendents, juvenile  
 164 justice detention officers I and II, juvenile justice detention  
 165 officer supervisors, juvenile justice residential officers,  
 166 juvenile justice residential officer supervisors I and II,  
 167 juvenile justice counselors, juvenile justice counselor  
 168 supervisors, human services counselor administrators, senior  
 169 human services counselor administrators, rehabilitation  
 170 therapists, and social services counselors of the Department of  
 171 Juvenile Justice; the names, home addresses, telephone numbers,  
 172 dates of birth, and places of employment of spouses and children  
 173 of such personnel; and the names and locations of schools and  
 174 day care facilities attended by the children of such personnel

588-00836-19 20197004\_\_

175 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
176 Constitution.

177 1. The home addresses, telephone numbers, dates of birth,  
178 and photographs of current or former public defenders, assistant  
179 public defenders, criminal conflict and civil regional counsel,  
180 and assistant criminal conflict and civil regional counsel; the  
181 names, home addresses, telephone numbers, dates of birth, and  
182 places of employment of the spouses and children of current or  
183 former public defenders, assistant public defenders, criminal  
184 conflict and civil regional counsel, and assistant criminal  
185 conflict and civil regional counsel; and the names and locations  
186 of schools and day care facilities attended by the children of  
187 current or former public defenders, assistant public defenders,  
188 criminal conflict and civil regional counsel, and assistant  
189 criminal conflict and civil regional counsel are exempt from s.  
190 119.07(1) and s. 24(a), Art. I of the State Constitution.

191 m. The home addresses, telephone numbers, dates of birth,  
192 and photographs of current or former investigators or inspectors  
193 of the Department of Business and Professional Regulation; the  
194 names, home addresses, telephone numbers, dates of birth, and  
195 places of employment of the spouses and children of such current  
196 or former investigators and inspectors; and the names and  
197 locations of schools and day care facilities attended by the  
198 children of such current or former investigators and inspectors  
199 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
200 Constitution. This sub-subparagraph is subject to the Open  
201 Government Sunset Review Act in accordance with s. 119.15 and  
202 shall stand repealed on October 2, 2022, unless reviewed and  
203 saved from repeal through reenactment by the Legislature.

588-00836-19 20197004\_\_

204 n. The home addresses, telephone numbers, and dates of  
205 birth of county tax collectors; the names, home addresses,  
206 telephone numbers, dates of birth, and places of employment of  
207 the spouses and children of such tax collectors; and the names  
208 and locations of schools and day care facilities attended by the  
209 children of such tax collectors are exempt from s. 119.07(1) and  
210 s. 24(a), Art. I of the State Constitution. This sub-  
211 subparagraph is subject to the Open Government Sunset Review Act  
212 in accordance with s. 119.15 and shall stand repealed on October  
213 2, 2022, unless reviewed and saved from repeal through  
214 reenactment by the Legislature.

215 o. The home addresses, telephone numbers, dates of birth,  
216 and photographs of current or former personnel of the Department  
217 of Health whose duties include, or result in, the determination  
218 or adjudication of eligibility for social security disability  
219 benefits, the investigation or prosecution of complaints filed  
220 against health care practitioners, or the inspection of health  
221 care practitioners or health care facilities licensed by the  
222 Department of Health; the names, home addresses, telephone  
223 numbers, dates of birth, and places of employment of the spouses  
224 and children of such personnel; and the names and locations of  
225 schools and day care facilities attended by the children of such  
226 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
227 the State Constitution. ~~This sub-subparagraph is subject to the  
228 Open Government Sunset Review Act in accordance with s. 119.15  
229 and shall stand repealed on October 2, 2019, unless reviewed and  
230 saved from repeal through reenactment by the Legislature.~~

231 p. The home addresses, telephone numbers, dates of birth,  
232 and photographs of current or former impaired practitioner

588-00836-19 20197004\_\_

233 consultants who are retained by an agency or current or former  
 234 employees of an impaired practitioner consultant whose duties  
 235 result in a determination of a person's skill and safety to  
 236 practice a licensed profession; the names, home addresses,  
 237 telephone numbers, dates of birth, and places of employment of  
 238 the spouses and children of such consultants or their employees;  
 239 and the names and locations of schools and day care facilities  
 240 attended by the children of such consultants or employees are  
 241 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 242 Constitution. This sub-subparagraph is subject to the Open  
 243 Government Sunset Review Act in accordance with s. 119.15 and  
 244 shall stand repealed on October 2, 2020, unless reviewed and  
 245 saved from repeal through reenactment by the Legislature.

246 q. The home addresses, telephone numbers, dates of birth,  
 247 and photographs of current or former emergency medical  
 248 technicians or paramedics certified under chapter 401; the  
 249 names, home addresses, telephone numbers, dates of birth, and  
 250 places of employment of the spouses and children of such  
 251 emergency medical technicians or paramedics; and the names and  
 252 locations of schools and day care facilities attended by the  
 253 children of such emergency medical technicians or paramedics are  
 254 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 255 Constitution. This sub-subparagraph is subject to the Open  
 256 Government Sunset Review Act in accordance with s. 119.15 and  
 257 shall stand repealed on October 2, 2021, unless reviewed and  
 258 saved from repeal through reenactment by the Legislature.

259 r. The home addresses, telephone numbers, dates of birth,  
 260 and photographs of current or former personnel employed in an  
 261 agency's office of inspector general or internal audit

588-00836-19 20197004\_\_

262 department whose duties include auditing or investigating waste,  
 263 fraud, abuse, theft, exploitation, or other activities that  
 264 could lead to criminal prosecution or administrative discipline;  
 265 the names, home addresses, telephone numbers, dates of birth,  
 266 and places of employment of spouses and children of such  
 267 personnel; and the names and locations of schools and day care  
 268 facilities attended by the children of such personnel are exempt  
 269 from s. 119.07(1) and s. 24(a), Art. I of the State  
 270 Constitution. This sub-subparagraph is subject to the Open  
 271 Government Sunset Review Act in accordance with s. 119.15 and  
 272 shall stand repealed on October 2, 2021, unless reviewed and  
 273 saved from repeal through reenactment by the Legislature.

274 s. The home addresses, telephone numbers, dates of birth,  
 275 and photographs of current or former directors, managers,  
 276 supervisors, nurses, and clinical employees of an addiction  
 277 treatment facility; the home addresses, telephone numbers,  
 278 photographs, dates of birth, and places of employment of the  
 279 spouses and children of such personnel; and the names and  
 280 locations of schools and day care facilities attended by the  
 281 children of such personnel are exempt from s. 119.07(1) and s.  
 282 24(a), Art. I of the State Constitution. For purposes of this  
 283 sub-subparagraph, the term "addiction treatment facility" means  
 284 a county government, or agency thereof, that is licensed  
 285 pursuant to s. 397.401 and provides substance abuse prevention,  
 286 intervention, or clinical treatment, including any licensed  
 287 service component described in s. 397.311(26). This sub-  
 288 subparagraph is subject to the Open Government Sunset Review Act  
 289 in accordance with s. 119.15 and shall stand repealed on October  
 290 2, 2023, unless reviewed and saved from repeal through

588-00836-19 20197004\_\_

291 reenactment by the Legislature.

292 t. The home addresses, telephone numbers, dates of birth,

293 and photographs of current or former directors, managers,

294 supervisors, and clinical employees of a child advocacy center

295 that meets the standards of s. 39.3035(1) and fulfills the

296 screening requirement of s. 39.3035(2), and the members of a

297 child protection team as described in s. 39.303 whose duties

298 include supporting the investigation of child abuse or sexual

299 abuse, child abandonment, child neglect, and child exploitation

300 or to provide services as part of a multidisciplinary case

301 review team; the names, home addresses, telephone numbers,

302 photographs, dates of birth, and places of employment of the

303 spouses and children of such personnel and members; and the

304 names and locations of schools and day care facilities attended

305 by the children of such personnel and members are exempt from s.

306 119.07(1) and s. 24(a), Art. I of the State Constitution. This

307 sub-subparagraph is subject to the Open Government Sunset Review

308 Act in accordance with s. 119.15 and shall stand repealed on

309 October 2, 2023, unless reviewed and saved from repeal through

310 reenactment by the Legislature.

311 3. An agency that is the custodian of the information

312 specified in subparagraph 2. and that is not the employer of the

313 officer, employee, justice, judge, or other person specified in

314 subparagraph 2. shall maintain the exempt status of that

315 information only if the officer, employee, justice, judge, other

316 person, or employing agency of the designated employee submits a

317 written request for maintenance of the exemption to the

318 custodial agency.

319 4. The exemptions in this paragraph apply to information

Page 11 of 12

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

588-00836-19 20197004\_\_

320 held by an agency before, on, or after the effective date of the

321 exemption.

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

Page 12 of 12

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Health Policy, *Chair*  
Appropriations Subcommittee on Health  
and Human Services, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Children, Families, and Elder Affairs  
Military and Veterans Affairs and Space

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR GAYLE HARRELL**  
25th District

February 13, 2019

Senator Lizbeth Benacquisto  
402 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Benacquisto,

I respectfully request that **SB 7004 – OGSR/Department of Health Personnel** be placed on the next available agenda for the Committee on Rules. SB 7004 passed its last committee stop unanimously.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell  
Senate District 25

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

**REPLY TO:**

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2019

Meeting Date

7004

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St. Petersburg FL 33705  
City State Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

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

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**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 7018

INTRODUCER: Education Committee

SUBJECT: OGSR/Public Research Facility/Animal Research

DATE: March 12, 2019

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

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

---

## I. Summary:

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

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

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

The bill takes effect October 1, 2019.

## II. Present Situation:

### Public Records Law

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

---

<sup>1</sup> 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.<sup>2</sup>

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

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

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

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

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

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

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

---

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

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

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

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

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

<sup>8</sup> Section 119.07(1)(a), F.S.

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

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



exemption.<sup>11</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>13</sup>

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

### **Open Government Sunset Review Act**

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

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>19</sup> 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;<sup>20</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>21</sup> or
- It protects trade or business secrets.<sup>22</sup>

---

<sup>11</sup> *Id.*

<sup>12</sup> The bill may, however, contain multiple exemptions that relate to one subject.

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

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

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

<sup>16</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

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

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

<sup>20</sup> Section 119.15(6)(b)1., F.S.

<sup>21</sup> Section 119.15(6)(b)2., F.S.

<sup>22</sup> Section 119.15(6)(b)3., F.S.

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

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

### **Animal Research Public Records Exemption**

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

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

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

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

### **Open Government Sunset Review Findings and Recommendations**

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

---

<sup>23</sup> 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?

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

<sup>25</sup> Section 119.15(7), F.S.

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

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

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

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

The bill takes effect October 1, 2019.

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

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

None.

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

##### ***Vote Requirement***

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

##### ***Public Necessity Statement***

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

***Breadth of Exemption***

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

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

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

**C. Government Sector Impact:**

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 585.611 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

---

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

---

By the Committee on Education

581-02176-19

20197018\_\_

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

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

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

16 585.611 Animal research identifying information.—

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

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

26 (b) Research protocols and approvals.

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

29 (d) Animal care and use committee records.

Page 1 of 2

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

581-02176-19

20197018\_\_

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

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

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

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

Page 2 of 2

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

**The Florida Senate**  
**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: SJR 74

INTRODUCER: Senator Bradley and others

SUBJECT: Single-subject Limitation for Constitution Revision Commission Proposals

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Fox</u>	<u>Roberts</u>	<u>EE</u>	<b>Favorable</b>
3.	<u>Stallard</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

## I. Summary:

SJR 74 limits any amendment to the Constitution proposed by the Constitution Revision Commission (“CRC”) to “one subject and matter connected therewith.” Under current law, each CRC proposal may embrace multiple subjects. It may even propose a singular, comprehensive revision of the Constitution. The next CRC convenes in 2037, and thus it would be the first Commission to be governed by the proposed single-subject limitation.

If approved by three-fifths of the membership of each House of the Legislature, SJR 74 will appear on the 2020 General Election ballot. It will take effect if approved by at least 60 percent of the votes cast on the measure.

## II. Present Situation:

### Overview

The Florida Constitution requires that a Constitution Revision Commission be established every 20 years and that it have the authority to propose a revision of all or any part of the Florida Constitution. Accordingly, the CRC may propose single-subject amendments, multi-subject amendments, or a revision of the entire Constitution.

### Context – Proposed Amendments that Appeared on the 2018 General Election Ballot

The CRC proposed seven of the amendments on the 2018 General Election ballot, at least two of which were regarded by many as including two or more substantially unrelated, or “bundled,” changes.<sup>1</sup> Accordingly, voters in many cases were forced to choose between voting for a change

---

<sup>1</sup> See, e.g., The News Service of Florida, *Constitutional Amendments? One subject only, please*, THE GAINESVILLE SUN (Nov. 23, 2018), <https://www.gainesville.com/news/20181123/constitutional-amendments-one-subject-only-please>.

they did not support (because it was paired with one they wanted) or voting against a change they desired (because it was paired with a change they did *not* like).<sup>2</sup>

CRC Amendments 6 and 9 were widely cited as embracing multiple subjects. Amendment 6 combined what many regarded as three different subjects: a crime-victim-rights proposal, a prohibition on judges deferring to agencies' interpretation of statutes or rules, and a 5-year increase in the mandatory retirement age for judges. Amendment 9 combined a ban on oil drilling in state waters with a ban on "vaping" in indoor workplaces.

## **Constitution Revision Commission**

### ***Origin***

The Florida Constitution was revised extensively in 1968 by three joint resolutions that were proposed during a Special Session of the Legislature. One of the resolutions included a provision requiring a Constitution Revision Commission to convene once every 20 years, beginning in 1977. Accordingly, three CRCs have convened: in 1977-1978, 1997-1998, and most recently in 2017-2018.<sup>3</sup>

### ***Members***

The CRC is comprised of 37 members, including the Attorney General plus: 15 members appointed by the Governor, including one designated to serve as Chair; nine (9) members *each* appointed by the Senate President and House Speaker; three (3) members appointed by the Chief Justice of the Florida Supreme Court.<sup>4</sup>

### ***Task, Procedures, and Authority***

The CRC's task is to examine the Constitution and decide which, if any, amendments to submit for voter approval. The amendments must be submitted to the Secretary of State at least 180 days before the next general election.<sup>5</sup> In turn, the amendments must be submitted to the voters at the next general election held more than 90 days after submission to the Secretary of State. To become effective, an amendment must be approved by at least 60 percent of the votes cast on the measure.<sup>6</sup>

---

<sup>2</sup> See Brendan Rivers and News Service of Florida Staff, *Bill Filed to Ban Bundled Amendments from Constitution Revision Commission*, WJCT FIRST COAST CONNECT (Nov. 26, 2018), <http://news.wjct.org/post/bill-filed-ban-bundled-amendments-constitution-revision-commission>; see generally, Editorial Board, *Florida's constitutional amendments: Vote 'yes' on 4 and 11, 'no' on rest*, TALLAHASSEE DEMOCRAT (Oct. 7, 2018), <https://www.tallahassee.com/story/opinion/editorials/2018/10/07/floridas-amendments-yes-4-and-11-no-rest-our-opinion/1494375002/> (arguing that amendment 6 and amendment 9 each included a proposal worthy of approval, but should be voted against on account of at least one unworthy proposal in each); Kelley H. Armitage, *Constitution Revision Commissions Avoid Logrolling, Don't They?*, 72 FLA. B.J. 62 (Nov. 1998) (arguing that the Constitution Revision Commission does not have sufficient safeguards against logrolling).

<sup>3</sup> Constitution Revision Commission, *History*, <http://flcrc.gov/about/history.html> (last visited Dec. 31, 2018).

<sup>4</sup> FLA. CONST. art. XI, s. 2.

<sup>5</sup> FLA. CONST. art. XI, s. 2.

<sup>6</sup> FLA. CONST. art. XI, s. 5.



The constitutional provision authorizing the CRC does not address the issue of multi-subject amendments. Indeed, it says only that the CRC must convene at the call of its chair, adopt rules of procedure, and “hold [an unspecified number of] public hearings.”<sup>7</sup>

### **The Single-Subject Requirement**

#### ***Amendments that are Limited to One Subject***

The Constitution authorizes five sources from which an amendment may originate: the Legislature, the CRC, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. Only citizen initiative proposals are limited to one subject. Accordingly, as the Florida Supreme Court stated in a case challenging a 2018 proposed amendment, the CRC need not limit its proposals to one subject:

Unlike proposed amendments that originate through initiative petitions, amendments proposed by the Constitution Revision Commission are not bound by the single-subject rule limiting amendments to one subject. . . . Moreover, the Florida Constitution expressly authorizes bundling, as it gives the Commission authority to revise the entire constitution or any part of it. The power to amend the whole constitution in one proposal necessarily includes the lesser power to amend parts of the constitution in one proposal.<sup>8</sup>

#### ***Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives***

The Florida Supreme Court has repeatedly explained the purposes for the single-subject requirement, at least with regard to citizen-initiative amendments. In its decision in *Fine v. Firestone*, the Court stated that the single-subject limitation allows:

...[T]he citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support.<sup>9</sup>

Moreover, the Court stated that the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”<sup>10</sup> Making a similar point in a later case, the Florida Supreme Court stated that the:

...[S]ingle-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific

---

<sup>7</sup> FLA. CONST. art. XI, s. 2.

<sup>8</sup> *Detzner v. Anstead*, 256 So.3d 820, 823-24 (Fla. 2018) (citation omitted); *see also*, *County of Volusia v. Detzner*, 253 So.3d 507, 512 (Fla. 2018) (“Appellants have conceded, however, that CRC proposals are not bound by the single subject requirement . . . .”); *Charter Review Commission of Orange Cty. v. Scott*, 647 So.2d 835, 837 (Fla. 1994) (“Only proposals originating through a petition initiative are subject to the single-subject rule.”).

<sup>9</sup> *Fine v. Firestone*, 448 So.2d 984, 994 (Fla. 1984).

<sup>10</sup> *Id.* at 832 (quoting *Adams v. Gunter*, 238 So.2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).

subject of government to protect against multiple precipitous changes in our state constitution.<sup>11</sup>

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from sources other than a citizen initiative, such as the CRC, the Court noted that the other methods of propounding a constitutional amendment “all afford an opportunity for public hearing and debate not only on the proposal itself but also in the drafting of any constitutional proposal.”<sup>12</sup> This is not true, the Court noted, of citizen initiatives.<sup>13</sup>

### ***What “One Subject” Means***

Over the years, the Florida Supreme Court has issued several opinions in which it explained what it means for an amendment to be limited to one subject.

In these opinions, the Court has stated, the single-subject limitation is “functional and not locational.”<sup>14</sup> In other words, the question is primarily one of what the amendment does, rather than a question of what part(s) of the Constitution it alters. As such, the single-subject limitation requires of each amendment a “natural and logical oneness of purpose.”<sup>15</sup> Moreover, the single-subject limitation prohibits an amendment from:

... (1) [E]ngaging in “logrolling” or (2) “substantially altering or performing the functions of multiple aspects of government.” The term logrolling refers to a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed.<sup>16</sup>

In addition, although “no single proposal can substantially *alter* or *perform* the functions of multiple branches,” the single-subject limitation does not prohibit a proposal that would “*affect* several branches of government.”<sup>17</sup> How an initiative proposal affects other articles or sections of the constitution, however, *is an appropriate factor* to be considered in determining whether there is more than one subject included in an initiative proposal.<sup>18</sup>

A brief look at three Supreme Court opinions will help illuminate what “one subject” really means.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a:

---

<sup>11</sup> *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So.2d 1336, 1339 (Fla. 1994) (quoting *Fine v. Firestone*, 448 So.2d 984, 988 (Fla. 1984)).

<sup>12</sup> *Id.* at 1339.

<sup>13</sup> *Id.*

<sup>14</sup> *Evans v. Firestone*, 457 So.2d 1351, 1354 (Fla. 1984).

<sup>15</sup> *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So.3d 822, 828 (Fla. 2016).

<sup>16</sup> *Id.* at 827-28 (internal citations omitted).

<sup>17</sup> *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So.2d 1336, 1339 (Fla. 1994) (emphasis in the original).

<sup>18</sup> *Fine v. Firestone*, 448 So.2d 984, 990 (Fla. 1984) (emphasis added).

...[R]ight for electricity consumers “to own or lease solar equipment installed on their property to generate electricity for their own use” while simultaneously ensuring that “State and local governments shall retain their abilities to protect consumer rights and public health, safety and welfare, and to ensure that consumers who do not choose to install solar are not required to subsidize the costs of backup power and electric grid access to those who do.”<sup>19</sup>

In the Court’s analysis of the amendment, it identified two basic “components”—the establishment of a right and a guarantee of the government’s authority to regulate that right. The Court rejected the argument that these components embraced different subjects as a matter of law, stating instead that the components were “two sides of the same coin,” were therefore “component parts or aspects of a single dominant plan or scheme,” and accordingly were “naturally related and connected to the amendment’s oneness of purpose.”<sup>20</sup> The Court also noted that the amendment did not engage in impermissible logrolling, as it did not combine a popular measure with an unpopular measure in hopes of compelling sufficient support for the unpopular measure.<sup>21</sup>

In another advisory opinion, the Court examined an amendment proposed by citizen initiative that would have created a “trust to restore the Everglades funded by a fee on raw sugar.”<sup>22</sup> The Court held that the amendment violated the single-subject rule because it “perform[ed] the functions of multiple branches of government.”<sup>23</sup> The amendment performed the legislative functions of imposing a levy, establishing a trust, and granting the trustees with power to set and redefine the boundaries of the “Everglades Ecosystem.” Additionally, the amendment “contemplate[d] the exercise of vast executive powers” by the trustees, including the “management, construction, and operation of water storage and sewer systems.”<sup>24</sup> Finally, the Court stated that the amendment would have performed a judicial function by essentially adjudicating that the sugar cane industry had polluted the Everglades and by imposing a judgment-like fee on that industry to cover cleanup costs.<sup>25</sup>

Finally, in *Fine v. Firestone*, the Court disapproved a proposed amendment that contained three subjects.<sup>26</sup> The Court did so without specifying that the subjects were related to the functions of various branches of government or that the amendment was an attempt at logrolling. Instead, the Court stated that the amendment:

...[L]imits the way in which governmental entities can tax; it limits what government can provide in services which are paid for by the users of such services; and it changes how governments can finance the construction of capital

---

<sup>19</sup> *Advisory Op. to Att’y Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So.3d 822, 828 (Fla. 2016) (quoting the language of the proposed amendment at issue, titled, “Rights of Electricity Consumers Regarding Solar Energy Choice”).

<sup>20</sup> *Id.* at 828.

<sup>21</sup> *Id.*

<sup>22</sup> *In re Advisory Op. to the Att’y Gen.—Save Our Everglades*, 636 So.2d 1336, 1337 (Fla. 1994).

<sup>23</sup> *Id.* at 1340.

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

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

<sup>26</sup> *Fine v. Firestone*, 448 So.2d 984 (Fla. 1984).

improvements with revenue bonds that are paid for from revenue generated by the improvements.<sup>27</sup>

### ***Joint Resolution***

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.<sup>28</sup> Like a bill, it may begin in either house of the Legislature.

To pass out of the Legislature and be submitted to the voters, a joint resolution must be agreed to by three-fifths of the membership of each House of the Legislature.<sup>29</sup> Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the legislatively proposed amendment is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election (unless otherwise specified in the amendment or in the Constitution).<sup>30</sup>

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

The joint resolution limits future CRC amendment proposals (beginning in 2037) to “one subject and matter directly connected therewith,” thereby eliminating the political tactic of bundling and logrolling to effect passage of unpopular or marginally-popular proposals by packaging them with more popular measures.

Because the wording of the single subject requirement in the joint resolution is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely interpret the single-subject requirements similarly.<sup>31</sup>

If passed by a three-fifths supermajority vote of each House of the Legislature, the proposed amendment will appear on the ballot at the 2020 General Election for voter approval.

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

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

None.

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

None.

---

<sup>27</sup> *Id.* at 992 (Fla. 1984).

