

Tab 1	CS/SB 290 by JU, Hooper; (Identical to CS/H 00037) School Bus Safety				
146020	A	S L WD	RC, Brandes	Delete L.20 - 21:	02/12 05:53 PM
Tab 2	CS/SB 364 by CA, Rader (CO-INTRODUCERS) Torres, Pizzo; (Similar to CS/CS/CS/H 00039) Independent Living Task Force				
663092	A	S	RC, Rader	Delete L.23 - 31:	02/11 09:29 AM
406430	A	S	RC, Rader	btw L.81 - 82:	02/11 09:29 AM
Tab 3	SB 384 by Baxley; (Identical to H 06025) Harris Chain of Lakes				
Tab 4	SB 630 by Mayfield (CO-INTRODUCERS) Rodriguez; (Compare to H 00457) Regulation of Smoking				
Tab 5	SB 716 by Mayfield; (Similar to H 00345) County Boundaries				
Tab 6	SB 936 by Gainer; (Identical to H 00593) Disability Retirement Benefits				
Tab 7	SB 1292 by Perry; (Identical to H 01173) Public Records/Nonjudicial Arrest Record of a Minor				
Tab 8	SB 7036 by CJ; (Identical to H 07019) OGSR/Criminal Intelligence Information/Criminal Investigative Information				
Tab 9	SB 7038 by CJ; (Identical to H 07005) OGSR/Information Held by an Investigative Agency				
Tab 10	CS/SB 7010 by GO, MS; (Similar to H 07027) OGSR/Service members and the Spouses and Dependents of Service members				
Tab 11	SJR 396 by Rodriguez; Single-subject Limitation for Taxation and Budget Reform Commission				
Tab 12	SB 828 by Benacquisto; (Compare to H 00887) Florida ABLE Program				
Tab 13	SB 830 by Benacquisto; (Compare to H 00887) OGSR/Certain Personal Financial and Health Information				
Tab 14	CS/SB 994 by JU, Passidomo (CO-INTRODUCERS) Stewart, Thurston; (Compare to CS/H 00709) Guardianship				
309876	A	S RCS	RC, Passidomo	Delete L.43 - 60:	02/12 06:29 PM
Tab 15	SB 1398 by Flores; (Identical to H 01097) Regional Planning Council Meetings				
934738	A	S L RCS	RC, Flores	btw L.29 - 30:	02/12 06:32 PM
Tab 16	SR 1704 by Flores; (Similar to H 08021) Taiwan				

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Gibson, Vice Chair

MEETING DATE: Wednesday, February 12, 2020
TIME: 4:00—6:00 p.m.
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	CS/SB 290 Judiciary / Hooper (Identical CS/H 37)	School Bus Safety; Revising civil penalties for certain violations relating to stopping for a school bus, etc. IS 01/21/2020 Favorable JU 02/04/2020 Fav/CS RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0
2	CS/SB 364 Community Affairs / Rader (Similar CS/CS/CS/H 39, S 340)	Independent Living Task Force; Establishing the Independent Living Task Force within the Florida Housing Finance Corporation; defining the term "disability"; requiring the task force to submit a report to the Governor and the Legislature by a specified date, etc. CF 11/05/2019 Favorable CA 12/09/2019 Fav/CS RC 02/12/2020 Temporarily Postponed	Temporarily Postponed
3	SB 384 Baxley (Identical H 6025)	Harris Chain of Lakes; Repealing provisions relating to the Harris Chain of Lakes Restoration Council, etc. EN 11/13/2019 Favorable CA 12/09/2019 Favorable RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0
4	SB 630 Mayfield (Compare H 457, CS/S 670)	Regulation of Smoking; Authorizing municipalities and counties to further restrict smoking within the boundaries of certain public parks, etc. CA 01/13/2020 Favorable IT 02/03/2020 Favorable RC 02/12/2020 Favorable	Favorable Yeas 15 Nays 0
5	SB 716 Mayfield (Similar H 345)	County Boundaries; Revising county boundaries, etc. CA 01/27/2020 Favorable GO 02/03/2020 Favorable RC 02/12/2020 Favorable	Favorable Yeas 15 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 12, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 936 Gainer (Identical H 593)	Disability Retirement Benefits; Allowing members receiving care at federal Veterans Health Administration facilities to use certification by a specified number of physicians working at such facilities as proof of total and permanent disability for purposes of establishing eligibility for benefits, etc. GO 01/13/2020 Favorable MS 02/05/2020 Favorable RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0
7	SB 1292 Perry (Identical H 1173, Compare H 615, Linked CS/S 700)	Public Records/Nonjudicial Arrest Record of a Minor; Providing an exemption from public records requirements for a nonjudicial record of the arrest of a minor who has successfully completed a diversion program; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CJ 01/14/2020 Favorable GO 02/03/2020 Favorable RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0
8	SB 7036 Criminal Justice (Identical H 7019)	OGSR/Criminal Intelligence Information/Criminal Investigative Information; Abrogating the scheduled repeals of provisions relating to specified criminal intelligence information or criminal investigative information, etc. GO 01/27/2020 Favorable RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0
9	SB 7038 Criminal Justice (Identical H 7005)	OGSR/Information Held by an Investigative Agency; Amending a provision relating to an exemption from public records requirements for information held by an investigative agency pursuant to an investigation relating to an activity prohibited under the Florida RICO Act; removing the scheduled repeal of the exemption, etc. GO 01/27/2020 Favorable RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 12, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 7010 Governmental Oversight and Accountability / Military and Veterans Affairs and Space (Similar H 7027)	OGSR/Servicemembers and the Spouses and Dependents of Servicemembers; Amending a provision which provides a public records exemption for the identification and location information of servicemembers and the spouses and dependents of servicemembers; expanding the exemption by removing the requirement that a servicemember submit a written statement that reasonable efforts have been made to protect the information in order to claim the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 01/13/2020 Fav/CS RC 01/29/2020 Temporarily Postponed RC 02/12/2020 Temporarily Postponed	Temporarily Postponed
11	SJR 396 Rodriguez	Single-subject Limitation for Taxation and Budget Reform Commission; Proposing an amendment to the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject, etc. JU 11/05/2019 Favorable EE 12/09/2019 Favorable RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0
12	SB 828 Benacquisto (Compare H 887)	Florida ABLE Program; Abrogating the future repeal of provisions relating to the Florida ABLE program, etc. CF 12/10/2019 Favorable RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0
13	SB 830 Benacquisto (Compare H 887)	OGSR/Certain Personal Financial and Health Information; Amending a provision which provides an exemption from public records requirements for certain personal financial and health information held by the Florida Prepaid College Board, Florida ABLE, Inc., or the Florida ABLE program, or an agent or service provider thereof; removing the scheduled repeal of the exemption, etc. GO 12/09/2019 Favorable RC 02/12/2020 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 12, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	CS/SB 994 Judiciary / Passidomo (Compare CS/H 709)	Guardianship; Expanding factors for a court to consider when appointing a guardian; prohibiting a guardian from consenting to, or signing on behalf of a ward, an order not to resuscitate without court approval; revising requirements for a petition for the appointment of a guardian; prohibiting professional guardians from petitioning for their own appointment except under certain circumstances; prohibiting guardians from taking certain actions on behalf of an alleged incapacitated person or minor, etc. CF 01/15/2020 Favorable JU 01/28/2020 Fav/CS RC 02/12/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
15	SB 1398 Flores (Identical H 1097)	Regional Planning Council Meetings; Providing requirements for establishing a quorum for meetings of certain councils when a voting member appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication; requiring the member to give notice of intent to appear via telephone, real-time videoconferencing, or similar real-time electronic or video communication by a specified time, etc. CA 01/21/2020 Favorable GO 02/03/2020 Favorable RC 02/12/2020 Fav/CS	Fav/CS Yeas 16 Nays 0
16	SR 1704 Flores (Similar HR 8021)	Taiwan; Encouraging the enhancement of the sister-state relationship and bilateral economic and cultural ties between Florida and the Republic of China, also known as Taiwan, and reaffirming and maintaining the commitment of the State of Florida to its strong and deepening relationship with the Republic of China, as the two embrace the same fundamental values of freedom, democracy, and the protection of human rights, etc. CM 02/04/2020 Favorable RC 02/12/2020 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 290

INTRODUCER: Judiciary Committee and Senator Hooper

SUBJECT: School Bus Safety

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Proctor</u>	<u>Miller</u>	<u>IS</u>	Favorable
2. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3. <u>Proctor</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 290 increases the minimum civil penalty for failure to stop for a school bus from \$100 to \$200. For a subsequent offense within 5 years, the Department of Highway Safety and Motor Vehicles (DHSMV) must suspend the driver license of the driver for not less than 180 days and not more than 1 year, instead of the current suspension of 90 days to 6 months.

The bill also increases the minimum civil penalty for passing a school bus on the side that children enter and exit, from \$200 to \$400. For a subsequent offense within 5 years, the DHSMV must suspend the driver license of the driver for not less than 360 days and not more than 2 years, instead of the current suspension of 180 days to 1 year.

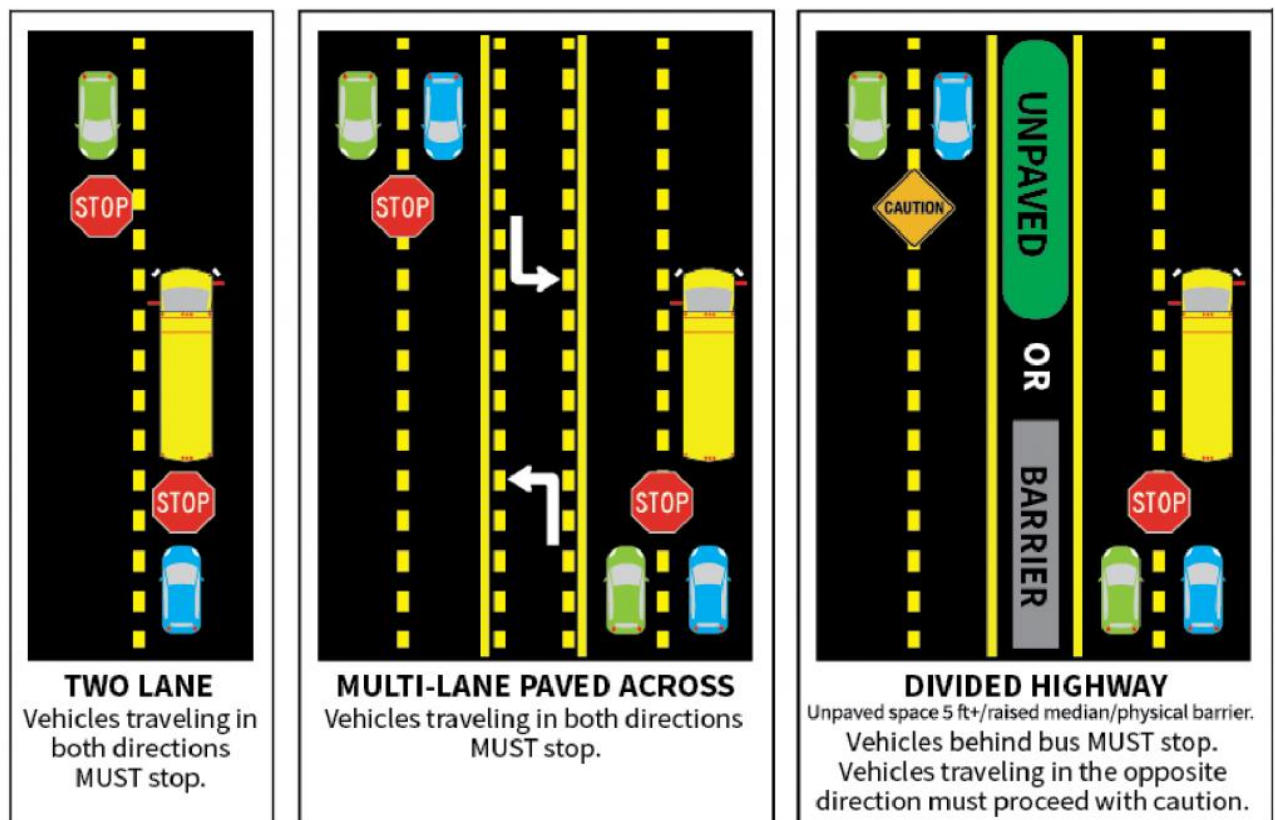
The bill may have an indeterminate, positive fiscal impact on state and local government revenues as a result of increasing the civil penalties for failing to stop for a school bus and passing a stopped school bus. The DHSMV estimates an insignificant negative fiscal impact due to required programming and implementation costs. See Fiscal Comments.

The bill has an effective date of January 1, 2021.

II. Present Situation:

School buses are required to stop as far to the right of the street as possible and display warning lights and stop signals before discharging or loading passengers.¹ When possible, school buses should not stop where visibility is obscured for a distance of 200 feet either way from the bus.²

Other drivers are required to bring their vehicles to a full stop when approaching a stopped school bus displaying a stop signal, until the signal has been withdrawn.³ However, a driver is not required to stop if the vehicle is traveling in the opposite direction of a stopped school bus upon a divided highway with an unpaved space of at least 5 feet, a raised median, or a physical barrier.⁴



5

A person cited for failing to stop for a school bus displaying the stop signal commits a moving violation and can pay the civil penalty, or can request a hearing to contest the citation.⁶ A driver who passes a school bus on the side that children enter and exit while the school bus displays a

¹ Section 316.172(3), F.S.

² *Id.*

³ Section 316.172(1)(a), F.S.

⁴ Section 316.172(2), F.S.

⁵ Florida Department of Highway Safety and Motor Vehicles, *Child Safety: School Bus Safety*, available at <https://www.flhsmv.gov/safety-center/child-safety/school-bus-safety/> (last visited January 15, 2020).

⁶ Section 318.14, F.S.

stop signal also commits a moving violation.⁷ However, the driver must attend a mandatory hearing at a specified time and location.⁸

The minimum civil penalty for failing to stop for a school bus displaying the stop signal is \$100. For a second or subsequent offense within a period of 5 years, the DHSMV must suspend the driver license of the driver for not less than 90 days and not more than 6 months.⁹ Including various fees and service charges, the total fine for this violation is up to \$263, which is distributed to various funds.¹⁰

The minimum civil penalty for passing a school bus on the side that children enter and exit when the school bus displays a stop signal is \$200. For a second or subsequent offense within a period of 5 years, the DHSMV must suspend the driver license of the driver for not less than 180 days and not more than 1 year.¹¹ Including various fees and service charges, the total fine for this violation is up to \$363, which is distributed to various funds.¹²

In addition to the above penalties, a driver who illegally passes a stopped school bus, but does not cause serious bodily injury to or death of another, will receive four points on his or her driver license record.¹³ A driver who illegally passes a stopped school bus and causes serious bodily injury to or death of another will receive six points on his or her driver license record.¹⁴ A driver who illegally passes a school bus on either side and causes serious bodily injury to or death of another person must serve 120 community service hours in a trauma center or hospital that regularly receives victims of vehicle accidents, and must participate in a victim's impact panel session.¹⁵ If such panel does not exist, the driver must attend a DHSMV-approved driver improvement course.¹⁶ In addition, the driver must pay a fine of \$1,500 and will have his or her driver license suspended by the DHSMV for not less than 1 year.¹⁷

If the driver receives a traffic citation for illegally passing a stopped school bus and the court withholds adjudication, the DHSMV will require him or her to complete a driver improvement course. If the course is not completed within 90 days after receiving a notice of the requirement to attend, the driver's license will be canceled until the improvement course is successfully completed.¹⁸

⁷ Section 316.172(1)(b), F.S.

⁸ Sections 316.172(1)(b) and 318.19(3), F.S.

⁹ Section 318.18(5)(a), F.S.

¹⁰ Florida Court Clerks and Comptrollers, *Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs, and Fines, Including a Fee Schedule for Recording*, effective July 1, 2019, available at:

https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/PublicationsAndDocuments/2016_Distribution_Schedule_w.pdf (last visited January 15, 2020).

¹¹ Section 318.18(5)(b), F.S.

¹² Florida Court Clerks, *supra*, at FN 10, p. 35.

¹³ Section 322.27(3)(d)4.a., F.S.

¹⁴ Section 322.27(3)(d)4.b., F.S.

¹⁵ Section 316.027(4)(b), F.S.

¹⁶ *Id.*

¹⁷ Section 318.18(5)(d), F.S.

¹⁸ Section 322.0261(4)(c), F.S.

According to the DHSMV data, in Fiscal Year 2018-2019, 3,760 traffic citations were issued for failing to stop for a school bus or passing a stopped school bus and 38 citations were issued for passing a school bus on the side children enter and exit.¹⁹

The Department of Education created a statewide survey for bus drivers to complete 1 day each year regarding the illegal passing of their school buses. The survey results from 2018 show that on a single day 10,937 illegal passes were made based on 9,009 school bus drivers completing the survey. Of these illegal passes, 447 were made on the right side of the bus where children generally enter and exit the vehicle, 10,018 were made on the left side, and for 472 of the passes the side was unknown.²⁰

The National Highway Traffic Safety Administration indicates that from 2007 to 2016, 98 school-age pedestrians (18 and younger) died in school-transportation-related crashes. Sixty percent were struck by school buses, 2 percent by vehicles functioning as school buses, and 38 percent by other vehicles involved in the crashes.²¹

III. Effect of Proposed Changes:

The bill amends s. 318.18(5)(a), F.S., increasing the minimum civil penalty for failure to stop for a school bus from \$100 to \$200; and for a subsequent offense within 5 years, the DHSMV must suspend the driver license of the driver for not less than 180 days and not more than one year.

The bill amends s. 318.18(5)(b), F.S., increasing the minimum civil penalty for passing a school bus on the side that children enter and exit, from \$200 to \$400; and for a subsequent offense within 5 years, the DHSMV must suspend the driver license of the driver for not less than 360 days and not more than 2 years.

The bill takes effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ Highway Safety and Motor Vehicles, *Senate Bill 290 Bill Analysis* (October 22, 2019) (on file with the Senate Committee on Infrastructure and Security).

²⁰ Florida Department of Education, *School Transportation, Illegal Passing of School Buses – Survey Results for 2018*, available at: <http://www.fldoe.org/core/fileparse.php/7585/urlt/fsr18.pdf> (last visited January 15, 2020).

²¹ National Highway Traffic Safety Administration, *Traffic Safety Facts, 2007-2016 Data, School-Transportation-Related Crashes*, DOT HS 812 476, revised January 2018, available at: <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812476> (last visited January 15, 2020).

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 increases penalties for persons failing to stop for a school bus.

C. Government Sector Impact:

Funds collected as civil penalties for traffic violations are distributed to various state and local funds:

- The bill may likely have an insignificant positive fiscal impact on the General Revenue Fund²² due to the increase in penalties for failing to stop for a school bus or passing a stopped school bus. The number of drivers who may be subjected to the additional \$100 or \$200 penalty is unknown; therefore the impact is indeterminate.
- The bill may have an insignificant positive fiscal impact to local government revenues. The number of drivers who may be subjected to the additional \$100 or \$200 fine is unknown; therefore the impact is indeterminate.²³

The DHSMV estimates that approximately 72 hours of technology programming will be required as a result of this bill. These hours are estimated to have a fiscal impact to the Highway Safety Operating Trust Fund of \$3,120 in FTE and contracted resources.²⁴ All costs related to programming and implementation can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

²² *Supra*, note 19.

²³ *Id.*

²⁴ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 318.18

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

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

CS by Judiciary on February 4, 2020:

The effective date has been amended to January 1, 2021. The previous effective date was July 1, 2020.

B. Amendments:

None.



146020

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2020	.	
	.	
	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment

Delete lines 20 - 21
and insert:
the driver license of the person for up to 1 year ~~not less than~~
~~90 days and not more than 6 months.~~

By the Committee on Judiciary; and Senator Hooper

590-03128-20

2020290c1

1 A bill to be entitled
 2 An act relating to school bus safety; amending s.
 3 318.18, F.S.; revising civil penalties for certain
 4 violations relating to stopping for a school bus;
 5 providing an effective date.
 6
 7 Be It Enacted by the Legislature of the State of Florida:
 8
 9 Section 1. Paragraphs (a) and (b) of subsection (5) of
 10 section 318.18, Florida Statutes, are amended to read:
 11 318.18 Amount of penalties.—The penalties required for a
 12 noncriminal disposition pursuant to s. 318.14 or a criminal
 13 offense listed in s. 318.17 are as follows:
 14 (5) (a) Two ~~One~~ hundred dollars for a violation of s.
 15 316.172(1)(a), failure to stop for a school bus. If, at a
 16 hearing, the alleged offender is found to have committed this
 17 offense, the court shall impose a minimum civil penalty of \$200
 18 ~~\$100~~. In addition to this penalty, for a second or subsequent
 19 offense within a period of 5 years, the department shall suspend
 20 the driver license of the person for not less than 180 ~~90~~ days
 21 and not more than 1 year ~~6 months~~.
 22 (b) Four ~~Two~~ hundred dollars for a violation of s.
 23 316.172(1)(b), passing a school bus on the side that children
 24 enter and exit when the school bus displays a stop signal. If,
 25 at a hearing, the alleged offender is found to have committed
 26 this offense, the court shall impose a minimum civil penalty of
 27 \$400 ~~\$200~~. In addition to this penalty, for a second or
 28 subsequent offense within a period of 5 years, the department
 29 shall suspend the driver license of the person for not less than

Page 1 of 2

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

590-03128-20

2020290c1

30 360 ~~180~~ days and not more than 2 years ~~1 year~~.
 31 Section 2. This act shall take effect January 1, 2021.

Page 2 of 2

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

February 5th, 2020

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

Dear Chair Benacquisto,

I am writing to request that SB 290, School Bus Safety, be placed on the agenda to be heard in the Rules Committee.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Hooper", with a large, stylized loop at the beginning.

Ed Hooper

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

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

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)

2/12/2020

Meeting Date

290

Bill Number (if applicable)

Topic School Bus Safety

Amendment Barcode (if applicable)

Name Chase Daniels

Job Title Assistant Executive Director

Address 8700 Citizens Dr

Street

Phone 727-277-6226

New Port Richey

FL

34655

Email cdaniels@pascosheriff.org

City

State

Zip

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

Representing Pasco Sheriff's Office

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/12/20
Meeting Date

290
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CARR ST.
Street

Phone 941.323.2404

THE FL 32301
City State Zip

Email dcullen@senate.fl.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ADVOCACY INSTITUTE FOR CHILDREN

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

2/12/2020

Meeting Date

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

SB 290

Bill Number (if applicable)

Topic School Bus Safety

Amendment Barcode (if applicable)

Name Wayne Bertsch (BIRCH)

Job Title Gov Relations

Address 7227 Land O Lakes Blvd

Phone 850 251 1835

Street

Land O Lakes

FL

34638

City

State

Zip

Email wbertsch@pasco.k12.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Pasco County Schools

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

290
Bill Number (if applicable) _____

Topic School BUS SAFETY

Amendment Barcode (if applicable) _____

Name Monte Stevens

Job Title _____

Address 123 S. Adams

Phone 671 4401

Street

Tally
City

FL
State

Zip

Email stevens@thesouthern
group.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AAA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-20
Meeting Date

290
Bill Number (if applicable)

Topic Bus Safety

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr
Street

Phone _____

hargo
City

FL
State

FL 33773
Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Saving families

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)

02/12/2020

Meeting Date

SB 290

Bill Number (if applicable)

Topic School Bus Safety

Amendment Barcode (if applicable)

Name GARY W. HESTER

Job Title Government Affairs - chief

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Zip

Email garywhester@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing 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
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 364

INTRODUCER: Community Affairs Committee and Senators Rader, Torres, and others

SUBJECT: Independent Living Task Force

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Paglialonga</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 364 creates a 25 member Independent Living Task Force (the task force) within the Florida Housing Finance Corporation (FHFC). The objective of the task force is to develop and evaluate policy proposals that incentivize building contractors and developers to create low-cost, supportive, and affordable housing for individuals who need such housing and who have a developmental disability or a mental illness.

The task force must submit a written report containing findings, conclusions, and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives no later than December 1, 2021.

The bill requires the FHFC to use existing resources to administer and support the task force.

The bill provides for the dissolution of the task force by January 1, 2022.

The bill takes effect upon becoming a law.

II. Present Situation:

Task Force Requirements under section 20.03, Florida Statutes

Section 20.03(8), F.S., defines “task force” to mean an “advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative related to that problem.” This provision specifies that the existence of a task force terminates upon the completion of its assignment.

Independent Living

The Florida Statutes do not define the term “independent living.” “Independent living” can refer to when an elderly person still has the physical and mental capacity to live independently but wants companionship or otherwise needs supportive services.¹ It can also encompass a living arrangement for people with disabilities who need supportive services.

In 1988, the Legislature created the Florida Independent Living Council.² The council is responsible for, among other things, jointly developing and submitting the State Plan for Independent Living.³ The council works to ensure that individuals with disabilities have an opportunity for input into the development of the State Plan for Independent Living and work for systematic change in the areas that are the biggest barriers to people with disabilities participating fully in their communities.⁴ The council describes the independent living philosophy as “promot[ing] consumer control of services, self-determination, and equal access and participation in every aspect of community life, to the level that individual wishes.”⁵

Independent living communities allow healthy individuals to live on their own, but they do not offer assisted living or nursing services. Independent living communities can offer amenities such as transportation, security, yard maintenance, laundry service, group meals, and social and cultural activities.⁶ Currently, there are over 200 independent living communities in Florida.⁷

Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within the Department of Economic Opportunity (DEO),⁸ is the state’s affordable housing finance agency. As such, the FHFC is responsible for increasing the amount of affordable

¹ According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, available at: <http://www.aplaceformom.com/independent-living/florida> (last visited Nov. 1, 2019).

² Chapter 88-214, Laws of Fla.

³ Section 413.395, F.S.

⁴ Floridasilc.org, *About Independent Living*, available at: <https://www.floridasilc.org/independent-living/> (last visited November 1, 2019).

⁵ *Id.*

⁶ Seniorliving.org, *Selecting an Independent Living Community* (Feb. 14, 2011), available at: <http://www.seniorliving.org/lifestyles/independent-living-communities/> (last visited Nov. 1, 2019).

⁷ According to the senior living search website, aPlaceforMom, *Independent Living in Florida*, available at: <http://www.aplaceformom.com/independent-living/florida> (last visited Nov. 1, 2019).

⁸ Section 420.504(1), F.S.

housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.⁹

Americans with Disabilities Act

The Americans with Disabilities Act of 1990 (ADA) is a federal law that prohibits discrimination against people with disabilities. Under the ADA, an individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such an impairment.¹⁰

The ADA specifies that major life activities include but not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”¹¹ In addition to the above activities, the ADA also covers individuals with impaired bodily functions. Under the ADA, “a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”¹²

In 2008, Congress amended the ADA to lower the burden for plaintiffs to prove that they meet the ADA’s definition of disability.¹³ The ADA specifies that the definition of disability “shall be construed in favor of broad coverage.”¹⁴

Notwithstanding the broad interpretation of a “disability” by the ADA, some individuals are excluded from coverage. A person who is a current user of illegal drugs is not covered, but a person who has a substantial history of drug or alcohol abuse and addiction may be covered.¹⁵ Persons with sexual behavior disorders are not covered.¹⁶ Persons who have conditions of compulsive gambling, kleptomania, and pyromania are also not regarded as disabled by the ADA.¹⁷

⁹ See ss. 420.502 and 420.507, F.S.

¹⁰ 42 U.S.C. s. 12102(1)

¹¹ 42 U.S.C. s. 12102(2)(A)

¹² 42 U.S.C. s. 12102(2)(B)

¹³ *Green v. Celco Partnership*, 218 F.Supp.3d 157 (U.S. District Court D. Conn. 2016)

¹⁴ *Id.* at 162.

¹⁵ The Council for Disability Rights, *The Americans with Disabilities Act: Frequently Asked Questions*, available at: <http://disabilityrights.org/adafaq.htm> (last visited Dec. 10, 2019).

¹⁶ *Id.*

¹⁷ *Id.*

U.S. Disability Statistics

Approximately 43 million Americans have physical or mental disabilities that are covered by the ADA.¹⁸ The Council for Disability Rights estimates that the average U.S. Citizen has a 20 percent chance of becoming disabled during their lifetime and a 50 percent chance of having a family member with a disability.¹⁹

The unemployment rate²⁰ for persons with a disability was 8.0 percent in 2018, more than twice the rate of those with no disability (3.7 percent).²¹ Although this is a great disparity, this comparison does not include a large proportion of persons who were not in this labor force²² calculation. In 2018, about 8 out of every 10 people with a disability were not considered part of the labor force (employed or actively seeking employment) compared with about 3 in 10 of those with no disability.

Among persons ages 16 to 64, the employment-population ratio²³ for persons with a disability was 30.4 percent in 2018.²⁴ Alternatively, the employment-population ratio for persons ages 16 to 64 without a disability was 74.0 percent in 2018.²⁵ The ratio for persons age 65 and older with a disability was 7.4 percent and the ratio for persons age 65 and older without a disability was 23.6 percent in 2018.²⁶ Although persons with a disability are less likely to be employed at an older age, persons of all ages with a disability were much less likely to be employed than those with no disability.²⁷

III. Effect of Proposed Changes:

Section 1 creates s. 420.5075, F.S., to establish the Independent Living Task Force within the FHFC for administrative purposes only. The FHFC is to use existing and available resources to support the activities of the task force.

The bill directs the task force to evaluate policy proposals that incentivize building contractors and developers to create units within mixed-use developments for individuals who have a disability, as defined by the ADA.

The task force is to be chaired by the executive director of the FHFC, or his or her designee, and composed of 25 members, to include:

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Unemployed persons are those who did not have a job, were available for work, and were actively looking for a job in the 4 weeks preceding the survey.

²¹ Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics Summary*, available at: <https://www.bls.gov/news.release/disabl.nr0.htm> (last visited Dec. 10, 2019).

²² Persons who are not employed, looking for employment, or considered unemployed are not in the labor force.

²³ The proportion of an economy's working-age population that is employed.

²⁴ Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics Summary*, available at: <https://www.bls.gov/news.release/disabl.nr0.htm> (last visited Dec. 10, 2019).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

- The director of the Florida Housing Finance Corporation or his or her designee, who shall serve as chair of the task force;
- The director of the Agency for Persons with Disabilities or his or her designee;
- The Secretary of the Department of Children and Families, or his or her designee;
- The executive director of the Department of Economic Opportunity, or his or her designee;
- The Secretary of the Department of Business and Professional Regulation, or his or her designee;
- The executive director of the Commission for the Transportation Disadvantaged, or his or her designee;
- The Secretary of the Department of Elderly Affairs, or his or her designee;
- An individual appointed by the Governor;
- A representative from the Florida Supportive Housing Coalition;
- A representative from the Florida Housing Coalition;
- A representative from the Florida Independent Living Council;
- A representative from the ARC of Florida;
- A representative from the National Alliance on Mental Illness of Florida;
- A representative from the Florida League of Cities;
- A representative from the Florida Association of Counties;
- A representative from the Association of Florida Community Developers;
- A representative from the Associated Builders and Contractors of Florida;
- A representative from the Florida Association of Rehabilitation Facilities;
- A representative from the Florida Developmental Disabilities Council;
- A representative from the banking industry who finances mixed-use developments;
- A representative from the Coalition of Affordable Housing Providers;
- A representative from the Commercial Real Estate Development Association;
- A representative from the Florida Behavioral Health Association;
- A representative from the Florida Assisted Living Association; and
- An attorney who is a member in good standing of the Elder Law Section of The Florida Bar.

Members of the task force shall serve without compensation or reimbursement for per diem or travel expenses. The task force is directed to convene its first meeting by August 1, 2020. The task force must meet as often as necessary to fulfill its responsibilities under the bill, and meetings may be conducted in person, by teleconference, or by other electronic means.

The bill directs the task force to work in consultation with local and state government to identify potential barriers and opportunities in current law, recommend modifications to existing laws, rules, or policies, recommend financial and regulatory incentives, evaluate policy proposals, and propose funding mechanisms to incentivize building contractors and developers to create low-cost, supportive, and affordable housing units within mixed-use developments for individuals with disabilities.

The task force must submit a final report containing its findings, conclusions, and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2021. The task force must dissolve on or before January 1, 2022.

Section 2 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that the task force members are to serve without compensation and are not entitled to reimbursement for per diem or travel expense. Thus, to the extent travel is required, the members will incur associated costs.

C. Government Sector Impact:

The DEO anticipates that it will incur a minor amount of travel and other administrative expenses as the FHFC is housed within DEO, and it is the agency directed to use existing resources to administer and support the activities of the task force.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.5075 of the Florida Statutes.

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

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

CS by Community Affairs on December 9, 2019:

The committee substitute:

- Replaces “developmental disability,” as defined in s. 393.063, F.S., and “mental illness,” as defined in s. 394.455, F.S., with “disability,” as defined by the Americans with Disabilities Act in 42 U.S.C. s. 12102(1).
- Adds the Secretary of Elderly Affairs or his or her designee to the task force.
- Adds a representative from the Florida Behavioral Health Association to the task force.
- Changes first meeting deadline from June 1, 2020 to August 1, 2020.
- Changes report submission deadline from December 1, 2020 to December 1, 2021.
- Changes task force expiration date from January 1, 2021 to January 1, 2022.

B. Amendments:

None.



663092

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Rader) recommended the following:

Senate Amendment

Delete lines 23 - 31
and insert:

(2) For purposes of this section, the term "disability" has the same meaning as provided in 42 U.S.C. s. 12102(1).

(3) The task force shall develop and evaluate policy proposals that incentivize building contractors and developers to create units within mixed-use developments which may be used as low-cost, supportive, and affordable housing for individuals who are in need of such housing and who have a disability. The



663092

12 task force shall give special consideration to the needs of
13 individuals who have a developmental disability, as defined in
14 s. 393.063, or a mental illness, as defined in s. 394.455, when
15 developing and evaluating policy proposals under this section.



406430

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Rader) recommended the following:

Senate Amendment

Between lines 81 and 82

insert:

18. A representative from the Florida Association of
Managing Entities.

By the Committee on Community Affairs; and Senators Rader,
Torres, and Pizzo

578-02014-20

2020364c1

A bill to be entitled

An act relating to the Independent Living Task Force;
creating s. 420.5075, F.S.; establishing the
Independent Living Task Force within the Florida
Housing Finance Corporation; defining the term
"disability"; providing for duties, membership, and
meetings of the task force; requiring the task force
to submit a report to the Governor and the Legislature
by a specified date; providing for expiration of the
task force; providing an effective date.

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

Section 1. Section 420.5075, Florida Statutes, is created
to read:

420.5075 Independent Living Task Force.—

(1) The Independent Living Task Force, a task force as
defined in s. 20.03(8), is established within the Florida
Housing Finance Corporation for administrative purposes only.
The corporation shall use existing and available resources to
administer and support the activities of the task force under
this section.

(2) For purposes of this section, the term "disability" has
the same meaning as provided in 42 U.S.C. s. 12102(1) of the
Americans with Disabilities Act, as that definition exists on
the effective date of this act.

(3) The task force shall develop and evaluate policy
proposals that incentivize building contractors and developers
to create units within mixed-use developments which may be used

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as low-cost, supportive, and affordable housing for individuals
who are in need of such housing and who have a disability.

(4) The task force shall consist of the following members:

(a) The director of the Florida Housing Finance Corporation
or his or her designee, who shall serve as chair of the task
force.

(b) The director of the Agency for Persons with
Disabilities or his or her designee.

(c) The Secretary of Children and Families or his or her
designee.

(d) The executive director of the Department of Economic
Opportunity or his or her designee.

(e) The Secretary of Business and Professional Regulation
or his or her designee.

(f) The executive director of the Commission for the
Transportation Disadvantaged or his or her designee.

(g) The Secretary of Elderly Affairs or his or her
designee.

(h) An individual appointed by the Governor.

(i) The following members appointed by the director of the
Florida Housing Finance Corporation:

1. A representative from the Florida Supportive Housing
Coalition.

2. A representative from the Florida Housing Coalition.

3. A representative from the Florida Independent Living
Council.

4. A representative from The Arc of Florida.

5. A representative from the National Alliance on Mental
Illness-Florida.

578-02014-20

2020364c1

59 6. A representative from the Florida League of Cities.
 60 7. A representative from the Florida Association of
 61 Counties.
 62 8. A representative from the Association of Florida
 63 Community Developers.
 64 9. A representative from the Associated Builders and
 65 Contractors of Florida.
 66 10. A representative from the Florida Association of
 67 Rehabilitation Facilities.
 68 11. A representative from the Florida Developmental
 69 Disabilities Council.
 70 12. A representative from the banking industry who finances
 71 mixed-use developments.
 72 13. A representative from the Coalition of Affordable
 73 Housing Providers.
 74 14. A representative from the Commercial Real Estate
 75 Development Association.
 76 15. A representative from the Florida Behavioral Health
 77 Association.
 78 16. A representative from the Florida Assisted Living
 79 Association.
 80 17. An attorney who is a member in good standing with the
 81 Elder Law Section of The Florida Bar.
 82 (5) Members of the task force shall serve without
 83 compensation and are not entitled to reimbursement for per diem
 84 or travel expenses. The task force shall convene its first
 85 meeting by August 1, 2020, and shall meet as often as necessary
 86 to fulfill its responsibilities under this section. Meetings may
 87 be conducted in person, by teleconference, or by other

Page 3 of 4

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

578-02014-20

2020364c1

88 electronic means.
 89 (6) In consultation with the applicable local and state
 90 governmental entities, the task force shall:
 91 (a) Identify potential barriers and opportunities in
 92 existing policies, rules, or laws to incentivize building
 93 contractors and developers to create low-cost, supportive, and
 94 affordable housing units for individuals with disabilities
 95 within mixed-use developments.
 96 (b) Recommend modifications to existing policies, rules, or
 97 laws or propose new policies, rules, or laws, such as allowing
 98 greater density, which would allow for the creation of low-cost,
 99 supportive, and affordable housing units for individuals with
 100 disabilities within mixed-use developments.
 101 (c) Recommend financial and regulatory incentives to
 102 encourage building contractors and developers to create low-
 103 cost, supportive, and affordable housing units for individuals
 104 with disabilities within mixed-use developments.
 105 (d) Propose funding mechanisms for the development and
 106 maintenance of spaces for low-cost, supportive, and affordable
 107 housing units for individuals with disabilities within mixed-use
 108 developments.
 109 (7) The task force shall submit a report by December 1,
 110 2021, to the Governor, the President of the Senate, and the
 111 Speaker of the House of Representatives which includes its
 112 findings, conclusions, and recommendations.
 113 (8) This section expires January 1, 2022.
 114 Section 2. This act shall take effect upon becoming a law.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health
and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER
29th District

December 11, 2019

Chair Lizbeth Benacquisto
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto,

I respectfully request that you place CS/SB 364, relating to Independent Living Task Force, on the agenda of the Committee on Rules at your earliest convenience.

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

Kindest Regards,

A handwritten signature in cursive script that reads "Kevin Rader".

Senator Kevin J. Rader
Florida Senate, District 29

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

REPLY TO:

- ☐ 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- ☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: 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 384

INTRODUCER: Senator Baxley

SUBJECT: Harris Chain of Lakes

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Dyson	Rogers	EN	Favorable
2. Toman	Yeatman	CA	Favorable
3. Dyson	Phelps	RC	Favorable

I. Summary:

SB 384 eliminates the Harris Chain of Lakes Restoration Council and removes the Council's responsibilities in the Harris Chain of Lakes Restoration Program.

II. Present Situation:

The Harris Chain of Lakes

The Harris Chain of Lakes is located north and west of the Orlando metropolitan area in Lake and Orange Counties.¹ The chain contains tens of thousands of acres of lakes and wetlands and is at the headwaters of the Ocklawaha River.² The Harris Chain of Lakes consists of Lake Harris, Little Lake Harris, Lake Apopka, Lake Yale, Lake Eustis, Lake Griffin, Lake Dora, Lake Beauclair, and Lake Carlton.³ These lakes all drain into the 9,400-acre Lake Griffin, then water flows into the Ocklawaha River and into the St. Johns River.⁴ The lakes account for about 75,000 total acres of water and are a major fishing attraction for central Florida.⁵

¹ Harris Chain of Lakes Restoration Council, *Where is the Harris Chain of Lakes and what does the Restoration Council do?*, available at <https://harrischainoflakescouncil.com/> (last visited Nov. 22, 2019).

² *Id.*

³ Florida Fish and Wildlife Conservation Commission, *Harris Chain of Lakes*, available at <https://myfwc.com/fishing/freshwater/sites-forecasts/ne/lake-harris/> (last visited Nov. 22, 2019).

⁴ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (Nov. 2001), available at https://harrischainoflakescouncil.com/annualreports/2001/2001_Annual_Report.pdf (last visited Nov 22, 2019).

⁵ Florida Fish and Wildlife Conservation Commission, *Harris Chain of Lakes*, available at <https://myfwc.com/fishing/freshwater/sites-forecasts/ne/lake-harris/> (last visited Nov. 22, 2019).

Concern about pollution in the lakes began as early as the 1950s.⁶ For decades, the lakes were negatively impacted by discharges of phosphorus from farms and wastewater runoff.⁷ Lake Apopka, at the headwaters of the Harris Chain of Lakes, became Florida's most polluted large lake.⁸ By the year 2000, loss of fish and bird species, declining water quality, and toxic algae were costing the area millions of dollars within the, tourism, recreational boating, and real estate industries.⁹

The lakes were considered to be “impaired water bodies,”¹⁰ which triggered the Department of Environmental Protection to develop total maximum daily loads (TMDLs) for the lakes. TMDLs are the maximum amount of a pollutant allowed to enter a water body so that the waterbody will meet and continue to meet water quality standards.¹¹ In order for an impaired water body to meet TMDL limits, basin area management plans (BMAPs) are one of the practices commonly implemented.¹² Currently, only Lake Harris and Lake Eustis are meeting their TMDLs, but Lakes Apopka, Beauclair, Dora, and Griffin have made significant progress on their average phosphorus concentration since 1990.¹³ The BMAPs for the Harris Chain of Lakes were adopted in 2007,¹⁴ and along with other rejuvenation projects, have contributed to the lakes' progression.¹⁵ As a result of significant efforts by state and local entities, the lakes' fisheries have rebounded. The Harris Chain of Lakes was named one of the 50 best new fishing spots in America by Field and Stream for 2019¹⁶ and was chosen to host the 2018 Bassmaster Team Championship.¹⁷

⁶ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (Nov. 2001), available at https://harrischainoflakescouncil.com/annualreports/2001/2001_Annual_Report.pdf (last visited Nov. 22, 2019).

⁷ St. Johns River Water Management district, *Waterways*, available at <https://www.sjrwmd.com/waterways/lake-griffin/> (last visited Nov 22, 2019).

⁸ *Id.*

⁹ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (Nov. 2001), available at https://harrischainoflakescouncil.com/annualreports/2001/2001_Annual_Report.pdf (last visited Nov. 22, 2019).

¹⁰ Rule 62-303.200(7), F.A.C., defines “impaired water” to mean a waterbody or waterbody segment that does not meet its applicable water quality standards, due in whole or in part to discharges of pollutants from point or nonpoint sources. Generally, a point source means pollution coming from a single place (e.g., a pipe); a nonpoint source indicates pollution coming from more than a single place (e.g., land runoff).

¹¹ EPA, *Overview of Total Maximum Daily Loads* (2018), available at <https://www.epa.gov/tmdl/overview-total-maximum-daily-loads-tmdls> (last visited Oct. 30, 2019).

¹² UF IFAS Extension, *BMAPs, BMPs, and the New Florida Water Bill* (Mar. 7, 2017), available at <https://nwdistrict.ifas.ufl.edu/phag/2017/03/17/bmaps-bmps-and-the-new-florida-water-bill/> (last visited Nov. 22, 2019).

¹³ Email from Adam Lovejoy, Governmental Affairs Director, St. Johns river Water Management District, RE: Harris Chain Status (Nov. 8, 2019) (on file with the Senate Community Affairs Committee)

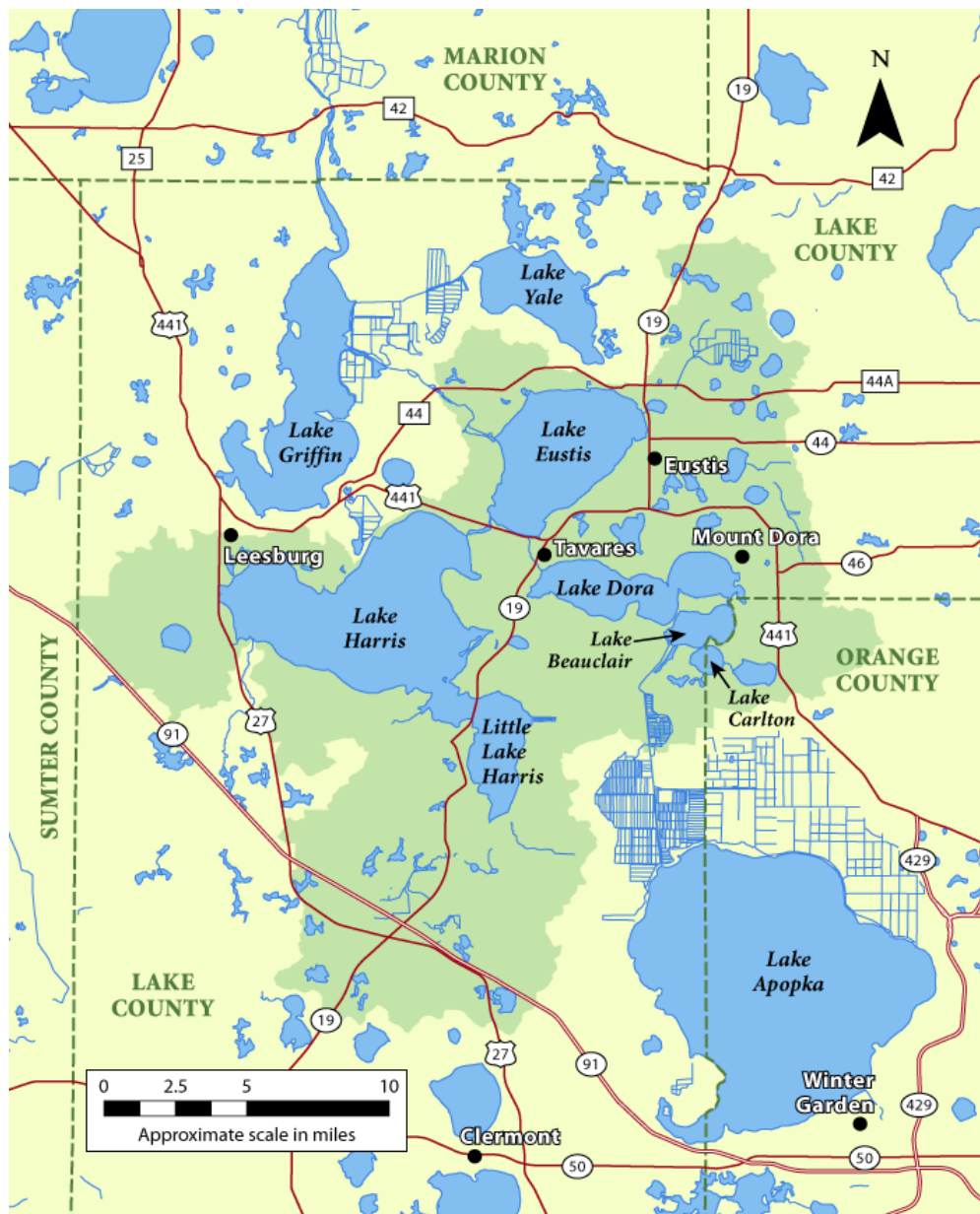
¹⁴ Division of Water Resource Management, *Basin Management Action Plan* (Aug. 14, 2007), available at <https://floridadep.gov/sites/default/files/AdoptedUpOcklawahaBMAP.pdf> (last visited Nov. 22, 2019).

¹⁵ See, e.g., St. Johns River Water Management District, *Waterways*, available at <https://www.sjrwmd.com/waterways/lake-apopka/> (last visited Nov. 22, 2019) (“In response to recent and ongoing restoration efforts, phosphorus concentrations in [Lake Apopka] have declined significantly.”).

¹⁶ Field and Stream, *The 50 Best New Fishing Spots in America* (Sept. 2019), available at <https://www.fieldandstream.com/50-best-new-fishing-spots-in-america/> (last visited Nov. 22, 2019).

¹⁷ Bassmaster, *Team Championship set for Florida's Harris Chain for first time* (May 2018), available at <https://www.bassmaster.com/news/team-championship-set-florida-s-harris-chain-first-time> (last visited Nov. 22, 2019).

A map of the lakes can be seen below:¹⁸



Harris Chain of Lakes Restoration Council

The Harris Chain of Lakes Restoration Council (“the Council”) was officially created by the Florida Legislature during the 2001 Legislative Session to reduce toxic algae, halt excessive growth of aquatic plants, restore the Harris Chain of Lakes’ water quality, and increase the Lakes’ recreational value, especially within the sport fishing industry.¹⁹ The Council is under the

¹⁸ Harris Chain of Lakes Restoration Council, *Where is the Harris Chain of Lakes and what does the Restoration Council do?*, available at <https://harrischainoflakescouncil.com/> (last visited Nov. 22, 2019).

¹⁹ Laws of Florida Chapter 2001-246

umbrella of St. Johns River Water Management District, with assistance from the Fish and Wildlife Conservation Commission, and the Lake County Water Authority.²⁰

The Council's members are appointed by the Lake County Legislative Delegation and consist of nine voting members who are:

- A person with a background in environmental science or regulation;
- A representative of waterfront property owners;
- A representative of the sport fishing industry;
- A person with training in biology or another scientific discipline;
- An attorney;
- An engineer;
- A physician; and
- Two residents of the county who are not required to meet any of the other requirements.²¹

Members of the Council are not paid for their services but are entitled to be reimbursed for per diem and travel expenses incurred during execution of their official duties.²²

The Council's powers and duties include:

- Reviewing audits and all data specifically related to lake restoration techniques and sport fish population recovery strategies, including data and strategies for shoreline restoration, sediment control and removal, exotic species management or removal, navigation, water quality, and fish and wildlife habitat improvement, particularly as they may apply to the Harris Chain of Lakes;²³
- Evaluating whether additional studies are needed;²⁴
- Exploring all possible sources of funding to conduct the restoration activities;²⁵
- Reporting to the President of the Senate and Speaker of the House of Representatives before November 25 of each year on the progress of the Harris Chain of Lakes restoration program and any recommendations for the next fiscal year;²⁶ and
- Acting as advisors to the Governing Board of the St. Johns River Water Management District.²⁷

In their 2018 report, the Council recommended:

- Investigating or studying the feasibility of creating a secondary form of conveyance for water from Lake Apopka, to include Double Run Swamp;
- Requesting SJRWMD expedite the development of minimum flows and levels for the Harris Chain of Lakes prior to 2021;
- Requesting dedicated legislative funding of \$10 million for Hydrilla management on the Harris Chain of Lakes; and

²⁰ Section 373.467, F.S.

²¹ Section 373.467(1)(a), F.S.

²² Section 373.467(6), F.S.

²³ Section 373.467(4)(a), F.S.

²⁴ Section 373.467(4)(b), F.S.

²⁵ Section 373.467(4)(c), F.S.

²⁶ Section 373.467(4)(d), F.S.

²⁷ Section 373.467(1)(a), F.S.

- Increasing monitoring to determine a trigger point for maintenance of Hydrilla in the Harris Chain of Lakes.²⁸

In addition to their duties laid out in s. 373.467, F.S., the Council is also tasked with reviewing existing restoration proposals to determine which are the most environmentally sound and economically feasible methods of improving the fish and wildlife habitat and natural systems of the lakes.²⁹

In 2007, the Office of Program Policy Analysis & Government Accountability issued a Sunset Memorandum on Water Management District Advisory Committees, and concluded that the Council should not be abolished.³⁰ The report stated that “discontinuing the council may decrease the input received by the district on issues related to the Harris Chain of Lakes and implementation of restoration activities.”³¹ However in 2008, the Joint Legislative Sunset Committee recommended that the Council be abolished, stating that “current statutes were adequate to allow for soliciting input, and it was unclear why lake-by-lake enactments were necessary.”³²

Harris Chain of Lakes Restoration Program

Section 373.468, F.S., requires the Florida Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the St. John’s River Water Management, and the Harris Chain of Lakes Restoration Council to:

- Evaluate different methodologies for removing the extensive tussocks³³ and buildup of organic matter along the shoreline and of the aquatic vegetation in the lakes; and
- Conduct any additional studies as recommended by the Harris Chain of Lakes Restoration Council.

The collaborative efforts of these entities in conducting these tasks and in reviewing restoration proposals are the chief responsibilities of the Harris Chain of Lakes restoration program.³⁴

Technical Advisory Group

The Council is advised by a group that consists of one representative from the St. Johns River Water Management District, the Department of Environmental Protection, the Department of Transportation, the Florida Fish and Wildlife Conservation Commission, the Lake County Water

²⁸ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (2018), available at https://harrischainoflakescouncil.com/annualreports/2018/2018_HC_Annual_Report.pdf (last visited Nov. 22, 2019).

²⁹ Section 373.468(1), F.S.

³⁰ Office of Program Policy Analysis and Government Accountability, *Sunset Memorandum; Water Management District Advisory Committee* (Sept. 11, 2007), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/07-S12.pdf> (last visited Nov 22, 2019).

³¹ *Id.*

³² Joint Sunset Committee, *Report of the Joint Legislative Sunset Committee* (Mar. 2008), available at <http://www.leg.state.fl.us/sunset/Pages/Archives.html> (see tab for 2008 Publications, Final Report) (last visited Oct. 17, 2019).

³³ Tussocks are rafts of herbaceous plants that form in water bodies or along coastlines which can block public access, hinder flood control, or impair navigation.

³⁴ Section 373.468, F.S.

Authority, the United States Army Corps of Engineers, and the University of Florida.³⁵ The purpose of the Technical Advisory Group is to provide the Council with scientific information along with both technical data and guidance in their review of various technologies and issues that come before it.³⁶ The representative seats for the Florida Department of Transportation and the U.S. Army Corps of Engineers are currently vacant.³⁷

St. Johns River Water Management District (SJRWMD)

The SJRWMD is an environmental regulatory agency of the state of Florida whose work is focused on ensuring a long-term supply of drinking water, and to protect and restore the health of water bodies in the district's 18 counties in northeast and east-central Florida.³⁸ They provide a representative to the Council's Technical Advisory Group,³⁹ and the chair of the governing board of the SJRWMD can request that the Council convene for a meeting.⁴⁰ The SJRWMD also provides the Council with staff support to carry out their duties⁴¹ and is responsible for per diem and travel expenses for members of the Council that are not appointed from a state or federal agency.⁴²

Florida Fish and Wildlife Conservation Commission (FWC)

The FWC is tasked with managing fish and wildlife resources for their long-term well-being and the benefit of people.⁴³ The FWC is statutorily required to have a representative on the Technical Advisory Group.⁴⁴ FWC is tasked with initiating the Harris Chain of Lakes restoration program recommended by the Council with assistance from the SJRWMD, and in consultation with DEP and pertinent local governments.⁴⁵ The FWC is also authorized to conduct a demonstration restoration project on the Harris Chain of Lakes for the purpose of creating better habitat for fish and wildlife.⁴⁶

Lake County Water Authority

The Lake County Water Authority is a special taxing district created for the following:

- Controlling and conserving the freshwater resources of Lake County;
- Fostering improvements to streams, lakes, and canals in the county;
- Improving the fish and aquatic wildlife of the country by improving the streams, lakes and canals in the county; and

³⁵ Section 373.467(1)(b), F.S.

³⁶ Harris Chain of Lakes Restoration Council, *The council*, available at <https://harrischainoflakescouncil.com/council.html> (last visited Nov. 22, 2019).

³⁷ *Id.*

³⁸ St Johns River Water Management District, *Who we are*, available at <https://www.sjrwmd.com/about/> (last visited Nov. 22, 2019).

³⁹ Section 373.467(1)(b), F.S.

⁴⁰ Section 373.467(3), F.S.

⁴¹ Section 373.467(5), F.S.

⁴² Section 373.467(6), F.S.

⁴³ Florida Fish and Wildlife Commission, *Our Mission*, available at <https://myfwc.com/about/overview/> (last visited Oct. 22, 2019).

⁴⁴ Section 373.467(1)(b), F.S.

⁴⁵ Section 373.468(2), F.S.

⁴⁶ Section 373.468(4), F.S.

- Protecting the freshwater resources of Lake County through assisting local governments in treating stormwater runoff.⁴⁷

In conjunction with the SJRWMD, the Lake County Water Authority regularly updates the Council on the water levels in the lakes.⁴⁸ The Lake County Water Authority is responsible for developing its own 5-year work plan and submitting annual reports to the Legislature, the SJRWMD, and the Lake County Board of Commissioners.⁴⁹ Along with placing a representative on the Technical Advisory Group, the Lake County Water Authority provides financial support to the Council.⁵⁰

Florida Department of Transportation (FDOT)

FDOT is the state's transportation agency and plays an important role regarding the environmental impact of transportation infrastructure. FDOT is a statutorily designated member of the Technical Advisory Group, but no FDOT delegate has been assigned since 2015.⁵¹

Florida Department of Environmental Protection (DEP)

DEP is Florida's lead agency for environmental management and stewardship.⁵² DEP is responsible for developing the TMDLs for the Harris Chain of Lakes⁵³ (among other projects) and adopting the BMAPs. DEP regularly makes presentations at Council meetings and provides a member to the Technical Advisory Group.⁵⁴

U.S. Army Corps of Engineers

The Army Corps of Engineers is the federal agency charged with restoring degraded ecosystems, constructing sustainable facilities, regulating waterways, managing natural resources, and cleaning up contaminated sites from past military activities.⁵⁵ The Corps' seat on the Technical Advisory Group has been vacant since 2010.⁵⁶

⁴⁷ Chs. 2005-314 and 2017-218, Laws of Fla. Electors of the county at large elect the seven members of the authority's governing board.

⁴⁸ See, e.g., Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (2018), available at https://harrischainoflakescouncil.com/annualreports/2018/2018_HC_Annual_Report.pdf (last visited Nov. 22, 2019).

⁴⁹ Ch. 2005-314, Laws of Fla.

⁵⁰ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (2018), available at https://harrischainoflakescouncil.com/annualreports/2018/2018_HC_Annual_Report.pdf (last visited Nov. 22, 2019).

⁵¹ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (2015), available at https://harrischainoflakescouncil.com/annualreports/2015/2015_Annual_Report.pdf (last visited Nov. 22, 2019).

⁵² Florida Department of Environmental Protection, *About DEP*, available at <https://floridadep.gov/about-dep> (last visited Nov. 22, 2019).

⁵³ Florida Department of Environmental Protection, *Total Maximum Daily Load for Total Phosphorus For Lake Harris and Little Lake Harris* (Sept. 19, 2003), available at https://floridadep.gov/sites/default/files/harris_little-harris-tp-tmdl_0.pdf (last visited Nov. 22, 2019).

⁵⁴ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (2017), available at https://harrischainoflakescouncil.com/annualreports/2017/2017_HC_Annual_Report.pdf (last visited Nov. 22, 2019).

⁵⁵ Army Corps of Engineers, *Environmental Program*, available at <https://www.usace.army.mil/Missions/Environmental.aspx> (last visited Nov. 22, 2019).

⁵⁶ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (2010), available at https://harrischainoflakescouncil.com/annualreports/2010/2010_Annual_Report.pdf (last visited Nov. 22, 2019).

University of Florida

The University of Florida is home to the Institute of Food and Agricultural Sciences (IFAS), whose primary mission is to “develop knowledge in agricultural, human and natural resources and to make that knowledge accessible to sustain and enhance the quality of human life”.⁵⁷ Along with providing a member to the Technical advisory Group, representatives from the University and IFAS have made multiple presentations to the Council in recent years on topics such as water depth, water quality, and aquatic plants in the lakes.⁵⁸

III. Effect of Proposed Changes:

The bill repeals s. 373.467, F.S., eliminating the Harris Chain of Lakes Restoration Council.

The bill amends s. 373.468, F.S., eliminating the Harris Chain of Lakes Restoration Council’s responsibilities in initiating the Harris Chain of Lakes restoration program and in reviewing other restoration proposals.

The bill provides an effective date of July 1, 2020.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

⁵⁷ The University of Florida, *Institute of Food and Agricultural Sciences*, available at <https://ifas.ufl.edu/about-us/> (last visited Nov. 22, 2019).

⁵⁸ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (2018), available at https://harrischainoflakescouncil.com/annualreports/2018/2018_HC_Annual_Report.pdf (last visited Nov. 22, 2019).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill would save costs associated with the Harris Chain of Lakes Restoration Council. The Council's 2018 report showed that the Lake County Water Authority's 2017-2018 budget included \$9,850 for the Council's operations.⁵⁹ According to DEP, not having to provide staff to support the Council may result in annual fiscal savings of approximately \$50,000 to the SJRWMD.⁶⁰ Additionally, there would be cost savings related to the support services provided by the Technical Advisory Group.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals section 373.467 of the Florida Statutes.
This bill substantially amends section 373.468 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.

⁵⁹ Harris Chain of Lakes Restoration Council, *Report to the Florida Legislature* (2018), available at https://harrischainoflakescouncil.com/annualreports/2018/2018_HC_Annual_Report.pdf (last visited Nov. 22, 2019).

⁶⁰ Department of Environmental Protection, *Agency Analysis of HB 6025/SB 384* (Oct. 8, 2019) (on file with the Senate Committee on Community Affairs).

By Senator Baxley

12-00668-20

2020384__

1 A bill to be entitled
 2 An act relating to the Harris Chain of Lakes;
 3 repealing s. 373.467, F.S., relating to the Harris
 4 Chain of Lakes Restoration Council; amending s.
 5 373.468, F.S.; conforming provisions to changes made
 6 by the act; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Section 373.467, Florida Statutes, is repealed.
 11 Section 2. Subsections (1) and (2) of section 373.468,
 12 Florida Statutes, are amended to read:
 13 373.468 The Harris Chain of Lakes restoration program.—
 14 (1) The Fish and Wildlife Conservation Commission and the
 15 St. Johns River Water Management District, in conjunction with
 16 the Department of Environmental Protection and, pertinent local
 17 governments, ~~and the Harris Chain of Lakes Restoration Council,~~
 18 shall review existing restoration proposals to determine which
 19 ones are the most environmentally sound and economically
 20 feasible methods of improving the fish and wildlife habitat and
 21 natural systems of the Harris Chain of Lakes.
 22 (2) To initiate the Harris Chain of Lakes restoration
 23 program ~~recommended by the Harris Chain of Lakes Restoration~~
 24 ~~Council,~~ the Fish and Wildlife Conservation Commission, with
 25 assistance from the St. Johns River Water Management District
 26 and in consultation and by agreement with the Department of
 27 Environmental Protection and pertinent local governments, shall
 28 develop tasks to be undertaken by those entities for the
 29 enhancement of fish and wildlife habitat. These agencies shall+

Page 1 of 2

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

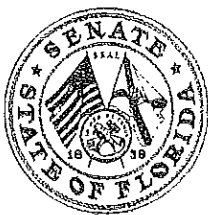
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2020384__

30 ~~(a)~~ evaluate different methodologies for removing the
 31 extensive tussocks and buildup of organic matter along the
 32 shoreline and of the aquatic vegetation in the lake.
 33 ~~(b) Conduct any additional studies as recommended by the~~
 34 ~~Harris Chain of Lakes Restoration Council.~~
 35 Section 3. This act shall take effect July 1, 2020.

Page 2 of 2

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



THE FLORIDA SENATE

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY
12th District

December 9, 2019

The Honorable Chair Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, Florida 32399

Dear Chair Benacquisto,

I would like to request that SB 384 Harris Chain of Lakes be heard in the next Rules Committee meeting.

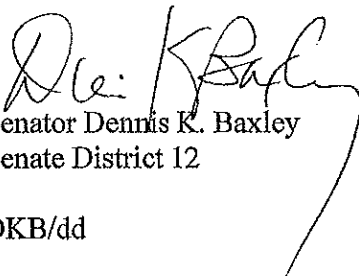
This good bill eliminates/repeals the unnecessary, tax funded, Harris Chain of Lakes Restoration Council while keeping the productive and successful Chain of Lakes restoration program in place.

The Harris Council is an advisory council that was recommended to be sunset more than ten years ago by the Joint Legislative Sunset Committee. Legislative committee reports during that process highlighted the duplicative and wasteful nature of the council.

The agencies that actually develop, fund, and implement recovery efforts in accordance with statute will continue with the restorative activities.

Thank you for your favorable consideration.

Onward & Upward,


Senator Dennis K. Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@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 630

INTRODUCER: Senator Mayfield

SUBJECT: Regulation of Smoking

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2. <u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
3. <u>Paglialonga</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 630 amends the “Florida Clean Indoor Air Act” in part II of ch. 386, F.S., which regulates vaping and tobacco smoking in Florida, to allow counties and municipalities to restrict smoking within the boundaries of any park they own. Currently, the regulation of smoking is preempted to the state and counties and municipalities are prohibited from regulating smoking. “Smoking” is defined in ch. 386, F.S., as “inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.”

The bill takes effect July 1, 2020.

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates vaping and tobacco smoking in Florida. The legislative purpose of the act is to protect the public from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.¹

Florida Constitution

Tobacco Smoking

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an “enclosed indoor workplace,” in part, as “any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers ... without regard to whether work is

¹ Section 386.202, F.S.

occurring at any given time.” The amendment defines “work” as “any persons providing any employment or employment-type service for or at the request of another individual or individuals or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not.” The amendment provides limited exceptions for private residences “whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof,” retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directed the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The amendment required that implementing legislation have an effective date of no later than July 1, 2003, and required that implementing legislation provide civil penalties for violations; provided for administrative enforcement, and required and authorized agency rules for implementation and enforcement. The amendment further provided that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

Vaping

On November 6, 2018, the voters of Florida approved Amendment 9 to the Florida Constitution, to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces.² The use of e-cigarettes is commonly referred to as vaping.

Amendment 9 adds vapor-generating electronic devices to the current prohibition against tobacco smoking in enclosed indoor workplaces. The amendment makes exceptions for the same enclosed indoor workplace locations where tobacco smoking is permitted and further permits tobacco smoking and the use of vapor-generating electronic devices in a “vapor-generating electronic device retailer.”

The amendment defines a “vapor-generating electronic device retailer” to mean “any enclosed indoor workplace dedicated to or predominantly for the retail sale of vapor-generating electronic devices and components, parts, and accessories for such products, in which the sale of other products or services is merely incidental.”

A vapor-generating electronic device is defined as “any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine product or any other substance.” The definition includes electronic cigarettes, electronic cigars, electronic cigarillos, electronic pipes, and other similar devices or products, replacement cartridge for such devices, and other containers of a solution or other substance intended to be used with or within the devices.

Section 20, Art. X, Florida Constitution, as amended, directs the Legislature to implement the “amendment in a manner consistent with its broad purpose and stated terms.” The implementing legislation must have an effective date of no later than July 1 of the year following approval (July 1, 2019). The implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for

² Amendment 9 also bans offshore oil and natural gas drilling on lands beneath state waters. *See* FLA. CONST. art II, s. 7.

implementation and enforcement. The Legislature may enact legislation more restrictive of tobacco smoking or vaping than that provided in the State Constitution.

Under the amendment, local governments may adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Florida's Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, Laws of Fla., which amended part. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment's prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace unless the act provides an exception. The act adopts and implements the amendment's definitions and adopts the amendment's exceptions for private residences whenever not being used for certain commercial purposes;³ stand-alone bars;⁴ designated smoking rooms in hotels and other public lodging establishments;⁵ and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.⁶

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.⁷ The penalty for a first violation is a fine of not less than \$250 and not more than \$750. The act provides fines for subsequent violations in the amount of not less than \$500 and not more than \$2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine of not more than \$100 for a first violation and not more than \$500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

During the 2019, Regular Session, the Legislature amended part II of 386, F.S., to ban the use of vapor-generating electronic devices, such as electronic cigarettes (e-cigarettes), in enclosed indoor workplaces. The use of e-cigarettes is commonly referred to as vaping.⁸

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary

³ Section 386.2045(1), F.S. *See also* definition of the term "private residence" in s. 386.203(1), F.S.