<sup>28</sup> FLA. CONST. art. XI. An amendment or revision may originate as a proposal by the Legislature, the Constitution Revision Commission, a Constitutional Convention, the Taxation and Budget Reform Commission, or the people directly, by way of an initiative.

<sup>29</sup> FLA. CONST. art. XI, s. 1.

<sup>30</sup> FLA. CONST. art. XI, s. 5.

<sup>31</sup> See e.g., *State v. Hackley*, 95 So. 3d 92, 95 (Fla. 2012); *State v. Hearn*, 961 So. 2d 211, 217 (Fla. 2007) (“We have held that where the Legislature uses the exact same words or phrases in two different statutes, we may assume it intended the same meaning to apply.”).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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

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

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be \$29,737.60, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. At this time, no amendments have achieved ballot position for the 2020 election by either joint resolution of the Florida Legislature or by the initiative petition process.<sup>32</sup>

---

<sup>32</sup> Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Jan. 10, 2019) (on file with the Senate Committee on Judiciary).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This resolution amends Article XI, section 2 of the Florida Constitution.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

By Senator Bradley

5-00368-19

201974\_\_

## Senate Joint Resolution

A joint resolution proposing an amendment to Section 2 of Article XI of the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Constitution Revision Commission be limited to a single subject.

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

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

## ARTICLE XI

## AMENDMENTS

## SECTION 2. Revision commission.—

(a) Within thirty days before the convening of the 2037 ~~2017~~ regular session of the legislature, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty-seven members:

- (1) the attorney general of the state;
  - (2) fifteen members selected by the governor;
  - (3) nine members selected by the speaker of the house of representatives and nine members selected by the president of the senate; and
  - (4) three members selected by the chief justice of the supreme court of Florida with the advice of the justices.
- (b) The governor shall designate one member of the

Page 1 of 2

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

5-00368-19

201974\_\_

commission as its chair. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) Each constitution revision commission shall convene at the call of its chair, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the custodian of state records its proposal, if any, of a revision of this constitution or any part thereof ~~of it~~.

(d) Any proposal of a revision of this constitution, or any part thereof, filed by the constitution revision commission with the custodian of state records must embrace but one subject and matter directly connected therewith.

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

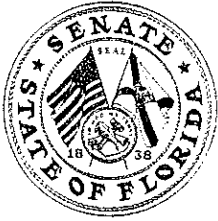
## CONSTITUTIONAL AMENDMENT

## ARTICLE XI, SECTION 2

ESTABLISHING SINGLE-SUBJECT LIMITATION FOR CONSTITUTION REVISION COMMISSION PROPOSALS.—Proposing an amendment to the State Constitution to require that any proposal of a revision to the State Constitution, or any part thereof, filed by the Constitution Revision Commission with the custodian of state records for placement on the ballot be limited to a single subject and matter directly connected to such subject.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations, *Chair*  
Finance and Tax  
Innovation, Industry and Technology  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission, *Alternating Chair*

**SENATOR ROB BRADLEY**  
5th District

February 6, 2019

Senator Lizbeth Benacquisto, Chairman  
Senate Rules Committee  
402 Senate Office Building  
404 South Monroe Street  
Tallahassee, Florida 32399-1100

Dear Madam Chairman:

I respectfully request that SJR 74, which places a single-subject limitation for Constitutional Revision Commission proposals, be placed on the committee's agenda at your earliest convenience.

Thank you for your consideration and please reach out to my staff or me if you have any questions or concerns about the joint resolution.

Sincerely,

Rob Bradley

cc: Mr. John B. Phelps

**REPLY TO:**

- 1279 Kingsley Avenue, Suite 107, Orange Park, Florida 32073 (904) 278-2085
- 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore



THE FLORIDA SENATE

APPEARANCE RECORD

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

3-13-19

Meeting Date

SB 74

Bill Number (if applicable)

Topic Single

Amendment Barcode (if applicable)

Name Paul Orvos

Job Title COORDINATOR

Address 912 Birdie Way

Phone 813-299-5682

Street

APOLLO BEACH FL

33572

City

State

Zip

Email

Speaking: For Against Information

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

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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

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

3/13/19  
Meeting Date

SB 74  
Bill Number (if applicable)

Topic Single Subject Limits for Const. Rev.

Amendment Barcode (if applicable)

Name Aimee Smith

Job Title Teacher

Address 5017 Central Ave

Phone \_\_\_\_\_

Street

Bowling Green FL 33834

City

State

Zip

Email aimeecsmith@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/13/2014  
Meeting Date

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

SB 74  
Bill Number (if applicable)

Topic SINGLE SUBJECT REQUIREMENT

Amendment Barcode (if applicable)

Name TERRY JOE CHAPMAN

Job Title RETIREE

Address 77 BRIDLE GATE DRIVE  
Street

Phone (850) 766-5507

CRAWFORDVILLE FL 32327  
City State Zip

Email houndsman sb@yahoo

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

4/13/19  
Meeting Date

SB0074  
Bill Number (if applicable)

Topic Single Subject

Amendment Barcode (if applicable)

Name Cheryl Brown

Job Title Educator

Address 830 Midland Ct

Phone 904 403 9707

Orange Park FL 32065  
City State Zip

Email cherb56@bellsouth.net

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/2019

Meeting Date

SB 0074

Bill Number (if applicable)

Topic SINGLE-SUBJECT LIMITATION

Amendment Barcode (if applicable)

Name RENNA LEE PAIVA

Job Title GUIDANCE COUNSELOR

Address 3798 Old Jennings Rd.

Street

Phone 904-778-5844

MIDDLEBURG, FL

City

32068

State

Email RENNALEE.PAIVA@FLORIDA.Senate.org

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

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

Representing CLAY COUNTY EDUCATION ASSOCIATION

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)

3-13-19

Meeting Date

SB 0074

Bill Number (if applicable)

Topic Single-Subject Limitation

Amendment Barcode (if applicable)

Name Douglas Deters

Job Title Teacher

Address 61 Reeding Ridge Dr. West

Phone 904-536-1174

Street

Jax FL 32225

City

State

Zip

Email coachdeters@gmail.com

Speaking:  For  Against  Information

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

Representing Clay County Education Assoc.

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

CS 001 (10/11/11)

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

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

3/13/2019

Meeting Date

SB74

Bill Number (if applicable)

Topic Single-subject Limitation for  
Constitutional Revision Commission

Amendment Barcode (if applicable)

Name Kathy Winn

Job Title volunteer

Address 1006 Brookwood Dr.  
Street

Phone (850) 766-2612

Tall FL 32308  
City State Zip

Email kathywinncan@  
embargo@mail.com

Speaking:  For  Against  Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

55R-74  
Bill Number (if applicable)

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

Topic Single Subject Amendment

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

Name JAMES FOGLE

Job Title Electrician

Address 3509 NW 22<sup>nd</sup> Dr  
Street

Phone 901-483-4800

Gainesville FL 32605  
City State Zip

Email JWCFI@yahoo.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

13 MAR 19

Meeting Date

SB 74

Bill Number (if applicable)

Topic SINGLE SUBJECT REQUIREMENT FOR CRC

Amendment Barcode (if applicable)

Name LARRY JENKINS

Job Title ELECTRICIAN

Address 703 E. 114th Ave

Phone 813-977-5019

Street

TAMPA

City

FL

State

33612

Zip

Email MSGJENK@aol.com

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/19 Meeting Date

74 Bill Number (if applicable)

Topic Single Subject Limitations for Consit Revision

Amendment Barcode (if applicable)

Name Carl Nicome Brady

Job Title Business Representative

Address 5000 NW 59 way Street

Phone 954-648-0015

Coral Springs, FL 33067 City State Zip

Email Cnicome@hotmail.com

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

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

Representing Self

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

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

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

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

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

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

3/13/19  
/Meeting Date

174  
Bill Number (if applicable)

Topic Single Subject Limitations for Const. Revision Comm.

Amendment Barcode (if applicable)

Name Glynda Linton

Job Title Bus. Representative

Address 4670 NW 557  
Street

Phone 954-648-5571

Martaton, FL 33317  
City State Zip

Email glynda.linton@yahoo.com

Speaking:  For  Against  Information

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

Representing Self.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/19 Meeting Date

74 Bill Number (if applicable)

Topic Single Subject Limitations See Const. Revision Comm Amendment Barcode (if applicable)

Name Lamar Bynum

Job Title CRANE OPERATOR

Address 11040 SW 217 TERR Street

Phone 786-646-8185

Miami, FL 33170 City State Zip

Email lamarbynum16@gmail.com

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

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

Representing Self

Appearing at request of Chair: [ ] Yes [X] No Lobbyist registered with Legislature: [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)

MAR 13, 2019

Meeting Date

74

Bill Number (if applicable)

Topic Single Subject Limitations for Constit Rev

Amendment Barcode (if applicable)

Name John SMITH

Job Title Longshoreman

Address 925 NE 209 Street

Phone 305 525 8342

Street

North Miami Beach

Fla.

33179

City

State

Zip

Email SMITHJB3847@gmail

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3-13-19  
Meeting Date

74  
Bill Number (if applicable)

Topic Singel Subject Admement

Amendment Barcode (if applicable)

Name Antonio Livingston Jr

Job Title Bus Operator

Address 6807 N 48th St.  
Street

Phone (813) 330-6620

Tampa FL 33610  
City State Zip

Email LivigstonA.ATU1593@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/19  
Meeting Date

74  
Bill Number (if applicable)

Topic Singal Subject Amendment

Amendment Barcode (if applicable)

Name Keith Blake

Job Title Bus Operator

Address 3404 Sherry Dr  
Street

Phone 812-380-2032

Brandon, FL 33511  
City State Zip

Email blakek.ATU1573@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date March 13, 19

Bill Number (if applicable) #74

Topic Single Subject Amendment

Amendment Barcode (if applicable)

Name Tunisia Jordan

Job Title Bus Operator

Address 12012 Bridge Point Ln.

Phone 813-812-0000

Riverview FL 33579  
City State Zip

Email Jordan.A.TU@gmail.com

Speaking:  For  Against  Information

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

Representing Self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



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

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

3-13-19

Meeting Date

SB74

Bill Number (if applicable)

Topic Single Issue

Amendment Barcode (if applicable)

Name Michael LEDBETTER

Job Title CITIZEN - Business Owner

Address 12233 Victor Lane

Phone (813) 294-9662

Street

DADE City

City

FL

State

33525

Zip

Email MALE649@aol.com

Speaking:  For  Against  Information

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

Representing SELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3/19  
Meeting Date

SB 74  
Bill Number (if applicable)

Topic single issue

Amendment Barcode (if applicable)

Name Beverly Ledbetter

Job Title adjunct professor

Address 12233 Victor Ln  
Street

Phone 813 294 9803

Dade City State Zip

Email msledbet@hotmail.com

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

3/13/19

Meeting Date

SB 74

Bill Number (if applicable)

Topic CRC - Single Subject

Amendment Barcode (if applicable)

Name Rich. Templin

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

Address 135 S. Monroe

Phone 850 - 224 - 6926

Street

Tallahassee

State

FL

Zip

32301

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida AFL-CIO

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3-13-2019

Meeting Date

SB74

Bill Number (if applicable)

Topic Single Subject Requirements

Amendment Barcode (if applicable)

Name Thomas N. Gibson

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

Address 7782 Melvin Road

Phone (904) 236-0358

Street

Jacksonville FL 32210

City

State

Zip

Email Tnathangibson@gmail.com

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3-13-19

Meeting Date

SB 74

Bill Number (if applicable)

Topic Constitutional Limitations

Amendment Barcode (if applicable)

Name Brett Farrell

Job Title Electrician

Address 7018 SW 46th Avenue  
Street

Phone 352-615-4986

Gainesville FL 32608  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

3/13/2019  
Meeting Date

SB 74  
Bill Number (if applicable)

Topic Single Subject Limitation for Constitution Rev Amendment Barcode (if applicable)

Name Nucleus Shelton

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

Address 7300 New 215  
Street

Phone (305) 215-2070

Sunrise FL 33313  
City State Zip

Email nucleus.shelton@gmail.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/2019

Meeting Date

SB 74

Bill Number (if applicable)

Topic SINGLE-SUBJECT LIMITATION FOR CONSTITUTION REV.

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title DIRECTOR OF COALITIONS

Address 200 W COLLEGE AVE

Phone 786-260-9283

Street

TALLAHASSEE FL 32

City

State

Zip

Email cgrajales@belibre.org

Speaking: [ ] For [ ] Against [ ] Information

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

Representing AMERICANS FOR PROSPERITY

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

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

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2019

Meeting Date

Topic \_\_\_\_\_

Bill Number 74  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)



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

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

---

Prepared By: The Professional Staff of the Committee on Rules

---

BILL: CS/SB 160

INTRODUCER: Criminal Justice Committee and Senator Book

SUBJECT: Prohibited Acts in Connection with Obscene or Lewd Materials

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	<b>Fav/CS</b>
2.	Tulloch	Cibula	JU	<b>Favorable</b>
3.	Storch	Phelps	RC	<b>Favorable</b>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 160 prohibits a person from knowingly doing any of the following with an obscene, child-like sex doll:

- Selling, lending, giving away, distributing, transmitting, showing, or transmuted;
- Offering to sell, lend, give away, distribute, transmit, show, or transmute;
- Having in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertising in any manner.

The bill provides that a person who violates this provision commits a first degree misdemeanor, while a second or subsequent violation is a third degree felony.

The bill also prohibits a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise. A violation of this provision is punishable as a second degree misdemeanor and a subsequent violation is punishable as a first degree misdemeanor.

Additionally, multiple sections of law are reenacted by the bill to incorporate changes made by the bill.

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. To the extent that the felony and misdemeanor created in the bill results in persons being convicted,

the bill may result in a positive indeterminate fiscal impact on prisons and/or jails (i.e. an increase in prison and/or jail beds).

The bill is effective October 1, 2019.

## II. Present Situation:

### Obscenity and the Law

The First Amendment of the U.S. Constitution states that, “Congress shall make no law . . . abridging the freedom of speech . . . .”<sup>1</sup> This language prohibits the government from having the ability to constrain the speech of citizens.<sup>2</sup>

However, there are some exceptions to this outright prohibition. The Supreme Court has ruled over time that some forms of speech are not protected by the First Amendment. Among the types of unprotected speech are child pornography,<sup>3</sup> “fighting words,” and obscenity.<sup>4</sup>

### *Case Law Prohibiting the Use of Obscenity*

There have been numerous cases that have made it to the United States Supreme Court regarding the issue of obscenity. In 1957, the Court decided *Roth v. U.S.*, a case in which the defendant was challenging the constitutionality of a federal obscenity statute<sup>5</sup> that prohibited the mailing of “obscene, lewd, lascivious, indecent, filthy, or vile” materials.<sup>6</sup> The Court was faced with the pointed question of whether obscenity was protected speech.<sup>7</sup> In its analysis, the Court considered the state laws in effect at the time the U.S. Constitution was ratified in 1792, and noted that most of these states provided criminal punishments for using certain types of speech, such as libel and obscenity. The Court concluded that, “In light of this history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance.”<sup>8</sup>

The Court further explained that “[a]ll ideas having even the slightest redeeming social importance” have the full protection of the First Amendment’s guaranties.<sup>9</sup> Obscenity, however, was not an “essential part of any exposition of ideas” and was of “such slight social value” that

---

<sup>1</sup> U.S. CONST. amend. I.

<sup>2</sup> Kathleen Ann Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, Congressional Research Service, summary page, (September 8, 2014), available at <https://fas.org/sgp/crs/misc/95-815.pdf> (last visited Feb. 28, 2019).

<sup>3</sup> “Child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct, where (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct. See 18 U.S.C.A. s. 2256(8).

<sup>4</sup> See n. 2, *supra*.

<sup>5</sup> 18 U.S.C.A s. 1461.

<sup>6</sup> *Roth v. U.S.*, 354 U.S. 476, 479 (1957).

<sup>7</sup> *Id.* at 481.

<sup>8</sup> *Id.* at 482-83.

<sup>9</sup> *Id.* at 484.

any benefit derived from its use was “clearly outweighed by the social interest in order and morality.”<sup>10</sup> As a result, the Court held that obscenity was not constitutionally protected speech.<sup>11</sup>

Though the Court had clearly declined to extend protection to obscenity, the more difficult question over time came in defining it. In *Roth*, the Court classified obscene material as that which “deals with sex in a manner appealing to prurient interest,” and defined prurient as “having a tendency to excite lustful thoughts.”<sup>12</sup> Similar difficulties arose a few years later for the Court in *Jacobellis v. Ohio*, where a man’s conviction for possession and exhibition of a film portraying a single explicit sexual scene hinged on whether the French film at issue was in fact obscene.<sup>13</sup> The Court held that the film was not obscene;<sup>14</sup> and it was in Justice Stewart’s concurrence that he famously demonstrated the difficulty of explaining obscenity, stating it is “indefinable” but “I know it when I see it.”<sup>15</sup>

It wasn’t until the Court’s decision in *Miller v. California* that clarity in defining obscenity was established with the creation of what is now commonly referred to as the *Miller* Test.<sup>16</sup> The three-prong *Miller* Test requires the trier of fact to consider the following factors to determine if something is obscene:

- (1) Whether “the average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest;
- (2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (3) Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>17</sup>

### ***Obscenity Involving Minors***

Federal law prohibits obscenity involving minors, and those who violate the law often face harsher penalties than if the offense involved adults only.<sup>18</sup> The law prohibits any individual from knowingly transferring or attempting to transfer obscene material using any means to a minor under 16 years of age.<sup>19</sup> It is also prohibited for any person to knowingly produce, distribute, receive, or possess with intent to transfer or distribute material that appears to depict minors engaged in sexually explicit conduct and is deemed obscene.<sup>20</sup>

The threshold for determining whether material involving minors is obscene is slightly lower than the *Miller* Test. Material involving minors can be considered obscene if:

- It depicts a minor engaging in sexually explicit conduct;

<sup>10</sup> *Id.* at 485 (quoting *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 571-72 (1942)(internal citations omitted).

<sup>11</sup> *Id.* at 485.

<sup>12</sup> *Id.* at 487 and n. 20.

<sup>13</sup> *Jacobellis v. Ohio*, 378 U.S. 184, 185-87, 193 (1964).

<sup>14</sup> *Id.* at 193.

<sup>15</sup> *Id.* at 197.

<sup>16</sup> *Miller v. California*, 413 U.S. 15, 24 (1973).

<sup>17</sup> *Id.* (citations omitted).

<sup>18</sup> The United States Department of Justice, *Citizen’s Guide to U.S. Federal Law on Obscenity*, available at <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity> (last visited Feb. 28, 2019).

<sup>19</sup> 18 U.S.C.A. s. 1470 (1998).

<sup>20</sup> 18 U.S.C.A. s. 1466A. (2003).

- It depicts an image that is, or appears to be a minor engaged in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse; and
- The image lacks serious literary, artistic, political, or scientific value.<sup>21</sup>

The Court tends to grant greater protections to minors, routinely upholding state statutes that penalize those who possess or disseminate obscene material relating to minors. In *New York v. Ferber*, the defendant was convicted for distributing material that depicted a sexual performance by a minor under the age of 16 in violation of a state law that prohibited persons from knowingly promoting material that depicted such a performance.<sup>22</sup> In *Ferber*, the Court held that the statute at issue did not violate the First Amendment, explaining that the states have a compelling interest, and thus are granted more leeway, in regulating pornographic depictions of children.<sup>23</sup> The Court reasoned that such material bears so heavily on the welfare of children engaged in its production that a balance of compelling interests is struck and, therefore, these materials are not afforded the protections of the First Amendment.<sup>24</sup>

### ***Florida Obscenity Laws***

In *Miller*, the Court explained that state laws that regulate obscene material must be carefully limited as written or construed in order to adequately protect the values of the First Amendment.<sup>25</sup> Current Florida law defines “obscene” to mean the status of material which:

- (1) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- (2) Depicts or describes, in a patently offensive way, sexual conduct;<sup>26</sup> and
- (3) Taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>27</sup>

Under this state’s obscenity statute, the possession, custody, or control of obscene material<sup>28</sup> by any person who knowingly sells, lends, gives away, distributes, transmits, shows, transmutes, offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show,

<sup>21</sup> *Id.* See also *New York v. Ferber*, 458 U.S. 747, 764 (1982).

<sup>22</sup> *New York v. Ferber*, 458 U.S. 747, 749 (1982).

<sup>23</sup> *Ferber*, 458 U.S. at 756.

<sup>24</sup> *Id.* at 747-48, 756-62.

<sup>25</sup> *Miller*, 413 U.S. 15, 24-25.

<sup>26</sup> “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.” Section 847.001(16), F.S.

<sup>27</sup> Section 847.001(10), F.S.

<sup>28</sup> The following materials are listed as examples of an obscene material: Any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose. Section 847.011(1)(a), F.S.

transmute, or advertise in any manner commits a first degree misdemeanor.<sup>29</sup> A subsequent violation is punishable as a third degree felony.<sup>30</sup>

Additionally, the possession, custody, or control of obscene material by any person who does not have the intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise commits a second degree misdemeanor.<sup>31</sup> A subsequent violation is punishable as a first degree misdemeanor.<sup>32</sup>

The courts have consistently held that the obscenity statute is not overbroad; and that, in light of the fact that obscenity is not protected by the First and Fourteenth Amendments, obscenity is subject to limited regulation pursuant to the police power left to the states.<sup>33</sup>

If a violation of the obscenity statute is based on the distribution or offer to distribute material that depicts a minor engaged in any act or conduct that is harmful to minors, such a violation is a third degree felony.<sup>34</sup> The penalty applies regardless of a person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent. Additionally, none of these circumstances may be raised as a defense in a prosecution.<sup>35</sup>

## Sex Dolls

The sex toy industry is now a \$15 billion industry, with projections that it will surpass \$50 billion by 2020.<sup>36</sup> A main component in today's industry are sex dolls – a type of sex toy that is shaped and sized to resemble a human sexual partner.<sup>37</sup> Such dolls are engineered to warm to the human touch,<sup>38</sup> customizable to include accessories, and equipped with settings to change facial expressions.<sup>39</sup>

---

<sup>29</sup> Section 847.011(1)(a), F.S. A first degree misdemeanor is punishable by a state prison term not exceeding 1 year, a fine not exceeding \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>30</sup> *Id.* A third degree felony is punishable by a state prison term not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>31</sup> Section 847.011(2), F.S. A second degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days, a fine not exceeding \$500, or both. Sections 775.082 and 775.083, F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Johnson v. State*, 351 So. 2d 10, 11 (Fla. 1977).

<sup>34</sup> Section 847.011(1)(c), F.S.

<sup>35</sup> Section 847.011(1)(d), F.S.

<sup>36</sup> Janet Burns, *How the 'Niche' Sex Toy Market Grew Into an Unstoppable \$15B Industry*, Forbes (July 15, 2016), available at <https://www.forbes.com/sites/janetwburns/2016/07/15/adult-expo-founders-talk-15b-sex-toy-industry-after-20-years-in-the-fray/#49bad9be5bb9> (last visited Feb. 28, 2019).

<sup>37</sup> Ally Donnelly, *Child Sex Dolls: Why Aren't They Illegal?*, NECN, (July 23, 2018), available at <https://www.necn.com/news/new-england/Child-Sex-Dolls-Why-Arent-They-Illegal-488937711.html> (last visited Feb. 28, 2019).

<sup>38</sup> Alice B. Lloyd, *Congressman: Child Sex Dolls Are Coming – And We're Not Ready*, The Weekly Standard (March 15, 2018), available at <https://www.weeklystandard.com/alice-b-lloyd/congressman-child-sex-dolls-are-coming-mdash-and-were-not-ready> (last visited Feb. 28, 2019).