⁴ Section 386.2045(4), F.S. *See also* definition of the term "stand-alone bar" in s. 386.203(11), F.S.

⁵ Section 386.2045(3), F.S. *See also* definition of the term "designated guest smoking room" in s. 386.203(4), F.S.

⁶ Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(8), F.S.

⁷ The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

⁸ *See* ch. 2019-14, Laws of Fla.

school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Enforcement

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of ch. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed \$25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco “alternative to suspension” program.⁹

If a person fails to comply with the directions on the citation, the person will waive his or her right to contest the citation, and the court may issue an order to show cause.¹⁰

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

As an exception to the state’s preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property.

Section 386.209, F.S., adopts and implements the Florida Constitution’s grant of authority to local governments to adopt more restrictive local ordinances on the use of vapor-generating electronic devices.

Regarding the issue of preemption, a Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.¹¹ The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,¹² authorizes school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

⁹ Section 386.212(3), F.S.

¹⁰ Section 386.212(4), F.S.

¹¹ Op. Att’y Gen. Fla. 2011-15 (July 21, 2011). *See also*, Op. Att’y Gen. Fla. 2005-63 (Nov. 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

¹² Chapter 2011-108, L.O.F.

Public Parks Owned by Counties and Municipalities

In Florida, there are 67 separate county park systems and more than 400 separate municipal park systems.¹³ For example, Orange County Florida maintains and operates 118 county-owned parks, which consist of a wide array of available activities and facilities.¹⁴ Parks provide a variety of activities to the public, including nature trails, bird watching, youth and adult athletics, bike paths, horse trails, boat ramps, fishing piers, metal detecting locations, outdoor gyms, and outdoor pavilions.¹⁵ Additionally, municipalities within Orange County also own and operate parks and outdoor recreational facilities. For example, the city of Winter Park, within Orange County, owns and operates 11 city parks, which offer similar recreational activities.¹⁶

The Division of Recreation and Parks within the Florida Department of Environmental Protection maintains a comprehensive inventory of the existing park facilities and outdoor resources in Florida. The inventory provides details about the parks and recreation areas in the state and consists of over 13,000 separate records, the majority of which are county and municipal parks.¹⁷

Laws in Other States

In 2009, Maine passed a law prohibiting “[smoking] tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.”¹⁸ In 2015, Hawaii passed a law prohibiting smoking within its state park system.¹⁹ In 2018, New Jersey banned smoking at public parks and beaches.²⁰ New Jersey’s legislature found that “[t]he prohibition of smoking at public parks and beaches would better preserve and maintain the natural assets of this State by reducing litter and increasing fire safety in those areas, while lessening exposure to secondhand tobacco smoke and providing for a more pleasant park or beach experience for the public[.]”²¹

¹³ Florida Division of Recreation and Parks, *Frequently Asked Questions*, available at: <http://prodenv.dep.state.fl.us/DrpOrpcr/StaticFiles/FAQ.pdf> (last visited Jan. 27, 2020).

¹⁴ Orange County Government Florida, *Parks*, available at: <http://www.orangecountyfl.net/CultureParks/Parks.aspx?m=lstaz#.Xcwjw8GP6Uk> (last visited Jan. 27, 2020).

¹⁵ *Id.*

¹⁶ City of Winter Park, *Parks*, available at: <https://cityofwinterpark.org/departments/parks-recreation/parks-playgrounds/parks/> (last visited Jan. 27, 2020).

¹⁷ Florida Division of Recreation and Parks, *Florida Outdoor Recreation Inventory*, available at: <https://floridadep.gov/parks/florida-outdoor-recreation-inventory> (last visited Jan. 27, 2020).

¹⁸ Me. Rev. Stat. tit. 22, ss. 1580-E(2) and 1541(6). Under Maine law, “‘Smoking’ includes carrying or having in one’s possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. ‘Smoking’ includes the use of an electronic smoking device.”

¹⁹ Haw. Rev. Stat. Ann. § 184-4.5. “Smoking” is defined in the statute as “inhaling or exhaling upon, burning, or carrying any lit cigarette, cigar, or pipe or the use of an electronic smoking device.”

²⁰ 2018 NJ Sess. Law Serv. Ch. 64, S. 2534 (2018), available at: https://www.njleg.state.nj.us/2018/Bills/PL18/64_.PDF (last visited Jan. 27, 2020). The law defines “smoking” as “the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.”

²¹ N.J. Stat. Ann. § 26:3D-56(e).

Alaska law prohibits individuals from smoking outdoors “within 10 feet of playground equipment located at a public or private school or a state or municipal park while children are present.”²² Puerto Rico prohibits smoking in “public or private recreational installations.”²³ The definition of public or private recreational installations under Puerto Rico law includes parks.²⁴ Oklahoma law designates all buildings and other properties owned or operated by the state as nonsmoking, effectively prohibiting smoking at state parks in Oklahoma, except for at any designated outdoor smoking areas.²⁵

Oregon’s Parks and Recreation Department prohibits smoking tobacco products at park properties but provides exceptions, including smoking in vehicles and at designated campsites.²⁶ Outside of Florida, many local governments in the United States have restricted or prohibited smoking in public parks.²⁷

Health and Environmental Concerns

In 2018, an estimated 16 percent of the adults in Florida were tobacco smokers.²⁸ Tobacco smoke contains over 7,000 chemicals, including hundreds that are toxic and up to 69 that are known to cause cancer.²⁹ Exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and other fatal diseases.³⁰ Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker.³¹ Studies suggest that secondhand smoke in crowded outdoor areas can cause concentrations of air contaminants comparable to those caused by indoor smoking.³²

²² Alaska Stat. Ann. ss. 18.35.301(c)(1) and 18.35.399(12). Alaska law defines “smoking” as “using an e-cigarette or other oral smoking device or inhaling, exhaling, burning, or carrying a lighted or heated cigar, cigarette, pipe, or tobacco or plant product intended for inhalation.”

²³ 24 L.P.R.A. ss. 891 and 892. “Smoking” is defined as “the activity of inhaling and exhaling smoke from [tobacco] and other substances that are lit in cigars, cigarettes, and pipes, and to possess or transport cigars, cigarettes, pipes, and smoking articles while lit and it shall also include the use of the so-called electronic cigarette.”

²⁴ 24 L.P.R.A. § 891.

²⁵ Okla. Stat. Ann. tit. 21, § 1247(B).

²⁶ Or. Admin. R. 736-010-0040(8)(j).

²⁷ American Nonsmokers’ Rights Foundation, *Municipalities with Smokefree Park Laws* (2017), available at: <https://no-smoke.org/wp-content/uploads/pdf/SmokefreeParks.pdf> (last visited Jan. 27, 2020). This document lists local governments in the U.S. that have created laws that restrict or prohibit smoking in public parks within their jurisdiction.

²⁸ United Health Foundation, America’s Health Rankings, *Annual Report*, available at: <https://www.americahealthrankings.org/explore/annual/measure/Smoking/state/FL> (last visited Jan. 27, 2020).

²⁹ *Id.*; U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 148 (2014), available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf> (last visited Jan. 27, 2020).

³⁰ U.S. Department of Health and Human Services, *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*, 7 (2014); Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, available at: https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Jan. 27, 2020).

³¹ Center for Disease Control and Prevention, *Secondhand Smoke (SHS) Facts*, available at: https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm (last visited Jan. 27, 2020).

³² Nipapun Kungskulniti et al., *Secondhand Smoke Point-Source Exposures Assessed By Particulate Matter At Two Popular Public Beaches in Thailand*, 40 J. PUBLIC HEALTH 3, 527–532 (2017), available at: <https://academic.oup.com/jpubhealth/article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639> (last visited Jan. 27, 2020); James Repace, *Benefits of Smoke-free Regulations in Outdoor Settings: Beaches, Golf Courses*,

Another significant issue with tobacco smoking in natural areas is litter consisting of used cigarette filters, commonly known as cigarette butts. Cigarette butts are typically comprised mainly of cellulose acetate, a plastic-like material that can take years to decompose.³³ It is estimated that, of the roughly 6 trillion cigarettes smoked annually worldwide, up to two-thirds of the cigarette butts are discarded as litter.³⁴ Furthermore, cigarette butts contain hazardous substances, and studies have shown these substances to be potentially toxic to animals.³⁵

Under Florida law, it is illegal to discard any tobacco product as litter.³⁶ Discarding a cigarette butt is a noncriminal infraction, punishable by a penalty of \$100 in addition to any court-ordered litter pickup or other commensurate labor.³⁷

Fires are another significant issue regarding smoking tobacco in public parks. The Legislature has found that cigarettes are the leading cause of fire deaths in Florida and the nation.³⁸ Florida law requires that cigarettes sold in the state meet standards for reduced ignition propensity.³⁹ In addition to the risk of fires in buildings, Florida generally has a year-round risk of wildfire.⁴⁰ Cigarettes or other smoking materials can cause wildfires when discarded as litter. Data from the United States Forest Service shows that a significant number of wildfires were started by “smoking” between 1992 and 2015.⁴¹ The Florida Forest Service has reported an increased risk of wildfires for areas of northwest Florida in the aftermath of Hurricane Michael, due to factors such as increased fuel loadings and reduced access for fire mitigation equipment.⁴²

Parks, Patios and in Motor Vehicles, 34 WM MITCHELL L. REV. 1621, 1622–1624 (2008), available at: <https://www.publichealthlawcenter.org/sites/default/files/resources/tclc-symposium-repace.pdf> (last visited Jan. 27, 2020).

³³ NOAA, National Ocean Service, *What Is the Most Common Form of Ocean Litter?* available at: <https://oceanservice.noaa.gov/facts/most-common-ocean-litter.html> (last visited Nov. 13, 2019); Bonanomi, Giuliano et al., *Cigarette Butt Decomposition and Associated Chemical Changes Assessed by 13C CPMAS NMR*, 10 PLoS ONE 1 e0117393, 2 (2015), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4307979/pdf/pone.0117393.pdf> (last visited Jan. 27, 2020).

³⁴ World Health Organization, *Tobacco and Its Environmental Impact: An Overview*, 24 (2017) available at: <https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=8E8DFDA81D9C76448B2C9EAD445BC784?sequence=1> (last visited Jan. 27, 2020); Thomas E. Novotny and Elli Slaughter, *Tobacco Product Waste: An Environmental Approach to Reduce Tobacco Waste*, 1 CURR. ENVIRON. HEALTH REP. 3: 208–216, 208 (2014), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4129234/> (last visited Jan. 27, 2020).

³⁵ Wenjau Lee and Chih Chun Lee, *Developmental Toxicity of Cigarette Butts - An Underdeveloped Issue*, 113 ECOTOXICOLOGY AND ENVIRON. SAFETY 362–368, 362–363, 367 (2015), available at: http://tweb.cjcu.edu.tw/journal/2015_03_04_11_23_24.114.pdf (last visited Jan. 27, 2020); Stephanie L. Wright, *Bioaccumulation and Biological Effects of Cigarette Litter in Marine Worms*, 2015 SCI. REP. 5: 14119, 1 (2015), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4569891/> (last visited Jan. 27, 2020).

³⁶ Section 403.413(2)(d) and (f), (4), F.S.

³⁷ Section 403.413(6)(a), F.S. Littering is a noncriminal infraction if the litter does not exceed 15 pounds in weight or 27 cubic feet in volume.

³⁸ Section 633.142(2)(a), F.S.

³⁹ Section 633.142, F.S.

⁴⁰ Florida Department of Agriculture and Consumer Services, *Wildland Fire, Prevention*, available at: <https://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Wildland-Fire> (last visited Jan. 27, 2020).

⁴¹ Karen C. Short, *Spatial Wildfire Occurrence Data For the United States, 1992-2015* (2017), available at: <https://www.fs.usda.gov/rds/archive/Product/RDS-2013-0009.4/> (last visited Jan. 27, 2020). The data can be viewed by clicking on the file labeled “RDS-2013-0009.4_ACCDB.zip,” and viewing the column labeled “STAT_CAUSE_DESCR.”

⁴² Jim Karels, Director, Florida Forest Service, Presentation to the Florida Senate Environment and Natural Resources Committee, January 8, 2019, *Hurricane Michael Impacts, Actions and Needs*, slides 14-16, 18 (2019).

III. Effect of Proposed Changes:

Section 1 amends s. 386.209, F.S., within part II of ch. 386, F.S. The bill allows municipalities and counties to further restrict smoking within the boundaries of any public park they own. Given the existing definition of “smoking” in ch. 386, F.S., the bill would allow municipalities and counties to further restrict the ability for any person to inhale, exhale, burn, carry, or possess any lighted tobacco product, including cigarettes, cigars, pipe tobacco, or any other lighted tobacco product, in a public county or municipal park.

Although this bill specifically relates to “smoking,” counties and municipalities are currently allowed to impose more restrictive regulation on the use of vapor-generating devices under s. 386.209, F.S.

Section 2 provides an effective date of July 1, 2020.

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:

Visitors to county or municipal parks who violate smoking restrictions imposed by a county or municipality may be subject to the applicable fines or civil penalty for such violations.

C. Government Sector Impact:

Counties and municipalities that opt to restrict smoking within the boundaries of public parks may incur indeterminate expenses related to enacting and enforcing such restrictions.

To the extent any imposed smoking restrictions deter or encourage visitation of a county or municipal park, a county or municipality may experience fluctuation in revenues generated by a public park admittance fee.

VI. Technical Deficiencies:

None.

VII. Related Issues:

There is no definition for “public park” in ch. 386, F.S., so it may not be clear exactly which areas are subject to the bill’s optional prohibition on smoking.

The short title of part II of ch. 386, F.S., which is entitled the “Florida Clean Indoor Air Act,” should be amended to remove the term “indoor” since the bill expands the scope of the act to regulate smoking beyond indoor areas, such as public parks.

VIII. Statutes Affected:

This bill substantially amends section 386.206 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Mayfield

17-00742A-20

2020630__

A bill to be entitled

An act relating to regulation of smoking; amending s.
386.209, F.S.; authorizing municipalities and counties
to further restrict smoking within the boundaries of
certain public parks; providing an effective date.

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

Section 1. Section 386.209, Florida Statutes, is amended to
read:

386.209 Regulation of smoking preempted to state.—This part
expressly preempts regulation of smoking to the state and
supersedes any municipal or county ordinance on the subject;
however, municipalities and counties may further restrict
smoking within the boundaries of any public parks they own, and
school districts may further restrict smoking ~~by persons~~ on
school district property. This section does not preclude the
adoption of municipal or county ordinances that impose more
restrictive regulation on the use of vapor-generating devices
than is provided in this part.

Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations
Environment and Natural Resources
Health Policy

SENATOR DEBBIE MAYFIELD

17th District

February 4, 2020

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

RE: SB 630

Dear Chairman Benacquisto,

I am respectfully requesting Senate Bill 630, a bill relating to Regulation of Smoking, be placed on the agenda for your Committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,



Senator Debbie Mayfield
District 17

Cc; John B. Phelps and Cynthia Futch

REPLY TO:

- ☐ 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: 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)

2/12/20

Meeting Date

SB 630

Bill Number (if applicable)

Topic

Regulation of Smoking

Amendment Barcode (if applicable)

Name

Larisa Svechin

Job Title

Vice Mayor, Sunny Isles Beach

Address

18070 Collins Ave

Phone

305-792-1776

Street

Sunny Isles Beach

FL

33160

City

State

Zip

Email

lsvechin@sibfl.net

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

City of Sunny Isles Beach

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/12/2020

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

SB 680

Meeting Date

Bill Number (if applicable)

Topic Regulation of Smoking in Parks

Amendment Barcode (if applicable)

Name Mark Ryan

Job Title City Manager

Address 2055 South Patrick Drive

Phone 321 773-3181

Indian Harbour Beach FL 32937

Email mryan@indianharbour.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Indian Harbour Beach

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/21/2020

Meeting Date

SB 630

Bill Number (if applicable)

Topic REGULATION OF SMOKING

Amendment Barcode (if applicable)

Name MICHAEL BEEDIE

Job Title CITY MANAGER

Address 107 MIRACLE STRIP RD SW

Street

Phone (850) 461-2687

FORT WALTON BEACH

City

FL

State

32548

Zip

Email MBEEDIE@FWB.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CITY OF FORT WALTON BEACH

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/12/20

Meeting Date

SB 630

Bill Number (if applicable)

Topic SMOKING IN PARKS

Amendment Barcode (if applicable)

Name Casey Cook

Job Title LEGISLATIVE ADVOCATE

Address PO BOX 1757
Street

Phone 850 701 3701

TLH
City

FL
State

32302
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-2020

Meeting Date

0630

*Bill Number (if applicable)*Topic Regulation of Smoking*Amendment Barcode (if applicable)*Name Natalie Fausel

Job Title _____

Address 201 West Park Ave., Suite 100Phone 561-317-0889*Street*TallahasseeFL32301Email natalie@anfieldflorida.com*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Indian River County, Broward County, and Palm Beach CountyAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

February 12, 2020

Meeting Date

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

SB 630

Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Ashley Lyerly

Job Title Director of Advocacy for Florida

Address 1678 Montgomery Highway, Suite 104-355

Phone (205) 968-2266

Street

Hoover

Alabama

35216

Email Ashley.Lyerly@lung.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Lung 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

9-12-2020
Meeting Date

630
Bill Number (if applicable)

Topic Smoking

Amendment Barcode (if applicable)

Name Dawn Steward

Job Title _____

Address 2130 Blossom Lane
Street
Winter Park FL 32789
City State Zip

Phone 407-645-0273

Email stu2130@aol.com

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/12/20

Meeting Date

630

Bill Number (if applicable)

Topic Regulation of Smoking

Amendment Barcode (if applicable)

Name Kloe Ciuperger "Chloe See-you-Per-Grr"

Job Title Legislative Coordinator

Address 2401 SE Monterey Rd

Street

Phone 772 486 4134

Stuart

City

FL

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Martin County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

8/18/2020
Meeting Date

SB 630
Bill Number (if applicable)

Topic REGULATION OF SMOKING

Amendment Barcode (if applicable)

Name TONNETTE GRAHAM

Job Title

Address 200 S. Monroe St
Tallahassee, FL 32301
Street City State Zip

Phone 850.922.4000

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ASSOC. of COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/12/20

Meeting Date

630

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST

Street

Phone 941-323-2404

TLH

City

FL

State

32301

Zip

Email cullen@sierraclub.org

adl.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/
Meeting Date

630
Bill Number (if applicable)

Topic Reg of Smoking

Amendment Barcode (if applicable)

Name Kelly Horton

Job Title _____

Address 420 E Jefferson St
Street

Phone 251 8400

TLH
City State Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Cancer Society

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-20

Meeting Date

SB 630

Bill Number (if applicable)

Topic Regulation of Smoking in Parks

Amendment Barcode (if applicable)

Name Sarah Stoeckel

Job Title Councilmember City of Titusville

Address 2700 Mangrum Place

Phone 321-543-9799

Street

Titusville

FL

32780

City

State

Zip

Email Sarah.stoeckel@titusville.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Titusville

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/12/20

Meeting Date

5B630

Bill Number (if applicable)

Topic Regulation of Smoking in Parks

Amendment Barcode (if applicable)

Name Tyler Payne

Job Title City Commissioner, Treasure Island

Address 11260 8th St E
Street

Phone 727-204-0143

Treasure Island, FL
City State Zip

Email tpayne@mytreasureisland.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing City of Treasure Island

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-20

Meeting Date

HB 630

Bill Number (if applicable)

Topic Smoking

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

City

FL

State

33773

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Saving families

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 716

INTRODUCER: Senator Mayfield

SUBJECT: County Boundaries

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Toman	Ryon	CA	Favorable
2. McVaney	McVaney	GO	Favorable
3. Toman	Phelps	RC	Favorable

I. Summary:

SB 716 alters the boundary lines of Indian River County and St. Lucie County. These alterations will move a 0.65 acre parcel from St. Lucie County to Indian River County and transfer 5.56 acres of land from Indian River County to St. Lucie County.

The bill shift revenues and expenditures between Indian River County and St. Lucie County and the respective school districts. The bill has no impact on state revenues and expenditures.

The bill takes effect upon becoming a law.

II. Present Situation:

History of Counties in Florida

While the provisional government and territorial councils provided for county forms of government in Florida, counties did not receive constitutional status until 1861. The Constitution of 1885 first recognized counties as legal subdivisions of the state. In addition, the Legislature was granted the power to create new counties and alter county boundaries.¹ Gilchrist County was created in 1925 as the last of Florida's current 67 counties.²

¹ State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *2018 - 2020 Local Government Formation Manual*, available at <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Jan. 21 2020).

² Chapter 11371, Laws of Fla. (1925).

The revised State Constitution of 1968 amended the provision in the 1885 Constitution relating to county formation. Section 1(a), Art. VIII of the State Constitution of 1968, states:

The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished or changed by law, with provision for payment and apportionment of the public debt.

Chapter 7, F.S., provides the boundary lines for Florida's 67 counties. Chapter 125, F.S., outlines the powers and duties of counties.

Changes in County Boundaries³

Adjusting the legal descriptions of one or more counties requires an amendment to general law. The Legislature has passed several acts changing existing county boundaries by amending the appropriate section of ch. 7, F.S. A bill seeking to change county boundaries should include an accurate legal description of the affected real property. Proper description of the subject area enables effective notice to those whose interests are affected substantially by the proposed governmental change.

County boundary changes of the past 35 years include those involving:

- Franklin and Wakulla counties in 1986,⁴
- Escambia and Santa Rosa counties in 1991,⁵
- Citrus and Levy counties in 1994,⁶
- Broward and Palm Beach counties in 2007,⁷ and
- St. Lucie County and Martin counties in 2012.⁸

Highway A1A Boundary Line for Indian River County and St. Lucie County⁹

Property located at 2498 S. Highway A1A is partially located in both Indian River County and St. Lucie County. In 1991, the counties entered into an agreement regarding the construction of a home at the address. The agreement addressed issues pertaining to the development of the property, including permitting, impact fees and concurrency. The agreement, however, did not address issues relating to the provision of services to the property. In 2019, the property's owner contacted both counties regarding the enactment of a boundary change, which would allow the entire property to be located in Indian River County.

County staff from both Indian River and St. Lucie met and came to an equitable boundary change to accommodate the request. The boundary change would result in moving 0.65 acres

³ See *supra* note 1.

⁴ Chapter 86-288, Laws of Fla.

⁵ Chapter 91-310, Laws of Fla.

⁶ Chapter 94-313, Laws of Fla.

⁷ Chapter 2007-222, Laws of Fla.

⁸ Chapter 2012-45, Laws of Fla.

⁹ See Indian River County Administrator, *Resolution Requesting the Legislature Enact a General Bill Amending Boundary Line between Indian River County and St. Lucie County* (Oct. 9, 2019) and County Attorney, St. Lucie County, *County Commission Agenda Request on Resolution No. 19-196* (Sep. 11, 2019) (both on file with the Senate Committee on Community Affairs).

from St. Lucie County to Indian River County and transfer 5.56 acres of land from Indian River County to St. Lucie County. Owners of the affected parcels indicated their support for the boundary change and each county passed a resolution requesting the Florida Legislature to enact a bill altering the legal descriptions of both counties.¹⁰

III. Effect of Proposed Changes:

The bill amends s. 7.31, F.S., to alter the boundary lines of Indian River County and s. 7.59, F.S., to alter the boundary lines of St. Lucie County. These alterations will move a 0.65 acre parcel from St. Lucie County to Indian River County and transfer 5.56 acres of land from Indian River County to St. Lucie County. Similarly, the Indian River County School District and the St. Lucie County School District will experience similar impacts.¹¹

The bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁰ St. Lucie County Resolution No. 19-196 (Oct. 1, 2019) and Indian River County Resolution No. 2019-092 (Oct. 15, 2019) (both on file the Senate Committee on Community Affairs).

¹¹ FLA. CONST. Art. IX, s. 4, provides that each county constitutes a school district.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Indian River County Administrator's Office, the boundary change will have minimal fiscal impact on Indian River County.¹² Information from the County Attorney Office in St. Lucie County indicates that the boundary change will result in a small reduction in ad valorem taxes collected in St. Lucie County.¹³ Similar impacts may be expected for the Indian River County School District and the St. Lucie County School District.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 7.31 and 7.59.

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

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

None.

B. Amendments:

None.

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

¹² Indian River County Administrator, *Resolution Requesting the Legislature Enact a General Bill Amending Boundary Line between Indian River County and St. Lucie County* (Oct. 9, 2019) (on file with the Senate Committee on Community Affairs).

¹³ County Attorney, St. Lucie County, *County Commission Agenda Request on Resolution No. 19-196* (Sep. 11, 2019) (on file with the Senate Committee on Community Affairs).

By Senator Mayfield

17-00952-20

2020716__

A bill to be entitled

An act relating to county boundaries; amending ss.
7.31 and 7.59, F.S.; revising county boundaries;
providing an effective date.

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

Section 1. Section 7.31, Florida Statutes, is amended to
read:

7.31 Indian River County.—The boundary lines of Indian
River County are as follows: Beginning at the northwest corner
of township thirty-one south, of range thirty-five east; thence
east on the line dividing the townships thirty and thirty-one
south, to the point where said line intersects the thread of the
south fork of the St. Sebastian River; thence northerly down the
thread of said stream to the main stream of the St. Sebastian
River; thence down the thread of the St. Sebastian River to its
confluence with the Indian River; thence east to the
intersection with the southwesterly extension of the centerline
of the approach channel to the Sebastian Inlet from the Indian
River; thence northeasterly along said centerline and continue
northeasterly and easterly along the centerline of the Sebastian
Inlet to the Atlantic Ocean; thence southward along the Atlantic
coast, including the waters of the Atlantic Ocean within the
jurisdiction of the State of Florida to the intersection of said
Atlantic coast and a line lying 45.22 feet south of, as measured
at right angles to, the township line dividing between townships
thirty-three and thirty-four south; thence west, parallel with,
and 45.22 feet south of said township line, to the west right-

Page 1 of 5

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

17-00952-20

2020716__

of-way line of State Road A1A; thence northwesterly along said
right-of-way line to the intersection of said right-of-way line
and the north line of Lot 25, plat of Kansas City Colony, as
recorded in Plat Book 4, page 23, of the public records of St.
Lucie County, Florida. Said north line of Lot 25 lying 150 feet
north of, and parallel with, as measured at right angles to, the
township line dividing townships thirty-three and thirty-four
south; thence west along the north line of said Lot 25 to the
easterly mean high water line of Round Island Creek; thence
meandering southeasterly along said mean high water line to its
intersection with the township line dividing townships thirty-
three and thirty-four south; thence west on said township line
to range line dividing ranges thirty-five and thirty-six east;
thence north between ranges thirty-five and thirty-six east to
the northeast corner of section one, township thirty-three
south, range thirty-five east; thence west on township line
dividing townships thirty-two and thirty-three south, range
thirty-five east to the range line dividing ranges thirty-four
and thirty-five east; thence north on said range line to the
northwest corner of township thirty-one south, range thirty-five
east, being the place of beginning.

Section 2. Section 7.59, Florida Statutes, is amended to
read:

7.59 St. Lucie County.—The boundary lines of St. Lucie
County are as follows: Beginning on the eastern boundary of the
State of Florida at a point where the north section line of
section thirteen, township thirty-seven south, range forty-one
east, produced easterly, would intersect the same; thence
westerly on the north line of said section and other sections to

Page 2 of 5

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59 the northwest corner of section eighteen, township thirty-seven
 60 south, range forty-one east; thence south along the range line
 61 between ranges forty east and forty-one east which is concurrent
 62 with the St. Lucie County and Martin County boundary lines to
 63 the intersection with the north line of the south 508.15 feet of
 64 the northeast quarter of section twenty-four, township thirty-
 65 seven south, range forty east; thence west along the south
 66 508.15-foot line of the northeast quarter of section twenty-
 67 four, township thirty-seven south, range forty east and
 68 concurrent with the municipal boundary line of the City of Port
 69 St. Lucie to the intersection of the east 924.15-foot line of
 70 section twenty-four, township thirty-seven south, range forty
 71 east; thence south along the east 924.15-foot line of section
 72 twenty-four, township thirty-seven south, range forty east and
 73 continuing along the municipal boundary line of the City of Port
 74 St. Lucie, to the intersection of the south line of the
 75 northeast quarter of section twenty-four, township thirty-seven
 76 south, range forty east; thence west along the south line of the
 77 northeast quarter of section twenty-four, township thirty-seven
 78 south, range forty east to the intersection with the west edge
 79 of Howard Creek; thence southerly and along with the west edge
 80 of Howard Creek being concurrent with the municipal boundary
 81 line of the City of Port St. Lucie to the intersection of the
 82 north shore of the north fork of the St. Lucie River and the
 83 west edge of Howard Creek as concurrent with the City of Port
 84 St. Lucie municipal boundary; thence departing said north shore
 85 of the north fork of the St. Lucie River and the municipal
 86 boundary line of the City of Port St. Lucie, a bearing direction
 87 (State Plane Coordinate System, Florida East Zone) of south 45

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88 degrees, 16 minutes west, 2,355 feet more or less, to a point
 89 within the body of water of the north fork of the St. Lucie
 90 River; thence departing said point a bearing direction (State
 91 Plane Coordinate System, Florida East Zone) of south 41 degrees,
 92 4 minutes east, 6,155 feet more or less to a point located in
 93 the body of the north fork of the St. Lucie River which
 94 intersects with the west line of section thirty, township
 95 thirty-seven south, range forty-one east; thence south 6,459
 96 feet along the west line of sections thirty and thirty-one,
 97 township thirty-seven south, range forty-one east, to the
 98 intersection with the township line between townships thirty-
 99 seven and thirty-eight south; also being the southwest corner of
 100 section thirty-one, township thirty-seven, range forty-one east;
 101 thence west on the said township line to the range line dividing
 102 ranges thirty-six and thirty-seven east; thence north on said
 103 range line, concurrent with the east boundary of Okeechobee
 104 County, to the northwest corner of township thirty-four south,
 105 range thirty-seven east; thence east on the township line
 106 dividing townships thirty-three and thirty-four south to a point
 107 of intersection with the easterly mean high water line of Round
 108 Island Creek; thence meandering northwesterly along said mean
 109 high water line to its intersection with the north line of Lot
 110 25, plat of Kansas City Colony, as recorded in Plat Book 4, page
 111 23, of the public records of St. Lucie County, Florida. Said
 112 north line of Lot 25 lying 150 feet north of, and parallel with,
 113 as measured at right angles to, the township line dividing
 114 townships thirty-three and thirty-four south; thence east along
 115 the north line of said Lot 25 to the west right-of-way line of
 116 State Road A1A; thence southeasterly along said right-of-way

Page 4 of 5

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17-00952-20

2020716

117 line to the intersection of said west right-of-way line and a
118 line lying 45.22 feet south of, as measured at right angles to,
119 the township line dividing townships thirty-three and thirty-
120 four south; thence east along said line lying 45.22 feet south
121 of, and parallel with the line dividing townships thirty-three
122 and thirty-four south, to the Atlantic Ocean; thence continuing
123 easterly to the eastern boundary of the State of Florida; thence
124 southerly along said east boundary, including the waters of the
125 Atlantic Ocean within the jurisdiction of the State of Florida,
126 to the place of beginning.

127 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations
Environment and Natural Resources
Health Policy

SENATOR DEBBIE MAYFIELD

17th District

February 4, 2020

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

RE: SB 716

Dear Chairman Benacquisto,

I am respectfully requesting Senate Bill 716, a bill relating to County Boundaries, be placed on the agenda for your Committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,



Senator Debbie Mayfield
District 17

Cc; John B. Phelps and Cynthia Futch

REPLY TO:

- ☐ 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: 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)

2/12

Meeting Date

716

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Natalie Kato

Job Title _____

Address 315 S. Culhaem St. Suite 830

Phone 763 221 3151

Street

Tallahassee

City

FL

State

32301

Zip

Email NKato@llw-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing St. Lucie County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 936

INTRODUCER: Senator Gainer

SUBJECT: Disability Retirement Benefits

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Favorable
2.	Brown	Caldwell	MS	Favorable
3.	Hackett	Phelps	RC	Favorable

I. Summary:

SB 936 amends certification requirements for a veteran to establish a proof of disability to receive a disability retirement benefit under the Florida Retirement System. Specifically, the bill allows a member of the Florida Retirement System who is receiving care at a federal Veterans Health Administration facility to offer certification by two of that facility's physicians as proof of the member's total and permanent disability, regardless of where the physician is licensed. Current law requires a member to receive certification from physicians licensed in Florida or the state in which the member works.

The bill is not expected to impact state or local revenues or expenditures.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Retirement System - Disability Retirement

Benefits under the Florida Retirement System may not be paid unless the member has ended employment.¹ A member who becomes totally and permanently disabled in the line of duty or after completing 5 years of service is entitled to a disability benefit.² A member is considered totally and permanently disabled if, "in the opinion of the administrator, he or she is prevented, by reason of a medically determinable physical or mental impairment, from rendering useful and efficient service as an officer or employee."³ The Division of Retirement has adopted rules for

¹ Section 121.091, F.S.

² Section 121.091(4), F.S.

³ Section 121.091(4)(b), F.S.

required documentation of a member's termination of employment and establishment of disability in order to approve disability retirement.⁴

Proof of disability is provided by certification of the member's total and permanent disability from two licensed physicians of the state, as well as other evidence required by the administrator.⁵ A member whose employment requires full time work outside the state, but within the United States, may include certification from two physicians licensed in the state in which the member works.⁶

In situations in which a federal veterans health facility is treating a member, physicians licensed in other states frequently provide the health services. In these circumstances, to prove disability, the member must go outside of his or her primary care facility to receive the required disability certification from Florida-licensed physicians. This process may prove time-consuming and costly.

The Florida-licensed physicians must document that:

- The member's medical condition occurred or became symptomatic during the member's employment;
- The member was totally and permanently disabled at the time he or she terminated covered employment; and
- Following termination, the member has not been employed.⁷

If the member applies for an in-line-of-duty disability, the physician must additionally document by competent medical evidence that the disability was caused by a job-related illness or accident during the member's employment.⁸

The administrator may require periodic reexaminations of the status of disability.⁹ If the administrator finds that the member has recovered from his or her disability prior to reaching the regular retirement date, disability retirement benefits are discontinued.