<sup>39</sup> Alanna Vagianos, *House Passes Bill Banning Sex Dolls That Look Like Children*, Huffington Post (June 15, 2018), available at [https://www.huffingtonpost.com/entry/house-passes-bill-banning-sex-dolls-that-look-like-children\\_us\\_5b23c2f7e4b07cb1712dcc7d](https://www.huffingtonpost.com/entry/house-passes-bill-banning-sex-dolls-that-look-like-children_us_5b23c2f7e4b07cb1712dcc7d) (last visited Feb. 28, 2019).

Sex dolls that resemble children are made overseas and imported into the U.S., where they are becoming increasingly prevalent.<sup>40</sup> Child-like sex dolls are robots that are made to look lifelike with prepubescent features and are engineered to warm to the human touch.<sup>41</sup> Such dolls are manufactured in China, Hong Kong, or Japan, and are shipped to the U.S. labeled as clothing mannequins or models in order to avoid detection.<sup>42</sup> A few U.S.-based internet retailers offer these dolls for sale; however, in April 2018, Amazon announced that it will no longer sell child-like sex dolls.<sup>43</sup>

### ***Banning Child-like Sex Dolls Outside of the U.S.***

There is a growing trend toward banning both the importation and possession of child-like sex dolls. In July 2017, a judge in the United Kingdom ruled that a child-like sex doll that a man was attempting to import was obscene, which led to his conviction for being in violation of a law banning the importation of obscene items. The judge explained that, “any right-thinking person” would consider the doll obscene.<sup>44</sup>

In Canada, there were at least 42 child-like sex dolls seized by Canadian border officials between January 2016 and August 2018. The dolls were seized and labeled as illegal child pornography. Despite there being no tangible scientific evidence to show child-like sex dolls lead to acts against children, a lawyer for the Canadian Centre for Child Protection explained that acting out a sexual fantasy on a realistic doll could lead someone to prey on a real child.<sup>45</sup>

### ***Federal Laws Banning Child-like Sex Dolls***

While there is no current ban in the U.S. on importation or private possession of child-like sex dolls, there is a federal law banning the importation of obscene matters. The law makes it a crime to bring into the U.S., or any place subject to the jurisdiction of the U.S., “any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character.”<sup>46</sup> A first-time offender of this provision shall be fined or imprisoned to a maximum term of 5 years, or both. A subsequent offense shall be subject to a fine or imprisonment of a maximum term of 10 years, or both.<sup>47</sup>

However, in 2018, legislation was passed in the House of Representatives that prohibited the importation of child-like sex dolls, robots, or mannequins.<sup>48</sup> The Curbing Realistic Exploitative Electronic Pedophilic Robots Act of 2017 (CREEPER Act) would have been the first law preventing the selling and distributing of child-like sex dolls and robots in the U.S.<sup>49</sup> Regulation of interstate commerce is within congressional power, which is why the CREEPER Act aims to

---

<sup>40</sup> See n. 38, *supra*.

<sup>41</sup> *Id.*

<sup>42</sup> See n. 39, *supra*.

<sup>43</sup> *Id.*

<sup>44</sup> BBC, *Child sex doll an obscene item, judge rules*, (July 31, 2017), available at <https://www.bbc.com/news/uk-40776622> (last visited Feb. 28, 2019).

<sup>45</sup> Rita Celli and Kathleen Harris, *Dozens of child sex dolls seized by Canadian border agents*, CBC News, (December 12, 2018), available at <https://www.cbc.ca/news/politics/cbsa-border-child-sex-dolls-1.4941213> (last visited Feb. 28, 2019).

<sup>46</sup> 18 U.S.C.A. s. 1462 (1996).

<sup>47</sup> *Id.*

<sup>48</sup> H.R. 4655, 115th Congress 2d Session (2017).

<sup>49</sup> See n. 39, *supra*.

stop the selling and distributing of these dolls in the U.S., rather than the possession of them. Critics of the legislation claimed that it did not go far enough, in part because the law did not criminalize possession of the dolls.<sup>50</sup> A similar law in the U.K. prohibits importation of the dolls, but does not prohibit possession.<sup>51</sup>

The legislative findings of the CREEPER Act expressed concern that the dolls make rape easier by teaching the rapist how to subdue the victim and overcome resistance.<sup>52</sup> With this, some have expressed concern that the life-like nature of the dolls can serve as a stepping stone toward committing an actual rape by permitting those unsure about their desires to test them out on the dolls. Others have suggested that these child-like sex dolls can normalize a pedophile's behaviors and potentially shift society's norms to make pedophilia more socially acceptable.<sup>53</sup>

While possession and distribution of child pornography is criminalized in the U.S., both courts and experts alike have maintained that possession of a child-like sex doll is not considered to be child pornography. In Kentucky, a county judge dropped child pornography charges against a man who was arrested after police tracked a package from China to the man's home that contained two child-like sex dolls. The judge dismissed the case because there was no actual child involved.<sup>54</sup> In July 2018, police officers went to a man's home in Shirley, Massachusetts, after being notified by eBay that he had purchased a child-like sex doll. This purchase, coupled with a previous eBay purchase of "a doll with the height and weight of an average 8-year-old girl" prompted police to get a search warrant for the man's home. During the search, officers found the doll, which he was not charged for having, and child pornography, which led to his arrest.<sup>55</sup>

### III. Effect of Proposed Changes:

The bill prohibits a person from knowingly doing any of the following with an obscene, child-like sex doll:

- Selling, lending, giving away, distributing, transmitting, showing, or transmuting;
- Offering to sell, lend, give away, distribute, transmit, show, or transmute;
- Having in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or
- Advertising in any manner.

The bill provides that a person who violates this provision commits a first degree misdemeanor and a second or subsequent violation is a third degree felony.

---

<sup>50</sup> See n. 37, *supra*.

<sup>51</sup> Dr. Marie-Helen Maras and Dr. Lauren R. Shapiro, *Child Sex Dolls and Robots: More Than Just an Uncanny Valley*, Journal of Internet Law, pg. 14 (December 2017), available at [https://www.researchgate.net/publication/321137227\\_Child\\_Sex\\_Dolls\\_and\\_Robots\\_More\\_Than\\_Just\\_an\\_Uncanny\\_Valley](https://www.researchgate.net/publication/321137227_Child_Sex_Dolls_and_Robots_More_Than_Just_an_Uncanny_Valley) (last visited Feb. 28, 2019).

<sup>52</sup> H.R. 4655, 115th Congress 2d Session (2017).

<sup>53</sup> John F. Banzhaf, *House Bans Child Sex Dolls – As Legal Expert Suggested*, ValueWalk, (June 13, 2018), available at <https://www.valuewalk.com/2018/06/house-bans-child-sex-dolls/> (last visited Feb. 28, 2019).

<sup>54</sup> WKRC, *Kenton County man who police say bought child sex dolls no longer facing charges*, (October 4, 2018), available at <https://local12.com/news/local/kenton-county-man-who-police-say-bought-child-sex-dolls-no-longer-facing-charges> (last visited Feb. 28, 2019).

<sup>55</sup> See n. 37, *supra*.

The bill also prohibits a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise. A violation of this provision is punishable as a second degree misdemeanor and a subsequent violation is punishable as a first degree misdemeanor.

The bill reenacts ss. 772.102, 847.02, 847.03, 847.09, 895.02, 921.0022, 933.02, 933.03, and 943.325, F.S., for the purpose of incorporating the amendments made by the bill to s. 847.011, F.S., by reference to that statute.

The bill is effective October 1, 2019.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The First Amendment of the U.S. Constitution prevents the government from creating laws that restrict the speech of citizens. The bill makes it a crime to knowingly possess or intend to sell or lend, among other things, an obscene child-like sex doll. To the extent that this prohibition restricts a person's right to free speech, the bill may implicate the First Amendment. However, such a provision would likely be upheld as the courts have routinely refused to extend protection to obscene speech involving minors.

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

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.



C. **Government Sector Impact:**

The Criminal Justice Impact Conference has not yet determined the fiscal impact for this bill. To the extent that the felony and misdemeanor created in the bill results in persons being convicted for a felony or misdemeanor, the bill may result in a positive indeterminate fiscal impact on prisons and/or jails (i.e. an increase in prison and/or jail beds).

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 847.011 of the Florida Statutes.

The bill reenacts the following sections of the Florida Statutes: 772.102, 847.02, 847.03, 847.09, 895.02, 921.0022, 933.02, 933.03, and 943.325.

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 Criminal Justice on February 11, 2019:**

The Committee Substitute provides that it is a second degree misdemeanor for a person to knowingly have possession, custody, or control of an obscene, child-like sex doll, with a subsequent violation being punishable as a first degree misdemeanor.

B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Book

591-02309-19

2019160c1

A bill to be entitled

An act relating to prohibited acts in connection with obscene or lewd materials; amending s. 847.011, F.S.; prohibiting a person from knowingly selling, lending, giving away, distributing, transmitting, showing, or transmuting; offering to commit such actions; having in his or her possession, custody, or control with the intent to commit such actions; or advertising in any manner an obscene, child-like sex doll; providing criminal penalties; prohibiting a person from knowingly having in his or her possession, custody, or control an obscene, child-like sex doll without the intent to commit certain actions; providing criminal penalties; reenacting ss. 772.102(1)(a), 847.02, 847.03, 847.09(2), 895.02(8)(a), 921.0022(3)(f), 933.02, 933.03, and 943.325(2)(g), F.S., relating to the definition of the term "criminal activity," the confiscation of obscene material, an officer seizing obscene material, legislative intent, the definition of the term "racketeering activity," level 6 of the offense severity ranking chart, grounds for the issuance of a search warrant, destruction of obscene prints and literature, and the definition of the term "qualifying offender," respectively, to incorporate the amendment made to s. 847.011, F.S., in references thereto; providing an effective date.

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

Page 1 of 21

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

591-02309-19

2019160c1

Section 1. Present subsections (5) through (10) of section 847.011, Florida Statutes, are redesignated as subsections (6) through (11), respectively, and a new subsection (5) is added to that section, to read:

847.011 Prohibition of certain acts in connection with obscene, lewd, etc., materials; penalty.—

(5) (a) A person may not knowingly sell, lend, give away, distribute, transmit, show, or transmute; offer to sell, lend, give away, distribute, transmit, show, or transmute; have in his or her possession, custody, or control with the intent to sell, lend, give away, distribute, transmit, show, or transmute; or advertise in any manner an obscene, child-like sex doll. A person who violates this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who is convicted of violating paragraph (a) a second or subsequent time commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who knowingly has in his or her possession, custody, or control an obscene, child-like sex doll without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. In any prosecution for such possession, it is not necessary to allege or prove the absence of such intent.

Page 2 of 21

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

591-02309-19

2019160c1

59 Section 2. For the purpose of incorporating the amendment  
 60 made by this act to section 847.011, Florida Statutes, in a  
 61 reference thereto, paragraph (a) of subsection (1) of section  
 62 772.102, Florida Statutes, is reenacted to read:  
 63 772.102 Definitions.—As used in this chapter, the term:  
 64 (1) “Criminal activity” means to commit, to attempt to  
 65 commit, to conspire to commit, or to solicit, coerce, or  
 66 intimidate another person to commit:  
 67 (a) Any crime that is chargeable by indictment or  
 68 information under the following provisions:  
 69 1. Section 210.18, relating to evasion of payment of  
 70 cigarette taxes.  
 71 2. Section 414.39, relating to public assistance fraud.  
 72 3. Section 440.105 or s. 440.106, relating to workers’  
 73 compensation.  
 74 4. Part IV of chapter 501, relating to telemarketing.  
 75 5. Chapter 517, relating to securities transactions.  
 76 6. Section 550.235 or s. 550.3551, relating to dogracing  
 77 and horseracing.  
 78 7. Chapter 550, relating to jai alai frontons.  
 79 8. Chapter 552, relating to the manufacture, distribution,  
 80 and use of explosives.  
 81 9. Chapter 562, relating to beverage law enforcement.  
 82 10. Section 624.401, relating to transacting insurance  
 83 without a certificate of authority, s. 624.437(4)(c)1., relating  
 84 to operating an unauthorized multiple-employer welfare  
 85 arrangement, or s. 626.902(1)(b), relating to representing or  
 86 aiding an unauthorized insurer.  
 87 11. Chapter 687, relating to interest and usurious

Page 3 of 21

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

591-02309-19

2019160c1

88 practices.  
 89 12. Section 721.08, s. 721.09, or s. 721.13, relating to  
 90 real estate timeshare plans.  
 91 13. Chapter 782, relating to homicide.  
 92 14. Chapter 784, relating to assault and battery.  
 93 15. Chapter 787, relating to kidnapping or human  
 94 trafficking.  
 95 16. Chapter 790, relating to weapons and firearms.  
 96 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,  
 97 relating to prostitution.  
 98 18. Chapter 806, relating to arson.  
 99 19. Section 810.02(2)(c), relating to specified burglary of  
 100 a dwelling or structure.  
 101 20. Chapter 812, relating to theft, robbery, and related  
 102 crimes.  
 103 21. Chapter 815, relating to computer-related crimes.  
 104 22. Chapter 817, relating to fraudulent practices, false  
 105 pretenses, fraud generally, and credit card crimes.  
 106 23. Section 827.071, relating to commercial sexual  
 107 exploitation of children.  
 108 24. Chapter 831, relating to forgery and counterfeiting.  
 109 25. Chapter 832, relating to issuance of worthless checks  
 110 and drafts.  
 111 26. Section 836.05, relating to extortion.  
 112 27. Chapter 837, relating to perjury.  
 113 28. Chapter 838, relating to bribery and misuse of public  
 114 office.  
 115 29. Chapter 843, relating to obstruction of justice.  
 116 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

Page 4 of 21

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

591-02309-19 2019160c1

117 s. 847.07, relating to obscene literature and profanity.  
 118 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.  
 119 849.25, relating to gambling.  
 120 32. Chapter 893, relating to drug abuse prevention and  
 121 control.  
 122 33. Section 914.22 or s. 914.23, relating to witnesses,  
 123 victims, or informants.  
 124 34. Section 918.12 or s. 918.13, relating to tampering with  
 125 jurors and evidence.  
 126 Section 3. For the purpose of incorporating the amendment  
 127 made by this act to section 847.011, Florida Statutes, in a  
 128 reference thereto, section 847.02, Florida Statutes, is  
 129 reenacted to read:  
 130 847.02 Confiscation of obscene material.—Whenever anyone is  
 131 convicted under s. 847.011, the court in awarding sentence shall  
 132 make an order confiscating said obscene material and authorize  
 133 the sheriff of the county in which the material is held to  
 134 destroy the same. The sheriff shall file with the court a  
 135 certificate of his or her compliance.  
 136 Section 4. For the purpose of incorporating the amendment  
 137 made by this act to section 847.011, Florida Statutes, in a  
 138 reference thereto, section 847.03, Florida Statutes, is  
 139 reenacted to read:  
 140 847.03 Officer to seize obscene material.—Whenever any  
 141 officer arrests any person charged with any offense under s.  
 142 847.011, the officer shall seize said obscene material and take  
 143 the same into his or her custody to await the sentence of the  
 144 court upon the trial of the offender.  
 145 Section 5. For the purpose of incorporating the amendment

591-02309-19 2019160c1

146 made by this act to section 847.011, Florida Statutes, in a  
 147 reference thereto, subsection (2) of section 847.09, Florida  
 148 Statutes, is reenacted to read:  
 149 847.09 Legislative intent.—  
 150 (2) Nothing in ss. 847.07-847.09 shall be construed to  
 151 repeal or in any way supersede the provisions of s. 847.011, s.  
 152 847.012, or s. 847.013.  
 153 Section 6. For the purpose of incorporating the amendment  
 154 made by this act to section 847.011, Florida Statutes, in a  
 155 reference thereto, paragraph (a) of subsection (8) of section  
 156 895.02, Florida Statutes, is reenacted to read:  
 157 895.02 Definitions.—As used in ss. 895.01-895.08, the term:  
 158 (8) "Racketeering activity" means to commit, to attempt to  
 159 commit, to conspire to commit, or to solicit, coerce, or  
 160 intimidate another person to commit:  
 161 (a) Any crime that is chargeable by petition, indictment,  
 162 or information under the following provisions of the Florida  
 163 Statutes:  
 164 1. Section 210.18, relating to evasion of payment of  
 165 cigarette taxes.  
 166 2. Section 316.1935, relating to fleeing or attempting to  
 167 elude a law enforcement officer and aggravated fleeing or  
 168 eluding.  
 169 3. Section 403.727(3)(b), relating to environmental  
 170 control.  
 171 4. Section 409.920 or s. 409.9201, relating to Medicaid  
 172 fraud.  
 173 5. Section 414.39, relating to public assistance fraud.  
 174 6. Section 440.105 or s. 440.106, relating to workers'

591-02309-19 2019160c1  
 175 compensation.  
 176 7. Section 443.071(4), relating to creation of a fictitious  
 177 employer scheme to commit reemployment assistance fraud.  
 178 8. Section 465.0161, relating to distribution of medicinal  
 179 drugs without a permit as an Internet pharmacy.  
 180 9. Section 499.0051, relating to crimes involving  
 181 contraband, adulterated, or misbranded drugs.  
 182 10. Part IV of chapter 501, relating to telemarketing.  
 183 11. Chapter 517, relating to sale of securities and  
 184 investor protection.  
 185 12. Section 550.235 or s. 550.3551, relating to dogracing  
 186 and horseracing.  
 187 13. Chapter 550, relating to jai alai frontons.  
 188 14. Section 551.109, relating to slot machine gaming.  
 189 15. Chapter 552, relating to the manufacture, distribution,  
 190 and use of explosives.  
 191 16. Chapter 560, relating to money transmitters, if the  
 192 violation is punishable as a felony.  
 193 17. Chapter 562, relating to beverage law enforcement.  
 194 18. Section 624.401, relating to transacting insurance  
 195 without a certificate of authority, s. 624.437(4)(c)1., relating  
 196 to operating an unauthorized multiple-employer welfare  
 197 arrangement, or s. 626.902(1)(b), relating to representing or  
 198 aiding an unauthorized insurer.  
 199 19. Section 655.50, relating to reports of currency  
 200 transactions, when such violation is punishable as a felony.  
 201 20. Chapter 687, relating to interest and usurious  
 202 practices.  
 203 21. Section 721.08, s. 721.09, or s. 721.13, relating to

591-02309-19 2019160c1  
 204 real estate timeshare plans.  
 205 22. Section 775.13(5)(b), relating to registration of  
 206 persons found to have committed any offense for the purpose of  
 207 benefiting, promoting, or furthering the interests of a criminal  
 208 gang.  
 209 23. Section 777.03, relating to commission of crimes by  
 210 accessories after the fact.  
 211 24. Chapter 782, relating to homicide.  
 212 25. Chapter 784, relating to assault and battery.  
 213 26. Chapter 787, relating to kidnapping or human  
 214 trafficking.  
 215 27. Chapter 790, relating to weapons and firearms.  
 216 28. Chapter 794, relating to sexual battery, but only if  
 217 such crime was committed with the intent to benefit, promote, or  
 218 further the interests of a criminal gang, or for the purpose of  
 219 increasing a criminal gang member's own standing or position  
 220 within a criminal gang.  
 221 29. Former s. 796.03, former s. 796.035, s. 796.04, s.  
 222 796.05, or s. 796.07, relating to prostitution.  
 223 30. Chapter 806, relating to arson and criminal mischief.  
 224 31. Chapter 810, relating to burglary and trespass.  
 225 32. Chapter 812, relating to theft, robbery, and related  
 226 crimes.  
 227 33. Chapter 815, relating to computer-related crimes.  
 228 34. Chapter 817, relating to fraudulent practices, false  
 229 pretenses, fraud generally, credit card crimes, and patient  
 230 brokering.  
 231 35. Chapter 825, relating to abuse, neglect, or  
 232 exploitation of an elderly person or disabled adult.

591-02309-19 2019160c1

233 36. Section 827.071, relating to commercial sexual  
 234 exploitation of children.

235 37. Section 828.122, relating to fighting or baiting  
 236 animals.

237 38. Chapter 831, relating to forgery and counterfeiting.

238 39. Chapter 832, relating to issuance of worthless checks  
 239 and drafts.

240 40. Section 836.05, relating to extortion.

241 41. Chapter 837, relating to perjury.

242 42. Chapter 838, relating to bribery and misuse of public  
 243 office.

244 43. Chapter 843, relating to obstruction of justice.

245 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or  
 246 s. 847.07, relating to obscene literature and profanity.

247 45. Chapter 849, relating to gambling, lottery, gambling or  
 248 gaming devices, slot machines, or any of the provisions within  
 249 that chapter.

250 46. Chapter 874, relating to criminal gangs.

251 47. Chapter 893, relating to drug abuse prevention and  
 252 control.

253 48. Chapter 896, relating to offenses related to financial  
 254 transactions.

255 49. Sections 914.22 and 914.23, relating to tampering with  
 256 or harassing a witness, victim, or informant, and retaliation  
 257 against a witness, victim, or informant.

258 50. Sections 918.12 and 918.13, relating to tampering with  
 259 jurors and evidence.

260 Section 7. For the purpose of incorporating the amendment  
 261 made by this act to section 847.011, Florida Statutes, in a

591-02309-19 2019160c1

262 reference thereto, paragraph (f) of subsection (3) of section  
 263 921.0022, Florida Statutes, is reenacted to read:

264 921.0022 Criminal Punishment Code; offense severity ranking  
 265 chart.-

266 (3) OFFENSE SEVERITY RANKING CHART

267 (f) LEVEL 6

268

Florida Statute	Felony Degree	Description
269 316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
270 316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
271 400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
272 499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
273 499.0051(3)	2nd	Knowing purchase or

	591-02309-19		2019160c1	receipt of prescription drug from unauthorized person.
274	499.0051 (4)	2nd		Knowing sale or transfer of prescription drug to unauthorized person.
275	775.0875 (1)	3rd		Taking firearm from law enforcement officer.
276	784.021 (1) (a)	3rd		Aggravated assault; deadly weapon without intent to kill.
277	784.021 (1) (b)	3rd		Aggravated assault; intent to commit felony.
278	784.041	3rd		Felony battery; domestic battery by strangulation.
279	784.048 (3)	3rd		Aggravated stalking; credible threat.
280	784.048 (5)	3rd		Aggravated stalking of person under 16.
281	784.07 (2) (c)	2nd		Aggravated assault on

	591-02309-19		2019160c1	law enforcement officer.
282	784.074 (1) (b)	2nd		Aggravated assault on sexually violent predators facility staff.
283	784.08 (2) (b)	2nd		Aggravated assault on a person 65 years of age or older.
284	784.081 (2)	2nd		Aggravated assault on specified official or employee.
285	784.082 (2)	2nd		Aggravated assault by detained person on visitor or other detainee.
286	784.083 (2)	2nd		Aggravated assault on code inspector.
287	787.02 (2)	3rd		False imprisonment; restraining with purpose other than those in s. 787.01.
288	790.115 (2) (d)	2nd		Discharging firearm or

	591-02309-19		2019160c1	
			weapon on school property.	
289	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.	
290	790.164(1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.	
291	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	
292	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	
293	794.05(1)	2nd	Unlawful sexual activity with specified minor.	
294				

	591-02309-19		2019160c1	
	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.	
295	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.	
296	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.	
297	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.	
298	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.	
299	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.	
300				



	591-02309-19		2019160c1
301	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
302	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
303	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
304	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
305	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
306	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
307	825.102(1)	3rd	Abuse of an elderly person or disabled adult.

	591-02309-19		2019160c1
308	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
309	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
310	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
311	827.03(2)(c)	3rd	Abuse of a child.
312	827.03(2)(d)	3rd	Neglect of a child.
313	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
314	836.05	2nd	Threats; extortion.
	836.10	2nd	Written threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.

591-02309-19 2019160c1

315 843.12 3rd Aids or assists person  
to escape.

316 847.011 3rd Distributing, offering  
to distribute, or  
possessing with intent  
to distribute obscene  
materials depicting  
minors.

317 847.012 3rd Knowingly using a minor  
in the production of  
materials harmful to  
minors.

318 847.0135(2) 3rd Facilitates sexual  
conduct of or with a  
minor or the visual  
depiction of such  
conduct.