Veterans Health Administration Physicians

The Veterans Health Administration (VHA) is one of the main administrations of the United States Department of Veterans Affairs.¹⁰ The VHA operates medical facilities that provide services to nearly 9 million veterans nationwide. While the VHA is responsible for ensuring that physicians at its facilities are properly credentialed, the VHA affords broad discretion to each facility director in hiring and credentialing.¹¹

⁴ Section 121.091(4)(a)2., F.S.

⁵ Section 121.091(4)(c)1., F.S.

⁶ *Id.*

⁷ Section 121.091(4)(c)2., F.S.

⁸ Section 121.091(4)(c)3., F.S.

⁹ Section 121.091(4)(h), F.S.

¹⁰ United States Government Accountability Office, *Greater Focus on Credentialing Needed to Prevent Disqualified Providers from Delivering Patient Care*, pg. 5 (Feb. 2019); available at <https://www.gao.gov/assets/700/697173.pdf>.

¹¹ *Id.* at 7-8.

A VHA physician must be licensed for unrestricted practice in any state to practice with the agency.¹² The state license must be full, active, current, and unrestricted. A physician who has had his or her license revoked for misconduct, incompetence, or substandard care is not eligible for VHA work unless the license is fully restored by the state licensing board. Physicians must also provide the VHA with employment history, pre-employment references, and details of past involvement with malpractice allegations. Prior to offering a position to a physician, the VHA must consult the National Practitioner Data Bank, which provides a background check for each new hire.¹³

III. Effect of Proposed Changes:

This bill provides a veteran with another option in establishing a proof of disability when he or she seeks a disability retirement benefit under the Florida Retirement System (FRS). Current law requires the FRS member, in establishing a proof of disability, to submit a certification of the members' total and permanent disability from two licensed physicians of the state, or of the state in which the member works full time. Pursuant to the bill, an FRS member who is receiving care at a federal Veterans Health Administration facility may alternatively offer two of that facility's physicians' certifications as proof of the member's total and permanent disability, regardless of where the physician is licensed.

The bill takes effect July 1, 2020.

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 reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹² Department of Veterans Affairs, Veterans Health Administration, *VHA Handbook, Credentialing and Privileging*, Handbook No. 1100.19, Pg. 14 (Oct. 15, 2012) ; available at <https://www.va.gov/vhapublications/publications.cfm?pub=2> (last visited Jan. 14, 2020).

¹³ *Id.* at 15-24.

E. Other Constitutional Issues:

Article X, Section 14 of the State Constitution requires that any governmental unit increasing Florida Retirement System benefits must concurrently provide for the funding of the increase on a sound actuarial basis. Because this bill does not increase benefits, no actuarial study is required, and no additional funding is necessary.¹⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A veteran who is an FRS member seeking a proof of disability would not have to seek out and submit the certification of disability from two licensed physicians in-state if he or she is receiving treatment from a federal Veterans Health Administration (VHA) facility outside the state. Alternatively, the member may receive certification from physicians treating the member at the VHA facility. Therefore, this bill would potentially save the veteran time and money, and the veteran may receive a disability retirement benefit sooner.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.091 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.

¹⁴ Department of Management Services, *2020 Agency Legislative Bill Analysis* (on file with the Senate Committee on Military and Veterans Affairs and Space).

B. Amendments:

None.

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

By Senator Gainer

2-01359-20

2020936__

1 A bill to be entitled
 2 An act relating to disability retirement benefits;
 3 amending s. 121.091, F.S.; allowing members receiving
 4 care at federal Veterans Health Administration
 5 facilities to use certification by a specified number
 6 of physicians working at such facilities as proof of
 7 total and permanent disability for purposes of
 8 establishing eligibility for benefits; providing an
 9 effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraph (c) of subsection (4) of section
 14 121.091, Florida Statutes, is amended to read:
 15 121.091 Benefits payable under the system.—Benefits may not
 16 be paid under this section unless the member has terminated
 17 employment as provided in s. 121.021(39)(a) or begun
 18 participation in the Deferred Retirement Option Program as
 19 provided in subsection (13), and a proper application has been
 20 filed in the manner prescribed by the department. The department
 21 may cancel an application for retirement benefits when the
 22 member or beneficiary fails to timely provide the information
 23 and documents required by this chapter and the department's
 24 rules. The department shall adopt rules establishing procedures
 25 for application for retirement benefits and for the cancellation
 26 of such application when the required information or documents
 27 are not received.
 28 (4) DISABILITY RETIREMENT BENEFIT.—
 29 (c) *Proof of disability.*—The administrator, before

Page 1 of 3

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2-01359-20

2020936__

30 approving payment of any disability retirement benefit, shall
 31 require proof that the member is totally and permanently
 32 disabled as provided herein:
 33 1. Such proof shall include the certification of the
 34 member's total and permanent disability by two licensed
 35 physicians of the state and such other evidence of disability as
 36 the administrator may require, including reports from vocational
 37 rehabilitation, evaluation, or testing specialists who have
 38 evaluated the applicant for employment. A member whose position
 39 with an employer requires that the member work full time outside
 40 this state in the United States may include certification by two
 41 licensed physicians of the state where the member works. A
 42 member who is receiving care at a federal Veterans Health
 43 Administration facility may include certification by two
 44 licensed physicians working at the facility.
 45 2. It must be documented that:
 46 a. The member's medical condition occurred or became
 47 symptomatic during the time the member was employed in an
 48 employee/employer relationship with his or her employer;
 49 b. The member was totally and permanently disabled at the
 50 time he or she terminated covered employment; and
 51 c. The member has not been employed with any other employer
 52 after such termination.
 53 3. If the application is for in-line-of-duty disability, in
 54 addition to the requirements of subparagraph 2., it must be
 55 documented by competent medical evidence that the disability was
 56 caused by a job-related illness or accident which occurred while
 57 the member was in an employee/employer relationship with his or
 58 her employer.

Page 2 of 3

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2-01359-20

2020936__

59 4. The unavailability of an employment position that the
60 member is physically and mentally capable of performing will not
61 be considered as proof of total and permanent disability.

62 Section 2. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2 12 20

Meeting Date

936

Bill Number (if applicable)

Topic DISABILITY RETIREMENT BENEFITS

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title president, Tallahassee Veterans Legal Collaborative

Address PO Box 1201

Phone 850/ 570-1967

Street

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TALLAHASSEE VETERANS LEGAL COLLABORATIVE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-20

Meeting Date

936

Bill Number (if applicable)

Topic DISABILITY RETIREMENT BENEFITS

Amendment Barcode (if applicable)

Name JOHN HAYNES

Job Title CHAIRMAN EMERITUS

Address 424 HIAWATHA FARMS RD.
Street

Phone 850-443-3451

MONTICELLO FL 32344
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA VETERANS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/12/20

Meeting Date

936

Bill Number (if applicable)

Topic Veterans

Amendment Barcode (if applicable)

Name Bill Helmick

Job Title _____

Address 120 S. Monroe St

Phone _____

Street

Tallahassee FL 32301

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing VFW / American Legion

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

02/12/2020

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

936

Meeting Date

Bill Number (if applicable)

Topic Disability Retirement Benefits

Amendment Barcode (if applicable)

Name Cody Farrill

Job Title Deputy Chief of Staff

Address 4050 Esplanade Way

Phone 8509226535

Street

Tallahassee

Florida

32311

City

State

Zip

Email Cody.Farrill@dms.myflorida.com

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

Representing Florida Department of Management Services

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 1292

INTRODUCER: Senator Perry

SUBJECT: Public Records/Nonjudicial Arrest Record of a Minor

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Favorable
2. Hackett	McVane	GO	Favorable
3. Stokes	Phelps	RC	Favorable

I. Summary:

SB 1292 is the public records exemption linked to SB 700. This bill provides that the nonjudicial records of arrest of minors who have successfully completed a diversion program and are eligible for expunction are made confidential and exempt from public disclosure, except that the record must be made available only to criminal justice agencies for specified purposes. SB 700 amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense. Additionally, SB 700 amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense to lawfully deny or fail to acknowledge his or her participation in the program.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect on the same date as SB 700 or similar legislation takes effect. As amended, CS/SB 700 is effective when this bill takes effect.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ 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.¹⁹

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.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides 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.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Juvenile Diversion Program Expunction

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed²⁷ or expunged.²⁸ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody of the record.²⁹ The following are authorized expungement processes for the criminal history record of a juvenile:

- Juvenile diversion;³⁰
- Automatic juvenile;³¹ and
- Early juvenile.³²

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. 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?

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

²⁸ Section 943.053(3)(b), F.S.

²⁹ Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

³⁰ Section 943.0582, F.S.

³¹ Section 943.0515, F.S.

³² Section 943.0515(1)(b)2., F.S.

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.³³

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer that confronted the juvenile at the time of the incident or the state attorney that has been referred the case. While participation in a diversion program may be restricted to misdemeanor offenses, there are some programs that enable a juvenile who has committed a felony to participate. In FY 2018-19, there were 4,965 juveniles who were referred to post arrest diversion programs for felony offenses.³⁴

After completing an eligible diversion program, a juvenile seeking to have his or her nonjudicial arrest record expunged must:

- Submit an application for diversion expunction to the FDLE.
- Submit, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that:
 - He or she has completed the diversion program;
 - The arrest was for a misdemeanor; and
 - He or she has not otherwise been charged by the state attorney with or have been found to have committed, any criminal offense or comparable ordinance violation.
- Have not, before the application for expunction, been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.³⁵

If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.³⁶

A criminal history record that is expunged under this section is only available to criminal justice agencies for the purpose of determining eligibility for diversion programs, a criminal investigation, or making a prosecutorial decision. Records that are eligible for expunction under this section must be sealed.³⁷ A juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and the expunction of the nonjudicial arrest record, unless the inquiry is made by a criminal justice agency³⁸ for one of the purposes stated above.³⁹

³³ Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last accessed January 9, 2020).

³⁴ Florida Department of Juvenile Justice, *Delinquency Profile 2018, Statewide Diversion – Felony Arrests*, (September 13, 2019), available at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last accessed January 9, 2020).

³⁵ Section 943.0582(3), F.S.

³⁶ Section 943.0582(3), F.S.

³⁷ Section 943.0582(2)(b), F.S.

³⁸ “Criminal justice agency” means: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. Section 942.045(11), F.S.

³⁹ Section 985.126(5), F.S.

A juvenile who receives an expunction under this section is not prevented from petitioning for the expunction or sealing of a later criminal history record for human trafficking victim expunction,⁴⁰ court ordered expunction,⁴¹ or court ordered sealing,⁴² if the juvenile is otherwise eligible for relief under those sections.⁴³

III. Effect of Proposed Changes:

SB 1292 is the public records exemption linked to SB 700. This bill provides that the non-judicial records of arrest of minors who have successfully completed a diversion program and are eligible for expunction are made confidential and exempt from public disclosure, except that the record must be made available only to criminal justice agencies for specified purposes.⁴⁴

SB 700 amends s. 943.0582, F.S., to permit juvenile diversion expunction for any offense, including *felony offenses*. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, this bill amends s. 985.126, F.S., to permit a juvenile who completes a diversion program for any offense, including a *felony or subsequent offense*, to lawfully deny or fail to acknowledge his or her participation in the program. This expands the current law, which only permits a juvenile who completes diversion for a *first-time misdemeanor offense* to lawfully deny or fail to acknowledge his or her participation in the program.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from the repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that the nonjudicial record of the arrest of a minor who successfully completed a diversion program for minors, which is sealed or expunged pursuant to s. 943.0582, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The purpose of diversion programs is to redirect youth from the justice system with opportunities for programming, rehabilitation, and restoration. This purpose will be undermined if the nonjudicial record of arrest is not confidential and exempt. The presence of a nonjudicial record of arrest of a minor who completed a diversion program can jeopardize his or her ability to obtain education, employment, and other opportunities necessary

⁴⁰ Section 943.0583, F.S.

⁴¹ Section 943.0585, F.S.

⁴² Section 943.059, F.S.

⁴³ Section 943.0582, F.S.

⁴⁴ Section 943.0582(2)(b), F.S., provides that the criminal history record of a person whose record is expunged pursuant to this section must be made available only to criminal justice agencies for the purpose of: determining eligibility for diversion programs; a criminal investigation; or making a prosecutorial decision under s. 985.15, F.S.

to become a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was successfully diverted from further delinquency proceedings through the completion of a diversion program. For these reasons, the Legislature finds that it is a public necessity that the criminal history records of minors which have received an expunction due to the successful completion of a diversion program be confidential and exempt from public records requirements.

This bill takes effect on the same date as SB 700 or similar legislation takes effect. As filed, SB 700 is effective July 1, 2020.

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 newly created or expanded public records or public meeting exemption. The bill creates a public record exemption for sealed and expunged criminal records and therefore requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public exemption. The bill creates a public record exemption for a nonjudicial record of arrest of a juvenile who has successfully completed a diversion program that is sealed or expunged. Section 2 of the bill provides a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt limited types of criminal records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

Indeterminate. The department will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

This bill takes effect on the same date as SB 700 or similar legislation takes effect. As amended, however, CS/SB 700 is effective when this bill takes effect. One of the two paired bills should contain an actual effective date, contingent upon the other's passage.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0582 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Perry

8-01761-20

20201292__

A bill to be entitled

An act relating to public records; amending s. 943.0582, F.S.; providing an exemption from public records requirements for a nonjudicial record of the arrest of a minor who has successfully completed a diversion program; providing for retroactive application; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (5) is added to section 943.0582, Florida Statutes, to read:

943.0582 Diversion program expunction.—

(5) A nonjudicial record of the arrest of a minor who has successfully completed a diversion program which is sealed or expunged under this section and which is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the record may be made available to criminal justice agencies only for the purposes specified in subparagraph (2)(b)1. The exemption under this subsection applies to records held by the department before, on, or after July 1, 2020. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Page 1 of 2

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

8-01761-20

20201292__

Section 2. The Legislature finds that it is a public necessity that the nonjudicial record of the arrest of a minor who successfully completed a diversion program for minors, which is sealed or expunged pursuant to s. 943.0582, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The purpose of diversion programs is to redirect youth from the justice system with opportunities for programming, rehabilitation, and restoration. This purpose will be undermined if the nonjudicial record of arrest is not confidential and exempt. The presence of a nonjudicial record of arrest of a minor who completed a diversion program can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to become a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was successfully diverted from further delinquency proceedings through the completion of a diversion program. For these reasons, the Legislature finds that it is a public necessity that the criminal history records of minors which have received an expunction due to the successful completion of a diversion program be confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that SB 700 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 5, 2020

I respectfully request that **Senate Bill #1292**, relating to Public Records/Nonjudicial Arrest Record of a Minor, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

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)

2/12/20*Meeting Date*SB 1292*Bill Number (if applicable)*Topic Public Records/ Non Judicial Arrest Record of a Minor*Amendment Barcode (if applicable)*Name Kristina WigginsJob Title Executive DirectorAddress 103 North Gadsden StreetPhone 850-488-6850*Street*TallahasseeFL32301*City**State**Zip*Email kwiggins@flpda.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Public Defender AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-2020

Meeting Date

1292

Bill Number (if applicable)

Topic Juvenile Records

Amendment Barcode (if applicable)

Name DAVIN STEWARD

Job Title _____

Address 2130 Blossom Lane

Phone 407-645-0273

Winter Park, FL 32789
City State Zip

Email stu2130@aol.com

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.

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 7036

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Criminal Intelligence Information/Criminal Investigative Information

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stokes	Jones		CJ Submitted as Committee Bill
1.	Hackett	McVane	GO	Favorable
2.	Stokes	Phelps	RC	Favorable

I. Summary:

SB 7036 amends ss. 943.0583 and 119.071, F.S., to save from repeal the current exemptions from public records disclosure for certain criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking. This information will continue to be confidential and exempt.

The original public necessity statement for the bill provides that the identity of victims of human trafficking is of a sensitive personal nature. Without this exemption, the release of identifying information may cause further trauma or cause unwarranted damage to the good name or reputation of the victim. Furthermore, victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crime. Without the public records exemption these victims face barriers to employment and other life opportunities.

Sections 943.0583 and 119.071(2)(h), F.S., relating to information regarding victims of human trafficking, are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2020, unless reviewed and saved from the repeal through reenactment by the Legislature. This bill removes the scheduled repeal to continue the confidential and exempt status of this information.

This bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests relating to information regarding victims of human trafficking should be offset by authorized fees. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ 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.¹⁹

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.²⁰

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ 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.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking, ranging from young children to adults, are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There are an estimated 40.3 victims of human trafficking in the world. Of that number, an estimated 25 percent are children. Based on data in 2017, it was estimated that 1 out of 7 endangered runaways reported to the National Center for Missing and Exploited Children were likely child sex trafficking victims.²⁷

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Polaris, *Human Trafficking: The Facts*, available at <https://polarisproject.org/human-trafficking/facts> (last visited December 19, 2019).

“Human trafficking” is defined in s. 787.06(2)(d), F.S., as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person. “A victim of human trafficking” is a person subjected to coercion,²⁸ for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.²⁹

Public Records Exemption for Criminal Intelligence Information or Criminal Investigative Information Relating to Human Trafficking

Section 943.0583, F.S., allows a victim of human trafficking to petition the court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme.³⁰ The standard of proof in a petition for expungement is a preponderance of the evidence. In 2015, the Legislature made any information that reveals, or may reveal, the identity of a victim of human trafficking whose criminal history record has been expunged, confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.³¹

The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.³² The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

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

Section 943.0583(11), F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

²⁸ Section 787.06(2)(a), F.S., defines “coercion” as using or threatening to use physical force against any person; restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; causing or threatening to cause financial harm to any person; enticing or luring any person by fraud or deceit; or providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

²⁹ Section 943.0583(1)(c), F.S.

³⁰ Section 943.0583(3), F.S., does not allow the following offenses to be expunged: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

³¹ Section 943.0583(11), F.S.; Chapter 2015-146, L.O.F.

³² Section 943.045(16), F.S.

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

[I]t is a public necessity that information in the investigative or intelligence records related to a criminal history record ordered expunged under s. 943.0583, Florida Statutes, which would or could reasonably be expected to reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under s. 943.0583, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been charged with crimes allegedly committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal charges remain on record and accessible to potential employers and others. Therefore, it is necessary that these records be made confidential and exempt in order for human trafficking victims to have the chance to rebuild their lives and reenter society.³³

Staff Surveys Regarding Exemptions Under Review

During the 2019 interim, Senate and House professional staff contacted the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), county sheriff's departments, and local police departments. An overwhelming majority of the responding agencies requested to preserve the public records exemption.

Public Records Exemption for Criminal Intelligence Information or Criminal Investigative Information that Reveals the Identity of a Child Abuse Victim or a Minor who is a Victim of Human Trafficking

Section 119.071, F.S., provides general exemptions from inspection or copying of public records. The Legislature has provided that the following information pertaining to agency investigations is exempt from public record:

- Any information that reveals the identity of the victim of the crime of child abuse, or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking; any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense of human trafficking; any photograph, videotape, or image of any part of the body of the victim of a sexual offense, including a sexual offense of human trafficking.³⁴

Section 119.071(2)(h), F.S., relating to information regarding victims of human trafficking, is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from the repeal through reenactment by the Legislature.

³³ Chapter 2015-146, L.O.F.

³⁴ Section 119.071(2)(h), F.S.

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

The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain criminal intelligence information or criminal investigative information that reveals the identity of a victim of the crime of human trafficking of a minor for labor or any victim of human trafficking for commercial sexual activity. The Legislature finds that it is important to strengthen the protections afforded victims of human trafficking for labor who are minors and victims of human trafficking for commercial sexual activity, regardless of age, in order to ensure their privacy and to prevent their re victimization by making such information confidential and exempt. The identity of these victims is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputation of the victims. Protecting the release of identifying information of such victims protects them from further embarrassment, harassment, or injury.³⁵

Staff Survey Regarding Exemptions Under Review

During the 2019 interim, Senate and House professional staff contacted the FDLE, the DJJ, county sheriff's departments and local police departments. An overwhelming majority of the responding agencies requested to preserve the public records exemption.

Twenty-six of the agencies that provided a response to the survey regarding s. 119.071(2)(h), F.S., were in favor of saving the exemption. Only three of those responding agencies suggested changes, and no agencies were in favor of repeal. Twenty-four of the agencies that provided a response to the survey regarding s. 943.0583(11), F.S., were in favor of saving the exemption. Only one of the responding agencies suggested changes, and one agency suggested repeal.

III. Effect of Proposed Changes:

The bill amends ss. 943.0583 and 119.071, F.S., to save from repeal the current exemption from public records disclosure for certain criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking.

This bill deletes the scheduled repeal of the current public records exemption for criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking. This information will continue to be confidential and exempt from public disclosure after October 1, 2020.

This bill takes effect on October 1, 2020.

³⁵ Chapter 2015-146, L.O.F.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

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

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. The original public necessity statement for the bill provides that the identity of victims of human trafficking is of a sensitive personal nature. Without this exemption, the release of identifying information may cause further trauma or cause unwarranted damage to the good name or reputation of the victim. Furthermore, victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crime. Without the public records exemption these victims face barriers to employment and other life opportunities. The justification upon which the public records exemption is based remains valid. Therefore, for these reasons, the bill reenacts the public records exemption.

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 the identity of victims of human trafficking. This bill exempts only certain criminal intelligence information and criminal investigative information that reveals the identity of victims of human trafficking from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Private Sector Impact:

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

C. Government Sector Impact:

This bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests relating to information regarding victims of human trafficking should be offset by authorized fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the sections 119.071 and 943.0583 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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 Criminal Justice

591-02257-20

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 119.071 and 943.0583, F.S.; abrogating the scheduled repeals of provisions relating to specified criminal intelligence information or criminal investigative information; providing an effective date.

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

Section 1. Paragraph (h) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

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

(2) AGENCY INVESTIGATIONS.—

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

a. Any information that reveals the identity of the victim of the crime of child abuse as defined by chapter 827 or that reveals the identity of a person under the age of 18 who is the victim of the crime of human trafficking proscribed in s. 787.06(3)(a).

b. Any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847.

c. A photograph, videotape, or image of any part of the

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body of the victim of a sexual offense prohibited under s. 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796, chapter 800, s. 810.145, chapter 827, or chapter 847, regardless of whether the photograph, videotape, or image identifies the victim.

2. Criminal investigative information and criminal intelligence information made confidential and exempt under this paragraph may be disclosed by a law enforcement agency:

a. In the furtherance of its official duties and responsibilities.

b. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that such agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim and not include the sexual nature of the offense committed against the person.

c. To another governmental agency in the furtherance of its official duties and responsibilities.

3. This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

~~4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (11) of section 943.0583, Florida Statutes, is amended to read:

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943.0583 Human trafficking victim expunction.-

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

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

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

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

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

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

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

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

~~(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand~~

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

Section 3. This act shall take effect October 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill #7036**, relating to OGSR/Criminal Intelligence Information, be placed on the:

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



Senator Keith Perry
Florida Senate, District 8

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 7038

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Information Held by an Investigative Agency

DATE: February 10, 2020

REVISED: _____

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

I. Summary:

SB 7038 amends s. 895.06(7), F.S., to save from repeal a public records exemption relating to investigative information. The exemption makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of offenses concerning racketeering and illegal debts.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal. The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill removes this repeal language.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests for the investigative information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So.3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ 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.¹⁹

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.²⁰

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ 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.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Florida RICO Act

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S. “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.²⁷

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s 1961(1).

Section 895.03, F.S., provides that it is unlawful for any person:

- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

Section 895.04, F.S., punishes as a first degree felony²⁸:

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²⁹ to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;³⁰
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.³¹

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.³²

²⁸ A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁹ Section 895.02(2), F.S., defines an “unlawful debt” as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

³⁰ Section 895.02(3), F.S., defines “enterprise” as any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

³¹ Section 895.03(4), F.S.

³² Section 895.05(2), F.S.

RICO Investigative Subpoenas

Under s. 895.06, F.S., an investigative agency³³ may, during the course of an investigation into civil violations of the Florida RICO Act, subpoena witnesses and material if the agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of the act.³⁴ “The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred.”³⁵

A subpoena is confidential for 120 days after the date of its issuance, and the subpoenaed person or entity may not disclose the existence of the subpoena to any person other than the attorney for the subpoenaed person or entity during the 120-day period.³⁶

The investigative agency may apply ex parte to the circuit court for the circuit in which a subpoenaed person or entity resides, is found, or transacts business for an order directing that the subpoenaed person or entity not disclose the existence of the subpoena to any other person or entity except the attorney for the subpoenaed person or entity for an additional period of time for good cause shown by the investigative agency.³⁷

The investigative agency may seek a court order for noncompliance with the subpoena and may stipulate to protective orders with respect to documents and information submitted in response to a subpoena.³⁸ A person’s failure to comply with a court order issued pursuant to s. 895.06, F.S., may be punished as contempt of court.³⁹

Public Records Exemption for Florida RICO Investigative Information

Section 895.06(7), F.S., which was created in 2015,⁴⁰ makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., which specifies prohibited racketeering activity.⁴¹

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.⁴² The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.⁴³ An investigation

³³ Section 895.02(7), F.S., defines “investigative agency” as the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

³⁴ Section 895.06(1), F.S.

³⁵ *Check ‘N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001), *review denied* 817 So.2d 845 (Fla. 2002).

³⁶ Section 895.06(2), F.S.

³⁷ *Id.*

³⁸ Section 895.06(4) and (6), F.S.

³⁹ Section 895.06(5), F.S.

⁴⁰ Chapter 2015-99, L.O.F.

⁴¹ *See* s. 895.06(7)(a), F.S.

⁴² Section 895.06(7)(b), F.S.

⁴³ Section 895.06(7)(c), F.S.

is considered complete once the investigative agency either files an action or closes its investigation without filing an action.⁴⁴

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal by the Legislature.⁴⁵

The statement of public necessity for the exemption provides the following reasons for creating the exemption:

- Because a Florida RICO Act investigation conducted by an investigative agency may lead to the filing of a civil action, the premature release of the information held by such investigative agency could frustrate or thwart the investigation and impair the ability of the investigative agency to effectively and efficiently administer its duties under the act;
- The exemption protects the reputation of the potential defendant in the event the investigation is closed without the filing of a civil action; and
- Without the exemption, a potential defendant under the Florida RICO Act may learn of the investigation and dissipate his or her assets and thwart any future enforcement action under the act.⁴⁶

Legislative Survey Regarding the Public Records Exemption for Florida RICO Investigation Information

Staff received responses from the Department of Legal Affairs (DLA) and the state attorney offices in the 15th and 20th Judicial Circuits to a joint survey of the House Oversight, Transparency and Public Management Subcommittee and the Senate Committee on Criminal Justice regarding the public records exemption for Florida RICO investigation information. Both offices recommended retaining the exemption without changes.⁴⁷

Between July 1, 2015, and August 1, 2019, the DLA initiated five RICO investigations, of which three have been completed. During the same time period, the state attorney office in the 15th Judicial Circuit initiated and completed a minimum of 16 RICO investigations, and the State Attorney's Office for the 20th Judicial Circuit initiated and completed approximately five RICO investigations.⁴⁸

III. Effect of Proposed Changes:

The bill saves from repeal and retains a public records exemption in s. 895.06(7), F.S., relating to investigative information. Section 895.06(7), F.S., makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., which specifies prohibited racketeering activity.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal. The

⁴⁴ Section 895.06(7)(d), F.S.

⁴⁵ Section 895.06(7)(e), F.S.

⁴⁶ Chapter 2015-99, L.O.F.

⁴⁷ The survey responses are on file with Senate Committee on Criminal Justice.

⁴⁸ *Id.*

information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill removes the scheduled repeal of the exemption.

The bill takes effect on October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

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. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

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 records exemption appears to be a reasonable measure to prevent premature release of RICO investigative information that could frustrate or thwart the investigation and thwart future RICO enforcement actions. Further, the RICO investigative information only remains confidential and exempt until all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

Costs incurred by an agency in responding to public records requests for the investigative information should be offset by authorized fees.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 895.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

⁴⁹ Section 119.07(2) and (4), 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 Committee on Criminal Justice

591-02256-20

20207038__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 895.06, F.S., relating to an exemption from public records requirements for information held by an investigative agency pursuant to an investigation relating to an activity prohibited under the Florida RICO Act; 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 (7) of section 895.06, Florida Statutes, is amended to read:

895.06 Civil investigative subpoenas; public records exemption.—

(7) (a) Information held by an investigative agency pursuant to an investigation of a violation of s. 895.03 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Information made confidential and exempt under paragraph (a) may be disclosed by the investigative agency to:

1. A government entity in the performance of its official duties.

2. A court or tribunal.

(c) Information made confidential and exempt under paragraph (a) is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

(d) For purposes of this subsection, an investigation is

Page 1 of 2

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

591-02256-20

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considered complete once the investigative agency either files an action or closes its investigation without filing an action.

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

Section 2. This act shall take effect October 1, 2020.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill #7038**, relating to OGSR/Information Held by an Investigative Agency, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is fluid and cursive, with a long horizontal stroke at the end.

Senator Keith Perry
Florida Senate, District 8

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 7010

INTRODUCER: Governmental Oversight and Accountability Committee and Military and Veterans Affairs and Space Committee

SUBJECT: OGSR/Service members and the Spouses and Dependents of Service members

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Brown</u>	<u>Caldwell</u>		MS Submitted as Comm. Bill/Fav
1.	<u>Hackett</u>	<u>McVane</u>	<u>GO</u>	Fav/CS
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7010 amends s. 119.0171(5)(k), Florida Statutes, to save from repeal the current exemption for contact information of a servicemember and his or her family that is held by an agency. Specifically, the exemption protects from public inspection and copying identification and location information of current or former active duty servicemembers who served after September 11, 2001, for the United States Armed Forces, a reserve component of the Armed Forces, or the National Guard. The exemption is scheduled for repeal October 2, 2020.

Protected information consists of the:

- Home address, telephone number, and date of birth of a servicemember;
- Home address, telephone number, date of birth, and place of employment of a spouse or dependent; and
- Name and location of a school attended by a spouse or dependent or a day care facility attended by a dependent.

The bill also removes the requirement that the servicemember include a statement that reasonable efforts have been made to otherwise protect the information from public access in their written request to an agency to have qualified information exempted, which expands the exemption. The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

Because the bill expands the public records exemption, a two-thirds vote by each house of the Legislature is required for its passage.

This bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records – Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ 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.¹⁹

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ 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.

¹⁹ Section 119.15(3), F.S.

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.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Public Records Exemption for Contact Information of Servicemembers

On November 30, 2014, the Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin, *Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Joint Bulletin).²⁷ In

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS), *Joint Intelligence Bulletin, Islamic State of Iraq and the Levant and Its Supporters Encouraging Attacks Against Military Personnel* (Nov. 30, 2014)(on file with the Senate Committee on Military and Veterans Affairs and Space).

it, the FBI and the DHS warn of potential attacks by the Islamic State of Iraq and the Levant (ISIL) on current and former servicemembers.²⁸ Specifically the report states,

The FBI recently received reporting indicating individuals located overseas are spotting and assessing like-minded individuals in the United States who are willing and capable of conducting attacks against current and former US-based members of the United States military.²⁹

Based on this, the Joint Bulletin urged servicemembers to be mindful of their content and presence on online social media accounts.³⁰

In 2015, the Legislature enacted a public records exemption for the contact and location information of a servicemember and his or her family.³¹ Specifically, the public records exemption protects from disclosure the identification and location information of current or former active duty servicemembers who served after September 11, 2001 of:

- The United States Armed Forces;
- A reserve component of the Armed Forces; or
- The National Guard.

The public records exemption protects from disclosure the identification and location information of the servicemember, his or her spouse, and his or her dependents. The information protected by the exemption consists of the:

- Home address, telephone number (including the telephone number of a personal communications device), and date of birth of a servicemember;
- Home address, telephone number (including the telephone number of a personal communications device), date of birth, and place of employment of the spouse or dependent of a servicemember; and
- Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

The servicemember must request the exemption in writing and include a statement that the servicemember has made reasonable efforts to protect the information from public access through other means. The term “reasonable efforts” is not defined in law.

The original public necessity statement articulates as justification for the exemption that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized. Specifically, the public necessity statement provided:

Servicemembers perform among the most critical, most effective, and most dangerous operations in defense of our nation’s freedom. Terrorist groups have threatened servicemembers and their families and have encouraged terrorist sympathizers to harm servicemembers and their families within the United

²⁸ *Id.*

²⁹ *Id.* at p. 2.

³⁰ *Id.* at p. 2.

³¹ Chapter 2015-86, L.O.F.

States. One terrorist group has allegedly gathered the photographs and home addresses of servicemembers from public sources to create and publish a list of servicemembers in order to make such persons vulnerable to an act of terrorism.³²

The public records exemption is scheduled to repeal on October 2, 2020.

Open Government Sunset Review

Survey on Public Records Exemption

During the interim of 2019, Senate and House staff drafted a survey to query various entities on the public records exemption.³³ Staff sent the survey to 23 state agencies, and the associations for the supervisors of elections and the property appraisers for distribution. Staff received 80 responses, or 51 percent:

- State agencies - Of 22 surveyed, 18 responded, for an 82 percent response rate³⁴;
- Supervisors of Elections - Of 67 surveyed, 21 responded, for a 31 percent response rate; and
- Property Appraisers. - Of 67 surveyed, 41 responded, for a 61 percent response rate.

Requests for Public Record Exemption

When asked about the number of requests made since the exemption took effect, the year 2015, entities receiving the top requests are as follows:

- Agencies - The Department of Highway Safety and Motor Vehicles received 512 requests, the Fish and Wildlife Conservation Commission received 34, and the Department of Law Enforcement received 20 to date;
- Supervisors of Elections - Volusia County received 1,465 requests, Pinellas received 325, and Okaloosa received 243 requests to date;
- Property Appraisers - Brevard County received 1,000 requests; Miami-Dade received 95, and Pinellas County received 76 requests to date.³⁵

Many entities responded that they have received zero requests for this exemption³⁶, and a few did not answer whether they had received requests.

³² *Id.*

³³ *Open Government Sunset Review Questionnaire, Identification and Location Information of Servicemembers* (July 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

³⁴ Surveys were sent to the Departments of Agriculture and Consumer Services, Business and Professional Regulation, Children and Families, Corrections, Economic Opportunity, Education, Elder Affairs, Environmental Protection, Financial Services, Health, Highway Safety and Motor Vehicles, Juvenile Justice, Law Enforcement, Legal Affairs, Lottery, Management Services, Military Affairs, Revenue, State, Transportation, Veterans' Affairs, and the Fish and Wildlife Conservation Commission.