319 914.23 2nd Retaliation against a  
witness, victim, or  
informant, with bodily  
injury.

320 944.35(3) (a) 2. 3rd Committing malicious  
battery upon or

591-02309-19 2019160c1

inflicting cruel or  
inhuman treatment on an  
inmate or offender on  
community supervision,  
resulting in great  
bodily harm.

321 944.40 2nd Escapes.

322 944.46 3rd Harboring, concealing,  
aiding escaped  
prisoners.

323 944.47(1) (a) 5. 2nd Introduction of  
contraband (firearm,  
weapon, or explosive)  
into correctional  
facility.

324 951.22(1) 3rd Intoxicating drug,  
firearm, or weapon  
introduced into county  
facility.

325

326 Section 8. For the purpose of incorporating the amendment

327 made by this act to section 847.011, Florida Statutes, in a

328 reference thereto, section 933.02, Florida Statutes, is

329 reenacted to read:

330 933.02 Grounds for issuance of search warrant.—Upon proper

591-02309-19 2019160c1

331 affidavits being made, a search warrant may be issued under the  
 332 provisions of this chapter upon any of the following grounds:  
 333 (1) When the property shall have been stolen or embezzled  
 334 in violation of law;  
 335 (2) When any property shall have been used:  
 336 (a) As a means to commit any crime;  
 337 (b) In connection with gambling, gambling implements and  
 338 appliances; or  
 339 (c) In violation of s. 847.011 or other laws in reference  
 340 to obscene prints and literature;  
 341 (3) When any property constitutes evidence relevant to  
 342 proving that a felony has been committed;  
 343 (4) When any property is being held or possessed:  
 344 (a) In violation of any of the laws prohibiting the  
 345 manufacture, sale, and transportation of intoxicating liquors;  
 346 (b) In violation of the fish and game laws;  
 347 (c) In violation of the laws relative to food and drug; or  
 348 (d) In violation of the laws relative to citrus disease  
 349 pursuant to s. 581.184; or  
 350 (5) When the laws in relation to cruelty to animals, as  
 351 provided in chapter 828, have been or are violated in any  
 352 particular building or place.  
 353  
 354 This section also applies to any papers or documents used as a  
 355 means of or in aid of the commission of any offense against the  
 356 laws of the state.  
 357 Section 9. For the purpose of incorporating the amendment  
 358 made by this act to section 847.011, Florida Statutes, in a  
 359 reference thereto, section 933.03, Florida Statutes, is

591-02309-19 2019160c1

360 reenacted to read:  
 361 933.03 Destruction of obscene prints and literature.—All  
 362 obscene prints and literature, or other things mentioned in s.  
 363 847.011 found by an officer in executing a search warrant, or  
 364 produced or brought into court, shall be safely kept so long as  
 365 is necessary for the purpose of being used as evidence in any  
 366 case, and as soon as may be afterwards, shall be destroyed by  
 367 order of the court before whom the case is brought.  
 368 Section 10. For the purpose of incorporating the amendment  
 369 made by this act to section 847.011, Florida Statutes, in a  
 370 reference thereto, paragraph (g) of subsection (2) of section  
 371 943.325, Florida Statutes, is reenacted to read:  
 372 943.325 DNA database.—  
 373 (2) DEFINITIONS.—As used in this section, the term:  
 374 (g) "Qualifying offender" means any person, including  
 375 juveniles and adults, who is:  
 376 1.a. Committed to a county jail;  
 377 b. Committed to or under the supervision of the Department  
 378 of Corrections, including persons incarcerated in a private  
 379 correctional institution operated under contract pursuant to s.  
 380 944.105;  
 381 c. Committed to or under the supervision of the Department  
 382 of Juvenile Justice;  
 383 d. Transferred to this state under the Interstate Compact  
 384 on Juveniles, part XIII of chapter 985; or  
 385 e. Accepted under Article IV of the Interstate Corrections  
 386 Compact, part III of chapter 941; and who is:  
 387 2.a. Convicted of any felony offense or attempted felony  
 388 offense in this state or of a similar offense in another

591-02309-19

2019160c1

389 jurisdiction;

390       b. Convicted of a misdemeanor violation of s. 784.048, s.  
391 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an  
392 offense that was found, pursuant to s. 874.04, to have been  
393 committed for the purpose of benefiting, promoting, or  
394 furthering the interests of a criminal gang as defined in s.  
395 874.03; or

396       c. Arrested for any felony offense or attempted felony  
397 offense in this state.

398       Section 11. This act shall take effect October 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Children, Families, and Elder Affairs, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Appropriations Subcommittee on Health and Human  
Services  
Health Policy  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

**SENATOR LAUREN BOOK**

32nd District

March 5, 2019

Chair Lizbeth Benacquisto  
Committee on Rules  
402 Senate Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Benacquisto:

I respectfully request that **CS/SB 160— Prohibited Acts in Connection with Obscene or Lewd Materials**, be placed on the agenda for the next Committee on Rules.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book  
Senate District 32

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

### REPLY TO:

- 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- 202 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/2019

Meeting Date

Topic \_\_\_\_\_

Bill Number 160  
*(if applicable)*

Name BRIAN PITTS

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

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

*City*

*State*

*Zip*

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**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 322

INTRODUCER: Health Policy Committee; Banking and Insurance Committee and Senator Simpson

SUBJECT: Preexisting Conditions

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Lloyd</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 322 requires each insurer or health maintenance organization (HMO) issuing major medical policies or contracts in Florida to offer at least one comprehensive major medical policy or contract that does not exclude, limit, deny, or delay coverage due to one or more preexisting medical conditions. The operative date for such mandated offer is the enactment of a federal law that expressly repeals the Patient Protection and Affordable Care Act (PPACA) or the invalidation of the PPACA by the United States Supreme Court. Preexisting conditions affect an estimated 129 million Americans.<sup>1</sup>

The PPACA prohibits group and individual health insurance plans from imposing preexisting condition exclusions. This requirement of the PPACA preempts state laws that allow such insurers to utilize preexisting condition exclusions. The currently preempted Florida law prohibits individual health policies from excluding preexisting conditions for more than 24 months and that may relate to conditions that manifested themselves during the 24-month period. Individual health policies may exclude coverage for named or specific conditions without any time limit. Florida law prohibits group policies from excluding preexisting conditions for more than 12 months, or 18 months in the case of a late enrollee, and may only relate to conditions that manifested themselves during the six-month period prior to coverage.

---

<sup>1</sup> 80 FR 72192.

## II. Present Situation:

### PPACA

On March 23, 2010, the PPACA was signed into law.<sup>2</sup> Among its sweeping changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions, for preexisting medical conditions and without basing premiums on any health-related factors. The PPACA imposes many insurance requirements, including an individual mandate of coverage, required benefits, rating and underwriting standards, mandatory review of rate increases, reporting of medical loss ratios and payment of rebates, internal and external appeals of adverse benefit determinations, and other requirements.<sup>3</sup> The PPACA preempts any state law that prevents the application of a provision of PPACA.<sup>4</sup>

#### *Preexisting Condition Exclusions*

The PPACA prohibits health insurance policies from excluding coverage for any preexisting condition.<sup>5</sup> A health insurer that offers individual or group health insurance coverage may not impose any preexisting condition exclusion.<sup>6</sup> Rules define the term, “preexisting condition exclusion” to include a denial of coverage.<sup>7</sup> Individual (but not group) grandfathered health plans are exempt from this requirement.<sup>8</sup>

#### **Regulation of Insurance in Florida**

Florida’s Office of Insurance Regulation (OIR) is responsible for the regulation of all activities of insurers and other risk-bearing entities.<sup>9</sup>

---

<sup>2</sup> Pub. Law No. 111-148, 124 Stat. 119-1945 (2010). PPACA was amended by Pub. Law No. 111-152, the Health Care and Education Reconciliation Act of 2010.

<sup>3</sup> Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. s. 300gg et seq.).

<sup>4</sup> The PPACA preempts any state law that prevents the application of a provision of the PPACA. The PPACA effectively allows states to adopt and enforce laws that provide greater consumer protections than the PPACA, but any state law that does not meet the federal minimum standards will be preempted. PPACA s. 1321(d).

<sup>5</sup> PPACA s. 1201; PHSA s. 2704 (42 U.S.C. 300gg-3).

<sup>6</sup> 45 CFR 144.108.

<sup>7</sup> *Preexisting condition exclusion* means a limitation or exclusion of benefits (including a denial of coverage) based on the fact that the condition was present before the effective date of coverage (or if coverage is denied, the date of the denial) under a group health plan or group or individual health insurance coverage...whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that day. A preexisting condition exclusion includes any limitation or exclusion of benefits (including a denial of coverage) applicable to an individual as a result of information relating to an individual’s health status before the individual’s effective date of coverage (or if coverage is denied, the date of the denial) under a group health plan, or group or individual health insurance coverage...such as a condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period. See 45 C.F.R. s. 144.013.

<sup>8</sup> A grandfathered health plan can be an individual or group health insurance policy purchased on or before March 23, 2010. Such plans are not subject to the ACA prohibition on pre-existing conditions and other specified ACA requirements. A plan can lose its grandfathered status if it is significantly changed. See Healthcare.gov, Grandfathered Health Insurance Plans, available at <https://www.healthcare.gov/health-care-law-protections/grandfathered-plans> (last viewed Feb. 18, 2019).

<sup>9</sup> The OIR is under the Financial Services Commission, which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, which serves as the agency head of the commission. Section 20.121(3), F.S.



### ***2019 Individual and Small Group Markets***

Nine health insurance companies writing individual policies or contracts submitted rate filings to the OIR in June 2018. In August 2018, the OIR announced that premiums for the individual PPACA-compliant plans would increase an average of 5.2 percent effective January 1, 2019.<sup>10</sup> The average approved rate changes on the exchange plans ranged from -1.5 percent to a +9.8 percent. Only one insurer, Blue Cross Blue Shield, offers individual coverage in all 67 counties.<sup>11</sup> During the 2019 open enrollment period, 1,786,679 individuals enrolled in Florida plans through the federally administered exchange.<sup>12</sup>

The OIR approved the 2019 rates for 14 small group insurers.<sup>13</sup> The weighted average change in approved rates from 2018 was 6.0 percent. The percentage change in approved rates from 2018 ranged from -11.8 percent to +14.5 percent. Florida Blue and United HealthCare (and affiliates) offer small group plans in every county.

### ***Preexisting Condition Exclusions***

The PPACA prohibits group and individual health insurance plans from imposing preexisting condition exclusions.<sup>14</sup> This requirement of the PPACA preempts state laws that allow such insurers to utilize preexisting condition exclusions. The currently preempted Florida law prohibits individual health policies from excluding preexisting conditions for more than 24 months and that may relate to conditions that manifested themselves during the 24-month period.<sup>15</sup> Individual health policies may exclude coverage for named or specific conditions without any time limit.<sup>16</sup> Florida law prohibits group policies from excluding preexisting conditions for more than 12 months, or 18 months in the case of a late enrollee and may only relate to conditions that manifested themselves during the six-month period prior to coverage.<sup>17</sup>

### **PPACA Legislation and Litigation**

In recent years, major federal legislation has been filed to amend, repeal or replace the PPACA.<sup>18</sup> In 2017, the federal Tax Cuts and Jobs Act<sup>19</sup> reduced the tax penalty for individuals who fail to

---

<sup>10</sup> Office of Insurance Regulation, Individual PPACA Market Monthly Premiums for Plan Year 2019, *available at* <https://floir.com/siteDocuments/IndividualMarketPremiumSummary.pdf> (last viewed Feb. 28, 2019). See also OIR Press Release, OIR Announces 2019 PPACA Individual Market Health Insurance Plan Rates, *available at* <https://www.floir.com/PressReleases/viewmediarelease.aspx?id=2234> (last viewed Feb. 28, 2019).

<sup>11</sup> OIR, Individual Market County Offerings, *available at* <https://www.floir.com/sitedocuments/IndividualMarketCountyOfferings.pdf>, (last viewed Feb. 28, 2019).

<sup>12</sup> CMS.gov, *Final Weekly Enrollment Snapshot for the 2019 Enrollment Period* (January 3, 2019), *available at* <https://edit.cms.gov/newsroom/fact-sheets/final-weekly-enrollment-snapshot-2019-enrollment-period> (last viewed Feb 28, 2019).

<sup>13</sup> OIR, Small Group PPACA Market Monthly Premiums for Plan Year 2019 (August 22, 2018), *available at* <https://www.floir.com/siteDocuments/SGMarketPremiumSummary.pdf> (last viewed Feb. 14, 2019).

<sup>14</sup> 42 U.S.C. s. 300gg-3.

<sup>15</sup> Section 627.6045, F.S.

<sup>16</sup> Section 627.607(2), F.S.

<sup>17</sup> Prior creditable coverage reduces the exclusion period.

<sup>18</sup> Compare Proposals to Replace the Affordable Care Act, *available at* <https://www.kff.org/interactive/proposals-to-replace-the-affordable-care-act/> (last viewed Feb. 28, 2019).

<sup>19</sup> Pub. Law No. 115-97, Stat. 2054 (2017).

comply with PPACA's individual mandate to maintain minimum essential health coverage to zero beginning tax year 2019.<sup>20</sup> However, the act did not repeal the individual mandate.

On December 14, 2018, the U.S. District Court for the Northern District of Texas, declared the individual mandate of the PPACA unconstitutional and the remaining provisions of the PPACA inseverable from the mandate, and thus invalid.<sup>21</sup> Subsequently, on December 31, 2018, the Court issued a stay that keeps the PPACA in force while the ruling is appealed.<sup>22</sup> In response to the ruling, the federal U.S. Department of Health and Human Services<sup>23</sup> stated, "The recent U.S. District Court decision regarding the Affordable Care Act is not an injunction that halts the enforcement of the law and not a final judgment. Therefore, HHS will continue administering and enforcing..."

### III. Effect of Proposed Changes:

**Section 1** creates s. 627.6046, F.S., to require insurers issuing or delivering individual health insurance policies in Florida to offer at least one comprehensive major medical health insurance policy that does not exclude or delay coverage under the policy or contract due to one or more preexisting medical conditions. This mandated offer is triggered by an operative date. The term, "operative date," means the date that either of the following occurs with respect to PPACA:

- A federal law is enacted that expressly repeals PPACA; or
- PPACA is invalidated by the United States Supreme Court.

Notwithstanding s. 627.6045, F.S.,<sup>24</sup> the bill requires every insurer to make such policy or contract available to all residents of the state within 30 days after the operative date. The comprehensive major medical health insurance policy that an insurer is required to offer under this section must be a policy that had been actively marketed in this state by the insurer as of the operative date and that was also actively marketed in this state during the year immediately preceding the operative date. An insurer may not limit or exclude benefits under such policy, including a denial of coverage applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage, or if coverage is denied, the date of the denial.

The term, "preexisting medical condition" is defined to mean:

- A condition that was present before the effective date of coverage under a policy, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the effective date of coverage; and

<sup>20</sup> Prior to tax year 2019, PPACA required that, for each month during the year, an individual must have minimum essential coverage (MEC) or individual mandate; qualify for an exemption; or pay a penalty or shared responsibility payment when filing the federal income tax return. 26 U.S.C. s. 5000A. See <https://www.irs.gov/taxtopics/tc561> (last viewed Feb. 28, 2019).

<sup>21</sup> *Texas v. Azar*, available at [https://benefitslink.com/src/ctop/Texas-v-US\\_NDTex\\_12142018.pdf](https://benefitslink.com/src/ctop/Texas-v-US_NDTex_12142018.pdf) (last viewed Feb. 28, 2019). The Court noted that the 2010 Congress memorialized that the mandate was the keystone to PPACA, see 42 U.S.C. s. 18091.

<sup>22</sup> *Texas v. Azar*, Order available at <https://static.politico.com/17/86/6721f2eb435fb2512430e54c2904/220.pdf> (last viewed Feb. 28, 2019).

<sup>23</sup> See Statement from the Department of Health and Human Services on *Texas v. Azar* (December 17, 2018), available at <https://www.hhs.gov/about/news/2018/12/17/statement-from-the-department-of-health-and-human-services-on-texas-v-azar.html> (last viewed Feb. 28, 2019).

<sup>24</sup> Florida law on preexisting conditions in individual market policies that is currently preempted by the PPACA.

- A condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period.<sup>25</sup>

This section does not apply to an insurer issuing only limited benefit, disability income, specified disease, Medicare supplement, or hospital indemnity policies in this state.

**Section 2** creates s. 627.65612, F.S., to require insurers issuing or delivering group health insurance policies in Florida to offer at least one comprehensive major medical health insurance policy that does not exclude or delay coverage under the policy due to one or more preexisting medical conditions, as required for individual policies and contracts in Section 1 of the bill. The terms, “operative date” and “preexisting medical condition,” have the same meaning as provided in Section 1 of the bill.

Notwithstanding s. 627.6561, F.S.,<sup>26</sup> an insurer is required under the bill to make such coverage available within 30 days after the operative date. The comprehensive major medical health insurance policy that an insurer is required to offer under this section must be a policy that had been actively marketed in this state by the insurer as of the operative date and that was also actively marketed in this state during the year immediately preceding the operative date. An insurer may not limit or exclude benefits under such policy, including a denial of coverage applicable to an individual as a result of information relating to an individual’s health status before the individual’s effective date of coverage, or if coverage is denied, the date of the denial.

This section does not apply to an insurer issuing only limited benefit, disability income, specified disease, Medicare supplement, or hospital indemnity policies in this state.

**Section 3** amends s. 641.31, F.S., to require health maintenance organizations (HMOs) issuing or delivering individual or group contracts in Florida to offer at least one comprehensive major medical health insurance policy or contract that does not exclude or delay coverage under the policy or contract due to one or more preexisting medical conditions, as required for individual policies and contracts in Section 1 of the bill. The terms, “operative date” and “preexisting medical condition,” have the same meaning as provided in Section 1 of the bill.

Notwithstanding s. 641.31071, F.S.,<sup>27</sup> an HMO is required under the bill to make such coverage available within 30 days after the operative date. The comprehensive major medical HMO contract that the HMO is required to offer under this section must be a contract that had been actively marketed in this state by the HMO as of the operative date and that was also actively marketed in this state during the year immediately preceding the operative date. An HMO may not limit or exclude benefits under such contract, including a denial of coverage applicable to an individual as a result of information relating to an individual’s health status before the individual’s effective date of coverage, or if coverage is denied, the date of the denial.

**Section 4** provides this act will take effect July 1, 2019.

---

<sup>25</sup> See 45 C.F.R. s. 144.013.

<sup>26</sup> Florida laws on preexisting conditions for group policies offered by insurers that are currently preempted by the PPACA.

<sup>27</sup> Florida laws on preexisting conditions for contracts offered by health maintenance organizations that are currently preempted by the PPACA.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

If the U.S. Supreme Court invalidates PPACA or a federal law expressly repeals PPACA, the bill would provide access for individuals and groups to at least one policy or contract for major medical coverage that did not exclude or delay coverage due to the applicant having one or more preexisting medical conditions. Currently, the Florida Insurance Code does not prohibit preexisting condition exclusions; however, it is preempted by PPACA.

CS/CS/SB 322 requires every insurer and HMO to offer at least one policy or contract without preexisting medical exclusions to all residents. Currently, only Florida Blue offers individual plans in every county. Florida Blue and United HealthCare (and affiliates) offer small group plans in every county.

Such coverage may be expensive for some individuals with preexisting medical conditions due to adverse selection. Many individuals purchasing such coverage would be expected to have some type of preexisting medical condition. Under Florida law, insurers would be allowed to pool policies or contracts covering preexisting conditions

separately from other policies that did not offer that benefit, as well as underwrite such policies that accounts for the losses experienced.

C. **Government Sector Impact:**

If implemented, the required changes to health maintenance organization contracts and group health insurance policies under contract with the state for state employee benefits would be required to comply with the mandatory eligibility and benefit changes under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 627.6046, 627.65612, and 641.31.

**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 Health Policy on March 4, 2019:**

Due to a scrivener's error, a provision in Section 2 of the bill, as filed, was not included in the CS adopted by the Banking and Insurance Committee. The CS by the Health Policy Committee corrected this error by re-inserting the provision relating to the type of group policy an insurer is required to offer.

**CS by Banking and Insurance on February 19, 2019:**

The CS:

- Revises the definition of the term, "preexisting medical condition."
- Revises requirements relating to the offer of coverage without preexisting condition exclusions.

B. **Amendments:**

None.

By the Committees on Health Policy; and Banking and Insurance;  
and Senator Simpson

588-02650-19

2019322c2

1 A bill to be entitled  
2 An act relating to preexisting conditions; creating  
3 ss. 627.6046 and 627.65612, F.S.; defining the terms  
4 "operative date" and "preexisting medical condition"  
5 with respect to individual and group health insurance  
6 policies, respectively; requiring insurers, contingent  
7 upon the occurrence of either of two specified events,  
8 to make at least one comprehensive major medical  
9 health insurance policy available to all residents of  
10 this state within a specified timeframe; prohibiting  
11 such insurers from excluding, limiting, denying, or  
12 delaying coverage under such policies due to  
13 preexisting medical conditions; requiring such  
14 policies to have been actively marketed on a specified  
15 date and during a certain timeframe before that date;  
16 providing applicability; amending s. 641.31, F.S.;  
17 defining the terms "operative date" and "preexisting  
18 medical condition" with respect to health maintenance  
19 contracts; requiring health maintenance organizations,  
20 contingent upon the occurrence of either of two  
21 specified events, to make at least one comprehensive  
22 major medical health maintenance contract available to  
23 all residents of this state within a specified  
24 timeframe; prohibiting such health maintenance  
25 organizations from excluding, limiting, denying, or  
26 delaying coverage under such contracts due to  
27 preexisting medical conditions; requiring such  
28 contracts to have been actively marketed on a  
29 specified date and during a certain timeframe before

Page 1 of 5

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

588-02650-19

2019322c2

30 that date; providing an effective date.  
31  
32 Be It Enacted by the Legislature of the State of Florida:  
33  
34 Section 1. Section 627.6046, Florida Statutes, is created  
35 to read:  
36 627.6046 Limit on preexisting conditions.—  
37 (1) As used in this section, the term:  
38 (a) "Operative date" means the date on which either of the  
39 following occurs with respect to the Patient Protection and  
40 Affordable Care Act, Pub. L. No. 111-148, as amended by the  
41 Health Care and Education Reconciliation Act of 2010, Pub. L.  
42 No. 111-152 (PPACA):  
43 1. A federal law is enacted which expressly repeals PPACA;  
44 or  
45 2. PPACA is invalidated by the United States Supreme Court.  
46 (b) "Preexisting medical condition" means a condition that  
47 was present before the effective date of coverage under a  
48 policy, whether or not any medical advice, diagnosis, care, or  
49 treatment was recommended or received before the effective date  
50 of coverage. The term includes a condition identified as a  
51 result of a preenrollment questionnaire or physical examination  
52 given to the individual, or review of medical records relating  
53 to the preenrollment period.  
54 (2) (a) Not later than 30 days after the operative date, and  
55 notwithstanding s. 627.6045 or any other law to the contrary,  
56 every insurer issuing, delivering, or issuing for delivery  
57 individual health insurance policies in this state shall make at  
58 least one comprehensive major medical health insurance policy

Page 2 of 5

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

588-02650-19 2019322c2

59 available to all residents of this state, and such insurer may  
 60 not exclude, limit, deny, or delay coverage under such policy  
 61 due to one or more preexisting medical conditions.

62 (b) An insurer may not limit or exclude benefits under such  
 63 policy, including a denial of coverage applicable to an  
 64 individual as a result of information relating to an  
 65 individual's health status before the individual's effective  
 66 date of coverage, or if coverage is denied, the date of the  
 67 denial.

68 (3) The comprehensive major medical health insurance policy  
 69 that the insurer is required to offer under this section must be  
 70 a policy that had been actively marketed in this state by the  
 71 insurer as of the operative date and that was also actively  
 72 marketed in this state during the year immediately preceding the  
 73 operative date.

74 (4) This section does not apply to an insurer that issues  
 75 only limited benefit, disability income, specified disease,  
 76 Medicare supplement, or hospital indemnity policies in this  
 77 state.

78 Section 2. Section 627.65612, Florida Statutes, is created  
 79 to read:

80 627.65612 Limit on preexisting conditions.-

81 (1) As used in this section, the terms "operative date" and  
 82 "preexisting medical condition" have the same meanings as  
 83 provided in s. 627.6046.

84 (2) (a) Not later than 30 days after the operative date, and  
 85 notwithstanding s. 627.6561 or any other law to the contrary,  
 86 every insurer issuing, delivering, or issuing for delivery group  
 87 health insurance policies in this state shall make at least one

588-02650-19 2019322c2

88 comprehensive major medical health insurance policy available to  
 89 all residents of this state, and such insurer may not exclude,  
 90 limit, deny, or delay coverage under such policy due to one or  
 91 more preexisting medical conditions.

92 (b) An insurer may not limit or exclude benefits under such  
 93 policy, including a denial of coverage applicable to an  
 94 individual as a result of information relating to an  
 95 individual's health status before the individual's effective  
 96 date of coverage, or if coverage is denied, the date of the  
 97 denial.

98 (3) The comprehensive major medical health insurance policy  
 99 that the insurer is required to offer under this section must be  
 100 a policy that had been actively marketed in this state by the  
 101 insurer as of the operative date and that was also actively  
 102 marketed in this state during the year immediately preceding the  
 103 operative date.

104 (4) This section does not apply to an insurer issuing only  
 105 limited benefit, disability income, specified disease, Medicare  
 106 supplement, or hospital indemnity policies in this state.

107 Section 3. Subsection (45) is added to section 641.31,  
 108 Florida Statutes, to read:

109 641.31 Health maintenance contracts.-

110 (45) (a) As used in this subsection, the terms "operative  
 111 date" and "preexisting medical condition" have the same meanings  
 112 as provided in s. 627.6046.

113 (b) Not later than 30 days after the operative date, and  
 114 notwithstanding s. 641.31071 or any other law to the contrary,  
 115 every health maintenance organization issuing, delivering, or  
 116 issuing for delivery individual or group contracts in this state

588-02650-19

2019322c2

117 shall make at least one comprehensive major medical health  
118 maintenance contract available to all residents of this state,  
119 and such health maintenance organization may not exclude, limit,  
120 deny, or delay coverage under such contract due to one or more  
121 preexisting medical conditions. A health maintenance  
122 organization may not limit or exclude benefits under such  
123 contract, including a denial of coverage applicable to an  
124 individual as a result of information relating to an  
125 individual's health status before the individual's effective  
126 date of coverage, or if coverage is denied, the date of the  
127 denial.

128 (c) The comprehensive major medical health maintenance  
129 contract the health maintenance organization is required to  
130 offer under this section must be a contract that had been  
131 actively marketed in this state by the health maintenance  
132 organization as of the operative date and that was also actively  
133 marketed in this state during the year immediately preceding the  
134 operative date.

135 Section 4. This act shall take effect July 1, 2019.





The Florida Senate

## Committee Agenda Request

**To:** Senator Benacquisto, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 7, 2019

---

I respectfully request that **Senate Bill #322**, relating to preexisting conditions, be placed on the:

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

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

Senator Wilton Simpson  
Florida Senate, District 10

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2019  
Meeting Date

SB 322  
Bill Number (if applicable)

Topic Pre existing Conditions

Amendment Barcode (if applicable)

Name Kathy Winn

Job Title volunteer

Address 1006 Brookwood Dr.  
Street

Phone (850) 766-2612

Tall. FL 32308  
City State Zip

Email kathywinnclan@embargmail.com

Speaking:  For  Against  Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/19/2019

Meeting Date

Topic \_\_\_\_\_

Bill Number 322

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG      FLORIDA      33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

**The Florida Senate**  
**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 7008

INTRODUCER: Judiciary Committee

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

DATE: March 12, 2019

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

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

---

**I. Summary:**

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

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

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

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

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

The bill takes effect October 1, 2019.

## II. Present Situation:

### Public Records Law

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

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

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

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

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

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

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

---

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

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

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

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

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

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

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

Only the Legislature may create an exemption to public records requirements.<sup>10</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>11</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>12</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>13</sup>

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

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

### **The Florida Information Protection Act of 2014 and the Related Exemption**

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

---

<sup>8</sup> Section 119.07(1)(a), F.S.

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

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

<sup>11</sup> *Id.*

<sup>12</sup> The bill may, however, contain multiple exemptions that relate to one subject.

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

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

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

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

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

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

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

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

### ***Florida Information Protection Act of 2014***

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

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

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

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

### ***Confidential and Exempt Information***

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

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

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

---

<sup>21</sup> See SB 1526 (2014 Reg. Session).

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

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

Proprietary information means information that:

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

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

### ***Open Government Sunset Review***

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

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

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

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

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



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

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

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

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

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

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

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

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

The bill takes effect October 1, 2019.

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

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

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue. Likewise, it does not reduce the percentage of a state tax shared with counties or municipalities.

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

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

***Public Necessity Statement***

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

***Breadth of Exemption***

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

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

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

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

**C. Government Sector Impact:**

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

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 501.171, Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

By the Committee on Judiciary

590-01172-19

20197008\_\_

A bill to be entitled

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

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

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

501.171 Security of confidential personal information.—

(11) PUBLIC RECORDS EXEMPTION.—

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

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

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

Page 1 of 3

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

590-01172-19

20197008\_\_

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

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

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

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

2. Personal information.

3. A computer forensic report.

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

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

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

1. Is owned or controlled by the covered entity.

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

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

Page 2 of 3

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

590-01172-19

20197008\_\_

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

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

64 5. Includes:

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

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

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

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

**The Florida Senate**  
**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 7034

INTRODUCER: Infrastructure and Security Committee

SUBJECT: OGSR/Automated License Plate Recognition System

DATE: March 12, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Proctor</u>	<u>Miller</u>		<b>IS Submitted as Committee Bill</b>
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

**I. Summary:**

SB 7034 amends s. 316.0777, F.S., to save from repeal the exemption from public disclosure for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system. The bill removes the scheduled repeal date of the exemption, resulting in the continuation of the exemption.

The bill is not anticipated to impact state and local revenues and expenditures.

The bill takes effect on October 1, 2019.

**II. Present Situation:**

**Public Records Law**

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

---

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

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

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

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>9</sup> 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.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

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

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

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

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

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

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

<sup>11</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

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

Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

### **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.<sup>14</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>15</sup> 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.<sup>16</sup> 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;<sup>17</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>20</sup> 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.<sup>21</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

<sup>13</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>14</sup> 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.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> 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?

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



for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>22</sup>

### **Automated License Plate Recognition System**

An automated license plate recognition system (ALPRS) is a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.<sup>23</sup> ALPRS uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. Data files compiled in ALPR systems typically contain the following information:

- Black and white plate image;
- Contextual color image;
- Electronically readable format of plate alphanumeric characters of license plate numbers;
- Location and GPS coordinates;
- Time and date of image capture; and
- Camera identification (mobile cameras may capture officer and vehicle/unit number).<sup>24</sup>

Although the full extent of ALPRS use is unknown, surveys conducted as part of this OGSR provided responses from 19 police departments and five agencies. Of the 24 respondents eight respondents stated they are using an ALPRS.

Data obtained from an ALPRS is generally used to check license plates against law enforcement hot lists. Hot lists contain a list of stolen plates and vehicles entered into the National Crime Information Center database, the Florida Crime Information Center database, Driver and Vehicle Information Database, and any information entered manually by the operating member. Examples of manual entries include, but are not limited to: attempt to locate; AMBER/SILVER alerts, child abductions, missing or wanted persons, and registered sexual predators.<sup>25</sup>

Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features. Florida Law requires the Department of State in consultation with the Department of Law Enforcement to establish a retention schedule for records containing images and data generated through the use of an ALPRS. The retention schedule must establish a maximum period that the records may be retained.<sup>26</sup>

---

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

<sup>23</sup> Section 316.0778(1), F.S.

<sup>24</sup> U.S. Department of Justice report on “ALPR Use by Law Enforcement: Policy and Operational Guide, Summary” available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/239605.pdf> (last visited on February 6, 2019).

<sup>25</sup> Florida Department of Highway Safety and Motor Vehicles’ “Florida Highway Patrol Policy Manual” on ALPRS available at: <https://www.flhsmv.gov/pdf/fhp/policies/1725.pdf> (last visited on February 6, 2019).

<sup>26</sup> Section 316.0778(2), F.S.

The Department of State specifies the retention of license plate recognition records: “Retain until obsolete, superseded, or administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series.”<sup>27</sup>

### **Open Government Sunset Review of the Public Record Exemption for the Automatic License Plate Recognition System**

In 2014, the Legislature created s. 316.0777, F.S., to exempt from the public record requirements information obtained by an ALPRS. The exemption applies to ALPRS images and data containing or providing personal identifying information, as well as personal identifying information derived from ALPRS data or images. The information collected from ALPRS and held by an agency is confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution.<sup>28</sup>

Such information may be disclosed under the following conditions:

- By or to a criminal justice agency, as defined in s. 119.011(4), F.S. in performance of the agency’s official duties.
- To a license plate registrant requesting his or her own information, as long as it is not related to any ongoing criminal investigation, as defined in s. 119.011(3), F.S.<sup>29</sup>

In creating the exemption, the Legislature found that exempting the release of personal identifying information collected by an ALPRS is a public necessity. The Legislature recognized that disclosure of such information could enable a third party to track a person’s movements and would be an invasion of personal privacy.<sup>30</sup> The Legislature further found that the public disclosure of sensitive personal information could be defamatory or jeopardize an individual’s safety and that the harm from public disclosure outweighs any public benefit.<sup>31</sup>

Section 316.0777, F.S., is subject to the OGSR and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Based upon a review of this public records exemption under the OGSR and discussions with the Florida Department of Highway Safety and Motor Vehicles, the professional staff of the Senate Infrastructure and Security Committee recommends that the Legislature retain the public records exemption established in s. 316.0777, F.S.

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

The bill is based on an Open Government Sunset Review of a public records exemption for information obtained by an ALPRS. The justification upon which the public records exemption is based remains valid.

---

<sup>27</sup> Florida Department of State, General Records Schedule GS2 for Law Enforcement, Correctional Facilities and District Medical Examiners, Effective: August 2017 available at: <https://dos.myflorida.com/media/698314/gs2-sl-2017-final.pdf> (last visited January 14, 2019).

<sup>28</sup> Ch. 2014-170, Laws of Fla.

<sup>29</sup> *Id.*

<sup>30</sup> Section 2, ch. 2014-170, Laws of Fla.

<sup>31</sup> *Id.*

The bill amends s. 316.0777, F.S., to delete the scheduled repeal of the current public records exemption for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from ALPRS held by an agency. These records will continue to be confidential and exempt from public disclosure.

The bill takes effect October 1, 2019.

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

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

Not applicable. This bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor

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

###### ***Vote Requirement***

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

###### ***Public Necessity Statement***

Article 1, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

###### ***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of this law is to protect all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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

None.

##### **D. State Tax or Fee Increases:**

None.

E. Other Constitutional Issues:

None.

**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 316.0777 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 Infrastructure and Security

596-02379-19

20197034\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 316.0777, F.S., which provides a public records exemption for certain images and data obtained through the use of an automated license plate recognition system and for personal identifying information of an individual in data generated from such images; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 316.0777, Florida Statutes, is amended to read:

316.0777 Automated license plate recognition systems; public records exemption.—

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

(a) "Active," "criminal intelligence information," and "criminal investigative information" have the same meanings as provided in s. 119.011(3).

(b) "Agency" has the same meaning as provided in s. 119.011.

(c) "Automated license plate recognition system" means a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.

(d) "Criminal justice agency" has the same meaning as provided in s. 119.011.

(2) The following information held by an agency is

Page 1 of 2

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

596-02379-19

20197034\_\_

confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Images and data containing or providing personal identifying information obtained through the use of an automated license plate recognition system.

(b) Personal identifying information of an individual in data generated or resulting from images obtained through the use of an automated license plate recognition system.

(3) Such information may be disclosed as follows:

(a) Any such information may be disclosed by or to a criminal justice agency in the performance of the criminal justice agency's official duties.

(b) Any such information relating to a license plate registered to an individual may be disclosed to the individual, unless such information constitutes active criminal intelligence information or active criminal investigative information.

(4) This exemption applies to such information held by an agency before, on, or after the effective date of this exemption.

~~(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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: CS/SB 7014

INTRODUCER: Community Affairs Committee and Governmental Oversight and Accountability Committee

SUBJECT: Government Accountability

DATE: March 12, 2019      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Ponder	McVaney		<b>GO Submitted as Committee Bill</b>
1.	Peacock	Yeatman	CA	<b>Fav/CS</b>
2.	Ponder	Phelps	RC	<b>Favorable</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

**I. Summary:**

CS/SB 7014 amends various statutes to enhance government accountability and auditing processes based on recommendations noted in recent reports by the Auditor General. The bill:

- Authorizes the Governor or Commissioner of Education, or designee, to notify the Joint Legislative Auditing Committee if an entity fails to comply with certain auditing and financial reporting requirements;
- Provides definitions for the terms “abuse,” “fraud,” and “waste;”
- Adds tourist development council and county tourism promotion agency to the definition of “local government entity” to clarify that the Auditor General has authority to audit the entities;
- Removes water management districts from the definition of local government entities for the purposes audit cycles and follow-up reviews;
- Requires the Florida Clerks of Court Operations Corporation to notify the Legislature quarterly if a clerk is not meeting workload performance standards;
- Requires each agency, the judicial branch, the Justice Administrative Commission, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Guardian Ad Litem program, local governmental entities, charter schools, school districts, Florida College System institutions, and state universities to establish and maintain internal controls designed to prevent and detect fraud, waste, and abuse;

- Requires counties, municipalities, special districts, and water management districts to maintain certain budget documents on their websites for specified timeframes;
- Revises the monthly financial statement requirements for water management districts;
- Provides that the Department of Financial Services may request additional information from local government entities when preparing its annual verified report;
- Revises the membership, and restrictions thereof, for an auditor selection committee of a county, municipality, special district, district school board, charter school, or charter technical career center;
- Specifies that the definition of fraud, waste and abuse set forth in s. 2 of the bill apply to s. 1001.42, F.S.;
- Requires completion of an annual financial audit of the Florida Virtual School; and
- Requires the Florida College System and Florida State University System to comply with s. 110.1127, F.S., for employee background screenings.

## II. Present Situation:

Various statutes ensure government accountability of state and local governments. For example, the Auditor General conducts audits of accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee. The Auditor General conducts operational and performance audits on public records and information technology systems. The Auditor General also reviews all audit reports of local governmental entities, charter schools, and charter technical career centers. Other statutes require publishing of government budgets and other information online and require government entities to follow certain practices to promote efficiency and compliance within the entity.

Due to the disparate issues in the bill, the “Present Situation” for each bill section is discussed below in conjunction with the “Effect of Proposed Changes.”

## III. Effect of Proposed Changes:

### Legislative Oversight (Sections 1, 2, and 3)

#### *Present Situation*

The position of Auditor General is established by Art. III, s. 2 of the State Constitution. The Auditor General is appointed to office to serve at the pleasure of the Legislature, by a majority vote of the members of the Joint Legislative Auditing Committee, subject to confirmation by both houses of the Legislature.<sup>1</sup> The appointment of the Auditor General may be terminated at any time by a majority vote of both houses of the Legislature.<sup>2</sup> At the time of appointment, the Auditor General must have been certified under the Public Accountancy Law in Florida for a period of at least 10 years and may not have less than 10 years’ experience in an accounting- or auditing-related field.<sup>3</sup>

---

<sup>1</sup> Section 11.42(2), F.S.

<sup>2</sup> Section 11.42(5), F.S.

<sup>3</sup> Section 11.42(2), F.S.

The Auditor General must conduct audits, examinations, or reviews of government programs<sup>4</sup> as well as audit the accounts and records of state agencies, state universities, state colleges, district school boards, and others as directed by the Joint Legislative Auditing Committee.<sup>5</sup> The Auditor General conducts operational and performance audits on public records and information technology systems and reviews all audit reports of local governmental entities, charter schools, and charter technical career centers.<sup>6</sup>

Various statutory provisions require the Auditor General to compile and submit reports. For example, the Auditor General must annually compile and transmit to the President of the Senate, the Speaker of the House of Representatives, and the Joint Legislative Auditing Committee a summary of significant findings and financial trends identified in audit reports.<sup>7</sup> The Auditor General also must compile and transmit to the President of the Senate, Speaker of the House of Representatives, and Joint Legislative Auditing Committee an annual report by December 1. The report must include a two-year work plan identifying the audit and other accountability activities to be undertaken and a list of statutory and fiscal changes recommended by the Auditor General.<sup>8</sup> In addition, the Auditor General must transmit recommendations at other times during the year when the information would be timely and useful to the Legislature.<sup>9</sup>

The annual report for the Auditor General for November 1, 2017, through October 31, 2018, contained the following recommendation:<sup>10</sup>

The Legislature should consider amending applicable Florida Statutes to establish in law the responsibility of each state and local government for the establishment and maintenance of management systems and internal controls designed to prevent and detect fraud, waste, and abuse; promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices; support economical and efficient operations; ensure reliability of financial records and reports; and safeguard assets.

Section 11.45, F.S., defines the types of audits the Auditor General may conduct, requires certain state and local governmental audits to be conducted, and specifies the frequency with which the audits must occur. The Auditor General also may conduct other audits he or she determines to be appropriate.

Following notification by the Auditor General, the Department of Financial Services (DFS), or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with applicable auditing, financial reporting, bond issuance notification, or bond

---

<sup>4</sup> Section 11.45(7), F.S.

<sup>5</sup> Section 11.45(2)(d)-(f), F.S.

<sup>6</sup> Section 11.45(7)(b), F.S.

<sup>7</sup> Section 11.45(7)(f), F.S.

<sup>8</sup> Section 11.45(7)(h), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Annual Report, Florida Auditor General, at page 9. A copy of the report can be found online at: [https://flauditor.gov/pages/pdf\\_files/annual%20report%202018.pdf](https://flauditor.gov/pages/pdf_files/annual%20report%202018.pdf) (last visited January 18, 2019).



verification provisions or the failure to disclose a financial emergency or provide information required during a financial emergency,<sup>11</sup> the Joint Legislative Auditing Committee may schedule a hearing to determine whether the entity should be subject to further state action. For purposes of s. 11.45, F.S., the term “local governmental entity” means a county agency, municipality, or special district as defined in s. 189.012, F.S.,<sup>12</sup> but does not include any housing authority established under ch. 421, F.S.

The Auditor General is also required to annually transmit, by July 15, to the President of the Senate, the Speaker of the House of Representatives, and the DFS a list of all school districts, charter schools, charter technical career centers, Florida College System institutions, state universities, and water management districts that have failed to comply with certain transparency requirements.

### *Effect of the Bill*

**Section 1** amends s. 11.40, F.S., to authorize the Governor or his or her designee, and the Commissioner of Education or his or her designee, to notify the Joint Legislative Auditing Committee that a local governmental entity, district school board, charter school, or charter technical career center has failed to comply with applicable auditing, financial reporting, bond issuance notification, or bond verification provisions or failed to disclose a financial emergency or provide information required during a financial emergency. Upon such notification the Joint Legislative Auditing Committee may consider whether the entity should be subject to further state action.

**Section 2** amends s. 11.45, F.S., to revise the definition of the term “financial audit” and to define the terms abuse, fraud, and waste. These newly defined terms are related to the internal controls various government entities must establish and maintain to prevent and detect fraud, waste, and abuse.

This section specifically includes tourist development council and county tourism promotion agency within the definition of “local governmental entity.” With this definition, the Auditor General clearly has the authority to conduct audits or other engagements of tourist development councils and county tourism promotion agencies.

This section exempts water management districts from being subject to audits as a local government entities conducted pursuant to s. 11.45(2)(j), F.S. With this change, the districts will continue to be subject to periodic audits authorized by s. 11.45(2)(f), F.S.,<sup>13</sup> and the Auditor

---

<sup>11</sup> Section 11.45, F.S., governs certain audits to be conducted by the Auditor General. Section 218.32(1), F.S., requires annual financial reports from local governmental entities. Section 218.38, F.S., requires notice of bond issuance and contains verification requirements. Section 218.503(3), F.S., requires certain entities to disclose a financial emergency and provide certain information concerning a financial emergency.

<sup>12</sup> Section 189.012(6), F.S., defines a “special district” to mean a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, F.S., a municipal service taxing or benefit unit as specified in s. 125.01, F.S., or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

<sup>13</sup> Section 11.45(2)(f), F.S., states in part that at least every three years, the Auditor General shall conduct operational audits of the accounts and records of water management districts.

General will follow up on prior audit findings at the next scheduled audit rather than 18 months after the completion of the latest audit.

This section expands the list of entities that must be included in the Auditor General report concerning entities that fail to comply with transparency requirements in s. 11.45, F.S., to include all local governmental entities rather than just the water management districts.

**Section 3** amends s. 11.47, F.S., to expand the activities that are punishable as a crime to include willful failure or refusal to provide the Auditor General access to an employee, officer, or agent of an entity as a first-degree misdemeanor punishable as provided in s. 775.082 or s. 775.083, F.S.

#### **Florida Clerks of Court Operations Corporation (Section 4)**

##### *Present Situation*

Currently, s. 28.35, F.S., requires the Florida Clerks of Court Operations Corporation (corporation) to develop and certify a uniform system of workload measures and applicable workload standards for court-related functions as developed by the corporation and clerk workload performance in meeting the workload performance standards. These workload measures and workload performance standards must be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs. The corporation must develop the workload measures and workload performance standards in consultation with the Legislature. When the corporation finds a clerk has not met the workload performance standards, the corporation must identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court. The corporation must notify the Legislature of any clerk not meeting workload performance standards and provide a copy of any corrective action plans.

##### *Effect of the Bill*

**Section 4** amends s. 28.35, F.S., to require the corporation to provide a copy of any corrective action plans for any clerk not meeting the workload performance standards within 45 days after the end of each quarter. The section is also amended to clarify that the applicable quarters end on the last day of March, June, September, and December of each year.

#### **Internal Controls to Prevent and Detect Fraud, Waste, and Abuse (Sections 5, 9, 14, 17, 18, and 20)**

##### *Present Situation*

##### State Agencies and the Judicial Branch

Section 215.86, F.S., requires each state agency and the judicial branch as defined in s. 216.011, F.S., to establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. It requires accounting systems and procedures to be designed to fulfill the requirements of generally accepted accounting principles.

### Local Governmental Entities

Section 218.33, F.S., requires each local governmental entity to begin its fiscal year on October 1 and end it on September 30. Section 218.33(2), F.S., requires each local governmental entity to follow uniform accounting practices and procedures as provided by rule of DFS to assure the use of proper accounting and fiscal management by such units. Such rules must include a uniform classification of accounts.

### Charter Schools

Section 1002.33, F.S., authorizes charter schools as part of Florida's state program of education. In addition to creating charter schools, that section also imposes certain requirements on charter schools. In pertinent part, the law provides that the governing body of a charter school is responsible for:

- Ensuring that the charter school has retained a certified public accountant or auditor to perform its annual audit;
- Reviewing and approving the audit report;
- Establishing a corrective plan, if necessary;
- Monitoring a financial recovery plan to ensure compliance; and
- Participating in governance training approved by the Department of Education, which must include government in the sunshine, conflicts of interest, ethics, and financial responsibility.<sup>14</sup>

### School Districts, Florida College System Institutions, and State Universities

Current law requires the financial records and accounts of each school district, Florida College System institution, and other institution or agency under the supervision of the State Board of Education (SBE) to be prepared and maintained as prescribed by law and rules of the SBE. The financial records and accounts of each state university under the supervision of the Board of Governors (BOG) must be prepared and maintained as prescribed by law and rules of the BOG. Rules of the SBE and rules of the BOG must incorporate the requirements of law and accounting principles generally accepted in the United States and must include a uniform classification of accounts. Each state university must annually file with the BOG financial statements prepared in conformity with these requirements. The BOG's rules must prescribe the filing deadline for the financial statements. The required financial accounts and reports must include provisions that are unique to K-12 school districts, Florida College System institutions, and state universities.<sup>15</sup>

### Justice Administrative Commission

The Justice Administrative Commission (Commission) is created in s. 43.16, F.S. As one of its duties, the Commission is charged with maintaining a central state office for administrative services and assistance on behalf of state attorneys and public defenders, the capital collateral regional counsel, the criminal conflict and civil regional counsel, and the Guardian Ad Litem Program.<sup>16</sup> Additionally, the Commission records and submits certain documents prepared by a state attorney, public defender, or criminal conflict and civil regional counsel or the Guardian Ad

---

<sup>14</sup> Section 1002.33(9)(j), F.S.