³⁵ A number of agencies and counties report that they maintain data on requests for public records exemptions in the aggregate, so that they have no way of discerning how many requests are made for this specific public records exemption.

³⁶ Entities reporting that they have not received any requests for this public records exemption are: Agencies - the Departments of Corrections, Economic Opportunity, Environmental Protection, Health, Juvenile Justice, and Legal Affairs; Property Appraisers - Alachua, Baker, Bradford, Charlotte, Columbia, Desoto, Dixie, Gilchrist, Gulf, Hardee, Hendry, Indian River, Liberty, Madison, Okeechobee, Putnam, Taylor, Union, and Wakulla counties; and Supervisors of Election - Citrus, Collier, Holmes, and Union counties.

Process for Request of Public Record Exemption

Respondents were asked if the agency has a process in place for a servicemember to request a public records exemption. Entities responded that some provide a form, online, in person or both while others handle it case by case. Several agencies include a public records exemption request form in the packet provided to new employees. Forms typically provide a checkoff list of available exemptions.³⁷ A number of counties specifically identify form DOS-119, provided by the Florida Department of State, as the Public Records Exemption Request form in use by their office.³⁸ The form requires servicemembers to have served after September 11, 2001, and for the applicant to certify, in signing the form that reasonable efforts have been made to protect the information from public disclosure.³⁹

Complaints About Public Records Exemption

When asked whether the agency has received complaints about the exemption, nine entities responded that they had received at least one. Most complaints were made to the Property Appraiser and may indicate the unique nature of the information maintained by their office and accessed for various purposes. As noted by the St. Johns County Property Appraiser:

We occasionally hear verbal complaints, because once someone has made their information confidential within our office, we can no longer discuss any sort of property information with them electronically or over the phone. Further, other organizations or departments (such as the building department) cannot look up the tax payer's information electronically. So, if the taxpayer is trying to pull a permit, or refinance their house, they physically have to come in with their driver's license or ID to receive such information when usually those organizations can simply pull it from our website.⁴⁰

Recommendation on Exemption

When asked whether an entity would recommend continuing the exemption, of total respondents, 37 recommended reenacting the exemption as is. In contrast, 25 respondents recommended reenactment with changes. Of these, 10 respondents recommended deleting the reasonable efforts requirement or defining the term.⁴¹ Twelve other respondents specifically requested that the Legislature lift the restriction on the post-September 11, 2001 date.⁴² Remaining respondents either did not answer the question or specified that they wished to remain neutral.

³⁷ These are the Departments of Education, Environmental Protection, Financial Services, Health, Legal Affairs, Management Services, Military Affairs, and Revenue.

³⁸ These are Bay, Collier, Flagler, Levy, Monroe, Pinellas, Putnam, Volusia, and Walton counties.

³⁹ Florida Department of State, *Public Records Exemption Request, Form DOS-119; Rev. 06/2015*; available at: <https://dos.myflorida.com/media/695507/public-records-exemption-formdos-119.pdf>.

⁴⁰ St. Johns County Property Appraiser, *Survey Response* (July 18, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴¹ These are: the Florida Department of Law Enforcement; the Property Appraisers of Charlotte, Duval, Hernando, Miami-Dade, Palm Beach, St. Lucie, and Wakulla counties; and the Supervisors of Election of Collier and Union counties.

⁴² These are: the Departments of Elder Affairs, Highway Safety and Motor Vehicles, Law Enforcement, and Military Affairs; the Property Appraisers of Brevard and Polk Counties; and the Supervisors of Election of Hernando, Levy, Okaloosa, Pinellas, St. Johns, and Volusia counties.

Only the Alachua County Property Appraiser, St. Johns County Property Appraiser, and Wakulla County Property Appraiser recommended repeal of the exemption.⁴³

Current Threat to Servicemembers

The FBI provided a letter⁴⁴ to the Florida Senate updating threats to servicemembers since its issuance of the Joint Bulletin of 2014. In the letter, the FBI submitted that on September 23, 2016, Ardit Ferizi was sentenced to 20 years imprisonment for providing material support to the Islamic State of Iraq and the Levant (ISIL), and accessing databases containing personal identifying information of tens of thousands of people, including military servicemembers and other governmental personnel. Mr. Ferizi subsequently culled the personal identifying information of servicemembers and other government personnel, which totaled about 1,300 individuals, and provided it to an ISIL member, who on August 11, 2015, posted by tweet a hit list that contained the personal identifying information of the individuals.

In February 2019, the FBI Jacksonville Field Office identified 12 new web pages that were hosting the ISIL hit list with all or some of the personal identifying information of the 1,300 individuals. One of the pages states:

O Crusaders, as you continue your ag[g]ression towards the Islamic State and your bombing campaign against the muslims, know that we are in your emails and computer systems, watching and recording your every move [W]e are extracting confidential data and passing on your personal information to the soldiers ... who ... will strike at your necks in your own lands!⁴⁵

Requirement of Reasonable Efforts

As noted above, what is meant by “a reasonable effort” to protect information from public access is not defined in law. Prior to 2017, various other public record exemptions required the requesting applicant to include a written statement that a reasonable effort had been made to protect the information from other sources.

In 2017, however, the Legislature deleted this requirement from the following exemptions afforded to:

- A general magistrate;
- A special magistrate;
- A judge of compensation claims;
- An administrative law judge of the Division of Administrative hearings;
- A child support enforcement hearing officer;
- A current or former guardian ad litem;
- A current or former investigator or inspector of the Department of Business and Professional Regulation;

⁴³ “The concept, first enacted for law enforcement decades ago, has been eclipsed by the continued advancement of available technology.” Alachua County Property Appraiser, *Survey Response* (July 25, 2019) (on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴⁴ FBI, *Re: Update on Department of Justice Press Release 16-1085 regarding Ardit Ferizi* (Oct. 11, 2019)(on file with the Senate Committee on Military and Veterans Affairs and Space).

⁴⁵ *Id.*

- A county tax collector;
- A current or former employee of the Department of Health;
- A current or former impaired practitioner consultant retained by an agency or whose duties result in a determination of a person's skill and safety to practice a licensed profession;
- A current or former emergency medical technician or paramedic; or
- A current or former employee of an inspector general or internal audit department.⁴⁶

In its public necessity statement, the Legislature notes:

Requiring these personnel prove that they made reasonable efforts to protect their identification and location information is an added burden on these individuals as well as on agencies The extent to which these individuals must protect their information from public accessibility is unclear. It is also unclear how much proof an agency needs The burden on an agency . . . adversely impacts the effective and efficient administration of government in establishing who is eligible for an exemption. Relatively few public record exemptions require an individual to prove that he or she made reasonable efforts to protect his or her information Such inconsistencies among public record exemptions reduce accuracy and efficiency when redacting exempt information It is not in the public interest for the public to receive inaccurately redacted information.⁴⁷

Currently, in addition to the servicemember exemption the only remaining requirement of reasonable efforts applies to an exemption for a current or former United States attorney, assistant United States attorney, judge of the United States Court of Appeal, United States district judge, or United States magistrate.⁴⁸

Other Exemptions

Part of the OGSR requires a review of other exemptions that may protect the same public record or meeting, and consideration of whether multiple exemptions may be merged. While it is possible that portions of information may be protected if a servicemember qualifies under another exemption, for example if the servicemember works in law enforcement ⁴⁹, s. 119.071(5)(k), F.S., uniquely protects the identifying and location information of servicemembers and their families. Additionally, no other exemption would be appropriate for merging. Therefore, the information and application of this exemption is not duplicated elsewhere in law, nor can it be merged with another exemption.

III. Effect of Proposed Changes:

The public necessity statement for the original exemption provides as justification that without the exemption the safety of servicemembers, their spouses, and their dependents is jeopardized.

⁴⁶ Chapter 2017-66, L.O.F.

⁴⁷ *Id.*

⁴⁸ Section 119.071(5)(i), F.S.

⁴⁹ Section 119.071(4)(d), F.S., provides a public records exemption for home addresses, phone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel.

Based on information received from the FBI, that concern has not lifted. Therefore, the bill reenacts the public record exemption for servicemembers and their families.

Additionally, the bill expands the exemption by removing the requirement that a servicemember provide a statement that reasonable efforts have been made to otherwise protect the information. Removing this requirement reflects concerns expressed by survey respondents in how to define a reasonable effort and is also consistent with the wholesale change that the Legislature made in 2017 in deleting the requirement of reasonable efforts from most other exemptions.

Although some survey respondents also requested that the Legislature expand the exemption to all servicemembers, the bill does not do so, as the intended target of the threat appears to continue to apply to servicemembers who served after September 11, 2001.⁵⁰

The public necessity statement provides that exempting servicemembers' identifying information is required to protect the servicemembers from targeted threats made by terrorist groups.

The bill provides for future legislative review and repeal on October 2, 2025, unless the Legislature saves the exemption from repeal before that date.

Because the bill expands the public records exemption, a two-thirds vote of each house of the Legislature is needed for it to pass.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires 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. Because the bill expands the public records exemption to include identification and location information for certain servicemembers and their families regardless of the servicemember's efforts to protect such information, a two-thirds vote is required 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

⁵⁰ FBI, *supra* note 40.

justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption which supports the public policy of the exemption.

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 the personal identifying information of servicemembers contained in a record held by government agencies from use by terrorist groups. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

The agencies will continue to incur costs relating to the redaction of exempt records.

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 by Governmental Oversight and Accountability on January 13, 2020:

The committee substitute revises the public necessity statement to explain that the exemption is meant to thwart targeted threats on servicemembers from terrorist groups.

- B. **Amendments:**

None.

By the Committees on Governmental Oversight and Accountability;
and Military and Veterans Affairs and Space

585-02219-20

20207010c1

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides a public records exemption for the identification and location information of servicemembers and the spouses and dependents of servicemembers; expanding the exemption by removing the requirement that a servicemember submit a written statement that reasonable efforts have been made to protect the information in order to claim the exemption; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (k) of subsection (5) of section 119.071, Florida Statutes, is amended to read:

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

(5) OTHER PERSONAL INFORMATION.—

(k)1. For purposes of this paragraph, the term:

a. "Identification and location information" means the:

(I) Home address, telephone number, and date of birth of a servicemember, and the telephone number associated with a servicemember's personal communication device.

(II) Home address, telephone number, date of birth, and place of employment of the spouse or dependent of a servicemember, and the telephone number associated with such

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spouse's or dependent's personal communication device.

(III) Name and location of a school attended by the spouse of a servicemember or a school or day care facility attended by a dependent of a servicemember.

b. "Servicemember" means a current or former member of the Armed Forces of the United States, a reserve component of the Armed Forces of the United States, or the National Guard, who served after September 11, 2001.

2. Identification and location information held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a servicemember submits to an agency that has custody of the identification and location information—

~~a. a written request to exempt the identification and location information from public disclosure; and~~

~~b. A written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.~~

3. This exemption applies to identification and location information held by an agency before, on, or after the effective date of this exemption.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025 ~~2020~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to make identification and location information of current or former members of the Armed Forces of the United States, a reserve component of the Armed Forces of the United

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59 States, or the National Guard, who served after September 11,
60 2001, and their spouses and dependents, exempt from s.
61 119.07(1), Florida Statutes, and s. 24(a), Article I of the
62 State Constitution, regardless of whether such individuals made
63 reasonable efforts to protect such information from being
64 public. Servicemembers perform among the most critical, most
65 effective, and most dangerous operations in defense of our
66 nation's freedom. Terrorist groups continue to threaten
67 servicemembers and their families and encourage terrorist
68 sympathizers to harm servicemembers and their families within
69 the United States. The Legislature finds that allowing public
70 access to the identification and location information of current
71 or former servicemembers and their families jeopardizes the
72 safety of servicemembers, their spouses, and their dependents.
73 The Legislature finds that protecting the safety and security of
74 current or former members of the Armed Forces of the United
75 States, a reserve component of the Armed Forces of the United
76 States, or the National Guard, who served after September 11,
77 2001, and their spouses and dependents, outweighs any public
78 benefit that may be derived from the public disclosure of the
79 identification and location information.

80 Section 3. This act shall take effect October 1, 2020.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs and Space, *Chair*
Children, Families, and Elder Affairs
Commerce and Tourism
Environment and Natural Resources

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR TOM A. WRIGHT
14th District

January 14, 2020

The Honorable Lizbeth Benacquisto
400, Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 7010 – OGSR/Servicemembers and the Spouses and Dependents of
Servicemembers

Dear Chair Benacquisto:

Senate Bill 7010, relating to OGSR/Servicemembers and the Spouses and Dependents of
Servicemembers has been referred to the Committee on Rules. I am requesting your
consideration on placing SB 7010 on your next agenda. Should you need any additional
information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom A. Wright".

Tom A. Wright, District 14

cc: John B. Phelps, Staff Director of the Committee on Rules
Cynthia Futch, Administrative Assistant of the Committee on Rules

REPLY TO:

- ☐ 4606 Clyde Morris Blvd., Suite 2-J, Port Orange, Florida 32129 (386) 304-7630
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: 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: SJR 396

INTRODUCER: Senator Rodriguez

SUBJECT: Single-subject Limitation for Taxation and Budget Reform Commission

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	Favorable
2. Fox	Roberts	EE	Favorable
3. Stallard	Phelps	RC	Favorable

I. Summary:

SJR 396 limits any amendment to the Constitution proposed by the Taxation and Budget Reform Commission to “one subject and matter connected therewith.”

As a joint resolution, this legislation must be agreed to by three-fifths of the membership of each house of the Legislature. Then, the constitutional amendment proposed in the resolution will be placed on the 2020 General Election ballot, and will take effect if approved by at least 60 percent of the votes cast on the measure. The next Taxation and Budget Reform Commission convenes in 2027, and thus it would be the first Commission to be governed by the amendment.

II. Present Situation:

Overview

The Florida Constitution requires that a Taxation and Budget Reform Commission be established once every 20 years and that it have the authority to propose a revision of the “Constitution or any part of it dealing with taxation or the state budgetary process.” Although the Commission’s proposals are limited to this area of law, each proposal may nonetheless embrace multiple subjects within this area.

Taxation and Budget Reform Commission

Origin

In 1988, this state's voters approved a constitutional amendment that was proposed by the Legislature to create the Taxation and Budget Reform Commission.¹ The amendment specified that the Commission must convene for the first time in 2007, and once every 20 years afterward.²

Members

The Constitution requires that the Commission be comprised of 25 voting members and 4 non-voting "ex-officio" members. The 25 voting members must be appointed by the Governor (11), the Speaker of the House (7), and the Senate President (7). The 4 non-voting members must be chosen by the Speaker (2) and the Senate President (2) from the members of their respective houses; one of the two choices from each house must be from the minority party. At its initial meeting, the commissioners must elect a commissioner who is not also a legislator to serve as chair.

Task, Procedures, and Authority

The Commission is tasked with examining this state's budgetary process, revenue needs, and expenditure processes.³ Upon examining these matters, the Commission must issue a report of the results of its review, and propose any recommended statutory changes to the Legislature. The Commission may also propose "a revision of this constitution or any part of it dealing with taxation and the state budgetary process."⁴

The constitutional provision giving rise to the Commission does little to prescribe how a Commission must go about its task. It says only that the Commission must elect a chair at its initial meeting, convene for further meetings at the call of the chair, adopt rules of procedure, and "hold [an unspecified number of] public hearings, as it deems necessary to carry out its responsibilities."⁵

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 Constitution Revision Commission, a citizen initiative, a constitutional convention, or the Taxation and Budget Reform Commission. As the Florida Supreme Court has repeatedly stated, "the citizen initiative is the only method that is constrained by the single-subject requirement."⁶

¹ See HJR 1616 (1988).

² *Id.*

³ FLA. CONST. art. XI, s. 6(d).

⁴ FLA. CONST. art. XI, s. 6(e).

⁵ FLA. CONST. art. XI, s. 2.

⁶ *Advisory Op. to Atty. Gen. ex rel. Amendment to Bar Government from Treating People Differently Based on Race in Public Educ.*, 778 So. 2d 888 (Fla. 2000); see also, *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.").

Policy Reasons for the Single-Subject Limitation on Amendments Originating as Initiatives

The Florida Supreme Court has also 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

the 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.⁷

Moreover, the Court stated, the single-subject limitation protects the Constitution “against precipitous and spasmodic changes in the organic law.”⁸ Making a similar point in a later case, the Florida Supreme Court stated that the

single-subject requirement in article XI, section 3, mandates that the electorate’s attention be directed to a change regarding one specific subject of government to protect against multiple precipitous changes in our state constitution.⁹

As to why this reasoning should not apply to prohibit multi-subject amendments that originate from other than a citizen initiative, such as the Taxation and Budget Reform Commission, 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.”¹⁰ This is not true, the Court noted, of citizen initiatives.¹¹

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.”¹² 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.”¹³ Moreover, the single-subject limitation prohibits an amendment from

(1) engaging 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,

⁷ *Fine v. Firestone*, 448 So. 2d 984, 994 (Fla. 1984).

⁸ *Id.* at 832 (quoting *Adams v. Gunter*, 238 So. 2d 824, 832 (Fla. 1970) (Thornal, J., concurring)).

⁹ *In re Advisory Op. to the Atty Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (quoting *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984)).

¹⁰ *See Id.* at 1339.

¹¹ *Id.*

¹² *Evans v. Firestone*, 457 So. 2d 1351, 1354 (Fla. 1984).

¹³ *Advisory Op. to Atty Gen. re Rights of Electricity Consumers regarding Solar Energy Choice (FIS)*, 188 So. 3d 822, 828 (Fla. 2016).

some of which electors might wish to support, in order to get an otherwise disfavored provision passed.¹⁴

And 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.”¹⁵ However, “how an initiative proposal *affects* other articles or sections of the constitution *is an appropriate factor* to be considered in determining whether there is more than one subject included in an initiative proposal.”¹⁶

A brief look at three Supreme Court opinions will help illuminate the Court’s understanding of these legal principles, and therefore of what “one subject” means.

In a recent advisory opinion, the Court analyzed an amendment that would have guaranteed a

right 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.”¹⁷

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. And 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,” and 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.”¹⁸ 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.¹⁹

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.”²⁰ The Court held that the amendment violated the single-subject rule because it “perform[ed] the functions of multiple branches of government.”²¹ 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

¹⁴ *Id.* at 827-28 (citations omitted).

¹⁵ *In re Advisory Op. to the Atty Gen.—Save Our Everglades*, 636 So. 2d 1336, 1339 (Fla. 1994) (emphasis in the original).

¹⁶ *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984) (emphasis added).

¹⁷ *Advisory Op. to Atty 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”).

¹⁸ *Id.* at 828.

¹⁹ *Id.*

²⁰ *In re Advisory Op. to the Atty Gen.—Save Our Everglades*, 636 So. 2d 1336, 1337 (Fla. 1994).

²¹ *Id.* at 1340.

“management, construction, and operation of water storage and sewer systems.”²² 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.²³

In yet another opinion, issued in *Fine v. Firestone*, the Court disapproved of a proposed amendment that contained three subjects.²⁴ But 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

limits 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 improvements with revenue bonds that are paid for from revenue generated by the improvements.²⁵

Joint Resolution

A joint resolution by the Legislature is one of the ways in which an amendment to the Florida Constitution may originate.²⁶ Like a bill, it may begin in either house of the Legislature.

To pass 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.²⁷ Unless expedited by the Legislature, the joint resolution is then submitted to the voters at the next general election. If the amendment proposed in the resolution is approved by at least 60 percent of the people voting on the measure, it becomes effective in the January following the election unless otherwise specified in the amendment or in the Constitution.²⁸

III. Effect of Proposed Changes:

The constitutional amendment proposed in the joint resolution, if approved by the voters at the general election in 2020, requires that any amendment proposed by a future Taxation and Budget Reform Commission be limited to “one subject and matter connected therewith.”

Because the wording of the single subject requirement for Commission proposals is identical to that used in the Constitution for citizen initiatives, the Supreme Court will likely presume that the single-subject requirements are the same.²⁹

²² *Id.*

²³ *Id.*

²⁴ *Fine v. Firestone*, 448 So. 2d 984 (Fla. 1984).

²⁵ *Id.* at 992 (Fla. 1984).

²⁶ 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.

²⁷ FLA. CONST. art. XI, s. 1.

²⁸ FLA. CONST. art. XI, s. 5.

²⁹ 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.”).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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 \$58,174.18, at a minimum. Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known. ...³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution amends Article XI, section 6 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.

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

³⁰ Email from Brittany Dover, Director of Legislative Affairs, Florida Department of State (Oct. 30, 2019) (on file with the Senate Committee on Judiciary).

By Senator Rodriguez

37-00407-20

2020396__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article XI of the State Constitution to require that any proposals to revise the State Constitution, or any part thereof, filed by the Taxation and Budget Reform Commission be limited to a single subject.

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

That the following amendment to Section 6 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 6. Taxation and budget reform commission.—

(a) Beginning in 2007 and each twentieth year thereafter, there shall be established a taxation and budget reform commission composed of the following members:

(1) eleven members selected by the governor, none of whom shall be a member of the legislature at the time of appointment.

(2) seven members selected by the speaker of the house of representatives and seven members selected by the president of the senate, none of whom shall be a member of the legislature at the time of appointment.

(3) four non-voting ex officio members, all of whom shall be members of the legislature at the time of appointment. Two of these members, one of whom shall be a member of the minority

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party in the house of representatives, shall be selected by the speaker of the house of representatives, and two of these members, one of whom shall be a member of the minority party in the senate, shall be selected by the president of the senate.

(b) Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.

(c) At its initial meeting, the members of the commission shall elect a member who is not a member of the legislature to serve as chair and the commission shall adopt its rules of procedure. Thereafter, the commission shall convene at the call of the chair. An affirmative vote of two thirds of the full commission shall be necessary for any revision of this constitution or any part of it to be proposed by the commission.

(d) The commission shall examine the state budgetary process, the revenue needs and expenditure processes of the state, the appropriateness of the tax structure of the state, and governmental productivity and efficiency; review policy as it relates to the ability of state and local government to tax and adequately fund governmental operations and capital facilities required to meet the state's needs during the next twenty year period; determine methods favored by the citizens of the state to fund the needs of the state, including alternative methods for raising sufficient revenues for the needs of the state; determine measures that could be instituted to effectively gather funds from existing tax sources; examine constitutional limitations on taxation and expenditures at the state and local level; and review the state's comprehensive planning, budgeting and needs assessment processes to determine whether the resulting information adequately supports a

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59 strategic decisionmaking process.

60 (e) The commission shall hold public hearings as it deems
61 necessary to carry out its responsibilities under this section.
62 The commission shall issue a report of the results of the review
63 carried out, and propose to the legislature any recommended
64 statutory changes related to the taxation or budgetary laws of
65 the state. Not later than one hundred eighty days prior to the
66 general election in the second year following the year in which
67 the commission is established, the commission shall file with
68 the custodian of state records its proposal, if any, of a
69 revision of this constitution or any part of it dealing with
70 taxation or the state budgetary process. Any proposal of a
71 revision of this constitution, or any part thereof, filed by the
72 commission with the custodian of state records must embrace but
73 one subject and matter directly connected therewith.

74 BE IT FURTHER RESOLVED that the following statement be
75 placed on the ballot:

76 CONSTITUTIONAL AMENDMENT

77 ARTICLE XI, SECTION 6

78 ESTABLISHING SINGLE-SUBJECT LIMITATION FOR TAXATION AND
79 BUDGET REFORM COMMISSION PROPOSALS.—Proposing an amendment to
80 the State Constitution to require that any proposal of a
81 revision to the State Constitution, or any part thereof, filed
82 by the Taxation and Budget Reform Commission with the custodian
83 of state records for placement on the ballot be limited to a
84 single subject and matter directly connected to such subject.

THE FLORIDA SENATE

APPEARANCE RECORD

02/12/2020
Meeting Date

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

SB396
Bill Number (if applicable)

Topic SINGLE-SUBJECT LIMITATION FOR TAXATION AND BUDGET REFORM

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W. COLLEGE AVE

Phone 786.260.9283

Street

TALLAHASSEE FL

City

State

Zip

Email cgrajales@belibre.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.

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 828

INTRODUCER: Senator Benacquisto

SUBJECT: Florida ABLE Program

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Favorable
2.	Hendon	Phelps	RC	Favorable

I. Summary:

SB 828 saves from repeal Florida ABLE, Inc., a direct-support organization for the Florida Prepaid College Board. Florida ABLE Inc. administers the Florida ABLE Program, a program that allows individuals to make tax exempt contributions to meet certain expenses associated with a disabled beneficiary.

The bill has no impact on state revenues or expenditures and takes effect upon becoming law.

II. Present Situation:

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose are prescribed by statute and by a written contract with the agency the organization supports.

Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs that are created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.¹ Specifically, the law requires each organization to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:²

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;

¹ Section 3, ch. 2014-96, L.O.F.

² Section 20.058(1), F.S.

- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service (IRS) Return of Organization Exempt from Income Tax form (Form 990).³

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the organization.⁴ Additionally, any contract between an agency and a CSO or DSO must be contingent upon the organization submitting and posting the information.⁵ If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the organization.⁶ The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.⁷

By August 15 of each year, the agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.⁸

Finally, a law creating or authorizing the creation of a CSO or DSO must state that the creation or authorization for the organization is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. Such organization in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.⁹

Audit Requirements

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹⁰ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO supports and submitted to the Auditor General and applicable state agency within nine months after the end of the fiscal year.

In addition, the Auditor General may conduct audits or other engagements of the accounts and records of the organization, pursuant to his or her own authority, or at the direction of the

³ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

⁴ Section 20.058(2), F.S.

⁵ Section 20.058(4), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Section 20.058(3), F.S.

⁹ Section 20.058(5), F.S.

¹⁰ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

Legislative Auditing Committee.¹¹ The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.¹²

Ethics Code Requirement

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.¹³

ABLE Programs

Federal ABLE Act of 2014

The federal Achieving a Better Life Experience Act (ABLE) of 2014 authorizing states to implement ABLE programs became law on December 19, 2014.¹⁴ An ABLE program provides a tax-advantaged approach for certain individuals with disabilities¹⁵ to build financial resources without losing eligibility for Supplemental Security Income (SSI)¹⁶ or Medicaid. The law authorizes ABLE accounts for individuals with disabilities who meet certain criteria, to spend distributions on “qualified disability expenses.”¹⁷ The purposes of the federal ABLE Act are to encourage and assist individuals and families in saving to support individuals with disabilities in maintaining health, independence, and quality of life, and provide secure funding for disability-related expenses that will supplement, but not supplant, other sources.¹⁸

Florida Prepaid College Board

The Florida Prepaid College Board (Board) administers the Stanley G. Tate Florida Prepaid College Program and the Florida College Savings Program, and performs specified essential governmental functions.¹⁹ Both are tax-favored 529 college savings plans authorized by Section

¹¹ Section 11.45(3)(d), F.S.

¹² *Id.*

¹³ Section 112.3251, F.S.

¹⁴ Public Law 113-295, 26 U.S.C. 529A.

¹⁵ An individual is an eligible individual for a taxable year if during such taxable year: (1) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or (2) a disability certification with respect to such individual is filed with the Secretary of Education for such taxable year. *Id.*

¹⁶ An account balance exceeding \$100,000 may cause suspension of SSI benefits; no such restriction affects Medicaid eligibility. ABLE United, *Program Description & Participation Agreement* (March 2019), available at https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf, at 14.

¹⁷ *Id.* The term “qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary of Education under specified conditions. *Id.*

¹⁸ *Id.*

¹⁹ Section 1009.971(1), F.S. See ss. 1009.97-1009.988, F.S. The Board is assigned to and administratively housed within the State Board of Administration, but it independently exercises specified powers and duties. *Id.* The Board consists of seven members, composed of the Attorney General, the Chief Financial Officer, the Chancellor of the State University System, the

529 of the Internal Revenue Code. The Board establishes policy and oversees the investment and financial performance of the programs.²⁰

Florida ABLE Program

The Florida ABLE Program was created in 2015²¹ to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified expenses of eligible individuals with disabilities.²²

The Florida Prepaid College Board is required to establish a direct-support organization to be known as “Florida ABLE, Inc.,” (ABLE United) to establish and administer the Florida ABLE Program. ABLE United is:²³

- A Florida not-for-profit corporation registered, incorporated, organized, and operated in compliance with chapter 617.
- Organized and operated to receive, hold, invest, and administer property and to make expenditures for the benefit of the Florida ABLE program.

The mission of ABLE United is to encourage and assist the saving of private funds to help persons with disabilities cover costs that support their health, independence, and quality of life.²⁴

ABLE United has developed the ABLE United Program to be a qualified ABLE program pursuant to Section 529A of the Internal Revenue Code. The program launched on July 1, 2016. As of May 15, 2019, 3,231 persons with disabilities have an ABLE United account with an average account balance of \$4,674. Among the individuals in the program, 44 percent have a developmental disability.²⁵

Legislative Findings and Recommendations

Senate professional staff reviewed documents related to ABLE United for compliance with accountability and authorizing statutes. ABLE United appears to be in compliance with such statutes. Findings and recommendations are summarized below.

Chancellor of the Division of Florida Colleges, and three members appointed by the Governor and subject to confirmation by the Senate. Section 1009.971(2), F.S.

²⁰ Florida Prepaid, *About the Board*, <https://www.myfloridaprepaid.com/about-us/> (last visited Aug. 19, 2019).

²¹ Section 2, ch. 2015-56, L.O.F.

²² Section 1009.986(1), F.S. The Florida ABLE program is authorized under s. 529A of the Internal Revenue Code to allow a person to make contributions for a taxable year to an ABLE account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the ABLE account. Section 1009.986(2)(h), F.S.

²³ Section 1009.986(3), F.S.

²⁴ ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1. The maximum annual contribution to an ABLE account is \$15,000, which may be increased if the beneficiary is working. ABLE United, *Program Description & Participation Agreement* (March 2019), available at https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf, at 2.

²⁵ ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1.

Compliance with Accountability Requirements

By August 1 of each year, ABLE United must submit the following information to the Board:²⁶

- The name, mailing address, telephone number, and website address of ABLE United.
- The statutory authority or executive order pursuant to which ABLE United was created.
- A brief description of the mission of, and results obtained by, ABLE United.
- A brief description of the plans of ABLE United for the next 3 fiscal years.
- A copy of ABLE United's code of ethics.
- A copy of ABLE United's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

Senate Professional staff found that the ABLE United annual disclosure contains all required information.²⁷ However, the Internal Revenue Service has determined that ABLE United is exempt from the requirement of filing Form 990.²⁸

The Board must make such information submitted above available to the public through the Board's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.²⁹ The Board includes the ABLE United required annual disclosure report on the Board's website.³⁰ However, the Board does not provide a link to ABLE United on the Board's website. Senate Professional staff recommend that the Board provide a link to the ABLE United website on the Board's website.

By August 15 of each year, the Board must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the OPPAGA the information provided by ABLE United. The report must also include a recommendation by the Board, with supporting rationale, to continue, terminate, or modify the Board's association with ABLE United.³¹ The Board provided the ABLE United required annual disclosure on July 8, 2019. In the required annual disclosure report the Board recommended continued association with ABLE United.³²

The contract between the Board and ABLE United must be contingent upon ABLE United's submission and posting of information required to be submitted to the Board and must include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by ABLE United within 30 days after its authorizing statute is repealed, the contract is terminated, or ABLE United is dissolved. If ABLE United fails to submit the required

²⁶ Section 20.058(1), F.S.

²⁷ ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 1.

²⁸ ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 10-11.

²⁹ Section 20.058(2), F.S.

³⁰ ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf>, at 1.

³¹ Section 20.058(3), F.S.

³² Cover letters to the annual disclosure report dated July 8, 2019, were distributed to the Governor, Speaker of the House of Representatives, President of the Senate, and OPPAGA. Email, Florida Prepaid College Board (Aug. 23, 2019).

information for 2 consecutive years, the Board chair must terminate any contract between the Board and ABLE United.³³ Senate Professional staff found that the contract between the Board and ABLE United incorporates the ABLE United Articles of Incorporation and Bylaws.³⁴ The Articles of Incorporation includes a provision for termination of the program and distribution of funds to the Board, or to the State of Florida if the Board is terminated.³⁵ In addition, the ABLE United Bylaws include a similar provision regarding the dissolution of ABLE United and reversion of funds.³⁶

ABLE United must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General (AG) pursuant to s. 11.45(8) and the Board. The audit report must be submitted within 9 months after the end of the fiscal year to the AG and to the Board.³⁷ Senate Professional staff found that ABLE United provided for an annual financial audit for the fiscal year ending June 30, 2018, conducted by Carr, Riggs & Ingram, LLC, and completed on December 21, 2018.³⁸

ABLE United must adopt its own ethics code. The ethics code must contain the standards of conduct and disclosures required under ss. 112.313 and 112.3143(2), respectively. The ethics code must be conspicuously posted on the ABLE United website.³⁹ The Foundation's Code of Ethics must address specified standards of conduct.⁴⁰ ABLE United has adopted a code of ethics, which is also the code of ethics that applies to all employees of the State Board of Administration.⁴¹ The review by Senate Professional staff found that the code of ethics addresses the required standards of conduct.⁴² However, the code of ethics is not posted on the ABLE United website. Senate Professional staff recommend that ABLE United post its code of ethics on the ABLE United website.

Compliance with Authorizing Requirements

ABLE United must operate under a written contract with the Board. The contract must include, but is not limited to, provisions that require:⁴³

- The articles of incorporation and bylaws of ABLE United approved by the Board.
- ABLE United to submit an annual budget for approval by the Board. The budget must comply with rules adopted by the Board.

³³ Section 20.058(4), F.S.

³⁴ Email, Florida Prepaid College Board (July 23, 2019).

³⁵ Florida ABLE, Inc., *Articles of Amendment to Articles of Incorporation of Florida ABLE, Inc.* (Dec. 6, 2019), at Article X.

³⁶ Florida ABLE, Inc., *First Amendment to the By-laws of Florida ABLE, Inc.* (Dec. 6, 2016), at Article XII.

³⁷ Section 215.981(1), F.S.

³⁸ Florida ABLE, Inc., *Financial Statements, June 30, 2018* (Dec. 21, 2018), available at <https://www.ableunited.com/wp-content/uploads/FINAL-FI-ABLE-with-required-12.21.18.pdf>.