<sup>15</sup> Section 1010.01, F.S.

<sup>16</sup> Section 43.16(5)(a), F.S.

Litem Program, including necessary budgets, vouchers that represent valid claims for reimbursement by the state for authorized expenses, and other things incidental to the proper administrative operation of the office, such as revenue transmittals to the Chief Financial Officer and automated systems plans.<sup>17</sup>

### *Effect of the Bill*

**Sections 5, 9, 14, 18, and 20** amend ss. 43.16, 215.86, 218.33, 1002.33, and 1010.01, F.S., respectively, to require state agencies, the judicial branch, local governmental entities, charter schools, school districts, Florida College System institutions, state universities, the Commission, each state attorney, each public defender, the criminal conflict and civil regional counsel, the capital collateral regional counsel, and the Guardian Ad Litem Program to establish and maintain internal controls designed to:

- Prevent and detect fraud, waste, and abuse, as defined in s. 11.45(1), F.S.;
- Promote and encourage compliance with applicable laws, rules, contracts, grant agreements, and best practices;
- Support economical and efficient operations;
- Ensure reliability of financial records and reports; and
- Safeguard assets.

**Section 17** amends s. 1001.42, F.S., to specify that internal controls designed to prevent and detect fraud, waste, and abuse meet the definition provided in s. 11.45(1), F.S.

### **Online Posting of Governmental Budgets (Sections 6, 7, 8, and 16)**

#### *Present Situation*

##### Counties and Municipalities

Counties<sup>18</sup> and municipalities<sup>19</sup> are required to post their tentative budgets on their websites two days prior to consideration of the budget at a public hearing. The final budget of a county or municipality must be posted on its website within 30 days after adoption. An amendment to a budget must be posted to the website within five days of adoption.<sup>20</sup> Current law does not specify how long these documents must remain available on the website.

##### Water Management Districts

Chapter 373, F.S., governs Florida's water resource management and authorizes the creation of water management districts, which are given taxing authority. A water management district is defined as "any flood control, resource management, or water management district" operating under the authority of ch. 373, F.S.<sup>21</sup> There are five water management districts in Florida: Northwest Florida, Suwanee River, St. Johns River, Southwest Florida, and South Florida.<sup>22</sup> Section 373.536, F.S., governs the budget process for water management districts and requires a

---

<sup>17</sup> Section 43.16(5)(b), F.S.

<sup>18</sup> Section 129.03, F.S.

<sup>19</sup> Section 166.241, F.S.

<sup>20</sup> Sections 129.06(2)(f)2., 166.241(5), and 189.016(7), F.S.

<sup>21</sup> Section 373.019(23), F.S.

<sup>22</sup> Section 373.069(1), F.S.

water management district's tentative budget to be posted on the water management district's website at least two days before budget hearings are conducted. The law requires a water management district's final adopted budget to be posted on the water management district's official website within 30 days after adoption.

### *Effect of the Bill*

**Sections 6, 7, 8, and 16** amend ss. 129.03, 129.06, 166.241, and 373.536, F.S., respectively, to require the various budgets remain accessible on a county, municipality or water management district's website for certain time periods. Specifically, a tentative budget must remain on an entity's website for at least 45 days and final budget or an adopted amendment to a budget must remain on the website for at least two years.

### **Florida Single Audit Act (Section 10)**

#### *Present Situation*

The Florida Single Audit Act, codified in s. 215.97, F.S., is designed to:

- Establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects;
- Promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities;
- Promote audit economy and efficiency by relying to the extent possible on already required audits of federal financial assistance provided to nonstate entities;
- Provide for identification of state financial assistance transactions in the state accounting records and recipient organization records;
- Promote improved coordination and cooperation within and between affected state agencies providing state financial assistance and nonstate entities receiving state assistance; and
- Ensure, to the maximum extent possible, that state agencies monitor, use, and follow-up on audits of state financial assistance provided to nonstate entities.

Pursuant to the Florida Single Audit Act, certain entities that meet the "audit threshold" requirements are subject to a state single audit or a project-specific audit. Currently, the "audit threshold" requires each nonstate entity that expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such nonstate entity to have a state single audit, or a project-specific audit, for such fiscal year. Every two years, the Auditor General, after consulting with the Executive Office of the Governor, the DFS, and all state awarding agencies, is required to review the threshold amount for requiring audits and may adjust the threshold amount.<sup>23</sup>

#### *Effect of the Bill*

**Section 10** amends s. 215.97, F.S., to allow the Auditor General to review the threshold amount for requiring audits periodically rather than every two years; however, the term "periodically" is not defined. This section also authorizes the Auditor General to recommend in its annual report to the Legislature a statutory change to revise the threshold amount.

---

<sup>23</sup> Section 215.97(2)(a), F.S.

## **Transparency in Government Spending (Section 11)**

### ***Present Situation***

The Transparency Florida Act (Act), codified in s. 215.985, F.S., requires the Governor, in consultation with the appropriations committees of the House and Senate, to maintain a central website providing access to all other websites required to be linked under the Act. It also requires certain budget information, certain contract information, and minimum functionality standards to be readily available online. In pertinent part, s. 215.985(11), F.S., requires each water management district to provide a monthly financial statement to its governing board and make the statement available for public access on its website.

### ***Effect of the Bill***

**Section 11** amends s. 215.985, F.S., to require a water management district's monthly financial statement to be in the form and manner prescribed by the DFS and requires each water management district to make the monthly financial statement available to the public on its website.

## **Local Governmental Entity Annual Financial Reports (Section 13)**

### ***Present Situation***

Section 218.32, F.S., requires local governmental entities that are required to provide for an audit under s. 218.39, F.S., to submit an audit report and annual financial report to the DFS within 45 days after completion of the audit report, but no later than nine months after the end of the fiscal year. The annual financial report must be signed by the chair of the governing body and the chief financial officer of the local governmental entity. The law also specifies the information that must be included in the report.

In addition, the DFS is required to file a verified report with the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity showing the revenues, both locally derived and derived from intergovernmental transfers, and the expenditures of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation that is required to submit an annual financial report.<sup>24</sup>

### ***Effect of the Bill***

**Section 13** amends s. 218.32, F.S., to authorize the DFS, in preparing the verified report, to request additional information from a local governmental entity. Any additional information requested must be provided to the DFS within 45 days after the request. If the local governmental entity does not comply with the request, the DFS must notify the Joint Legislative Auditing Committee, which may take action pursuant to s. 11.40(2), F.S.

---

<sup>24</sup> Section 218.32(2), F.S.

## **Local Government Auditor Selection Procedures (Section 15)**

### ***Present Situation***

Section 218.391, F.S., outlines the process that each local governmental entity, district school board, charter school, or charter technical career center must follow in selecting an auditor to conduct the annual financial audit of the entity required by s. 218.39, F.S. Each entity is required to establish an audit committee to assist the governing body in selecting the auditor. The audit committee of a noncharter county must consist of each of its constitutional officers and one member of the board of county commissioners or its designee. The audit committees must publicly announce requests for proposals for the audit services. The law specifies the factors that must be considered in selecting the auditor and the procedures for negotiating for compensation.

### ***Effect of the Bill***

**Section 15** amends s. 218.391, F.S., to require each county's auditor selection committee to consist of each county officer elected pursuant to the State Constitution or the county charter, or their respective designees, and one member of the board of county commissioners or its designee. The section requires the auditor selection committee for a municipality, special district, district school board, charter school, or charter technical career center to consist of at least three members, one of whom must be a member of the governing body of the entity. That member must serve as the auditor selection committee's chair. An employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may not serve as a member of an auditor selection committee; however, an employee, chief executive officer, or chief financial officer of the county, municipality, special district, district school board, charter school, or charter technical career center may serve in an advisory capacity.

## **The Florida Virtual School (Section 19)**

### ***Present Situation***

The Florida Virtual School was created to develop and deliver online and distance learning education.<sup>25</sup> The Commissioner of Education is charged with monitoring the Florida Virtual School. In pertinent part, the law requires the board of trustees to submit an annual report to the Governor, the Legislature, the Commissioner of Education, and the State Board of Education (SBE) that must address:

- The operations and accomplishments of the Florida Virtual School within the state and those occurring outside the state as Florida Virtual School Global;
- The marketing and operational plan for the Florida Virtual School and Florida Virtual School Global, including recommendations regarding methods for improving the delivery of education through the Internet and other distance learning technology;
- The assets and liabilities of the Florida Virtual School and Florida Virtual School Global at the end of the fiscal year;
- A copy of an annual financial audit of the accounts and records of the Florida Virtual School and Florida Virtual School Global, conducted by an independent certified public accountant and performed in accordance with rules adopted by the Auditor General;

---

<sup>25</sup> Section 1002.37(1)(a), F.S.

- Recommendations regarding the unit cost of providing services to students through the Florida Virtual School and Florida Virtual School Global; and
- Recommendations regarding an accountability mechanism to assess the effectiveness of the services provided by the Florida Virtual School and Florida Virtual School Global.<sup>26</sup>

### *Effect of the Bill*

**Section 19** amends s. 1002.37, F.S., to require the Florida Virtual School to have an annual financial audit of its accounts and records conducted by an independent auditor who is a licensed certified public accountant. The independent auditor must conduct the audit in accordance with rules adopted by the Auditor General and must prepare an audit report in accordance with such rules. The audit report must include a written statement by the board of trustees describing corrective action to be taken in response to each of the independent auditor's recommendations. The independent auditor must submit the audit report to the board of trustees and the Auditor General no later than nine months after the end of the preceding fiscal year.

### **Employee Background Screening (Sections 21 and 22)**

#### *Present Situation*

Currently, s. 110.1127, F.S., requires that each agency designate the positions that require background screening using level one standards and those positions that, because of the special trust or responsibility or sensitive location, require security background investigations using level two screening standards. Level one screening standards include employment history checks, statewide criminal correspondence checks and a check of the Dru Sjodin National Sex Offender Public Website by the Department of Law Enforcement.<sup>27</sup> For a level two screening, the Department of Law Enforcement performs a criminal history record check of its records and request the Federal Bureau of Investigations (FBI) to perform a national criminal history record check of its records.<sup>28</sup> According to the Department of Law Enforcement, the FBI does not allow its criminal justice information to be reviewed for a level two background investigation unless the screening is required by law.

Section 1001.60, F.S., established a system of governance for the Florida College System for the institutions identified in s. 1000.21, F.S. Likewise, state universities are governed by the Board of Governors, as provided in s. 1001.70, F.S. Current law does not specify that the Florida College System and State University System are state agencies for the purpose of s. 110.1127, F.S.

#### *Effect of the Bill*

**Sections 21 and 22** create ss. 1012.8551 and 1012.915, F.S., respectively, to apply s. 110.1127, F.S., relating to background screening requirements to the personnel of the Florida College System and the State University System. With this change, state universities and colleges are required to designate personnel for level one and level two background screenings. This statutory

---

<sup>26</sup> Section 1002.37(6), F.S.

<sup>27</sup> Section 435.03(1), F.S.

<sup>28</sup> Section 435.04(1), F.S.



requirement is intended to allow background screenings requested by the State College System and the State University System to include federal information.

#### **Other Provisions (Sections 12, 23, 24, and 25)**

**Section 12** amends s. 218.31(17), F.S., to revise the definition of the term “financial audit.”

**Section 23** conforms provisions and cross-references to changes made by the bill.

**Section 24** specifies that a proper and legitimate state purpose is served when internal controls are established to prevent and detect fraud, waste, and abuse and to safeguard and account for government funds and property.

**Section 25** provides an effective date of July 1, 2019.

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

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

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

- The law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; or
- The expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments.

Article VII, s. 18(d) of the Florida Constitution provides, in pertinent part, that laws having insignificant fiscal impact are exempt from the mandates requirements.

This bill requires county and municipal governments to establish and maintain specified internal controls and to maintain its budgets online for a specified period. Section 23 of the bill specifies that the bill serves an important state interest. An exception may apply because the bill applies to similarly situated persons (municipalities, counties, water management districts, school districts, state agencies and other governmental entities).

In addition, the bill may be exempt from the mandates requirements if the costs incurred by the municipalities and counties to comply are \$2.1 million or less (the threshold for “insignificant”<sup>29</sup> fiscal impact for Fiscal Year 2018-2019).<sup>30</sup>

---

<sup>29</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited January 29, 2019).

<sup>30</sup> Based on the Demographic Estimating Conference’s population adopted on November 5, 2018. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited January 29, 2019).

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

The bill does not appear to impact state or local revenues.

**C. Government Sector Impact:**

State agencies, the court system, court-related entities, local governments, district school boards, charter schools, and state colleges and universities may incur minimal costs associated with establishing and maintaining the specified internal controls.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 11.47, 28.35, 43.16, 112.061, 129.03, 129.06, 166.241, 215.86, 215.97, 215.985, 218.31, 218.32, 218.33, 218.39, 218.391, 218.503, 373.536, 1001.42, 1002.33, 1002.37, and 1010.01.

This bill also creates sections 1012.8551, 1012.915, and one undesignated section of Florida law.

**IX. Additional Information:**

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

**CS by Community Affairs on March 5, 2019:**

The committee substitute:

- Revises the definition of the term “financial audit” contained in ss. 11.45 and 218.31, F.S.
- Amends s. 218.391, F.S., regarding auditor selection committee for specified governmental entities.
- Makes technical amendment to s. 1001.42(12), F.S.

- B. **Amendments:**

None.

---

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

---

By the Committees on Community Affairs; and Governmental  
Oversight and Accountability

578-02725-19

20197014c1

1 A bill to be entitled  
2 An act relating to government accountability; amending  
3 s. 11.40, F.S.; specifying that the Governor, the  
4 Commissioner of Education, or the designee of the  
5 Governor or of the commissioner, may notify the  
6 Legislative Auditing Committee of an entity's failure  
7 to comply with certain auditing and financial  
8 reporting requirements; amending s. 11.45, F.S.;  
9 revising definitions and defining the terms "abuse,"  
10 "fraud," and "waste"; excluding water management  
11 districts from certain audit requirements; removing a  
12 cross-reference; authorizing the Auditor General to  
13 conduct audits of tourist development councils and  
14 county tourism promotion agencies; revising reporting  
15 requirements applicable to the Auditor General;  
16 amending s. 11.47, F.S.; specifying that any person  
17 who willfully fails or refuses to provide access to an  
18 employee, officer, or agent of an entity under audit  
19 is subject to a penalty; amending s. 28.35, F.S.;  
20 revising reporting requirements applicable to the  
21 Florida Clerks of Court Operations Corporation;  
22 amending s. 43.16, F.S.; revising the responsibilities  
23 of the Justice Administrative Commission, each state  
24 attorney, each public defender, the criminal conflict  
25 and civil regional counsel, the capital collateral  
26 regional counsel, and the Guardian Ad Litem Program,  
27 to include the establishment and maintenance of  
28 certain internal controls; amending ss. 129.03,  
29 129.06, and 166.241, F.S.; requiring counties and

Page 1 of 33

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

578-02725-19

20197014c1

30 municipalities to maintain certain budget documents on  
31 the entities' websites for a specified period;  
32 amending s. 215.86, F.S.; revising the purposes for  
33 which management systems and internal controls must be  
34 established and maintained by each state agency and  
35 the judicial branch; amending s. 215.97, F.S.;  
36 revising certain audit threshold requirements;  
37 amending s. 215.985, F.S.; revising the requirements  
38 for a monthly financial statement provided by a water  
39 management district; amending s. 218.31, F.S.:  
40 revising the definition of the term "financial audit";  
41 amending s. 218.32, F.S.; authorizing the Department  
42 of Financial Services to request additional  
43 information from a local governmental entity in  
44 preparation of an annual report; requiring a local  
45 governmental entity to respond to such requests within  
46 a specified timeframe; requiring the department to  
47 notify the Legislative Auditing Committee of  
48 noncompliance; amending s. 218.33, F.S.; requiring  
49 local governmental entities to establish and maintain  
50 internal controls to achieve specified purposes;  
51 amending s. 218.391, F.S.; revising membership, and  
52 restrictions thereof, for an auditor selection  
53 committee; prescribing requirements and procedures for  
54 selecting an auditor if certain conditions exist;  
55 amending s. 373.536, F.S.; deleting obsolete language;  
56 requiring water management districts to maintain  
57 certain budget documents on the districts' websites  
58 for specified periods; amending s. 1001.42, F.S.;

Page 2 of 33

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

578-02725-19

20197014c1

59 authorizing additional internal audits as directed by  
 60 the district school board; amending s. 1002.33, F.S.;  
 61 revising the responsibilities of the governing board  
 62 of a charter school to include the establishment and  
 63 maintenance of internal controls; amending s. 1002.37,  
 64 F.S.; requiring completion of an annual financial  
 65 audit of the Florida Virtual School; specifying audit  
 66 requirements; requiring an audit report to be  
 67 submitted to the board of trustees of the Florida  
 68 Virtual School and the Auditor General; deleting  
 69 obsolete provisions; amending s. 1010.01, F.S.;  
 70 requiring each school district, Florida College System  
 71 institution, and state university to establish and  
 72 maintain certain internal controls; creating ss.  
 73 1012.8551 and 1012.915, F.S.; specifying applicable  
 74 standards as to employee background screening and  
 75 investigations of Florida College System and State  
 76 University System personnel, respectively; amending s.  
 77 218.503, F.S.; conforming provisions and cross-  
 78 references to changes made by the act; providing a  
 79 declaration of important state interest; providing an  
 80 effective date.

81  
 82 Be It Enacted by the Legislature of the State of Florida:

83  
 84 Section 1. Subsection (2) of section 11.40, Florida  
 85 Statutes, is amended to read:

86 11.40 Legislative Auditing Committee.—

87 (2) Following notification by the Auditor General, the

578-02725-19

20197014c1

88 Department of Financial Services, ~~or~~ the Division of Bond  
 89 Finance of the State Board of Administration, the Governor or  
 90 his or her designee, or the Commissioner of Education or his or  
 91 her designee of the failure of a local governmental entity,  
 92 district school board, charter school, or charter technical  
 93 career center to comply with the applicable provisions within s.  
 94 11.45(5)-(7), s. 218.32(1), s. 218.38, or s. 218.503(3), the  
 95 Legislative Auditing Committee may schedule a hearing to  
 96 determine if the entity should be subject to further state  
 97 action. If the committee determines that the entity should be  
 98 subject to further state action, the committee shall:

99 (a) In the case of a local governmental entity or district  
 100 school board, direct the Department of Revenue and the  
 101 Department of Financial Services to withhold any funds not  
 102 pledged for bond debt service satisfaction which are payable to  
 103 such entity until the entity complies with the law. The  
 104 committee shall specify the date that such action must ~~shall~~  
 105 begin, and the directive must be received by the Department of  
 106 Revenue and the Department of Financial Services 30 days before  
 107 the date of the distribution mandated by law. The Department of  
 108 Revenue and the Department of Financial Services may implement  
 109 ~~the provisions of~~ this paragraph.

110 (b) In the case of a special district created by:

111 1. A special act, notify the President of the Senate, the  
 112 Speaker of the House of Representatives, the standing committees  
 113 of the Senate and the House of Representatives charged with  
 114 special district oversight as determined by the presiding  
 115 officers of each respective chamber, the legislators who  
 116 represent a portion of the geographical jurisdiction of the

578-02725-19

20197014c1

117 special district, and the Department of Economic Opportunity  
 118 that the special district has failed to comply with the law.  
 119 Upon receipt of notification, the Department of Economic  
 120 Opportunity shall proceed pursuant to s. 189.062 or s. 189.067.  
 121 If the special district remains in noncompliance after the  
 122 process set forth in s. 189.0651, or if a public hearing is not  
 123 held, the Legislative Auditing Committee may request the  
 124 department to proceed pursuant to s. 189.067(3).

125 2. A local ordinance, notify the chair or equivalent of the  
 126 local general-purpose government pursuant to s. 189.0652 and the  
 127 Department of Economic Opportunity that the special district has  
 128 failed to comply with the law. Upon receipt of notification, the  
 129 department shall proceed pursuant to s. 189.062 or s. 189.067.  
 130 If the special district remains in noncompliance after the  
 131 process set forth in s. 189.0652, or if a public hearing is not  
 132 held, the Legislative Auditing Committee may request the  
 133 department to proceed pursuant to s. 189.067(3).

134 3. Any manner other than a special act or local ordinance,  
 135 notify the Department of Economic Opportunity that the special  
 136 district has failed to comply with the law. Upon receipt of  
 137 notification, the department shall proceed pursuant to s.  
 138 189.062 or s. 189.067(3).

139 (c) In the case of a charter school or charter technical  
 140 career center, notify the appropriate sponsoring entity, which  
 141 may terminate the charter pursuant to ss. 1002.33 and 1002.34.

142 Section 2. Subsection (1), paragraph (j) of subsection (2),  
 143 paragraph (u) of subsection (3), and paragraph (i) of subsection  
 144 (7) of section 11.45, Florida Statutes, are amended, and  
 145 paragraph (x) is added to subsection (3) of that section, to

Page 5 of 33

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

578-02725-19

20197014c1

146 read:  
 147 11.45 Definitions; duties; authorities; reports; rules.—  
 148 (1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:  
 149 (a) "Abuse" means behavior that is deficient or improper  
 150 when compared with behavior that a prudent person would consider  
 151 a reasonable and necessary operational practice given the facts  
 152 and circumstances. The term includes the misuse of authority or  
 153 position for personal gain.

154 (b)-(a) "Audit" means a financial audit, operational audit,  
 155 or performance audit.

156 (c)-(b) "County agency" means a board of county  
 157 commissioners or other legislative and governing body of a  
 158 county, however styled, including that of a consolidated or  
 159 metropolitan government, a clerk of the circuit court, a  
 160 separate or ex officio clerk of the county court, a sheriff, a  
 161 property appraiser, a tax collector, a supervisor of elections,  
 162 or any other officer in whom any portion of the fiscal duties of  
 163 a body or officer expressly stated in this paragraph are ~~the~~  
 164 above are under law separately placed by law.

165 (d)-(e) "Financial audit" means an examination of financial  
 166 statements in order to express an opinion on the fairness with  
 167 which they are presented in conformity with generally accepted  
 168 accounting principles and an examination to determine whether  
 169 operations are properly conducted in accordance with legal and  
 170 regulatory requirements. Financial audits must be conducted in  
 171 accordance with auditing standards generally accepted in the  
 172 United States and government auditing standards ~~as adopted by~~  
 173 ~~the Board of Accountancy~~. When applicable, the scope of  
 174 financial audits must ~~shall~~ encompass the additional activities

Page 6 of 33

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

578-02725-19

20197014c1

175 necessary to establish compliance with the Single Audit Act  
176 Amendments of 1996, 31 U.S.C. ss. 7501-7507, and other  
177 applicable federal law.

178 (e) "Fraud" means obtaining something of value through  
179 willful misrepresentation, including, but not limited to,  
180 intentional misstatements or intentional omissions of amounts or  
181 disclosures in financial statements to deceive users of  
182 financial statements, theft of an entity's assets, bribery, or  
183 the use of one's position for personal enrichment through the  
184 deliberate misuse or misapplication of an organization's  
185 resources.