³⁹ Section 112.3251, F.S.

⁴⁰ Section 112.313, F.S.

⁴¹ ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 2.

⁴² ABLE United, *Direct-Support Organization Disclosures* (July 8, 2019), available at <http://flprepaidstage.wpengine.com/wp-content/uploads/2019-Florida-ABLE-Disclosure-Required-pursuant-to-Section-20.058-Florida-Statutes.pdf> at 2.

⁴³ Section 1009.986(3)(b), F.S.

- ABLE United to pay reasonable consideration to the Board for products or services provided directly or indirectly by the Board.
- The Board to solicit proposals, to contract or subcontract, or to amend contractual service agreements of the Board for the benefit of ABLE United.
- The Board to maintain the website of ABLE United.
- The Board to annually certify that ABLE United is complying with the terms of the contract and acting in a manner consistent with this section and in the best interest of the state. The certification must be reported in the official minutes of a meeting of the Board.
- The disclosure of material provisions in the contract and of the distinction between the Board and ABLE United to donors of gifts, contributions, or bequests, and the inclusion of such disclosure on all promotional and fundraising publications.
- The fiscal year for ABLE United to begin on July 1 and end on June 30 of the following year.

The Board and ABLE United entered into a contract on August 14, 2015.⁴⁴ The review by Senate Professional staff found that the contract between the Board and ABLE United includes all required provisions.⁴⁵ In addition, as required in the contract the Board certified on March 26, 2019, that ABLE United was in compliance with the terms of the contract and acting in a manner in the best interest of the State of Florida.⁴⁶

ABLE United must provide for an annual financial audit in accordance with s. 215.981, F.S.⁴⁷ The review by Senate Professional staff found that ABLE United provided for an annual financial audit for the fiscal year ending June 30, 2018, conducted by Carr, Riggs & Ingram, LLC, and completed on December 21, 2018.⁴⁸

The board of directors of ABLE United must consist of:⁴⁹

- The chair of the FL Prepaid Board, who serves as chair of the board of directors of Florida ABLE, Inc.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the FL Prepaid Board. A current member of the FL Prepaid Board, other than the chair, may be appointed.
- One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the Governor.
- Two individuals who are advocates of persons with disabilities, one of whom shall be appointed by the President of the Senate and one of whom shall be appointed by the Speaker

⁴⁴ Email, Florida Prepaid College Board (July 23, 2019).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 1009.986(3)(c), F.S. Section 215.981(1), F.S., requires that each direct-support organization and each citizen support organization with annual expenditures in excess of \$100,000, created or authorized pursuant to law, and created, approved, or administered by a state agency, other than a university, district board of trustees of a community college, or district school board, must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and the state agency that created, approved, or administers the direct-support organization or citizen support organization.

⁴⁸ Florida ABLE, Inc., *Financial Statements, June 30, 2018* (Dec. 21, 2018), available at <https://www.ableunited.com/wp-content/uploads/FINAL-FL-ABLE-with-required-12.21.18.pdf>.

⁴⁹ Section 1009.986(3)(d)

of the House of Representatives. At least one of the individuals so appointed must be an advocate of persons with developmental disabilities.

In addition, ABLE United must comply with statutory requirements relating to the board of directors' meeting schedule, member terms, and member reimbursement.⁵⁰ The ABLE United Board of Directors includes the Chair of the Florida Prepaid College Board, an appointee of the Florida Prepaid College Board, and one member each appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate who meet the specified qualifications.⁵¹ The review by Senate Professional staff found that the ABLE United Bylaws include provisions in compliance with requirements regarding member terms, individual authority of board members, meeting schedule, quorum, and reimbursement.⁵²

The ABLE United participation agreement must include provisions specifying that:⁵³

- The participation agreement is only a debt or obligation of the Florida ABLE program and the Florida ABLE Program Trust Fund and is not a debt or obligation of the Board or the state.
- Participation in the Florida ABLE program does not guarantee that sufficient funds will be available to cover all qualified disability expenses for any designated beneficiary and does not guarantee the receipt or continuation of any product or service for the designated beneficiary.
- The designated beneficiary must be a resident of this state or a resident of a contracting state at the time the ABLE account is established.
- The establishment of an ABLE account in violation of federal law is prohibited.
- Contributions in excess of the limitations set forth in s. 529A of the Internal Revenue Code (IRC) are prohibited.
- The state is a creditor of ABLE accounts as, and to the extent, set forth in s. 529A of the IRC.
- Material misrepresentations by a party to the participation agreement, other than ABLE United, in the application for the participation agreement or in any communication with ABLE United regarding the Florida ABLE program may result in the involuntary liquidation of the ABLE account. If an account is involuntarily liquidated, the designated beneficiary is entitled to a refund, subject to any fees or penalties provided by the participation agreement and the IRC.

The review by Senate Professional staff found that the ABLE United Program Description and Participation Agreement⁵⁴ includes all required provisions.

Florida United must establish a comprehensive investment plan for the Florida ABLE program, subject to the approval of the Board. The comprehensive investment plan must specify the investment policies to be used by Florida United in its administration of the program.⁵⁵ Senate Professional staff found that ABLE United has established a Comprehensive Investment Plan

⁵⁰ *Id.*

⁵¹ ABLE United, *About Us*, <https://www.ableunited.com/about-us/> (last visited Aug. 22, 2019).

⁵² Florida ABLE, Inc., *By-Laws of Florida ABLE, Inc.* Email. *Florida Prepaid College Board*, July 23, 2019.

⁵³ Section 1009.986(4)(b), F.S.

⁵⁴ ABLE United, *Program Description & Participation Agreement* (March 2019), available at https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf.

⁵⁵ Section 1009.986(5), F.S.

approved by the Board. The plan establishes participant investment options, asset class allocation ranges and targets, administrative fees, and performance expectations and monitoring.⁵⁶

On or before March 31 of each year, Florida United must prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the Florida ABLE program which includes a description of the financial condition of the program at the close of the fiscal year. Florida United must submit copies of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives and must make the report available to each designated beneficiary.⁵⁷ Senate Professional staff found that the ABLE United 2018 Annual Report contains the required financial information and is available on the ABLE United website.⁵⁸ The report was distributed to the required recipients in March 2019.⁵⁹

The Board must adopt rules to administer the Florida ABLE program. Rules must include, but are not limited to:⁶⁰

- Specifying the procedures by which Florida United must be governed and operate, including requirements for the budget of Florida United and conditions with which Florida United must comply to use property, facilities, or personal services of the Board.
- The procedures for determining that an ABLE account has been abandoned.
- Adoption of provisions determined necessary by the Board for the Florida ABLE program to retain its status as a qualified ABLE program or the tax-exempt status or other similar status of the program or its participants under the Internal Revenue Code.

Senate Professional staff found that the Board adopted the required rules to administer the Florida ABLE program. Rule 19B-17.001, F.A.C., addresses Florida ABLE, Inc., governance; submission of an annual budget; and use of property, facilities, and personal services. Rule 19B-18.003, F.A.C., incorporates the ABLE United Program Description and Participation Agreement,⁶¹ which provides the procedures for abandoned accounts and necessary safeguards to retain its status as a qualified ABLE program.

III. Effect of Proposed Changes:

Subsection (12) of s. 1009.986, F.S., repeals the entire section of statute that creates the ABLE program rather than subsection (3) that contains the DSO. So by removing subsection 12, the bill saves from repeal both the direct-support organization Florida ABLE Inc. and the Florida ABLE program. The bill will provide for the continuation of the administration of the Florida ABLE program by ABLE United, which provides private savings plans in tax-exempt accounts to pay

⁵⁶ Florida ABLE, Inc., *Comprehensive Investment Plan, Florida ABLE Program* (Apr. 1, 2019). Email. *Florida Prepaid College Board*, July 23, 2019.

⁵⁷ Section 1009.986(9), F.S.

⁵⁸ ABLE United, *2018 Annual Report*, available at https://www.ableunited.com/wp-content/uploads/2018-ABLE_United-Annual-Report_FINAL-WEB-as-of-3.28.19.pdf.

⁵⁹ Email, Florida Prepaid College Board (July 23, 2019).

⁶⁰ Section 1009.986(10), F.S.

⁶¹ ABLE United, *Program Description & Participation Agreement* (March 2019), available at https://www.ableunited.com/wp-content/uploads/ABLEUnited_PDPA_2019.pdf.

for qualified expenses for individuals with a disability, without removing eligibility for Supplemental Security Income and Medicaid.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By extending the repeal date of the direct-support organization and the ABLE program, the bill will provide a source of tax exempt savings for individuals with a disability, without jeopardizing eligibility for certain benefits, such as Medicaid and Supplemental Security Income (SSI).

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.986 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Benacquisto

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A bill to be entitled

An act relating to the Florida ABLE program; amending s. 1009.986, F.S.; abrogating the future repeal of provisions relating to the Florida ABLE program; providing an effective date.

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

Section 1. Subsection (12) of section 1009.986, Florida Statutes, is amended, and subsections (1) through (11) of that section are republished, to read:

1009.986 Florida ABLE program.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to establish a qualified ABLE program in this state which will encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified disability expenses of eligible individuals with disabilities. The Legislature intends that the qualified ABLE program be implemented in a manner that is consistent with federal law authorizing the program and that maximizes program efficiency and effectiveness.

(2) DEFINITIONS.—As used in ss. 1009.987 and 1009.988 and this section, the term:

(a) "ABLE account" means an account established and maintained under the Florida ABLE program.

(b) "Contracting state" means a state that has entered into a contract with Florida ABLE, Inc., to provide residents of Florida or that state with access to a qualified ABLE program.

(c) "Designated beneficiary" means the eligible individual who established an ABLE account or the eligible individual to

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whom an ABLE account was transferred.

(d) "Eligible individual" has the same meaning as provided in s. 529A of the Internal Revenue Code.

(e) "Florida ABLE program" means the qualified ABLE program established and maintained under this section by Florida ABLE, Inc.

(f) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as defined in s. 220.03(1), and regulations adopted pursuant thereto.

(g) "Participation agreement" means the agreement between Florida ABLE, Inc., and a participant in the Florida ABLE program.

(h) "Qualified ABLE program" means the program authorized under s. 529A of the Internal Revenue Code which may be established by a state or agency, or instrumentality thereof, to allow a person to make contributions for a taxable year to an ABLE account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the ABLE account.

(i) "Qualified disability expense" has the same meaning as provided in s. 529A of the Internal Revenue Code.

(3) DIRECT-SUPPORT ORGANIZATION; FLORIDA ABLE, INC.—

(a) The Florida Prepaid College Board shall establish a direct-support organization to be known as "Florida ABLE, Inc.," which is:

1. A Florida not-for-profit corporation registered, incorporated, organized, and operated in compliance with chapter 617.

2. Organized and operated to receive, hold, invest, and

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administer property and to make expenditures for the benefit of the Florida ABLE program.

(b) Florida ABLE, Inc., shall operate under a written contract with the Florida Prepaid College Board. The contract must include, but is not limited to, provisions that require:

1. The articles of incorporation and bylaws of Florida ABLE, Inc., to be approved by the Florida Prepaid College Board.

2. Florida ABLE, Inc., to submit an annual budget for approval by the Florida Prepaid College Board. The budget must comply with rules adopted by the Florida Prepaid College Board.

3. Florida ABLE, Inc., to pay reasonable consideration to the Florida Prepaid College Board for products or services provided directly or indirectly by the Florida Prepaid College Board.

4. The Florida Prepaid College Board to solicit proposals, to contract or subcontract, or to amend contractual service agreements of the Florida Prepaid College Board for the benefit of Florida ABLE, Inc.

5. The Florida Prepaid College Board to maintain the website of Florida ABLE, Inc.

6. The Florida Prepaid College Board to annually certify that Florida ABLE, Inc., is complying with the terms of the contract and acting in a manner consistent with this section and in the best interest of the state. The certification must be reported in the official minutes of a meeting of the Florida Prepaid College Board.

7. The disclosure of material provisions in the contract and of the distinction between the Florida Prepaid College Board and Florida ABLE, Inc., to donors of gifts, contributions, or

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bequests, and the inclusion of such disclosure on all promotional and fundraising publications.

8. The fiscal year for Florida ABLE, Inc., to begin on July 1 and end on June 30 of the following year.

(c) Florida ABLE, Inc., shall provide for an annual financial audit in accordance with s. 215.981. The Florida Prepaid College Board and the Auditor General may require Florida ABLE, Inc., or its independent auditor, to provide any supplemental data relating to the operation of Florida ABLE, Inc.

(d)1. The board of directors of Florida ABLE, Inc., shall consist of:

a. The chair of the Florida Prepaid College Board, who shall serve as the chair of the board of directors of Florida ABLE, Inc.

b. One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the Florida Prepaid College Board. A current member of the Florida Prepaid College Board, other than the chair, may be appointed.

c. One individual who possesses knowledge, skill, and experience in the areas of accounting, risk management, or investment management, who shall be appointed by the Governor.

d. Two individuals who are advocates of persons with disabilities, one of whom shall be appointed by the President of the Senate and one of whom shall be appointed by the Speaker of the House of Representatives. At least one of the individuals appointed under this sub-subparagraph must be an advocate of persons with developmental disabilities, as that term is defined

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in s. 393.063.

2.a. The term of the appointee under sub-subparagraph 1.b. shall be up to 3 years as determined by the Florida Prepaid College Board. Such appointee may be reappointed.

b. The term of the appointees under sub-subparagraphs 1.c. and d. shall be 3 years. Such appointees may be reappointed for up to one consecutive term.

3. Unless authorized by the board of directors of Florida ABLE, Inc., an individual director has no authority to control or direct the operations of Florida ABLE, Inc., or the actions of its officers and employees.

4. The board of directors of Florida ABLE, Inc.:

a. Shall meet at least quarterly and at other times upon the call of the chair.

b. May use any method of telecommunications to conduct, or establish a quorum at, its meetings or the meetings of a subcommittee or other subdivision if the public is given proper notice of the telecommunications meeting and provided reasonable access to observe and, if appropriate, to participate.

5. A majority of the total current membership of the board of directors of Florida ABLE, Inc., constitutes a quorum of the board.

6. Members of the board of directors of Florida ABLE, Inc., and the board's subcommittees or other subdivisions shall serve without compensation; however, the members may be reimbursed for reasonable, necessary, and actual travel expenses pursuant to s. 112.061.

(e) Subject to rule adopted by the Florida Prepaid College Board, Florida ABLE, Inc., may use property, other than money,

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facilities, and personal services of the Florida Prepaid College Board, provided that Florida ABLE, Inc., offers equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. As used in this paragraph, the term "personal services" means use of the Florida Prepaid College Board's full-time and part-time personnel, payroll processing services, and other services prescribed by rule of the Florida Prepaid College Board.

(4) FLORIDA ABLE PROGRAM.—

(a) On or before July 1, 2016, Florida ABLE, Inc., shall establish and administer the Florida ABLE program. Before implementing the program, Florida ABLE, Inc., must obtain a written opinion from counsel specializing in:

1. Federal tax matters which indicates that the Florida ABLE program is designed to comply with s. 529A of the Internal Revenue Code.

2. Federal securities law which indicates that the Florida ABLE program and the offering of participation in the program are designed to comply with applicable federal securities law and qualify for the available tax exemptions under such law.

(b) The participation agreement must include provisions specifying that:

1. The participation agreement is only a debt or obligation of the Florida ABLE program and the Florida ABLE Program Trust Fund and, as provided under paragraph (f), is not a debt or obligation of the Florida Prepaid College Board or the state.

2. Participation in the Florida ABLE program does not guarantee that sufficient funds will be available to cover all qualified disability expenses for any designated beneficiary and

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does not guarantee the receipt or continuation of any product or service for the designated beneficiary.

3. The designated beneficiary must be a resident of this state or a resident of a contracting state at the time the ABLE account is established.

4. The establishment of an ABLE account in violation of federal law is prohibited.

5. Contributions in excess of the limitations set forth in s. 529A of the Internal Revenue Code are prohibited.

6. The state is a creditor of ABLE accounts as, and to the extent, set forth in s. 529A of the Internal Revenue Code.

7. Material misrepresentations by a party to the participation agreement, other than Florida ABLE, Inc., in the application for the participation agreement or in any communication with Florida ABLE, Inc., regarding the Florida ABLE program may result in the involuntary liquidation of the ABLE account. If an account is involuntarily liquidated, the designated beneficiary is entitled to a refund, subject to any fees or penalties provided by the participation agreement and the Internal Revenue Code.

(c) The participation agreement may include provisions specifying:

1. The requirements and applicable restrictions for opening an ABLE account.

2. The eligibility requirements for a party to a participation agreement and the rights of the party.

3. The requirements and applicable restrictions for making contributions to an ABLE account.

4. The requirements and applicable restrictions for

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directing the investment of the contributions or balance of the ABLE account.

5. The administrative fee and other fees and penalties applicable to an ABLE account.

6. The terms and conditions under which an ABLE account or participation agreement may be modified, transferred, or terminated.

7. The disposition of abandoned ABLE accounts.

8. Other terms and conditions determined to be necessary or proper.

(d) The participation agreement may be amended throughout its term for purposes that include, but are not limited to, allowing a participant to increase or decrease the level of participation and to change designated beneficiaries and other matters authorized by this section and s. 529A of the Internal Revenue Code.

(e) If an ABLE account is determined to be abandoned pursuant to rules adopted by the Florida Prepaid College Board, Florida ABLE, Inc., may use the balance of the account to operate the Florida ABLE program.

(f) A contract or participation agreement entered into by or an obligation of Florida ABLE, Inc., on behalf of and for the benefit of the Florida ABLE program does not constitute a debt or obligation of the Florida Prepaid College Board or the state, but is only a debt or obligation of the Florida ABLE program and the Florida ABLE Program Trust Fund. The state does not have an obligation to a designated beneficiary or any other person as a result of the Florida ABLE program. The obligation of the Florida ABLE program is limited solely to amounts in the Florida

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ABLE Program Trust Fund. All amounts obligated to be paid from the Florida ABLE Program Trust Fund are limited to the amounts available for such obligation. The amounts held in the Florida ABLE program may be disbursed only in accordance with this section.

(g) Notwithstanding any other provision of law, Florida ABLE, Inc., may enter into an agreement with a contracting state which allows Florida ABLE, Inc., to participate under the design, operation, and rules of the contracting state's qualified ABLE program or which allows the contracting state to participate under the Florida ABLE program.

(h) The Florida ABLE program shall continue in existence until terminated by law. If the state determines that the program is financially infeasible, the state may terminate the program. Upon termination, amounts in the Florida ABLE Program Trust Fund held for designated beneficiaries shall be returned in accordance with the participation agreement.

(i) The state pledges to the designated beneficiaries that the state will not limit or alter their rights under this section which are vested in the Florida ABLE program until the program's obligations are met and discharged. However, this paragraph does not preclude such limitation or alteration if adequate provision is made by law for the protection of the designated beneficiaries pursuant to the obligations of Florida ABLE, Inc., and does not preclude termination of the Florida ABLE program if the state determines that the program is not financially feasible. This pledge and undertaking by the state may be included in participation agreements.

(5) COMPREHENSIVE INVESTMENT PLAN.—Florida ABLE, Inc.,

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shall establish a comprehensive investment plan for the Florida ABLE program, subject to the approval of the Florida Prepaid College Board. The comprehensive investment plan must specify the investment policies to be used by Florida ABLE, Inc., in its administration of the program. Florida ABLE, Inc., may place assets of the program in investment products and in such proportions as may be designated or approved in the comprehensive investment plan. Such products shall be underwritten and offered in compliance with the applicable federal and state laws or regulations or exemptions therefrom. A designated beneficiary may not direct the investment of any contributions to the Florida ABLE program, unless specific fund options are offered by Florida ABLE, Inc. Directors, officers, and employees of Florida ABLE, Inc., may enter into participation agreements, notwithstanding their fiduciary responsibilities or official duties related to the Florida ABLE program.

(6) EXEMPTION FROM CLAIMS OF CREDITORS.—Moneys paid into or out of the Florida ABLE Program Trust Fund by or on behalf of a designated beneficiary are exempt, as provided by s. 222.22, from all claims of creditors of the designated beneficiary if the participation agreement has not been terminated. Moneys paid into the Florida ABLE program and benefits accrued through the program may not be pledged for the purpose of securing a loan.

(7) MEDICAID RECOVERY; PRIORITY OF DISTRIBUTIONS.—

(a) Unless prohibited by federal law, upon the death of a designated beneficiary, funds in the ABLE account must first be distributed for qualified disability expenses then transferred to the estate of the designated beneficiary or an ABLE account

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of another eligible individual specified by the designated beneficiary or by the estate of the designated beneficiary.

(b) Except as required by federal law, the state Medicaid program may not file a claim for Medicaid recovery of funds in an ABLE account.

(c) Florida ABLE, Inc., shall assist and cooperate with the Agency for Health Care Administration and Medicaid programs in other states by providing the agency and programs with the information needed to accomplish the purpose and objective of this subsection.

(8) PAYROLL DEDUCTION AUTHORITY.—The payroll deduction authority provided under s. 1009.975 applies to the Florida Prepaid College Board and Florida ABLE, Inc., for purposes of administering this section.

(9) REPORTS.—

(a) On or before November 1, 2015, Florida ABLE, Inc., shall prepare a report on the status of the establishment of the Florida ABLE program by Florida ABLE, Inc. The report must also include, if warranted, recommendations for statutory changes to enhance the effectiveness and efficiency of the program. Florida ABLE, Inc., shall submit copies of the report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(b) On or before March 31 of each year, Florida ABLE, Inc., shall prepare or cause to be prepared a report setting forth in appropriate detail an accounting of the Florida ABLE program which includes a description of the financial condition of the program at the close of the fiscal year. Florida ABLE, Inc., shall submit copies of the report to the Governor, the President

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of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives and shall make the report available to each designated beneficiary. The accounts of the Florida ABLE program are subject to annual audit by the Auditor General.

(10) RULES.—The Florida Prepaid College Board shall adopt rules to administer this section. Such rules must include, but are not limited to:

(a) Specifying the procedures by which Florida ABLE, Inc., shall be governed and operate, including requirements for the budget of Florida ABLE, Inc., and conditions with which Florida ABLE, Inc., must comply to use property, facilities, or personal services of the Florida Prepaid College Board.

(b) The procedures for determining that an ABLE account has been abandoned.

(c) Adoption of provisions determined necessary by the Florida Prepaid College Board for the Florida ABLE program to retain its status as a qualified ABLE program or the tax-exempt status or other similar status of the program or its participants under the Internal Revenue Code. Florida ABLE, Inc., shall inform participants in the Florida ABLE program of changes to the tax or securities status of their interests in the ABLE program and participation agreements.

(11) STATE OUTREACH PARTNERS.—The Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Children and Families, and the Department of Education shall assist, cooperate, and coordinate with Florida ABLE, Inc., in the provision of public information and outreach for the Florida ABLE program.

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349 ~~(12) REPEAL.—In accordance with s. 20.058, this section is~~
350 ~~repealed October 1, 2020, unless reviewed and saved from repeal~~
351 ~~by the Legislature.~~

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/2/20

Meeting Date

828/836

Bill Number (if applicable)

Topic Florida ABLE

Amendment Barcode (if applicable)

Name John Finch

Job Title Director of Florida ABLE

Address 1801 Heritage Blvd

Phone _____

Street

City

Tall

State

FL

Zip

32389

Email john.finch@edible

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida ABLE Inc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 830

INTRODUCER: Senator Benacquisto

SUBJECT: OGSR/Certain Personal Financial and Health Information

DATE: February 10, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Favorable
2.	Ponder	Phelps	RC	Favorable

I. Summary:

SB 830 amends s. 1009.987, F.S., to save from repeal the public records exemption relating to personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer. This information will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records – Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ 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.¹⁹

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.²⁰ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ 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.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and 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.²⁶

Federal ABLE Act

The federal ABLE Act (Achieving a Better Life Experience Act of 2014) became law on December 19, 2014.²⁷ The purpose of the ABLE Act is to encourage individuals and families to save money to support individuals with disabilities.²⁸ The ABLE Act permits a state to implement a qualified ABLE program and establish ABLE accounts for eligible individuals with disabilities that meet certain criteria.²⁹ A designated beneficiary of an ABLE account is an eligible individual who establishes an ABLE account and is the owner of such of an account.³⁰ An agent or parent may also establish an account on behalf of the eligible individual.³¹

Florida ABLE Program

An individual is an eligible individual for a taxable year if during such taxable year:³²

- The individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26; or
- A disability certification with respect to such individual is filed with the Secretary of the Department of Treasury for such taxable year.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Pub. L. No. 113-295, 128 Stat. 4056 (Dec. 19, 2014).

²⁸ *Id.*

²⁹ 26 U.S.C. s. 529A(e)(1).

³⁰ *Id.* at (e)(3). A designated beneficiary may also be a brother, sister, stepbrother, or stepsister of a former designated beneficiary of the ABLE account, provided such new designated beneficiary is also an eligible individual. *Id.* at (e)(4).

³¹ Rule 19B-18.003, F.A.C., *Participation Agreement, Final ABLE Terms and Conditions*, Form No. FPCB 2018-08, available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-09690>.

³² *Id.*; s. 1009.986(2)(d), F.S.

Under the Florida ABLE Program, eligible individuals with disabilities, family members, and others may contribute funds to an ABLE account, which supplements, rather than supplants, any federal benefits received by the beneficiary.³³ Those funds may be used for qualified disability expenses relating to the individual's blindness or disability. These expenses may include education, housing, transportation, employment support, health, prevention, wellness, financial, and legal expenses, and other expenses authorized through federal regulations.³⁴

A consumer's personal financial and health information held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, of the State Constitution.³⁵

A "consumer" means a party to a participation agreement of the Florida ABLE program.³⁶ The law provides that "personal financial and health information" means:³⁷

- A consumer's personal health condition, disease, injury, or medical diagnosis or treatment;
- The existence, nature, source, or amount of a consumer's personal income or expenses;
- Records of or relating to a consumer's personal financial transactions of any kind; or
- The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth.

The Florida Prepaid College Board and Florida ABLE, Inc., may disclose information made confidential and exempt to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or to verify the eligibility of an eligible individual or authorize the use of an ABLE account.³⁸

Section 1009.987, F.S., provides for future review and repeal of the public records exemption on October 2, 2020.

Chapter 2015-58, L.O.F., which established the exemption from public record disclosure requirements for consumer information held under the Florida ABLE program, included a public necessity statement that provided rationale for the exemption. This rationale recognized that the disclosure of sensitive financial information regarding a consumer under the Florida ABLE program could create the opportunity for theft, identity theft, fraud, and other illegal activity, thereby jeopardizing the financial security of the consumer and placing him or her at risk for substantial financial harm. Furthermore, the disclosure of personal health information relating to

³³ Pub. L. 113-295, Div. B, Title I, §§ 101(2) and 103 (Dec. 19, 2014). Any amount in an ABLE account will be disregarded, except for the purpose of determining supplemental security income, any amount in excess of \$100,000 may cause a suspension in benefits. *Id.*; see also Letter from Brian Neale, U.S. Dep't of Health and Human Servs., *Implications of the ABLE Act for State Medicaid Programs* (Sept. 7, 2017), available at <https://www.medicaid.gov/federal-policy-guidance/downloads/smd17002.pdf>.

³⁴ 26 U.S.C. s. 529A(e)(5).

³⁵ Section 1009.987, F.S.

³⁶ Section 1009.987(1)(a), F.S.

³⁷ Section 1009.987(1)(b), F.S.

³⁸ Section 1009.987(3), F.S.

a consumer under the Florida ABLE program could negatively affect an individual's business and personal relationships and cause detrimental financial consequences.³⁹

Open Government Sunset Review Findings and Recommendations

In June 2019, the Senate Education Committee and the House Oversight, Transparency & Public Management Subcommittee sent an Open Government Sunset Review Questionnaire to the Florida Prepaid College Board regarding the need to maintain the exemption related to personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer.

The Florida Prepaid College Board responded to the questionnaire and recommended that the exemption remain in effect to protect the personal, financial, and health information for individuals associated with ABLE accounts in the Florida ABLE program.

III. Effect of Proposed Changes:

SB 830 saves from repeal the current public records exemption relating to personal financial and health information of a consumer that is held by the Florida Prepaid College Board, the Florida ABLE, Inc., the Florida ABLE program, or an agent or service provider of one of these entities relating to an ABLE account, or a participation agreement or any information that would identify a consumer. The information will continue to be confidential and exempt from public disclosure beyond October 2, 2020.

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

³⁹ Ch. 2015-58, L.O.F.

Public Necessity Statement

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

Breadth of Exemption

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

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1009.987 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Benacquisto

27-00652-20

2020830__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1009.987, F.S., which provides an exemption from public records requirements for certain personal financial and health information held by the Florida Prepaid College Board, Florida ABLE, Inc., or the Florida ABLE program, or an agent or service provider thereof; 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 1009.987, Florida Statutes, is amended to read:

1009.987 Public records exemption.—

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

(a) "Consumer" means a party to a participation agreement.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, injury, or medical diagnosis or treatment;

2. The existence, nature, source, or amount of a consumer's personal income or expenses;

3. Records of or relating to a consumer's personal financial transactions of any kind; or

4. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth.

(2) The personal financial and health information of a consumer held by the Florida Prepaid College Board, Florida ABLE, Inc., or the Florida ABLE program, or an agent or service

Page 1 of 2

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

27-00652-20

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provider thereof, relating to an ABLE account or a participation agreement or any information that would identify a consumer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) The Florida Prepaid College Board or Florida ABLE, Inc., may authorize the disclosure of information made confidential and exempt under subsection (2) to another state or federal government entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities or to verify the eligibility of an eligible individual or authorize the use of an ABLE account.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2020.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/2/20

Meeting Date

828/836

Bill Number (if applicable)

Topic Florida ABLE

Amendment Barcode (if applicable)

Name John Finch

Job Title Director of Florida ABLE

Address 1801 Heritage Blvd

Phone _____

Street

City

Tall

State

FL

Zip

32389

Email john.finch@edible

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida ABLE Inc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 994

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Passidomo, and others

SUBJECT: Guardianship

DATE: February 13, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 994 revises the guardianship statutes to ensure that a ward's personal and property interests are carefully protected by and from a guardian. The bill:

- Requires a court, when appointing a guardian, to inquire into and consider potential disqualifications and conflicts of interest;
- Specifies that a plenary or limited guardian must obtain court approval before consenting to or obtaining an order not to resuscitate a ward, and when such request is made pursuant to an emergency, requires a court to rule on the within 72 hours of filing;
- Mandates that a petition for appointment of a guardian or professional guardian disclose certain background information about the guardian seeking appointment and whether a less restrictive arrangement, other than a guardianship, could meet the needs of the ward;
- Defines the term "alternatives to guardianship;"
- Prohibits a professional guardian from petitioning for appointment unless the petitioner is a relative of the alleged incapacitated person or minor or the petitioner is a public guardian who seeks appointment for a person of limited financial means and the public guardian will be paid by the Office of Public and Professional Guardians or a local government;
- Specifies that the initial guardianship plan and each annual guardianship plan must include a list of preexisting orders not to resuscitate or preexisting advance directives and certain information about those documents;
- Requires that, in the annual guardianship report, a guardian report any payments or remuneration received from any source for services rendered for the ward;

- Prohibits a guardian from offering, paying, soliciting, or receiving a commission, benefit, or split-fee arrangement in return for engaging in a transaction for goods or services on behalf of an alleged incapacitated person or minor or a ward; and
- Prohibits a guardian from having an interest in a business transaction or activity with certain individuals unless prior approval is granted by a court order or the relationship existed before the guardian was appointed.

The bill could have an indeterminate fiscal impact on the state court system and has an effective date of July 1, 2020.

II. Present Situation:

Guardianship

A guardian may be described as someone who has been given the legal duty and authority to care for another person or his or her property because of that person's infancy, disability, or incapacity.¹ Guardianships are trust relationships designed to protect vulnerable members of society who do not have the ability to protect themselves. The person for whom a guardian is appointed is called a "ward."² Once a guardian is appointed by the court, the guardian serves as a surrogate decision-maker and makes personal or financial decisions, or both, for the ward.³ Guardianships are generally disfavored because the ward loses his or her individual and civil rights. A guardian may be appointed only if the court finds there is no less restrictive alternative to guardianship.

Two Forms of Guardianship

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.⁴ For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence which is determined by a court appointed examination committee.⁵

Fiduciary Duty

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.⁶ A fiduciary relationship exists between two persons when one of them is under a duty to act or to give advice for the benefit of another upon matters within the scope of that relationship.⁷ The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best

¹ BLACK'S LAW DICTIONARY, 11th edition, 2019.

² Section 744.102(22), F.S.

³ Section 744.102(9), F.S.

⁴ See generally, s. 744.102(9), F.S. A plenary guardian exercises all delegable rights and powers of the ward after a court has determined that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

⁵ See generally, s. 744.102(12), F.S.

⁶ *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

⁷ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

interest of the ward, and must disclose material facts.⁸ In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out his or her responsibilities in an informed and considered manner.

Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward and his or her overall physical and social health. A guardian must file with the court an initial guardianship report,⁹ an annual guardianship report,¹⁰ and an annual accounting of the ward's property.¹¹ The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.¹²

At the heart of a court's interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446, F.S., states that the "fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law." In the event of a breach by the guardian of the guardian's fiduciary duty, the court must take the necessary actions to protect the ward and the ward's assets.¹³

Professional Guardians

In Florida, a "professional guardian" means any guardian who has, at any time, rendered services to three or more wards as their guardian.¹⁴ A professional guardian must register annually with the Statewide Public Guardianship Office.¹⁵ Professional guardians must receive a minimum of 40 hours of instruction and training and a minimum of 16 hours of continuing education every 2 years after the initial educational requirement is met. The instruction and education must be completed through a course approved or offered by the Statewide Public Guardianship Office.¹⁶

A professional guardian is subject to a level 2 background check,¹⁷ an investigation of the guardian's credit history,¹⁸ and is required to demonstrate competency to act as a professional guardian by taking an examination approved by the DOEA.¹⁹ These requirements do not apply to a professional guardian or the employees of that professional guardian when that guardian is a:

- Trust company;
- State banking corporation;

⁸ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

⁹ Section 744.362, F.S.

¹⁰ Section 744.367, F.S.

¹¹ Section 744.3678, F.S.

¹² Section 744.368, F.S.

¹³ Section 744.446(4), F.S.

¹⁴ Section 744.102(17), F.S.

¹⁵ Section 744.2002(1) F.S.

¹⁶ Section 744.2003(3), F.S.

¹⁷ Section 744.2003(5), F.S. Level 2 screenings are more thorough than level 1 screenings because they apply to positions of responsibility or trust, often with more vulnerable people, such as children, the elderly, or the disabled. Level 2 screenings require a security background investigation that includes fingerprint-based searches for statewide criminal history records through FDLE and a national criminal history records check through the Federal Bureau of Investigation. It may also include local criminal records checks. Section 435.04, F.S.

¹⁸ Section 744.2003(4), F.S.

¹⁹ Section 744.2003(6), F.S.

- State savings association authorized and qualified to exercise fiduciary powers in this state; or
- National banking association or federal savings and loan association authorized and qualified to exercise fiduciary duties in this state.²⁰

Determining Incapacity

The process to determine incapacity and the appointment of a guardian begins with a petition filed in the appropriate circuit court. A petition may be executed by an adult and must be served on and read to the alleged incapacitated person. The notice and copies of the petition must be provided to the attorney for the alleged incapacitated person and served on all next of kin identified in the petition.²¹

In the hearing on the petition alleging incapacity, the partial or total incapacity of the person must be established by clear and convincing evidence.²² The court must enter a written order determining incapacity after finding that a person is incapacitated with respect to the exercise of a particular right or all rights. A person is determined to be incapacitated only with respect to those rights specified in the court's order.²³ When an order determines that a person is incapable of exercising delegable rights, the court must consider whether there is an alternative to guardianship which will sufficiently address the problems of the incapacitated person. If an alternative to guardianship will not sufficiently address the problems of the incapacitated person, a guardian will be appointed.²⁴

Court Proceedings

The court retains jurisdiction over all guardianships and shall review the appropriateness and extent of a guardianship annually.²⁵ At any time, any interested person, including the ward, may petition the court for review alleging that the guardian is not complying with the guardianship plan or is exceeding his or her authority under the guardianship plan and is not acting in the best interest of the ward. If the petition for review is found to be without merit the court may assess costs and attorney fees against the petitioner.²⁶

A guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee.²⁷ Fees and costs incurred are generally awardable from the guardianship estate, unless the court finds the requested compensation substantially unreasonable.²⁸

²⁰ Section 744.2003(10), F.S.

²¹ Section 744.331(1), F.S.

²² Section 744.331(5)(c), F.S.

²³ Section 744.331(6), F.S.

²⁴ Section 744.331(6)(b), F.S.

²⁵ Section 744.372, F.S.

²⁶ Section 744.3715, F.S.

²⁷ Section 744.108(1), F.S.

²⁸ Section 744.108(8), F.S.

A ward has the right to be restored to capacity at the earliest possible time.²⁹ The ward, or any interested person filing a suggestion of capacity, has the burden of proving the ward is capable of exercising some or all of the rights which were removed. Immediately upon the filing of the suggestion of capacity, the court must appoint a physician to examine the ward. The physician must examine the ward and file a report with the court within 20 days.³⁰ All objections to the suggestion of capacity must be filed within 20 days after formal notice is served on the ward, guardian, attorney for the ward, if any, and any other interested persons designated by the court.³¹ If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court must set the matter for hearing.³²

Guardian Compensation

The guardian, or an attorney who has rendered services to the ward or to the guardian on the ward's behalf, is entitled to a reasonable fee for services rendered and reimbursement for costs incurred on behalf of the assets of the guardianship estate unless the court finds the requested compensation to be substantially unreasonable.³³ Before the fees may be paid, a petition for fees or expenses must be filed with the court and accompanied by an itemized description of the services performed for the fees and expenses sought to be recovered.³⁴ When fees for a guardian or an attorney are submitted to the court for determination, the court shall consider:

- The time and labor required;
- The novelty and difficulty of the questions involved and the skill required to perform the services properly;
- The likelihood that the acceptance of the particular employment will preclude other employment of the person;
- The fee customarily charged in the locality for similar services;
- The nature and value of the incapacitated person's property, the amount of income earned by the estate, and the responsibilities and potential liabilities assumed by the person;
- The results obtained;
- The time limits imposed by the circumstances;
- The nature and length of the relationship with the incapacitated person; and
- The experience, reputation, diligence, and ability of the person performing the service.³⁵

Conflict of Interest

Unless the court gives prior approval, or the relationship existed prior to the appointment of the guardian and is disclosed to the court in the petition for appointment of a guardian, a guardian may not:

- Have any interest, financial or otherwise, direct or indirect, in any business transaction or activity with the guardianship;
- Acquire an ownership, possessory, security, or other monetary interest adverse to the ward;

²⁹ Section 744.3215(1)(c), F.S.

³⁰ Section 744.464(2)(b), F.S.

³¹ Section 744.464(2)(d), F.S.

³² Section 744.464(2)(e), F.S.

³³ Section 744.108(1) and (8), F.S.

³⁴ Section 744.108(5), (7), F.S.

³⁵ Section 744.108(2), F.S.

- Be designated as a beneficiary on any life insurance policy, pension, or benefit plan of the ward unless such designation was made by the ward prior to adjudication of incapacity; and
- Directly or indirectly purchase, rent, lease, or sell any property or services from or to any business entity that the guardian, or the guardian's spouse or family, is an officer, partner, director, shareholder, or proprietor, or has any financial interest.³⁶

A guardian with such a conflict of interest may be removed from the guardianship by the court.³⁷

End of Life Decision-Making

Florida law defines an advance directive as a witnessed, oral statement or written instruction that expresses a person's desires about any aspect of his or her future health care, including the designation of a health care surrogate, a living will, or an anatomical gift.³⁸ Designation of each of these can serve different purposes and have their own unique requirements and specifications under the law.

One type of advance directive, a "do not resuscitate order" (DNRO) results in the withholding of cardiopulmonary resuscitation (CPR) from an individual if a DNRO is presented to the health care professional treating the patient. For the DNRO to be valid, it must be on the form adopted by the Department of Health, signed by the patient's physician and by the patient, or if the patient is incapacitated, the patient's health care surrogate or proxy, court-appointed guardian, or attorney in fact under a durable power of attorney.³⁹ Florida's DNRO form is printed on yellow paper.⁴⁰ It is the responsibility of the Emergency Medical Services provider to ensure that the DNRO form or the patient identification device, which is a miniature version of the form, accompanies the patient.⁴¹ A DNRO may be revoked by the patient at any time, if signed by the patient, or the patient's health care surrogate, proxy, court-appointed guardian or a person acting under a durable power of attorney.⁴²

Expedited Judicial Intervention Concerning Medical Treatment Procedures

Rule 5.900 of the Florida Probate Rules states any proceeding for expedited judicial intervention concerning medical treatment procedures may be brought by any interested adult person and shall be commenced by the filing of a verified petition which states:⁴³

- The name and address of the petitioner;
- The name and location of the person who is the subject of the petition;
- The relationship of the petitioner to the patient;
- The names, relationship to the patient, and addresses if known to the petitioner, of:
 - The patient's spouse and adult children;
 - The patient's parents (if the patient is a minor);

³⁶ Section 744.446, F.S.

³⁷ *Id.*

³⁸ Section 765.101, F.S.

³⁹ Section 401.45(3), F.S.

⁴⁰ Rule 64J-2.018, F.A.C.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Florida Probate Rules: Fla. Prob. R. 5.900.

- If none of the above, the patient's next of kin;
- Any guardian and any court-appointed health care decision-maker;
- Any person designated by the patient in a living will or other document to exercise the patient's health care decision in the event of the patient's incapacity;
- The administrator of the hospital, nursing home, or other facility where the patient is located;
- The patient's principal treating physician and other physicians known to have provided any medical opinion or advice about any condition of the patient relevant to this petition; and
- All other persons the petitioner believes may have information concerning the expressed wishes of the patient; and
- Facts sufficient to establish the need for the relief requested, including, but not limited to, facts to support the allegation that the patient lacks the capacity to make the requisite medical treatment decision.

Any affidavits and supporting documentation, including any living will or designation of health care decision-maker, must be attached to the petition. Unless waived by the court, notice of the petition and the preliminary hearing must be served on the following persons who have not joined in the petition or otherwise consented to the proceedings:⁴⁴

- The patient;
- The patient's spouse and the patient's parents, if the patient is a minor;
- The patient's adult children;
- Any guardian and any court-appointed health care decision-maker;
- Any person designated by the patient in a living will or other document to exercise the patient's health care decision in the event of the patient's incapacity;
- The administrator of the hospital, nursing home, or other facility where the patient is located;
- The patient's principal treating physician and other physicians believed to have provided any medical opinion or advice about any condition of the patient relevant to this petition;
- All other persons the petitioner believes may have information concerning the expressed wishes of the patient; and
- Such other persons as the court may direct.

A preliminary hearing on the petition must be held within 72 hours after the filing of the petition. At that time the court must review the petition and supporting documentation. In its discretion the court must either:⁴⁵

- Rule on the relief requested immediately after the preliminary hearing; or
- Conduct an evidentiary hearing not later than 4 days after the preliminary hearing and rule on the relief requested immediately after the evidentiary hearing.

⁴⁴ *Id.*

⁴⁵ *Id.*

Recent Investigations Into Guardianship Abuse

The abuses of professional guardian Rebecca Fierle began surfacing in the spring of 2019⁴⁶ and have revealed several weaknesses in the guardianship statutes. For example, Steven Stryker, a ward of Ms. Fierle's, died in May 2019 in a Tampa hospital after choking on food. Hospital staff could not perform lifesaving procedures on the 75-year-old due to a "do not resuscitate" order executed by Ms. Fierle. Testimony revealed that Ms. Fierle refused to remove the order even though Mr. Stryker had never expressed a desire to forego life-saving measures and die.⁴⁷ An investigation by the Orange County Comptroller's office concluded that Ms. Fierle was assigned to almost 100 Orange County guardianship cases in July 2019. In reviewing the 6,936 invoices that Ms. Fierle submitted to AdventHealth through her companies, it was determined that she submitted invoices of at least \$3,956,325 between January 2009 and June 2019. AdventHealth reported payments of \$3,706,609 since 2014. Those invoices represented services she allegedly provided to 682 patients. Of the 682 patients, 210 related to current or previous guardianship cases.

The Orange County Comptroller's investigation concluded that:

- Payments of \$2,514,715 were not reported to the court as required by statute;
- In bypassing the court for the approval of her fees, Ms. Fierle's hourly rates greatly exceeded the amounts that were determined to be reasonable by the court;
- Ms. Fierle appeared to maintain business relationships with her wards that were not disclosed or even approved by the court;
- Ms. Fierle double-billed AdventHealth and her wards' assets for identical services and fees;
- Previous relationships between Ms. Fierle and wards were not disclosed to the court as required by law;
- Petitions were submitted by Ms. Fierle requesting that she be appointed to the case as guardian;
- Bills were submitted for services provided before a guardianship case was initiated;
- Many invoices were paid twice resulting in multiple reimbursements for the same invoices;
- Ms. Fierle submitted invoices for cases that were not assigned to her but to a different guardian.⁴⁸

It was also reported by the media that Ms. Fierle developed relationships and conflicts of interest with people who were appointed to serve on a three member guardianship examining committee that was used to determine the incapacity of a person.⁴⁹

⁴⁶ J.D. Peacock II, Clerk of the Circuit Court and Comptroller for Okaloosa County, Florida, *OPPG Investigation Case Number 19-064* (July 9, 2019) (on file with the Senate Committee on Judiciary).

⁴⁷ Monivette Cordeiro, ORLANDO SENTINEL, *Man died after Orlando legal guardian filed 'do not resuscitate' order against his wishes, investigation finds/Exclusive* (July 15, 2019) <http://www.orlandosentinel.com/news/os-ne-man-died-after-orlando-guardian-filed-dnr-order-20190715-nnggrqhainedzce4j74oshar2y-story.html>.

⁴⁸ Phil Diamond, CPA County Comptroller of Orange County Florida, *Investigation of Payments Made to Professional Guardian – Rebecca Fierle by AdventHealth, Report 479*, (Sept. 2019) <https://www.occompt.com/download/Audit%20Reports/rpt479.pdf>.

⁴⁹ Monivette Cordeiro, *Florida's troubled guardianship system riddled with conflicts of interest, critics claim / Special Report*, ORLANDO SENTINEL (Aug. 14, 2019), <https://www.orlandosentinel.com/news/florida/guardians/os-ne-guardianship-examining-committee-conflicts-20190814-osbekpwlfnfezneolyxtvzmrhy-story.html>.

In July, an Orange County circuit judge found that Ms. Fierle had abused her powers as a guardian and removed Ms. Fierle from 98 cases in Orange and Osceola counties. A Seminole County judge followed suit that same week. The courts also revoked any do not resuscitate orders that Ms. Fierle may have filed.⁵⁰ Ms. Fierle filed an appeal to the Fifth District Court of Appeal in hopes that the lower court decisions would be overturned. The court denied her petition although she currently has at least one other petition pending in the Fifth District Court of Appeal.⁵¹

Ms. Fierle resigned her position as a registered professional guardian on July 25, 2019, and sought discharge from all of her cases. The Florida Department of Law Enforcement confirmed that a search warrant was executed on Ms. Fierle's Orlando office on August 5, 2019. The cremated remains of nine people were recovered, one of which remains unidentified. The criminal investigation against Ms. Fierle and her business is ongoing.⁵²

III. Effect of Proposed Changes:

Considerations When Appointing a Guardian

Section 1 amends s. 744.312, F.S., to place additional responsibilities on a court before appointing someone to serve as a guardian. The court must inquire into and consider a guardian's potential disqualification under s. 744.309, F.S., which outlines who may be appointed as a guardian for a ward, or potential conflicts of interest under s. 744.446, F.S., which requires that a guardian be independent, impartial, and maintain a fiduciary relationship to the ward.

Petitions for Appointment of a Guardian or Professional Guardian

Section 2 amends s. 744.334, F.S., to require that a petition for the appointment of a guardian state the reasons why an individual should be appointed guardian and whether he or she is a professional guardian. The bill also adds the word "alleged" before "incapacitated person or minor," and provides that the petition must explain if any other type of guardianship exists under part III of Chapter 744 (Types of Guardianship) or "alternatives to guardianship," which it defines as an advance directive, a durable power of attorney, a representative payee, or a trust instrument. The bill requires the petition to state why a guardian advocate or other alternatives to guardianship, which are less restrictive than a guardianship, are insufficient to meet the needs of the alleged incapacitated person or minor. The bill further provides that if the petitioner is a professional guardian, he or she may not petition for his or her own appointment unless the petitioner is a relative of the alleged incapacitated person or minor or is seeking appointment for a person of limited financial means and the guardian will be paid by either the Office of Public and Professional guardians or by a local government.

⁵⁰ Greg Angel, *Watchdog Update: 2nd Judge Removes Guardian From Cases After Man's Death*, Orlando Spectrum News 13, (July 19, 2019) <https://www.mynews13.com/fl/orlando/news/2019/07/19/watchdog-update--2nd-judge-removes-guardian-after-man-s-death>.

⁵¹ Florida Fifth District Court of Appeal Docket, Case Number: 5D19-3013 (reviewed on Jan. 22, 2020) <http://onlinedocketsdca.flcourts.org/DCAResults/LTCases?CaseNumber=3013&CaseYear=2019&Court=5>

⁵² FDLE Office of Public Information, *FDLE Statement Regarding Remains in the Rebecca Fierle Investigation* (Jan. 8, 2020) (on file with the Senate Committee on Judiciary).

Initial Guardianship Plan and Annual Guardianship Plan

Section 3 amends s. 744.363, F.S., and **Section 5** amends s. 744.3675, F.S., to specify that the initial guardianship plan and each annual guardianship plan must include a list of preexisting orders not to resuscitate and preexisting advance directives and the date an order or directive was signed, whether the document has been suspended by the court, and a description of the steps taken to identify and locate the document. These requirements are additions to other existing elements that must be included in the plans.

A Guardian's Payments and Benefits Must be Included in an Annual Guardianship Report

Section 4 amends s. 744.367, F.S., to require that guardians disclose to the court in the annual guardianship report all remuneration received by the guardian from any source for services rendered to or on behalf of the ward. This requirement applies to both guardians of the person and guardians of the property. The bill also defines remuneration as any payment or other benefit made directly or indirectly, overtly or covertly, or in cash or in kind to the guardian.

Orders Not to Resuscitate a Ward

Section 6 amends s. 744.441, F.S.. The bill creates a new subsection (1) and renumbers subsections (1) – (22) as subsections (1)(a) – (1)(v), and creates a new subsection (2) to specify that a plenary or limited guardian may sign a DNR as provided in statute if a court order is first obtained, however in cases where a guardian seeks a court order for a DNR on an emergent basis, the guardian must first follow the procedures in Florida Probate Rule 5.900, and the court must hold a preliminary hearing within 72 hours after the petition is filed.

Additional Conflicts of Interests and Prohibited Activities for a Guardian

Section 7 amends s. 744.446, F.S., relating to conflicts of interest. The bill renumbers subsections (2), (3), and (4), and adds a new subsection (2), to more specifically prohibit guardians from offering, paying, soliciting, or receiving a commission, benefit, bonus, rebate, or kickback, directly or indirectly, overtly or covertly, or in cash or in kind, or engaging in split-fee arrangements in return for referring, soliciting, or engaging in a transaction for goods or services on behalf of an alleged incapacitated person or minor, or a ward, for past or future goods or services.

Additionally, the bill specifies that, unless prior approval is granted by a court order or the relationship existed before the guardian was appointed and was disclosed to the court in the petition for appointment of guardian, a guardian may not have any interest, financial or otherwise, in a business transaction or activity with the ward, the judge presiding over the case, any member of the appointed examining committee, any court employee involved in the guardianship process, or the attorney for the ward.

Section 8 provides an effective date of July 1, 2020.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The State Courts Administrator predicts a likely increase in workload and judicial time as a result of modifying screening and monitoring requirements of guardians and guardianship plans. The fiscal impact, however, cannot be accurately determined at this time due to the unavailability of data needed to establish the increase in the judicial workload.⁵³

The Florida Court Clerks and Comptrollers (Clerks) estimates that there will be an increase in the number of items the Clerk's staff will need to review, but the impact is indeterminate. The Clerks also estimate there will be an increase in auditing if additional complaints are received relating to DNROs, assuming the number of court hearings do

⁵³ Office of the State Courts Administrator, *SB 994 Judicial Impact Statement* (Jan. 13, 2020) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=30133>.

not increase. If the number of court hearings do increase, there will be an impact due to court docketing and related duties.⁵⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 744.312, 744.334, 744.363, 744.367, 744.3675, 744.441, and 744.446 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Rules on February 12, 2020:

- Eliminates the requirement that a guardian obtain specific authority from the court, as described in s. 744.3725, F.S., before consenting to or signing off on a DNR order and the requirement that a court must rule on a petition to consent to or sign off on a DNR within 72 hours after the filing of a verified petition making such a request; and
- Permits a plenary or limited guardian to sign a DNR order once a court has approved a petition for such an order; where the plenary or limited guardian seeks court approval for a DNR on an emergency basis, the CS provides that the procedures for expedited judicial intervention under rule 5.900 of the Florida Probate Rules apply and that a court must hold a preliminary hearing on the petition within 72 hours of the petition being filed.

CS by Judiciary on January 28, 2020:

Two additional provisions were added to the bill which:

- Require a court to rule within 72 hours after a petition is filed to obtain a do-not-resuscitate order. The petition must disclose the petitioner's interest in the proceeding, clarify what specific authority is requested, state the facts that constitute the basis for the relief sought, and state that the requested authority is in the ward's best interest; and
- Permit a public guardian to petition for appointment as a guardian if he or she is seeking appointment for a person of limited financial means and he or she will be compensated from the Office of Public and Professional Guardians or by a local government.

⁵⁴ Florida Court Clerks and Comptrollers, *HB 709, FCCC Bill Analysis* (Dec. 19, 2019) <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=25301&yr=2020>.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/12/2020	.	
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	.	
	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 60
and insert:

Section 2. Section 744.441, Florida Statutes, is amended to
read:

744.441 Powers of guardian upon court approval.—After
obtaining approval of the court pursuant to a petition for
authorization to act:7

(1) A plenary guardian of the property, or a limited
guardian of the property within the powers granted by the order



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12 appointing the guardian or an approved annual or amended
13 guardianship report, may:

14 (a)~~(1)~~ Perform, compromise, or refuse performance of a
15 ward's contracts that continue as obligations of the estate, as
16 he or she may determine under the circumstances.

17 (b)~~(2)~~ Execute, exercise, or release any powers as trustee,
18 personal representative, custodian for minors, conservator, or
19 donee of any power of appointment or other power that the ward
20 might have lawfully exercised, consummated, or executed if not
21 incapacitated, if the best interest of the ward requires such
22 execution, exercise, or release.

23 (c)~~(3)~~ Make ordinary or extraordinary repairs or
24 alterations in buildings or other structures; demolish any
25 improvements; or raze existing, or erect new, party walls or
26 buildings.

27 (d)~~(4)~~ Subdivide, develop, or dedicate land to public use;
28 make or obtain the vacation of plats and adjust boundaries;
29 adjust differences in valuation on exchange or partition by
30 giving or receiving consideration; or dedicate easements to
31 public use without consideration.

32 (e)~~(5)~~ Enter into a lease as lessor or lessee for any
33 purpose, with or without option to purchase or renew, for a term
34 within, or extending beyond, the period of guardianship.

35 (f)~~(6)~~ Enter into a lease or arrangement for exploration
36 and removal of minerals or other natural resources or enter into
37 a pooling or unitization agreement.

38 (g)~~(7)~~ Abandon property when, in the opinion of the
39 guardian, it is valueless or is so encumbered or in such
40 condition that it is of no benefit to the estate.



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41 (h)~~(8)~~ Pay calls, assessments, and other sums chargeable or
42 accruing against, or on account of, securities.

43 (i)~~(9)~~ Borrow money, with or without security, to be repaid
44 from the property or otherwise and advance money for the
45 protection of the estate.

46 (j)~~(10)~~ Effect a fair and reasonable compromise with any
47 debtor or obligor or extend, renew, or in any manner modify the
48 terms of any obligation owing to the estate.

49 (k)~~(11)~~ Prosecute or defend claims or proceedings in any
50 jurisdiction for the protection of the estate and of the
51 guardian in the performance of his or her duties. Before
52 authorizing a guardian to bring an action described in s.
53 736.0207, the court shall first find that the action appears to
54 be in the ward's best interests during the ward's probable
55 lifetime. There shall be a rebuttable presumption that an action
56 challenging the ward's revocation of all or part of a trust is
57 not in the ward's best interests if the revocation relates
58 solely to a devise. This paragraph ~~subsection~~ does not preclude
59 a challenge after the ward's death. If the court denies a
60 request that a guardian be authorized to bring an action
61 described in s. 736.0207, the court shall review the continued
62 need for a guardian and the extent of the need for delegation of
63 the ward's rights.

64 (l)~~(12)~~ Sell, mortgage, or lease any real or personal
65 property of the estate, including homestead property, or any
66 interest therein for cash or credit, or for part cash and part
67 credit, and with or without security for unpaid balances.

68 (m)~~(13)~~ Continue any unincorporated business or venture in
69 which the ward was engaged.



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70 (n)~~(14)~~ Purchase the entire fee simple title to real estate
71 in this state in which the guardian has no interest, but the
72 purchase may be made only for a home for the ward, to protect
73 the home of the ward or the ward's interest, or as a home for
74 the ward's dependent family. If the ward is a married person and
75 the home of the ward or of the dependent family of the ward is
76 owned by the ward and spouse as an estate by the entirety and
77 the home is sold pursuant to the authority of paragraph (l)
78 ~~subsection (12)~~, the court may authorize the investment of any
79 part or all of the proceeds from the sale toward the purchase of
80 a fee simple title to real estate in this state for a home for
81 the ward or the dependent family of the ward as an estate by the
82 entirety owned by the ward and spouse. If the guardian is
83 authorized to acquire title to real estate for the ward or
84 dependent family of the ward as an estate by the entirety in
85 accordance with the preceding provisions, the conveyance shall
86 be in the name of the ward and spouse and shall be effective to
87 create an estate by the entirety in the ward and spouse.

88 (o)~~(15)~~ Exercise any option contained in any policy of
89 insurance payable to, or insuring to the benefit of, the ward.

90 (p)~~(16)~~ Pay reasonable funeral, interment, and grave marker
91 expenses for the ward from the ward's estate.

92 (q)~~(17)~~ Make gifts of the ward's property to members of the
93 ward's family in estate and income tax planning procedures.

94 (r)~~(18)~~ When the ward's will evinces an objective to obtain
95 a United States estate tax charitable deduction by use of a
96 split interest trust (as that term is defined in s. 736.1201),
97 but the maximum charitable deduction otherwise allowable will
98 not be achieved in whole or in part, execute a codicil on the



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ward's behalf amending said will to obtain the maximum charitable deduction allowable without diminishing the aggregate value of the benefits of any beneficiary under such will.

(s)~~(19)~~ Create or amend revocable trusts or create irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning. The court shall retain oversight of the assets transferred to a trust, unless otherwise ordered by the court.

(t)~~(20)~~ Renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

(u)~~(21)~~ Enter into contracts that are appropriate for, and in the best interest of, the ward.

(v)~~(22)~~ As to a minor ward, pay expenses of the ward's support, health, maintenance, and education, if the ward's parents, or either of them, are alive.

(2) A plenary guardian or a limited guardian of a ward may sign an order not to resuscitate as provided in s. 401.45(3). When a plenary guardian or a limited guardian of a ward seeks to obtain approval of the court to sign an order not to resuscitate, if required by exigent circumstances, the procedures for expedited judicial intervention under rule 5.900 of the Florida Probate Rules apply, and the court must hold a preliminary hearing within 72 hours after the petition is filed.

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

And the title is amended as follows:

Delete lines 4 - 9



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128 and insert:
129 appointing a guardian; amending s. 744.441, F.S.;
130 authorizing certain guardians to sign an order not to
131 resuscitate; requiring the court to use specified
132 procedures for expedited judicial intervention under
133 certain circumstances; amending s. 744.334,

By the Committee on Judiciary; and Senators Passidomo, Stewart,
and Thurston

590-02762-20

2020994c1

A bill to be entitled

An act relating to guardianship; amending s. 744.312, F.S.; expanding factors for a court to consider when appointing a guardian; amending s. 744.3215, F.S.; prohibiting a guardian from consenting to, or signing on behalf of a ward, an order not to resuscitate without court approval; requiring the court to make a determination within a specified timeframe after the filing of a certain petition; amending s. 744.334, F.S.; revising requirements for a petition for the appointment of a guardian; defining the term "alternatives to guardianship"; prohibiting professional guardians from petitioning for their own appointment except under certain circumstances; defining the term "relative"; providing that a specified provision does not apply to public guardians under specified circumstances; amending s. 744.363, F.S.; expanding requirements for initial guardianship plans; amending s. 744.367, F.S.; expanding requirements for annual guardianship reports; defining the term "remuneration"; amending s. 744.3675, F.S.; expanding requirements for annual guardianship plans; amending s. 744.446, F.S.; prohibiting guardians from taking certain actions on behalf of an alleged incapacitated person or minor; revising provisions relating to conflicts of interest; providing an effective date.

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

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

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Section 1. Paragraph (e) is added to subsection (3) of section 744.312, Florida Statutes, and subsection (1) of that section is republished, to read:

744.312 Considerations in appointment of guardian.—

(1) If the person designated is qualified to serve pursuant to s. 744.309, the court shall appoint any standby guardian or preneed guardian, unless the court determines that appointing such person is contrary to the best interests of the ward.

(3) The court shall also:

(e) Inquire into and consider potential disqualifications under s. 744.309 and potential conflicts of interest under s. 744.446.

Section 2. Paragraph (f) is added to subsection (4) of section 744.3215, Florida Statutes, and paragraph (e) of subsection (1) of that section is republished, to read:

744.3215 Rights of persons determined incapacitated.—

(1) A person who has been determined to be incapacitated retains the right:

(e) To have a qualified guardian.

(4) Without first obtaining specific authority from the court, as described in s. 744.3725, a guardian may not:

(f) Consent to or sign on behalf of the ward an order not to resuscitate executed under s. 401.45(3). The court must make such a determination within 72 hours after the filing of a verified petition stating:

1. The petitioner's interest in the proceeding;

2. The specific authority requested; and

3. The facts constituting the basis for the relief sought

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

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and that the authority being requested is in the best interest of the ward.

Section 3. Section 744.334, Florida Statutes, is amended to read:

744.334 Petition for appointment of guardian or professional guardian; contents.—

(1) Every petition for the appointment of a guardian shall be verified by the petitioner and shall contain statements, to the best of petitioner's knowledge and belief, showing the name, age, residence, and post office address of the alleged incapacitated person or minor; the nature of her or his incapacity, if any; the extent of guardianship desired, either plenary or limited; the residence and post office address of the petitioner; the names and addresses of the next of kin of the alleged incapacitated person or minor, if known to the petitioner; the name of the proposed guardian and the reasons why she or he should be appointed guardian; whether the proposed guardian is a professional guardian; the relationship and previous relationship of the proposed guardian to the alleged incapacitated person or minor ward; any other type of guardianship under part III of this chapter or alternatives to guardianship that the alleged incapacitated person or minor has designated or is in currently or has been in previously; the reasons why a guardian advocate under s. 744.3085 or other alternatives to guardianship are insufficient to meet the needs of the alleged incapacitated person or minor; and the nature and value of property subject to the guardianship; and the reasons why this person should be appointed guardian. The petition must state whether if a willing and qualified guardian cannot be

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located, ~~the petition must so state.~~ As used in this subsection, the term "alternatives to guardianship" means an advance directive as defined in s. 765.101, a durable power of attorney as provided in chapter 709, a representative payee under 42 U.S.C. s. 1007, or a trust instrument as defined in s. 736.0103.

(2) If the petitioner is a professional guardian, she or he may not petition for her or his own appointment unless the petitioner is a relative of the alleged incapacitated person or minor. For purposes of this subsection, the term "relative" means an individual who would qualify to serve as a nonresident guardian under s. 744.309(2). This subsection does not apply to a public guardian appointed under s. 744.2006 who seeks appointment as a guardian of a person of limited financial means and whose compensation as guardian for such person would be paid from the Office of Public and Professional Guardians or any local government ~~The petition for appointment of a professional guardian must comply with the provisions of subsection (1), and must state that the petitioner is a professional guardian.~~

Section 4. Subsection (1) of section 744.363, Florida Statutes, is amended to read:

744.363 Initial guardianship plan.—

(1) The initial guardianship plan shall include all of the following:

(a) The provision of medical, mental, or personal care services for the welfare of the ward.†

(b) The provision of social and personal services for the welfare of the ward.†

(c) The place and kind of residential setting best suited for the needs of the ward.†

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(d) The application of health and accident insurance and any other private or governmental benefits to which the ward may be entitled to meet any part of the costs of medical, mental health, or related services provided to the ward, ~~and~~

(e) Any physical and mental examinations necessary to determine the ward's medical and mental health treatment needs.

(f) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.

Section 5. Subsection (3) of section 744.367, Florida Statutes, is amended to read:

744.367 Duty to file annual guardianship report.—

(3)(a) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual guardianship report of a guardian of the person must consist of an annual guardianship plan. The annual guardianship report of a guardian of the property and the annual guardianship report of a guardian of the person must both include a declaration of all remuneration received by the guardian from any source for services rendered to or on behalf of the ward. As used in this paragraph, the term "remuneration" means any payment or other benefit made directly or indirectly, overtly or covertly, or in cash or in kind to the guardian.

(b) The annual guardianship report must shall be served on the ward, unless the ward is a minor or is totally

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incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

Section 6. Paragraph (d) is added to subsection (1) of section 744.3675, Florida Statutes, to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(d) A list of any preexisting orders not to resuscitate executed under s. 401.45(3) or preexisting advance directives, as defined in s. 765.101, the date an order or directive was signed, whether such order or directive has been suspended by the court, and a description of the steps taken to identify and locate the preexisting order not to resuscitate or advance directive.

Section 7. Present subsections (2), (3), and (4) of section 744.446, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, a new subsection (2) is added to that section, and present subsection (2) of that section is amended, to read:

744.446 Conflicts of interest; prohibited activities; court approval; breach of fiduciary duty.—

(2) A guardian may not offer, pay, solicit, or receive a commission, benefit, bonus, rebate, or kickback, directly or indirectly, overtly or covertly, in cash or in kind, or engage

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175 in a split-fee arrangement in return for referring, soliciting,
176 or engaging in a transaction for goods or services on behalf of
177 an alleged incapacitated person or minor, or a ward, for past or
178 future goods or services.

179 ~~(3)(2)~~ Unless prior approval is obtained by court order, or
180 unless such relationship existed before ~~prior to~~ appointment of
181 the guardian and is disclosed to the court in the petition for
182 appointment of guardian, a guardian may not:

183 (a) Have any interest, financial or otherwise, direct or
184 indirect, in any business transaction or activity with the ward,
185 the judge presiding over the case, any member of the appointed
186 examining committee, any court employee involved in the
187 guardianship process, or the attorney for the ward;

188 (b) Acquire an ownership, possessory, security, or other
189 pecuniary interest adverse to the ward;

190 (c) Be designated as a beneficiary on any life insurance
191 policy, pension, or benefit plan of the ward unless such
192 designation was validly made by the ward before ~~prior to~~
193 adjudication of incapacity of the ward; and

194 (d) Directly or indirectly purchase, rent, lease, or sell
195 any property or services from or to any business entity of which
196 the guardian or the guardian's spouse or any of the guardian's
197 lineal descendants, or collateral kindred, is an officer,
198 partner, director, shareholder, or proprietor, or has any
199 financial interest.

200 Section 8. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 29, 2020

I respectfully request that **Senate Bill #994**, relating to Guardianship, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 12, 2020

Meeting Date

994

Bill Number (if applicable)

309876

Amendment Barcode (if applicable)

Topic Guardianship

Name Brian Jogerst

Job Title

Address 307 West Park Avenue

Street

Tallahassee FL

32301

City

State

Zip

Phone 850-222-0191

Email brian@waypointstat.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Elder Law Section / Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-20

Meeting Date

994

Bill Number (if applicable)

Topic SB 994

Amendment Barcode (if applicable)

Name Bryan Cherry

Job Title Consultant

Address 150 S. Monroe St, STE 303

Street

Tallahassee FL

City

State

Zip

Phone (850) 544-5673

Email bryan@pinpointresults

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL. Public Guardian Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/12/2020

Meeting Date

994

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Tim Parson

Job Title _____

Address 113 E. College Ave.