186 (f) ~~(d)~~ "Governmental entity" means a state agency, a county  
187 agency, or any other entity, however styled, that independently  
188 exercises any type of state or local governmental function.

189 (g) ~~(e)~~ "Local governmental entity" means a county agency,  
190 municipality, tourist development council, county tourism  
191 promotion agency, or special district as defined in s. 189.012.  
192 The term, ~~but~~ does not include any housing authority established  
193 under chapter 421.

194 (h) ~~(f)~~ "Management letter" means a statement of the  
195 auditor's comments and recommendations.

196 (i) ~~(g)~~ "Operational audit" means an audit whose purpose is  
197 to evaluate management's performance in establishing and  
198 maintaining internal controls, including controls designed to  
199 prevent and detect fraud, waste, and abuse, and in administering  
200 assigned responsibilities in accordance with applicable laws,  
201 administrative rules, contracts, grant agreements, and other  
202 guidelines. Operational audits must be conducted in accordance  
203 with government auditing standards. Such audits examine internal

578-02725-19

20197014c1

204 controls that are designed and placed in operation to promote  
205 and encourage the achievement of management's control objectives  
206 in the categories of compliance, economic and efficient  
207 operations, reliability of financial records and reports, and  
208 safeguarding of assets, and identify weaknesses in those  
209 internal controls.

210 (j) ~~(h)~~ "Performance audit" means an examination of a  
211 program, activity, or function of a governmental entity,  
212 conducted in accordance with applicable government auditing  
213 standards or auditing and evaluation standards of other  
214 appropriate authoritative bodies. The term includes an  
215 examination of issues related to:

216 1. Economy, efficiency, or effectiveness of the program.

217 2. Structure or design of the program to accomplish its  
218 goals and objectives.

219 3. Adequacy of the program to meet the needs identified by  
220 the Legislature or governing body.

221 4. Alternative methods of providing program services or  
222 products.

223 5. Goals, objectives, and performance measures used by the  
224 agency to monitor and report program accomplishments.

225 6. The accuracy or adequacy of public documents, reports,  
226 or requests prepared under the program by state agencies.

227 7. Compliance of the program with appropriate policies,  
228 rules, or laws.

229 8. Any other issues related to governmental entities as  
230 directed by the Legislative Auditing Committee.

231 (k) ~~(i)~~ "Political subdivision" means a separate agency or  
232 unit of local government created or established by law and

578-02725-19

20197014c1

233 includes, but is not limited to, the following and the officers  
 234 thereof: authority, board, branch, bureau, city, commission,  
 235 consolidated government, county, department, district,  
 236 institution, metropolitan government, municipality, office,  
 237 officer, public corporation, town, or village.

238 ~~(l)-(j)~~ "State agency" means a separate agency or unit of  
 239 state government created or established by law and includes, but  
 240 is not limited to, the following and the officers thereof:  
 241 authority, board, branch, bureau, commission, department,  
 242 division, institution, office, officer, or public corporation,  
 243 as the case may be, except any such agency or unit within the  
 244 legislative branch of state government other than the Florida  
 245 Public Service Commission.

246 (m) "Waste" means the act of using or expending resources  
 247 unreasonably, carelessly, extravagantly, or for no useful  
 248 purpose.

249 (2) DUTIES.—The Auditor General shall:

250 (j) Conduct audits of local governmental entities when  
 251 determined to be necessary by the Auditor General, when directed  
 252 by the Legislative Auditing Committee, or when otherwise  
 253 required by law. No later than 18 months after the release of  
 254 the audit report, the Auditor General shall perform such  
 255 appropriate followup procedures as he or she deems necessary to  
 256 determine the audited entity's progress in addressing the  
 257 findings and recommendations contained within the Auditor  
 258 General's previous report. The Auditor General shall notify each  
 259 member of the audited entity's governing body and the  
 260 Legislative Auditing Committee of the results of his or her  
 261 determination. For purposes of this paragraph, local

578-02725-19

20197014c1

262 governmental entities do not include water management districts.

263  
 264 The Auditor General shall perform his or her duties  
 265 independently but under the general policies established by the  
 266 Legislative Auditing Committee. This subsection does not limit  
 267 the Auditor General's discretionary authority to conduct other  
 268 audits or engagements of governmental entities as authorized in  
 269 subsection (3).

270 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor  
 271 General may, pursuant to his or her own authority, or at the  
 272 direction of the Legislative Auditing Committee, conduct audits  
 273 or other engagements as determined appropriate by the Auditor  
 274 General of:

275 (u) The Florida Virtual School ~~pursuant to s. 1002.37.~~

276 (x) Tourist development councils and county tourism  
 277 promotion agencies.

278 (7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

279 (i) The Auditor General shall annually transmit by July 15,  
 280 to the President of the Senate, the Speaker of the House of  
 281 Representatives, and the Department of Financial Services, a  
 282 list of all school districts, charter schools, charter technical  
 283 career centers, Florida College System institutions, state  
 284 universities, and local governmental entities ~~water management~~  
 285 ~~districts~~ that have failed to comply with the transparency  
 286 requirements as identified in the audit reports reviewed  
 287 pursuant to paragraph (b) and those conducted pursuant to  
 288 subsection (2).

289 Section 3. Subsection (3) of section 11.47, Florida  
 290 Statutes, is amended to read:



578-02725-19

20197014c1

291 11.47 Penalties; failure to make a proper audit or  
 292 examination; making a false report; failure to produce documents  
 293 or information.-

294 (3) Any person who willfully fails or refuses to provide  
 295 access to an employee, officer, or agent of an entity subject to  
 296 an audit or to furnish or produce any book, record, paper,  
 297 document, data, or sufficient information necessary to a proper  
 298 audit or examination which the Auditor General or the Office of  
 299 Program Policy Analysis and Government Accountability is by law  
 300 authorized to perform commits ~~shall be guilty of~~ a misdemeanor  
 301 of the first degree, punishable as provided in s. 775.082 or s.  
 302 775.083.

303 Section 4. Paragraph (d) of subsection (2) of section  
 304 28.35, Florida Statutes, is amended to read:

305 28.35 Florida Clerks of Court Operations Corporation.-

306 (2) The duties of the corporation shall include the  
 307 following:

308 (d) Developing and certifying a uniform system of workload  
 309 measures and applicable workload standards for court-related  
 310 functions as developed by the corporation and clerk workload  
 311 performance in meeting the workload performance standards. These  
 312 workload measures and workload performance standards shall be  
 313 designed to facilitate an objective determination of the  
 314 performance of each clerk in accordance with minimum standards  
 315 for fiscal management, operational efficiency, and effective  
 316 collection of fines, fees, service charges, and court costs. The  
 317 corporation shall develop the workload measures and workload  
 318 performance standards in consultation with the Legislature. When  
 319 the corporation finds a clerk has not met the workload

Page 11 of 33

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

578-02725-19

20197014c1

320 performance standards, the corporation shall identify the nature  
 321 of each deficiency and any corrective action recommended and  
 322 taken by the affected clerk of the court. For quarterly periods  
 323 ending on the last day of March, June, September, and December  
 324 of each year, the corporation shall notify the Legislature of  
 325 any clerk not meeting workload performance standards and provide  
 326 a copy of any corrective action plans. Such notifications must  
 327 be submitted no later than 45 days after the end of the  
 328 preceding quarterly period. As used in this subsection, the  
 329 term:

330 1. "Workload measures" means the measurement of the  
 331 activities and frequency of the work required for the clerk to  
 332 adequately perform the court-related duties of the office as  
 333 defined by the membership of the Florida Clerks of Court  
 334 Operations Corporation.

335 2. "Workload performance standards" means the standards  
 336 developed to measure the timeliness and effectiveness of the  
 337 activities that are accomplished by the clerk in the performance  
 338 of the court-related duties of the office as defined by the  
 339 membership of the Florida Clerks of Court Operations  
 340 Corporation.

341 Section 5. Present subsections (6) and (7) of section  
 342 43.16, Florida Statutes, are renumbered as subsections (7) and  
 343 (8), respectively, and a new subsection (6) is added to that  
 344 section, to read:

345 43.16 Justice Administrative Commission; membership, powers  
 346 and duties.-

347 (6) The commission, each state attorney, each public  
 348 defender, the criminal conflict and civil regional counsel, the

Page 12 of 33

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

578-02725-19 20197014c1

349 capital collateral regional counsel, and the Guardian Ad Litem  
 350 Program shall establish and maintain internal controls designed  
 351 to:

352 (a) Prevent and detect fraud, waste, and abuse as defined  
 353 in s. 11.45(1).

354 (b) Promote and encourage compliance with applicable laws,  
 355 rules, contracts, grant agreements, and best practices.

356 (c) Support economical and efficient operations.

357 (d) Ensure reliability of financial records and reports.

358 (e) Safeguard assets.

359 Section 6. Paragraph (c) of subsection (3) of section  
 360 129.03, Florida Statutes, is amended to read:

361 129.03 Preparation and adoption of budget.-

362 (3) The county budget officer, after tentatively  
 363 ascertaining the proposed fiscal policies of the board for the  
 364 next fiscal year, shall prepare and present to the board a  
 365 tentative budget for the next fiscal year for each of the funds  
 366 provided in this chapter, including all estimated receipts,  
 367 taxes to be levied, and balances expected to be brought forward  
 368 and all estimated expenditures, reserves, and balances to be  
 369 carried over at the end of the year.

370 (c) The board shall hold public hearings to adopt tentative  
 371 and final budgets pursuant to s. 200.065. The hearings shall be  
 372 primarily for the purpose of hearing requests and complaints  
 373 from the public regarding the budgets and the proposed tax  
 374 levies and for explaining the budget and any proposed or adopted  
 375 amendments. The tentative budget must be posted on the county's  
 376 official website at least 2 days before the public hearing to  
 377 consider such budget and must remain on the website for at least

578-02725-19 20197014c1

378 45 days. The final budget must be posted on the website within  
 379 30 days after adoption and must remain on the website for at  
 380 least 2 years. The tentative budgets, adopted tentative budgets,  
 381 and final budgets shall be filed in the office of the county  
 382 auditor as a public record. Sufficient reference in words and  
 383 figures to identify the particular transactions ~~must~~ shall be  
 384 made in the minutes of the board to record its actions with  
 385 reference to the budgets.

386 Section 7. Paragraph (f) of subsection (2) of section  
 387 129.06, Florida Statutes, is amended to read:

388 129.06 Execution and amendment of budget.-

389 (2) The board at any time within a fiscal year may amend a  
 390 budget for that year, and may within the first 60 days of a  
 391 fiscal year amend the budget for the prior fiscal year, as  
 392 follows:

393 (f) Unless otherwise prohibited by law, if an amendment to  
 394 a budget is required for a purpose not specifically authorized  
 395 in paragraphs (a)-(e), the amendment may be authorized by  
 396 resolution or ordinance of the board of county commissioners  
 397 adopted following a public hearing.

398 1. The public hearing must be advertised at least 2 days,  
 399 but not more than 5 days, before the date of the hearing. The  
 400 advertisement must appear in a newspaper of paid general  
 401 circulation and must identify the name of the taxing authority,  
 402 the date, place, and time of the hearing, and the purpose of the  
 403 hearing. The advertisement must also identify each budgetary  
 404 fund to be amended, the source of the funds, the use of the  
 405 funds, and the total amount of each fund's appropriations.

406 2. If the board amends the budget pursuant to this

578-02725-19 20197014c1

407 paragraph, the adopted amendment must be posted on the county's  
408 official website within 5 days after adoption and must remain on  
409 the website for at least 2 years.

410 Section 8. Subsections (3) and (5) of section 166.241,  
411 Florida Statutes, are amended to read:

412 166.241 Fiscal years, budgets, and budget amendments.—

413 (3) The tentative budget must be posted on the  
414 municipality's official website at least 2 days before the  
415 budget hearing, held pursuant to s. 200.065 or other law, to  
416 consider such budget and must remain on the website for at least  
417 45 days. The final adopted budget must be posted on the  
418 municipality's official website within 30 days after adoption  
419 and must remain on the website for at least 2 years. If the

420 municipality does not operate an official website, the  
421 municipality must, within a reasonable period of time as  
422 established by the county or counties in which the municipality  
423 is located, transmit the tentative budget and final budget to  
424 the manager or administrator of such county or counties who  
425 shall post the budgets on the county's website.

426 (5) If the governing body of a municipality amends the  
427 budget pursuant to paragraph (4) (c), the adopted amendment must  
428 be posted on the official website of the municipality within 5  
429 days after adoption and must remain on the website for at least  
430 2 years. If the municipality does not operate an official  
431 website, the municipality must, within a reasonable period of  
432 time as established by the county or counties in which the  
433 municipality is located, transmit the adopted amendment to the  
434 manager or administrator of such county or counties who shall  
435 post the adopted amendment on the county's website.

578-02725-19 20197014c1

436 Section 9. Section 215.86, Florida Statutes, is amended to  
437 read:

438 215.86 Management systems and controls.—Each state agency  
439 and the judicial branch as defined in s. 216.011 shall establish  
440 and maintain management systems and internal controls designed  
441 to:

442 (1) Prevent and detect fraud, waste, and abuse as defined  
443 in s. 11.45(1). ~~that~~

444 (2) Promote and encourage compliance with applicable laws,  
445 rules, contracts, and grant agreements.†

446 (3) Support economical and ~~economic,~~ efficient, and  
447 effective operations.†

448 (4) Ensure reliability of financial records and reports.†

449 (5) Safeguard and ~~safeguarding of~~ assets. Accounting  
450 systems and procedures shall be designed to fulfill the  
451 requirements of generally accepted accounting principles.

452 Section 10. Paragraph (a) of subsection (2) of section  
453 215.97, Florida Statutes, is amended to read:

454 215.97 Florida Single Audit Act.—

455 (2) As used in this section, the term:

456 (a) "Audit threshold" means the threshold amount used to  
457 determine when a state single audit or project-specific audit of  
458 a nonstate entity shall be conducted in accordance with this  
459 section. Each nonstate entity that expends a total amount of  
460 state financial assistance equal to or in excess of \$750,000 in  
461 any fiscal year of such nonstate entity shall be required to  
462 have a state single audit,† or a project-specific audit,† for such  
463 fiscal year in accordance with the requirements of this section.  
464 ~~Every 2 years the Auditor General, After consulting with the~~

578-02725-19

20197014c1

465 Executive Office of the Governor, the Department of Financial  
 466 Services, and all state awarding agencies, the Auditor General  
 467 shall periodically review the threshold amount for requiring  
 468 audits under this section and may recommend any appropriate  
 469 statutory change to revise the threshold amount in the annual  
 470 report submitted to the Legislature pursuant to s. 11.45(7)(h)  
 471 ~~adjust such threshold amount consistent with the purposes of~~  
 472 ~~this section.~~

473 Section 11. Subsection (11) of section 215.985, Florida  
 474 Statutes, is amended to read:

475 215.985 Transparency in government spending.—

476 (11) Each water management district shall provide a monthly  
 477 financial statement in the form and manner prescribed by the  
 478 Department of Financial Services to the district's ~~its~~ governing  
 479 board and make such monthly financial statement available for  
 480 public access on its website.

481 Section 12. Subsection (17) of section 218.31, Florida  
 482 Statutes, is amended to read:

483 218.31 Definitions.—As used in this part, except where the  
 484 context clearly indicates a different meaning:

485 (17) "Financial audit" means an examination of financial  
 486 statements in order to express an opinion on the fairness with  
 487 which they are presented in conformity with generally accepted  
 488 accounting principles and an examination to determine whether  
 489 operations are properly conducted in accordance with legal and  
 490 regulatory requirements. Financial audits must be conducted in  
 491 accordance with auditing standards generally accepted in the  
 492 United States and government auditing standards ~~as adopted by~~  
 493 ~~the Board of Accountancy and as prescribed by rules promulgated~~

Page 17 of 33

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

578-02725-19

20197014c1

494 ~~by the Auditor General.~~ When applicable, the scope of financial  
 495 audits must ~~shall~~ encompass the additional activities necessary  
 496 to establish compliance with the Single Audit Act Amendments of  
 497 1996, 31 U.S.C. ss. 7501-7507, and other applicable federal law.

498 Section 13. Subsection (2) of section 218.32, Florida  
 499 Statutes, is amended to read:

500 218.32 Annual financial reports; local governmental  
 501 entities.—

502 (2) The department shall annually by December 1 file a  
 503 verified report with the Governor, the Legislature, the Auditor  
 504 General, and the Special District Accountability Program of the  
 505 Department of Economic Opportunity showing the revenues, both  
 506 locally derived and derived from intergovernmental transfers,  
 507 and the expenditures of each local governmental entity, regional  
 508 planning council, local government finance commission, and  
 509 municipal power corporation that is required to submit an annual  
 510 financial report. In preparing the verified report, the  
 511 department may request additional information from the local  
 512 governmental entity. The information requested must be provided  
 513 to the department within 45 days after the request. If the local  
 514 governmental entity does not comply with the request, the  
 515 department shall notify the Legislative Auditing Committee,  
 516 which may take action pursuant to s. 11.40(2). The report must  
 517 include, but is not limited to:

518 (a) The total revenues and expenditures of each local  
 519 governmental entity that is a component unit included in the  
 520 annual financial report of the reporting entity.

521 (b) The amount of outstanding long-term debt by each local  
 522 governmental entity. For purposes of this paragraph, the term

Page 18 of 33

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

578-02725-19

20197014c1

523 "long-term debt" means any agreement or series of agreements to  
 524 pay money, which, at inception, contemplate terms of payment  
 525 exceeding 1 year in duration.

526 Section 14. Present subsection (3) of section 218.33,  
 527 Florida Statutes, is renumbered as subsection (4), and a new  
 528 subsection (3) is added to that section, to read:

529 218.33 Local governmental entities; establishment of  
 530 uniform fiscal years and accounting practices and procedures.—

531 (3) Each local governmental entity shall establish and  
 532 maintain internal controls designed to:

533 (a) Prevent and detect fraud, waste, and abuse as defined  
 534 in s. 11.45(1).

535 (b) Promote and encourage compliance with applicable laws,  
 536 rules, contracts, grant agreements, and best practices.

537 (c) Support economical and efficient operations.

538 (d) Ensure reliability of financial records and reports.

539 (e) Safeguard assets.

540 Section 15. Subsections (2), (3), and (4) of section  
 541 218.391, Florida Statutes, are amended, and subsection (9) is  
 542 added to that section, to read:

543 218.391 Auditor selection procedures.—

544 (2) The governing body of a ~~charter~~ county, municipality,  
 545 special district, district school board, charter school, or  
 546 charter technical career center shall establish an auditor  
 547 selection ~~audit~~ committee.

548 (a) The auditor selection committee for a ~~Each noncharter~~  
 549 ~~county must shall establish an audit committee that,~~ at a  
 550 minimum, ~~shall~~ consist of each of the county officers elected  
 551 pursuant to the county charter or s. 1(d), Art. VIII of the

578-02725-19

20197014c1

552 State Constitution, or their respective designees ~~a designee,~~  
 553 and one member of the board of county commissioners or its  
 554 designee.

555 (b) The auditor selection committee for a municipality,  
 556 special district, district school board, charter school, or  
 557 charter technical career center must consist of at least three  
 558 members. One member of the auditor selection committee must be a  
 559 member of the governing body of an entity specified in this  
 560 paragraph, who shall serve as the chair of the committee.

561 (c) An employee, a chief executive officer, or a chief  
 562 financial officer of the county, municipality, special district,  
 563 district school board, charter school, or charter technical  
 564 career center may not serve as a member of an auditor selection  
 565 committee established under this subsection; however, an  
 566 employee, a chief executive officer, or a chief financial  
 567 officer of the county, municipality, special district, district  
 568 school board, charter school, or charter technical career center  
 569 may serve in an advisory capacity.

570 (d) The primary purpose of the auditor selection ~~audit~~  
 571 ~~committee~~ is to assist the governing body in selecting an  
 572 auditor to conduct the annual financial audit required in s.  
 573 218.39; however, the ~~audit~~ committee may serve other audit  
 574 oversight purposes as determined by the entity's governing body.  
 575 The public ~~may shall~~ not be excluded from the proceedings under  
 576 this section.

577 (3) The auditor selection ~~audit~~ committee shall:

578 (a) Establish factors to use for the evaluation of audit  
 579 services to be provided by a certified public accounting firm  
 580 duly licensed under chapter 473 and qualified to conduct audits

578-02725-19 20197014c1

581 in accordance with government auditing standards as adopted by  
 582 the Florida Board of Accountancy. Such factors shall include,  
 583 but are not limited to, ability of personnel, experience,  
 584 ability to furnish the required services, and such other factors  
 585 as may be determined by the committee to be applicable to its  
 586 particular requirements.

587 (b) Publicly announce requests for proposals. Public  
 588 announcements must include, at a minimum, a brief description of  
 589 the audit and indicate how interested firms can apply for  
 590 consideration.

591 (c) Provide interested firms with a request for proposal.  
 592 The request for proposal shall include information on how  
 593 proposals are to be evaluated and such other information the  
 594 committee determines is necessary for the firm to prepare a  
 595 proposal.

596 (d) Evaluate proposals provided by qualified firms. If  
 597 compensation is one of the factors established pursuant to  
 598 paragraph (a), it shall not be the sole or predominant factor  
 599 used to evaluate proposals.

600 (e) Rank and recommend in order of preference no fewer than  
 601 three firms deemed to be the most highly qualified to perform  
 602 the required services after considering the factors established  
 603 pursuant to paragraph (a). If fewer than three firms respond to  
 604 the request for proposal, the committee shall recommend such  
 605 firms as it deems to be the most highly qualified.

606 (4) The governing body shall inquire of qualified firms as  
 607 to the basis of compensation, select one of the firms  
 608 recommended by the auditor selection ~~audit~~ committee, and  
 609 negotiate a contract, using one of the following methods:

578-02725-19 20197014c1

610 (a) If compensation is not one of the factors established  
 611 pursuant to paragraph (3) (a) and not used to evaluate firms  
 612 pursuant to paragraph (3) (e), the governing body shall negotiate  
 613 a contract with the firm ranked first. If the governing body is  
 614 unable to negotiate a satisfactory contract with that firm,  
 615 negotiations with that firm shall be formally terminated, and  
 616 the governing body shall then undertake negotiations with the  
 617 second-ranked firm. Failing accord with the second-ranked firm,  
 618 negotiations shall then be terminated with that firm and  
 619 undertaken with the third-ranked firm. Negotiations with the  
 620 other ranked firms shall be undertaken in the same manner. The  
 621 governing body, in negotiating with firms, may reopen formal  
 622 negotiations with any one of the three top-ranked firms, but it  
 623 may not negotiate with more than one firm at a time.

624 (b) If compensation is one of the factors established  
 625 pursuant to paragraph (3) (a) and used in the evaluation of  
 626 proposals pursuant to paragraph (3) (d), the governing body shall  
 627 select the highest-ranked qualified firm or must document in its  
 628 public records the reason for not selecting the highest-ranked  
 629 qualified firm.

630 (c) The governing body may select a firm recommended by the  
 631 audit committee and negotiate a contract with one of the  
 632 recommended firms using an appropriate alternative negotiation  
 633 method for which compensation is not the sole or predominant  
 634 factor used to select the firm.

635 (d) In negotiations with firms under this section, the  
 636 governing body may allow a designee to conduct negotiations on  
 637 its behalf.

638 (9) If the entity fails to select the auditor in accordance

578-02725-19

20197014c1

639 with the requirements of subsections (3)-(6), the entity must  
 640 again perform the auditor selection process in accordance with  
 641 this section to select an auditor to conduct audits for  
 642 subsequent fiscal years.

643 Section 16. Paragraph (e) of subsection (4), paragraph (d)  
 644 of subsection (5), and paragraph (d) of subsection (6) of  
 645 section 373.536, Florida Statutes, are amended to read:

646 373.536 District budget and hearing thereon.—

647 (4) BUDGET CONTROLS; FINANCIAL INFORMATION.—

648 (e) ~~By September 1, 2012,~~ Each district shall provide a  
 649 monthly financial statement in the form and manner prescribed by  
 650 the Department of Financial Services to the district's governing  
 651 board and make such monthly financial statement available for  
 652 public access on its website.

653 (5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND  
 654 APPROVAL.—

655 (d) Each district shall, by August 1 of each year, submit  
 656 for review a tentative budget and a description of any  
 657 significant changes from the preliminary budget submitted to the  
 658 Legislature pursuant to s. 373.535 to the Governor, the  
 659 President of the Senate, the Speaker of the House of  
 660 Representatives, the chairs of all legislative committees and  
 661 subcommittees having substantive or fiscal jurisdiction over  
 662 water management districts, as determined by the President of  
 663 the Senate or the Speaker of the House of Representatives, as  
 664 applicable, the secretary of the department, and the governing  
 665 body of each county in which the district has jurisdiction or  
 666 derives any funds for the operations of the district. The  
 667 tentative budget must be posted on the district's official

578-02725-19

20197014c1

668 website at least 2 days before budget hearings held pursuant to  
 669 s. 200.065 or other law and must remain on the website for at  
 670 least 45 days.

671 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;  
 672 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—

673 (d) The final adopted budget must be posted on the water  
 674 management district's official website within 30 days after  
 675 adoption and must remain on the website for at least 2 years.

676 Section 17. Paragraph (1) of subsection (12) of section  
 677 1001.42, Florida Statutes, as amended by chapter 2018-5, Laws of  
 678 Florida, is amended to read:

679 1001.42 Powers and duties of district school board.—The  
 680 district school board, acting as a board, shall exercise all  
 681 powers and perform all duties listed below:

682 (12) FINANCE.—Take steps to assure students adequate  
 683 educational facilities through the financial procedure  
 684 authorized in chapters 1010 and 1011 and as prescribed below:

685 (1) *Internal auditor.*—May or, in the case of a school  
 686 district receiving annual federal, state, and local funds in  
 687 excess of \$500 million, shall employ an internal auditor. The  
 688 scope of the internal auditor shall not be restricted and shall  
 689 include every functional and program area of the school system.

690 1. The internal auditor shall perform ongoing financial  
 691 verification of the financial records of the school district, a  
 692 comprehensive risk assessment of all areas of the school system  
 693 every 5 years, and other audits and reviews as the district  
 694 school board directs for determining:

695 a. The adequacy of internal controls designed to prevent  
 696 and detect fraud, waste, and abuse as defined in s. 11.45(1).

578-02725-19

20197014c1

697 b. Compliance with applicable laws, rules, contracts, grant  
 698 agreements, district school board-approved policies, and best  
 699 practices.

700 c. The efficiency of operations.

701 d. The reliability of financial records and reports.

702 e. The safeguarding of assets.

703 f. Financial solvency.

704 g. Projected revenues and expenditures.

705 h. The rate of change in the general fund balance.

706 2. The internal auditor shall prepare audit reports of his  
 707 or her findings and report directly to the district school board  
 708 or its designee.

709 3. Any person responsible for furnishing or producing any  
 710 book, record, paper, document, data, or sufficient information  
 711 necessary to conduct a proper audit or examination which the  
 712 internal auditor is by law authorized to perform is subject to  
 713 the provisions of s. 11.47(3) and (4).

714 Section 18. Paragraph (j) of subsection (9) of section  
 715 1002.33, Florida Statutes, is amended to read:

716 1002.33 Charter schools.—

717 (9) CHARTER SCHOOL REQUIREMENTS.—

718 (j) The governing body of the charter school shall be  
 719 responsible for:

720 1. Establishing and maintaining internal controls designed  
 721 to:

722 a. Prevent and detect fraud, waste, and abuse as defined in  
 723 s. 11.45(1).

724 b. Promote and encourage compliance with applicable laws,  
 725 rules, contracts, grant agreements, and best practices.

Page 25 of 33

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

578-02725-19

20197014c1

726 c. Support economical and efficient operations.

727 d. Ensure reliability of financial records and reports.

728 e. Safeguard assets.

729 ~~2.1-~~ Ensuring that the charter school has retained the  
 730 services of a certified public accountant or auditor for the  
 731 annual financial audit, pursuant to s. 1002.345(2), who shall  
 732 submit the report to the governing body.

733 ~~3.2-~~ Reviewing and approving the audit report, including  
 734 audit findings and recommendations for the financial recovery  
 735 plan.

736 ~~4.a.3-a-~~ Performing the duties in s. 1002.345, including  
 737 monitoring a corrective action plan.

738 b. Monitoring a financial recovery plan in order to ensure  
 739 compliance.

740 ~~5.4-~~ Participating in governance training approved by the  
 741 department which must include government in the sunshine,  
 742 conflicts of interest, ethics, and financial responsibility.

743 Section 19. Present subsections (6) through (10) of section  
 744 1002.37, Florida Statutes, are renumbered as subsections (7)  
 745 through (11), respectively, present subsection (6) is amended,  
 746 and a new subsection (6) is added to that section, to read:

747 1002.37 The Florida Virtual School.—

748 (6) The Florida Virtual School shall have an annual  
 749 financial audit of its accounts and records conducted by an  
 750 independent auditor who is a certified public accountant  
 751 licensed under chapter 473. The independent auditor shall  
 752 conduct the audit in accordance with rules adopted by the  
 753 Auditor General pursuant to s. 11.45 and, upon completion of the  
 754 audit, shall prepare an audit report in accordance with such

Page 26 of 33

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



578-02725-19

20197014c1

755 rules. The audit report must include a written statement by the  
 756 board of trustees describing corrective action to be taken in  
 757 response to each of the independent auditor's recommendations  
 758 included in the audit report. The independent auditor shall  
 759 submit the audit report to the board of trustees and the Auditor  
 760 General no later than 9 months after the end of the preceding  
 761 fiscal year.

762 ~~(7)(6)~~ The board of trustees shall annually submit to the  
 763 Governor, the Legislature, the Commissioner of Education, and  
 764 the State Board of Education the audit report prepared pursuant  
 765 to subsection (6) and a complete and detailed report setting  
 766 forth:

767 (a) The operations and accomplishments of the Florida  
 768 Virtual School within the state and those occurring outside the  
 769 state as Florida Virtual School Global.

770 (b) The marketing and operational plan for the Florida  
 771 Virtual School and Florida Virtual School Global, including  
 772 recommendations regarding methods for improving the delivery of  
 773 education through the Internet and other distance learning  
 774 technology.

775 (c) The assets and liabilities of the Florida Virtual  
 776 School and Florida Virtual School Global at the end of the  
 777 fiscal year.

778 ~~(d) A copy of an annual financial audit of the accounts and~~  
 779 ~~records of the Florida Virtual School and Florida Virtual School~~  
 780 ~~Global, conducted by an independent certified public accountant~~  
 781 ~~and performed in accordance with rules adopted by the Auditor~~  
 782 ~~General.~~

783 (d)(e) Recommendations regarding the unit cost of providing

578-02725-19

20197014c1

784 services to students through the Florida Virtual School and  
 785 Florida Virtual School Global. In order to most effectively  
 786 develop public policy regarding any future funding of the  
 787 Florida Virtual School, it is imperative that the cost of the  
 788 program is accurately identified. The identified cost of the  
 789 program must be based on reliable data.

790 ~~(e)(f)~~ Recommendations regarding an accountability  
 791 mechanism to assess the effectiveness of the services provided  
 792 by the Florida Virtual School and Florida Virtual School Global.

793 Section 20. Subsection (5) is added to section 1010.01,  
 794 Florida Statutes, to read:

795 1010.01 Uniform records and accounts.—

796 (5) Each school district, Florida College System  
 797 institution, and state university shall establish and maintain  
 798 internal controls designed to:

799 (a) Prevent and detect fraud, waste, and abuse as defined  
 800 in s. 11.45(1).

801 (b) Promote and encourage compliance with applicable laws,  
 802 rules, contracts, grant agreements, and best practices.

803 (c) Support economical and efficient operations.

804 (d) Ensure reliability of financial records and reports.

805 (e) Safeguard assets.

806 Section 21. Section 1012.8551, Florida Statutes, is created  
 807 to read:

808 1012.8551 Employee background screening and investigations  
 809 for Florida College System personnel.—Section 110.1127 applies  
 810 to each institution in the Florida College System. Each  
 811 institution must designate the positions subject to background  
 812 screening and investigation pursuant to that section.

578-02725-19

20197014c1

813 Section 22. Section 1012.915, Florida Statutes, is created  
 814 to read:  
 815 1012.915 Employee background screening and investigations  
 816 for State University System personnel.—Section 110.1127 applies  
 817 to each institution in the State University System. Each  
 818 institution must designate the positions subject to background  
 819 screening and investigation pursuant to that section.  
 820 Section 23. Subsection (3) of section 218.503, Florida  
 821 Statutes, is amended to read:  
 822 218.503 Determination of financial emergency.—  
 823 (3) Upon notification that one or more of the conditions in  
 824 subsection (1) have occurred or will occur if action is not  
 825 taken to assist the local governmental entity or district school  
 826 board, the Governor or his or her designee shall contact the  
 827 local governmental entity or the Commissioner of Education or  
 828 his or her designee shall contact the district school board, as  
 829 appropriate, to determine what actions have been taken by the  
 830 local governmental entity or the district school board to  
 831 resolve or prevent the condition. The information requested must  
 832 be provided within 45 days after the date of the request. If the  
 833 local governmental entity or the district school board does not  
 834 comply with the request, the Governor or his or her designee or  
 835 the Commissioner of Education or his or her designee shall  
 836 notify ~~the members of~~ the Legislative Auditing Committee, which  
 837 ~~he~~ may take action pursuant to s. 11.40(2) ~~11.40~~. The Governor  
 838 or the Commissioner of Education, as appropriate, shall  
 839 determine whether the local governmental entity or the district  
 840 school board needs state assistance to resolve or prevent the  
 841 condition. If state assistance is needed, the local governmental

Page 29 of 33

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

578-02725-19

20197014c1

842 entity or district school board is considered to be in a state  
 843 of financial emergency. The Governor or the Commissioner of  
 844 Education, as appropriate, has the authority to implement  
 845 measures as set forth in ss. 218.50–218.504 to assist the local  
 846 governmental entity or district school board in resolving the  
 847 financial emergency. Such measures may include, but are not  
 848 limited to:  
 849 (a) Requiring approval of the local governmental entity’s  
 850 budget by the Governor or approval of the district school  
 851 board’s budget by the Commissioner of Education.  
 852 (b) Authorizing a state loan to a local governmental entity  
 853 and providing for repayment of same.  
 854 (c) Prohibiting a local governmental entity or district  
 855 school board from issuing bonds, notes, certificates of  
 856 indebtedness, or any other form of debt until such time as it is  
 857 no longer subject to this section.  
 858 (d) Making such inspections and reviews of records,  
 859 information, reports, and assets of the local governmental  
 860 entity or district school board as are needed. The appropriate  
 861 local officials shall cooperate in such inspections and reviews.  
 862 (e) Consulting with officials and auditors of the local  
 863 governmental entity or the district school board and the  
 864 appropriate state officials regarding any steps necessary to  
 865 bring the books of account, accounting systems, financial  
 866 procedures, and reports into compliance with state requirements.  
 867 (f) Providing technical assistance to the local  
 868 governmental entity or the district school board.  
 869 (g)1. Establishing a financial emergency board to oversee  
 870 the activities of the local governmental entity or the district

Page 30 of 33

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

578-02725-19 20197014c1

871 school board. If a financial emergency board is established for  
 872 a local governmental entity, the Governor shall appoint board  
 873 members and select a chair. If a financial emergency board is  
 874 established for a district school board, the State Board of  
 875 Education shall appoint board members and select a chair. The  
 876 financial emergency board shall adopt such rules as are  
 877 necessary for conducting board business. The board may:

878 a. Make such reviews of records, reports, and assets of the  
 879 local governmental entity or the district school board as are  
 880 needed.

881 b. Consult with officials and auditors of the local  
 882 governmental entity or the district school board and the  
 883 appropriate state officials regarding any steps necessary to  
 884 bring the books of account, accounting systems, financial  
 885 procedures, and reports of the local governmental entity or the  
 886 district school board into compliance with state requirements.

887 c. Review the operations, management, efficiency,  
 888 productivity, and financing of functions and operations of the  
 889 local governmental entity or the district school board.

890 d. Consult with other governmental entities for the  
 891 consolidation of all administrative direction and support  
 892 services, including, but not limited to, services for asset  
 893 sales, economic and community development, building inspections,  
 894 parks and recreation, facilities management, engineering and  
 895 construction, insurance coverage, risk management, planning and  
 896 zoning, information systems, fleet management, and purchasing.

897 2. The recommendations and reports made by the financial  
 898 emergency board must be submitted to the Governor for local  
 899 governmental entities or to the Commissioner of Education and

578-02725-19 20197014c1

900 the State Board of Education for district school boards for  
 901 appropriate action.

902 (h) Requiring and approving a plan, to be prepared by  
 903 officials of the local governmental entity or the district  
 904 school board in consultation with the appropriate state  
 905 officials, prescribing actions that will cause the local  
 906 governmental entity or district school board to no longer be  
 907 subject to this section. The plan must include, but need not be  
 908 limited to:

909 1. Provision for payment in full of obligations outlined in  
 910 subsection (1), designated as priority items, which are  
 911 currently due or will come due.

912 2. Establishment of priority budgeting or zero-based  
 913 budgeting in order to eliminate items that are not affordable.

914 3. The prohibition of a level of operations which can be  
 915 sustained only with nonrecurring revenues.

916 4. Provisions implementing the consolidation, sourcing, or  
 917 discontinuance of all administrative direction and support  
 918 services, including, but not limited to, services for asset  
 919 sales, economic and community development, building inspections,  
 920 parks and recreation, facilities management, engineering and  
 921 construction, insurance coverage, risk management, planning and  
 922 zoning, information systems, fleet management, and purchasing.

923 Section 24. The Legislature finds that a proper and  
 924 legitimate state purpose is served when internal controls are  
 925 established to prevent and detect fraud, waste, and abuse and to  
 926 safeguard and account for government funds and property.  
 927 Therefore, the Legislature determines and declares that this act  
 928 fulfills an important state interest.

578-02725-19

20197014c1

929

Section 25. This act shall take effect July 1, 2019.

# CourtSmart Tag Report

Room: EL 110  
Caption: Senate Rules Committee

Case No.:  
Judge:

Type:

Started: 3/13/2019 10:01:09 AM

Ends: 3/13/2019 10:59:05 AM Length: 00:57:57

10:01:08 AM Meeting called to order by Chair Benacquisto  
10:01:15 AM Roll call  
10:01:18 AM Quorum present  
10:01:40 AM Senator Hooper recognized to introduce CS/CS/SB 248  
10:02:15 AM Questions?  
10:02:40 AM Late filed amendment 426328  
10:02:57 AM Objections to hearing amendment?  
10:03:07 AM Questions?  
10:03:11 AM Public testimony  
10:03:18 AM Chase Daniels of Pasco Sheriff's Office waives in support  
10:03:23 AM Voice vote shown favorably  
10:03:25 AM Amendment 426328 is adopted  
10:03:30 AM Back on the bill as amended  
10:03:37 AM Public testimony  
10:03:42 AM Chase Daniels of Pasco Sheriff's Office waives in support  
10:03:52 AM Chief Gary Hester of the Florida Police Chiefs Association waives in support  
10:03:57 AM Lisa Henning of Fraternal Order of Police waives in support  
10:04:02 AM Michael Crabb of Orange County Sheriff's Office waives in support  
10:04:06 AM Debate?  
10:04:09 AM Senator Hooper waives his close  
10:04:13 AM Roll call  
10:04:47 AM CS/CS/SB 248 reported favorably  
10:05:06 AM Senator Hooper recognized to introduce CS/SB 7014  
10:06:39 AM Questions?  
10:07:42 AM No debate  
10:07:46 AM Senator Hooper waives his close  
10:07:52 AM Roll call  
10:07:57 AM CS/SB 7014 reported favorably  
10:08:25 AM Senator Bean recognized to introduce CS/SB 124  
10:09:25 AM Questions?  
10:09:39 AM Public testimony  
10:09:43 AM Eric Stern of the Florida PTA waives in support  
10:09:47 AM Barney Bishop of the Florida Smart Justice Alliance waives in support  
10:09:54 AM Alan Abramowitz waives in support  
10:10:03 AM Brian Pitts Justice-2-Jesus waives in support  
10:10:14 AM Senator Bean waives his close  
10:10:19 AM Roll call  
10:10:28 AM CS/SB 124 reported favorably  
10:10:45 AM Senator Perry recognized to introduce CS/SB 142  
10:11:12 AM Questions?  
10:11:13 AM Public testimony  
10:11:24 AM Cesar Grajales of Americans for Prosperity waives in support  
10:11:31 AM Scott Jerkins of Florida Home Builders Association & National Utility Contractors waives in support  
10:11:33 AM Chris Carmody of Associated Builders & Contractors waives in support  
10:11:36 AM Debate?  
10:11:39 AM Perry waives his close  
10:11:42 AM Roll call  
10:11:48 AM CS/SB 142 reported favorably  
10:12:15 AM Senator Diaz recognized to introduce SB 7018  
10:12:25 AM Questions?  
10:12:48 AM Debate?  
10:12:51 AM Senator Diaz waives his close

10:12:55 AM Roll call  
10:12:59 AM SB 7018 reported favorably  
10:13:25 AM Senator Baxley recognized to introduce CS/SB 256  
10:13:48 AM Questions?  
10:14:02 AM Public testimony  
10:14:06 AM Barney Bishop of Florida Smart Justice Alliance waives in support  
10:14:10 AM Stephen Winn of Florida Osteopathic Medical Association waives in support  
10:14:15 AM Mary Thomas of Florida Medical Association waives in support  
10:14:21 AM Aimee Diaz Lyon of Florida Chapter American Academy of Pediatrics waives in support  
10:14:27 AM Debate?  
10:14:32 AM Senator Baxley waives his close  
10:14:37 AM Roll call  
10:14:43 AM CS/SB 256 reported favorably  
10:15:06 AM Senator Simmons recognized to introduce SB 7008  
10:15:40 AM Questions?  
10:15:57 AM Debate?  
10:16:00 AM Senator Simmons waives his close  
10:16:03 AM Roll call  
10:16:06 AM SB 7008 reported favorably  
10:16:33 AM Senator Harrell recognized to introduce SB 7002  
10:17:38 AM Questions?  
10:18:38 AM Debate?  
10:18:48 AM Senator Harrell waives her close  
10:18:53 AM Roll call  
10:18:56 AM SB 7002 reported favorably  
10:19:23 AM Senator Harrell recognized to introduce SB 7004  
10:20:27 AM Questions?  
10:21:27 AM Public testimony  
10:21:35 AM Brian Pitts Justice-2-Jesus speaks on SB 7004  
10:23:14 AM Debate?  
10:24:16 AM Senator Harrell to close on SB 7004  
10:24:49 AM Roll call  
10:24:54 AM SB 7004 reported favorably  
10:25:20 AM Senator Bradley recognized to introduce SJR 74  
10:25:40 AM Questions?  
10:26:26 AM Senator Lee asks a question  
10:26:56 AM Senator Bradley in response  
10:27:38 AM Senator Lee asks a question  
10:27:46 AM Senator Bradley in response  
10:28:06 AM Senator Farmer asks a question  
10:28:12 AM Senator Bradley in response  
10:28:52 AM Senator Farmer asks a question  
10:29:01 AM Senator Stargel asks a question  
10:29:11 AM Senator Bradley in response  
10:29:41 AM Public testimony  
10:29:52 AM Paul Orvash waives in support  
10:30:01 AM Aimee Smith waives in support  
10:30:05 AM Terry Joe Chapman waives in support  
10:30:10 AM Cheryl Brown waives in support  
10:30:25 AM Renna Lee Paiva of the Clay County Education Association waives in support  
10:30:26 AM Douglas Deters of the Clay County Education Association waives in support  
10:30:32 AM Kathy Winn of the League of Women Voters of Florida waives in support  
10:30:39 AM James Ingle waives in support  
10:30:45 AM Larry Jenkins waives in support  
10:30:52 AM Carol Nicole Brady waives in support  
10:31:07 AM Glynda Linton waives in support  
10:31:09 AM Lamar Bynum waives in support  
10:31:11 AM John Smith waives in support  
10:31:20 AM Antonio Livingston Jr. waives in support  
10:31:22 AM Keith Blake waives in support  
10:31:27 AM Tunisha Jordan waives in support  
10:31:33 AM Michael Ledbetter waives in support

**10:31:38 AM** Beverly Ledbetter waives in support  
**10:31:44 AM** Rich Templin of Florida AFL-CIO waives in support  
**10:31:52 AM** Thomas N. Gibson waives in support  
**10:31:56 AM** Brett Farrell waives in support  
**10:32:01 AM** Nucleus Shelton waives in support  
**10:32:06 AM** Cesar Grajales of Americans for Prosperity waives in support  
**10:32:12 AM** Brian Pitts Justice-2-Jesus speaks on SJR 74  
**10:33:31 AM** Debate?  
**10:34:31 AM** Senator Lee in debate  
**10:35:47 AM** Senator Thurston in debate  
**10:38:13 AM** Senator Rodriguez in debate  
**10:39:20 AM** Senator Bradley to close on SJR 74  
**10:40:42 AM** Roll call  
**10:40:44 AM** SJR 74 reported favorably  
**10:41:17 AM** Senator Simpson recognized to introduce CS/CS/SB 322  
**10:41:36 AM** Questions?  
**10:41:43 AM** Senator Braynon asks a question  
**10:41:54 AM** Senator Simpson in response  
**10:41:59 AM** Senator Braynon asks a question  
**10:42:07 AM** Senator Simpson in response  
**10:42:27 AM** Public testimony  
**10:42:36 AM** Kathy Winn of the League of Women Voters of Florida waives in support  
**10:42:43 AM** Brian Pitts Justice-2-Jesus speaks on CS/CS/SB 322  
**10:44:41 AM** Debate?  
**10:45:06 AM** Senator Braynon in debate  
**10:45:56 AM** Senator Simpson to close on CS/CS/SB 322  
**10:46:15 AM** Roll call  
**10:46:28 AM** CS/CS/SB 322 reported favorably  
**10:47:04 AM** Senator Lee recognized to introduce SB 7034  
**10:47:55 AM** Questions?  
**10:47:59 AM** Debate?  
**10:48:02 AM** Senator Lee waives his close  
**10:48:07 AM** Roll call  
**10:48:13 AM** SB 7034 reported favorably  
**10:48:40 AM** Senator Book recognized to introduce CS/SB 160  
**10:49:07 AM** Questions?  
**10:50:11 AM** Public testimony  
**10:50:15 AM** Brian Pitts Justice-2-Jesus speaks on CS/SB 160  
**10:53:07 AM** Debate?  
**10:54:08 AM** Senator Bradley in debate  
**10:55:41 AM** Chair Benacquisto in debate  
**10:56:41 AM** Senator Book to close on CS/SB 160  
**10:56:55 AM** Roll call  
**10:57:21 AM** CS/SB 160 reported favorably  
**10:57:54 AM** Senator Bradley motions to vote favorably after the vote on CS/SB 7014  
**10:58:14 AM** Senator Hutson motions to vote favorably after the vote on SB 7002, SB 7008, CS/CS/SB 322 and SB 7034  
**10:58:20 AM** Senator Brandes motions to vote favorably after the vote on CS/SB 124, CS/SB 142, CS/CS/SB 248, CS/SB 256, SB 7018, SB 7008 and CS/SB 7014  
**10:58:23 AM** Senator Brandes motions to vote unfavorably after the vote on CS/CS/SB 322  
**10:58:37 AM** Senator Flores motions to vote favorably after the vote on CS/CS/SB 248 and CS/SB 7014  
**10:58:39 AM** No objection, show those motions adopted  
**10:58:53 AM** Meeting adjourned