Street

Phone 850-910-2678

City

Tallahassee

State

FL

Zip

32301

Email tim@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

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

Representing Lutheran Services Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/12/2020

Meeting Date

SB 994

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Zayne smith

Job Title Associate State Director

Address 215 South Monroe Suite 603

Phone 850.228.4243

Street

Tallahassee

FL

32301

City

State

Zip

Email zsmith@aarp.org

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

Representing AARP

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-12-20

Meeting Date

994

Bill Number (if applicable)

Topic

Guardianship

Amendment Barcode (if applicable)

Name

Doug Franks

Job Title

Address

1034 Justice Ln.

Phone

678 570 3010

Street

Aurora GA 30102

Email

douglasfranks@gmail.com

City

State

Zip

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Free Ernestine.com

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

994
Bill Number (if applicable)

Meeting Date _____

Topic Guardianship Fraud Amendment Barcode (if applicable) _____

Name Angela Victoria Woodhull

Job Title Licensed Private Investigator

Address 1920 SW 72nd St. Phone (352) 219-6994
Street Gainesville FL 32607 Email chachaangelina@yahoo.com
City State Zip

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

Representing Guardianship Victims

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-20

Meeting Date

SB994

Bill Number (if applicable)

Topic GUARDIANSHIP

Amendment Barcode (if applicable)

Name SABRINA SCHWARTZ

Job Title —

Address 7659 JONESTA SHORES DR
Street

Phone 561-308-0302

LAKE WORTH FL 33463
City State Zip

Email Sm2PK@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LILA H. SCHWARTZ (WARD/MOTHER)

Appearing at request of Chair: ☒ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/12/2020

Meeting Date

994

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Daniel Olson

Job Title Director, Government Affairs

Address 400 S. Monroe

Phone _____

Street

Tallahassee

FL

32399

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Office of the Attorney General

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/12/20

Meeting Date

994

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Ken Kniepman (Keh-neep-man)

Job Title Associate

Address 201 W Park

Phone _____

Street

Tallahassee

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-12-20

Meeting Date

994

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Street

Phone _____

Largo

City

FL

State

33773

Zip

Email _____

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Saving Families

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 1398

INTRODUCER: Rules Committee and Senator Flores

SUBJECT: Community Planning

DATE: February 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Ryon	CA	Favorable
2.	Hackett	McVane	GO	Favorable
3.	Toman	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1398 provides requirements for establishing a quorum for meetings of regional planning councils when a voting member appears via telephone, real-time video conferencing, or similar real-time electronic or video communication.

The bill also requires the Department of Economic Opportunity, when selecting applicants for Community Planning Technical Assistance Grants, to give preference to certain small counties and municipalities located near a proposed multiuse corridor interchange.

II. Present Situation:

Open Meetings Law

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

¹ FLA CONST., art. I, s. 24(b).

² *Id.*

³ FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”⁴ or the “Sunshine Law,”⁵ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.⁶ The board or commission must provide the public reasonable notice of such meetings.⁷ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.⁸ Minutes of a public meeting must be promptly recorded and open to public inspection.⁹ Failure to abide by public meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.¹⁰ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹¹

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

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.¹⁵

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.”

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

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

⁶ Section 286.011(1)-(2), F.S.

⁷ *Id.*

⁸ Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(1), F.S.

¹¹ Section 286.011(3), F.S. Penalties include a fine of up to \$500 or a second degree misdemeanor.

¹² FLA CONST., art. I, s. 24(c).

¹³ *Id.*

¹⁴ *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 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.

¹⁵ Section 286.0113, F.S. “Team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.

Administrative Procedure Act

The Administrative Procedure Act (APA)¹⁶ outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering citizen involvement. The process subjects state agencies to a uniform procedure in enacting rules and issuing orders and allows citizens to challenge an agency's decision.¹⁷

The term “agency” is defined in s. 120.52(1), F.S., as:

- The Governor, each state officer and state department, and each departmental unit described in s. 20.04, F.S.;¹⁸
- The Board of Governors of the State University System;
- The Commission on Ethics;
- The Fish and Wildlife Conservation Commission;
- A regional water supply authority;
- A regional planning agency;
- A multicounty special district, but only if a majority of its governing board is comprised of non-elected persons;
- Educational units;
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.;
- Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county; and
- Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.¹⁹

Use of Electronic Media and Public Meetings

Section 120.54(5)(b)2, F.S., requires the Administration Commission²⁰ to promulgate rules to create uniform rules of procedure for state agencies to use when conducting public meetings, hearings or workshops, including procedures for conducting meetings in person and by means of communications media technology.²¹ The agency must state in the notice that the public meeting, hearing, or workshop will be conducted by means of communications media technology, or if attendance may be provided by such means.²² The notice must also state how individuals

¹⁶ See ch. 120, F.S.

¹⁷ See Joint Administrative Procedures Committee, *A Primer on Florida's Administrative Procedure Act*, available at <http://www.japc.state.fl.us/Documents/Publications/PocketGuideFloridaAPA.pdf> (last visited Jan. 15, 2020).

¹⁸ Section 20.04, F.S., specifies the structure of the executive branch of state government.

¹⁹ The definition of agency does not include a municipality or legal entity created solely by a municipality and expressly excludes certain legal entities or organizations found in chs. 343, 348, and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

²⁰ Section 14.202, F.S. The Administration Commission is composed of the Governor and the Cabinet (The Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture compose the Cabinet. Section 20.03(1), F.S.).

²¹ Section 120.54(5)(b)2, F.S. The term “communications media technology” means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available.

²² *Id.*

interested in attending may do so.²³ Notwithstanding the use of electronic media technology, all evidence, testimony, and argument presented at the public meeting must be afforded equal consideration, regardless of the method of communication.²⁴ In addition to agencies required to comply with ch. 120, F.S., certain entities created by an interlocal agreement may conduct public meetings and workshops via communications media technology.²⁵

While current law allows state agencies and certain entities created by an interlocal agreement to conduct meetings and vote by means of communications media technology, there has been a question over whether or not local boards or agencies may conduct meetings in the same fashion.²⁶ The Office of Attorney General has opined that only state agencies can conduct meetings and vote via communications media technology, thus rejecting a school board's request to conduct board meetings via electronic means.²⁷ The Attorney General reasoned that s. 120.54(5)(b)2, F.S., limits its terms only to uniform rules that apply to state agencies.²⁸ The Attorney General explained that "allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission."²⁹

The Attorney General reasoned that a similar rationale is not applicable to local boards and commissions even though it may be convenient and save money since the representation on these boards and commissions are local thus, "such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting."³⁰ However, if a quorum of a local board is physically present at the public meeting, a board may allow a member who is unavailable to physically attend the meeting due to extraordinary circumstances such as illness, to participate and vote at the meeting via communications media technology.³¹

Florida Regional Planning Councils

The Florida Regional Planning Council Act³² allows the creation of regional planning councils (RPC). The Legislature has recognized RPCs as the "only multipurpose regional entity that is in position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than local issues, provide technical assistance to local governments, and meet other needs of the communities in each region."³³ RPCs span multiple counties within the geographical boundaries of any one comprehensive planning district.³⁴ The voting membership of a RPC must

²³ *Id.*

²⁴ *Id.*

²⁵ Section 163.01(18), F.S. (Allowing public agencies located in at least five counties, of which at least three are not contiguous, to conduct public meetings and workshops by means of communications media technology).

²⁶ Robert Eschenfelder, *Modern Sunshine: Attending Public Meetings in the Digital Age*, 84 Fla. B.J. 28 (2010).

²⁷ Op. Att'y Gen. Fla. 98-28 (1998).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Section 186.501–186.513, F.S.

³³ Section 186.502(4), F.S.

³⁴ Section 186.504, F.S.

consist of representatives living within the geographical area covered by the council.³⁵ The ten RPCs are as follows: West Florida, Apalachee, North Central Florida, Northeast Florida, East Central Florida, Tampa Bay, Central Florida, Southwest Florida, Treasure Coast, and South Florida.³⁶ Each RPC consists of anywhere from three (South Florida) to 12 counties (North Central Florida).³⁷

DEO Technical Assistance Grant Program

Section 163.3168(3), F.S., requires the Department of Economic Opportunity (DEO), as the state land planning agency, to help communities find creative solutions to foster vibrant, healthy communities and authorizes the DEO to use various means to provide direct and indirect technical assistance within available resources. To carry out this charge, DEO's Bureau of Community Planning and Growth manages the Community Planning Technical Assistance Grant Program. Under the program, the DEO awards grant funds to counties, cities, and regional planning councils to assist local governments in developing economic development strategies, meeting the requirements of the Community Planning Act, addressing critical local planning issues, and promoting innovative planning solutions to challenges identified by local government applicants.³⁸ The program has funded a wide range of activities which have included, for example, the development and revision of comprehensive plan amendments, economic development strategic plans, affordable housing action plans, downtown master plans, transportation master plans, and revitalization plans.

Beginning in fiscal year 2011-2012, the Legislature has annually appropriated state funds to the DEO to implement the program. From fiscal years 2015-2016 to 2019-2020, the DEO has expended almost \$6 million on 173 approved grant projects.³⁹

M-CORES Program

Enacted during the 2019 Regular Session,⁴⁰ the Multi-use Corridors of Regional Economic Significance (M-CORES) Program is designed to advance the construction of regional corridors that will accommodate multiple modes of transportation and multiple types of infrastructure.⁴¹ The specific purpose of the program is to revitalize rural communities, encourage job creation in those communities, and provide regional connectivity while leveraging technology, enhancing the quality of life and public safety, and protecting the environment and natural resources.⁴²

Section 338.2278(1)(a)-(k), F.S., enumerates the intended benefits which the M-CORES Program seeks to address, which include, but are not limited to: hurricane evacuation; congestion mitigation; trade and logistics; broadband, water, and sewer connectivity; energy distribution;

³⁵ Section 186.504(2), F.S.

³⁶ Section 186.512, F.S.

³⁷ *Id.*

³⁸ DEO, Division of Community Planning, *Technical Assistance*, available at: <http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/technical-assistance> (last visited Feb. 13, 2020).

³⁹ Information received from DEO staff on Jan. 23, 2020 (on file with Senate Committee on Rules).

⁴⁰ Chapter 2019-43, Laws of Fla.

⁴¹ For additional detailed information about M-CORES, see the FDOT M-CORES website, available at: <https://floridamcores.com/> (last visited Jan. 28, 2020).

⁴² Section 338.2278(1), F.S.

autonomous, connected, shared, and electric vehicle technology; other transportation modes, such as shared-use nonmotorized trails, freight and passenger rail, and public transit; mobility as a service; availability of a trained workforce skilled in traditional and emerging technologies; protection or enhancement of wildlife corridors or environmentally sensitive areas; and protection or enhancement of primary springs protection zones and farmland preservation areas. The following three corridors comprise the M-CORES Program:

- Southwest-Central Florida Connector (Collier County to Polk County);
- Suncoast Connector (Citrus County to Jefferson County); and
- Northern Turnpike Connector (the northern terminus of the Florida Turnpike northwest to the Suncoast Parkway).⁴³

As required by law, the Florida Department of Transportation (FDOT) has assembled three task forces to study the three specific multi-use corridors.⁴⁴ The task forces will make recommendations to the FDOT regarding the potential economic and environmental impacts of the corridor and other factors as specified in the M-CORES legislation. Task Forces are required to report their evaluations in a final report submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by October 1, 2020.⁴⁵ The law requires, to the maximum extent feasible, project construction to begin no later than December 31, 2022, with projects open to traffic no later than December 31, 2030.⁴⁶

III. Effect of Proposed Changes:

Section 1 amends s. 120.525, F.S., to authorize the use of communication media technology for board meetings of RPCs that cover three or more counties. Specifically, a voting member who appears via telephone, real-time videoconferencing, or similar real-time electronic or video communication that is broadcast publicly at the meeting location may be counted toward the quorum requirement if at least one-third of the voting members of such RPC are physically present at the meeting location.

The bill also requires the member to provide oral, written, or electronic notice of his or her intent to appear via communications media technology to their respective planning council at least 24 hours before the scheduled meeting.

Section 2 amends s. 163.3168, F.S., to require the DEO, when selecting applications for Community Planning Technical Assistance Grants, to give preference to certain small counties and municipalities for assistance in:

- Determining whether an area in and around a proposed multiuse corridor interchange contains appropriate land uses and natural resource protection; and
- Developing or amending a local government's comprehensive plan to provide for the land uses, natural resource protection, and intended benefits associated with a proposed multiuse corridor interchange.

⁴³ Section 338.2278(2)(a)-(c), F.S.

⁴⁴ Section 338.2278(c)1., F.S.

⁴⁵ Section 338.2278(3)(c)9., F.S.

⁴⁶ Section 338.2278(6), F.S.

Counties with a population of 200,000 or less, and municipalities within such counties, are eligible for the funding preference provided in the bill.

Section 3 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Authorizing RPCs to use media technology for quorum purposes may save on travel time and cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.525 and 163.3168.

IX. Additional Information:

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

CS by Rules on February 12, 2020:

The committee substitute requires DEO to give a preference for technical assistance grant funding to certain small counties and municipalities located near a proposed multiuse corridor interchange.

- B. **Amendments:**

None.



934738

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/12/2020	.	
	.	
	.	
	.	

The Committee on Rules (Flores) recommended the following:

Senate Amendment (with title amendment)

Between lines 29 and 30
insert:

Section 2. Present subsection (4) of section 163.3168, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

163.3168 Planning innovations and technical assistance.—

(4) When selecting applications for funding for technical assistance, the state land planning agency shall give a preference to a county that has a population of 200,000 or less,



934738

and to a municipality located within such a county, for
assistance in determining whether the area in and around a
proposed multiuse corridor interchange as described in s.
338.2278 contains appropriate land uses and natural resource
protections and for aid in developing or amending a local
government's comprehensive plan to provide for such uses,
protections, and intended benefits as provided in s. 338.2278.

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

And the title is amended as follows:

Delete lines 2 - 11

and insert:

An act relating to community planning; amending s.
120.525, F.S.; providing requirements for establishing
a quorum for meetings of certain councils when a
voting member appears via telephone, real-time
videoconferencing, or similar real-time electronic or
video communication; requiring the member to give
notice of intent to appear via telephone, real-time
videoconferencing, or similar real-time electronic or
video communication by a specified time; amending s.
163.3168, F.S.; requiring the Department of Economic
Opportunity to give a preference to certain counties
and municipalities when selecting applications for
funding for technical assistance; providing an
effective date.

By Senator Flores

39-01530-20

20201398__

1 A bill to be entitled
 2 An act relating to regional planning council meetings;
 3 amending s. 120.525, F.S.; providing requirements for
 4 establishing a quorum for meetings of certain councils
 5 when a voting member appears via telephone, real-time
 6 videoconferencing, or similar real-time electronic or
 7 video communication; requiring the member to give
 8 notice of intent to appear via telephone, real-time
 9 videoconferencing, or similar real-time electronic or
 10 video communication by a specified time; providing an
 11 effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (4) is added to section 120.525,
 16 Florida Statutes, to read:
 17 120.525 Meetings, hearings, and workshops.—
 18 (4) For purposes of establishing a quorum at meetings of
 19 regional planning councils that cover three or more counties, a
 20 voting member who appears via telephone, real-time
 21 videoconferencing, or similar real-time electronic or video
 22 communication that is broadcast publicly at the meeting location
 23 may be counted toward the quorum requirement if at least one-
 24 third of the voting members of the regional planning council are
 25 physically present at the meeting location. A member must
 26 provide oral, written, or electronic notice of his or her intent
 27 to appear via telephone, real-time videoconferencing, or similar
 28 real-time electronic or video communication to the regional
 29 planning council at least 24 hours before the scheduled meeting.

Page 1 of 2

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

39-01530-20

20201398__

30 Section 2. This act shall take effect July 1, 2020.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 3rd, 2020

I respectfully request that **Senate Bill #1398**, relating to Regional Planning Council Meetings, be placed on the:

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

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

Senator Anitere Flores
Florida Senate, District 39

Technical Assistance (TA) GRANTS AWARDED FY 15-16 Totals \$1,294,000

Grantee		County	Grant Project	Grant Award
1	Apalachicola, City of (Franklin County)	Franklin	Study the stormwater framework of the City and develop a work plan to address pollutants. Draft Land Development Regulations regarding stormwater fees within the City.	\$55,000
2	Apalachee Regional Planning Council	Calhoun	Create a Strategic Community Vision Plan for downtown Blountstown and incorporate into the City's Comprehensive Plan	\$22,000
3	Dunnellon, City of	Marion	Assemble and update comprehensive plan.	\$74,000
4	Holmes County	Holmes	Create a Hwy. 90 Corridor Plan in concert with plans of Walton, Jackson, Washington, and Gadsden Counties; purpose is to draw visitors to the historic Hwy. 90 Corridor to enhance economic development.	\$20,000
5	Islamorada, Village of	Monroe	Develop a revised Building Permit Allocation System that takes into account preferred development areas and environmentally sensitive areas. Provide a draft of revised Land Development Regulations incorporating the Allocation System and hold a public workshop to obtain feedback.	\$32,500
6	Walton County	Walton	Create a Hwy. 90 Corridor Plan in concert with plans of Holmes, Jackson, Washington, and Gadsden Counties; purpose is to encourage visitors to the historic Hwy. 90 Corridor to enhance economic development.	\$20,000
7	Gadsden County	Gadsden	Create a Hwy. 90 Corridor Plan in concert with similar plans for Walton, Holmes, Jackson, and Washington Counties; purpose is to draw visitors to the historic Hwy. 90 Corridor to enhance economic development.	\$20,000
8	Alford, Town of	Jackson	Analyze the Town's strengths, weaknesses, opportunities and threats, prepare a Vision Plan, and update the Town's comprehensive plan to enhance economic development.	\$22,000

9	North Bay Village, City of	Miami-Dade	Produce an Economic Development and Redevelopment Strategic Plan	\$25,000
10	East Central Florida Regional Planning Council		Expand on Indian River Lagoon Outfall Project and update economic impact analysis for the Lagoon.	\$155,000
11	Daytona Beach, City of	Volusia	Visual Imaging for Public Projects.	\$25,000
12	East Central Florida Regional Planning Council	Orange County	Develop Orange County Food Production Strategic Plan.	\$30,000
13	Tampa Bay Regional Planning Council	Citrus, Hernando, Hillsborough, Manatee, Pasco and Pinellas	Coast to Coast Trail Branding Image.	\$115,000
14	Indian Harbour Beach, City of	Brevard	Comprehensive Stormwater Management Plan.	\$25,000
15	Franklin County	Franklin	Create a GIS-based Planning Map for unincorporated Franklin County and make available via web link on County's website	\$25,000
16	Hamilton County	Hamilton	Analyze Comprehensive Plan to address changes in statutes, streamline development review process and digitize and update Future Land Use Map	\$25,000
17	Jennings, Town of	Hamilton	Conduct a mapping study and analysis of the Town's current infrastructure and develop a 10-year plan for infrastructure repairs and expansion	\$25,000
18	Madison County	Madison	Prepare comprehensive plan amendments to update the plans of the Town of Lee and the Town of Greenville and incorporate a new Economic Development Element into each of the two comprehensive plans.	\$39,000
19	Marathon, City of	Monroe	Update Land Development Regulations to be consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern.	\$42,500
20	Mascotte, City of	Lake	Update Land Development Regulations to be consistent with the Principles for Guiding Development for the Green Swamp Area of Critical State Concern and to adress previous DEO rejections.	\$10,000

21	Niceville, City of	Okaloosa	Update Land Development Code to maintain consistency with the Future Land Use Element of the City's Comprehensive Plan, clarifying unclear and contradicting regulations	\$25,000
22	St. Johns County	St. Johns	Conduct an analysis of the County's passive recreation parks to provide information to guide the County promote maximum use of the parks.	\$25,000
23	Atlantic Beach, City of	Duval	Create a Community Redevelopment Area (CRA) to encourage the redevelopment of the Mayport Road corridor (Highway A1A).	\$25,000
24	Dade City	Pasco	The City of Dade City, under its Neighborhood Improvement Program, will prepare a neighborhood plan for a specific neighborhood identified in the deliverables.	\$25,000
25	Tampa, City of	Hillsborough	Prepare a final proposed Tree & Landscape Ordinance that Implements the Tampa Comprehensive Plan and the City's recently adopted Urban Forest Management Plan.	\$25,000
26	Holmes County	Holmes	Prepare a Industrial park master plan for a 255-acre site in Holmes County.	\$18,000
27	Walton County	Walton	Prepare s study to determine the options for transit/transportation for the CR 30A corridor and determine infrastructure needs to enable use of these options.	\$25,000
28	Newberry, City of	Alachua	Prepare comprehensive plan amendments to update the Future Land Use, Community Visioning component, Economic Development, and other key elements of the comprehensive plan.	\$25,000
29	Columbia County	Columbia	Update the County's comprehensive plan Future Land Use Map (FLUM) and Official Zoning Atlas (OZA) to create an interactive, web-based application for its citizens to access the data.	\$17,500

30	Hampton, City of	Bradford	Update the City's comprehensive plan while educating the public and elected officials about the value purpose and potential of planning to develop strategies to improve the City for current and future residents.	\$25,000
31	Fort White, Town of	Columbia	Conduct an Evaluation and Appraisal Review of its comprehensive plan and draft any required plan amendments.	\$5,000
32	Central Florida Regional Planning Council	Brevard, Lake, Marion, Orange, Osceola, Seminole, Sumter, and Volusia	Develop and draft comprehensive plan amendments to meet required updates, providing transportation, intergovernmental coordination, and capital improvement policies to address the newly formed Heartland Regional Transportation Planning Organization for twelve local governments in the HRTPO.	\$77,500
33	Southwest Florida Regional Planning Council	Charolotte, Collier, Glades, Hendry, Lee and Sarasota	Developing a Rail Preservation Plan to determine the necessary steps to take in the 12 local government comprehensive plans to preserve the intact Seminole Gulf Railway Corridor for long-term multi-modal transportation uses.	\$39,000
34	Clewiston	Hendry	Develop a Main Street Revitalization Plan along US Highway 27 in the City of Clewiston	\$25,000
35	Dundee, Town of	Polk	Vision Plan for the Downtown Area and draft Land Development Regulations (LDRs) to implement the Vision Plan.	\$25,000
36	Fort Myers, City of	Lee	Community education program, Community Preference Analysis, and a Visual Preference Assessment for the Dr. Martin Luther King Corridor in the City in order to facilitate redevelopment of the corridor.	\$30,000
37	Frostproof, City of	Polk	Develop a Community Redevelopment Area (CRA) Plan that will meet the requirements of Section 163.362, Florida Statutes.	\$25,000

38	Highlands County	Highlands	Draft Land Development Regulations to implement the voluntary Sebring Airport Encouragement Zone/Spring Lake Mixed Use Development Area Overlay.	\$25,000
TOTALS				\$1,294,000

Technical Assistance (TA) GRANTS AWARDED FY 16-17 Totals \$1,509,850

	Grantee	County	Project Discription	Amount
1	Altha	Calhoun	Update Comp Plan adopted in 1991	\$30,000.00
2	Apalachee Regional Planning Council #1	Bay, Jackson, Gadsden	Feasibility Study for Chattahoochee to Bristol Trail	\$30,000.00
3	Apalachee Regional Planning Council #2	Franklin, Liberty, Dixie	Corridor 98 Vision, inventory and maps of community events, historic sites, etc., and developing a corridor master plan for three local governments along Highway 98; seek buy-in from other local governments along Highway 98	\$75,000.00
4	Bell	Gilchrist	Prepare EAR-Based Amendments	\$10,000.00
5	Bowling Green	Hardee	Master Recreation Plan for Pyatt Park	\$25,000.00
6	Bushnell	Bushnell	Establish a Community Redevelopment Area	\$25,000.00
7	Calhoun	Calhoun	Plan amendments to clarify land use categories; amend Infrastructure Element policies to address protection of areas of prime groundwater recharge	\$25,000.00
8	Cape Canaveral #1	Brevard	Master Plan Update for Canaveral City Park	\$40,000.00
9	Central FL RPC	DeSoto, Hardee, Highlands, Okechobee, Polk	Draft LDRs for temporary post-disaster accommodations	\$60,000.00
10	Century	Escambia	Update LDRs	\$25,000.00
11	Charlotte	Charlotte	Update Murdock Village Community Redevelopment Plan	\$40,000.00
12	Chipley	Washington	Develop Chipley CRA Community Redevelopment Plan	\$25,000.00
13	Clearwater	Pinellas	Evaluate flood risk for coastal areas within municipal boundaries with the Peril of Flood	\$20,000.00
14	Columbia	Columbia	Five-Year Sports Tourism Enrichment Strategic Plan	\$35,000.00
15	DeSoto	DeSoto	Update Housing and FLUE Elements, FLUM, and Housing Support Document re: work force housing	\$40,000.00
16	Dundee	Polk	Update LDRs, prepare fact sheet, application checklist, and application forms	\$25,000.00
17	Dunnellon	Marion	Update land development regulations; identify nonconforming properties, recommend solutions, and conduct a public workshop on potential solutions.	\$40,000.00

18	Freeport	Walton	Develop Freeport Recreation Plan	\$32,000.00
19	Green Cove Springs	Clay	Annexation Report	\$30,000.00
20	Gulf Co.	Gulf, Franklin, Liberty, Gadsden	Strategic Sites Inventory (identify quality industrial and commercial sites along intermodal transportation assets - highway, rail, airports, and seaport transportation assets - connecting Gulf, Franklin, Liberty, and Gadsden counties); develop a Strategic Plan for designation as a "freight logistic zone."	\$65,000.00
21	Hallandale Beach	Broward	Corridor Revitalization Plan for Hallandale Beach Boulevard	\$35,000.00
22	Hastings	St.Johns	Update Town's LDRs	\$25,000.00
23	Hawthorne	Alachua	Update Comp Plan and Data and Analysis	\$40,000.00
24	Hillsborough	Hillsborough	Promote healthy food access in an area of need in the City of Tampa	\$25,000.00
25	Indialantic	Brevard	Master Sidewalk Plan	\$15,000.00
26	Indian River	Indian River	An assessment that identifies and prioritizes areas and projects within Indian River County that are suitable for the conversion of Onsite Sewage Treatment and Disposal Systems (OSTDS, also referred to as septic systems) to centralized sewer.	\$35,000.00
27	LaBelle	Hendry	Tourism Marketing Strategy	\$30,000.00
28	LaCrosse	Alachua	EAR-based amendments	\$6,000.00
29	Lake Placid	Highlands	Community Redevelopment Plan	\$25,000.00
30	Liberty	Liberty	Update Land Development Code	\$25,000.00
31	Lynn Haven	Bay	Develop multi-modal mobility fee structure; necessary comp plan and LDR amendments.	\$25,000.00
32	Miami Gardens	Miami-Dade	Multi-Purpose CRA/Entertainment District Plan	\$25,000.00
33	Milton	Santa Rosa	Community Life Cycle Plan (planning for 1/4 of population shifting to 65+)	\$30,000.00
34	Montverde	Lake	Develop Complete Streets Criteria, Residential Design Criteria, Sidewalk Master Plan, and Village Core Ecotourism and Sports Tourism Overlay District	\$23,000.00

35	North Port	Sarasota	Develop a Neighborhood Revitalization Plan for a minimum of four and up to seven of its older neighborhoods on the north and south side of US Highway 41 along the Big Slough.	\$33,000.00
36	Orange Co.	Orange	Urban Infill and Redevelopment Plan for Pine Castle Corridor Area	\$60,000.00
37	Palm Beach	Palm Beach	Action Plan for the Westgate Avenue corridor	\$25,000.00
38	Santa Rosa	Santa Rosa	Bicycle and Pedestrian Master Plan for Pace/Pea Ridge area	\$30,000.00
39	Sneads	Jackson	Vision and Targeted Industries List and Amend Comp Plan	\$35,000.00
40	South Florida RPC	Broward, Miami-Dade, Monroe	Infrastructure Protection Plan for 6 communities in Monroe, Miami-Dade, and Broward Counties that have high risks of coastal flooding.	\$53,600.00
41	St. Augustine	St. Johns	Action Plan for the Peril Flood area	\$20,000.00
42	St. Lucie	St. Lucie	Fisherman's Wharf Plan	\$35,000.00
43	Tampa Bay Regional Planning Council	Pinellas, Pasco, Hernando, Sumpter, Lake , Orange, Seminole, Volusia and Brevard	Coast to Coast Trail Implementation and Marketing Plan	\$67,250.00
44	Wakulla	Wakulla	Land Use Assessment within Crawfordville Town Plan area.	\$25,000.00
45	Webster	Sumter	Update Zoning and Land Development Code	\$25,000.00
46	West Melbourne	Brevard	Develop a mixed use town center, identify transportation improvements, and draft comprehensive plan policies and LDRs.	\$40,000.00
TOTAL				\$1,509,850.00

Technical Assistance (TA) Grants Awarded FY 17-18 Totals \$1,151,000

GRANTEE		County	PROJECT	Amount Funded
1	Altha, Town of	Calhoun	Complete the adoption of comp plan amendments funded in FY 2016-2017 grant and add a Public School Facilities Element.	\$5,000
2	Baker County	Baker	Neighborhood Development Plan for Town of Sanderson	\$32,500
3	Crescent City, City of	Putnam	CRA Plan Update and necessary comp plan and LDR amendments	\$40,000
4	East Central Florida RPC	St. Johns, Volusia, Brevard, Putnam and Flagler	St. Johns River-To-Sea Loop Strategic Plan and Eco Tourism Resource Initiative	\$75,000
5	Havana, Town of	Gadsden	Prepare Havana Historic Downtown Master Plan	\$28,000
6	Jackson County	Jackson	Comprehensive Plan Update	\$23,500
7	Lake Helen, City of	Volusia	Prepare a Downtown Master Plan	\$40,000
8	Marineland, Town of	Flagler and St. Johns	Feasibility study of extending the municipal sewer line from either Flagler County or St. Johns County into the Town; amend Capital Improvements Element to reflect funding for the chosen alternative.	\$32,000
9	Marion County	Marion	Architectural & Site Design Standards Manual for the Silver Springs CRA and accompanying Land Development Code Amendments to adopt the manual	\$40,000
10	Mary Esther, City of	Okaloosa	Update Coastal Management Element to address Peril of Flood	\$18,000
11	Mexico Beach, City of	Bay	Update Comprehensive Plan	\$25,000
12	Montverde, Town of	Lake	Eco-tourism/Sports Tourism Facilities Plan, plan to promote Historic and Archaeological Tourism, and preparation of a draft comp plan Archaeological and Historic Resources Element to implement comp plan Economic Prosperity Element adopted in 2014	\$19,000
13	Oak Hill, City of	Volusia	Economic Development Strategic Plan	\$43,500
14	Penney Farms, Town of	Clay	Prepare a vision and Quality of Life Element for its comp plan	\$32,500
15	Pensacola, City of	Escambia	Prepare design guidelines for 3 CRAs and adopt into LDRs	\$40,000

16	West Florida RPC - AGREEMENT WILL BE WITH WALTON COUNTY; AWARD LETTER GOES TO WALTON COUNTY	Walton	Hwy 331 Corridor Economic Development Plan (EDP); plan amendment to incorporate the EDP into the comprehensive plan	\$40,000
17	Williston, City of	Levy	EAR amendments and other comp plan updates	\$32,000
18	East Central Regional Planning Council	Seminole	Food entrepreneurship plan for Sanford's Historic Goldsboro community	\$30,000
19	Orange County	Orange	Green Stormwater Master Plan for the proposed Pine Castle Urban Infill and Redevelopment Area	\$50,000
20	Palm Beach County	Palm Beach	Evaluate Westgate/Belvedere Homes CRA Overlay zoning regulations adopted in 1989 and prepare draft LDR amendments	\$40,000
21	Port St. Lucie, City of	St. Lucie	Overlay Zoning District for 5-mile area between a Florida Turnpike Interchange to the East and an I-95 Interchange to the West	\$40,000
22	South Florida RPC	Broward and Miami-Dade	Reduction in coastal flood vulnerability for City of Miami and Hallandale Beach, and Peril of Flood comp plan amendments.	\$25,000
23	Tamarac, City of	Broward	Add an Economic Development Element to the comp plan	\$25,000
24	Treasure Coast RPC for City of West Palm Beach	Palm Beach	Complete Streets Project, Forest Hill Boulevard Corridor between I-95 and US 1	\$30,000
25	Arcadia, City of	DeSoto	Prepare Economic Diversification Strategic Plan and comp plan amendments	\$25,000
26	Cape Coral, City of	Lee	Mooring Field Ordinance for Bimini Field CRA	\$30,000
27	Central Florida RPC	Polk, Highlands, Osceola, Okeechobee	Priority Action Plan for the Avon Park Air Force Range Sentinel Landscape Program (sample conservation easement, guidebook for landowners considering conservation easements, and GIS database of public owned land and land in conservation easements)	\$50,000
28	Davenport, City of	Polk	Draft LDR update, create fact sheets/guides, application checklist, and application forms	\$25,000
29	DeSoto County	DeSoto	Prepare Comprehensive Plan Economic Development Element	\$35,000

30	Dundee, Town of	Polk	Draft engineering design manual and standard details manual for design and construction of public and private infrastructure	\$25,000
31	Pasco County, City of Dade City and City of Zephyrhills	Pasco	US 301 Corridor Model Development Code to implement the adopted 2016 US 301 Corridor Land Use Vision and Transportation Strategy	\$50,000
32	Polk City, City of	Polk	Parks and Recreation Master Plan	\$25,000
33	Sebring, City of	Highlands	Update 10-Year Water Supply Plan and prepare draft related comp plan goals, objectives and policies	\$10,000
34	Southwest Florida Regional Planning Council	Glades, Hendry and Collier	Regional strategy for agricultural sustainability for Glades and Hendry Counties and the Immokalee portion of Collier County.	\$30,000
35	Marathon, City of	Monroe	Survey and Master Plan of Historic Resources	\$40,000
				Total: \$1,151,000

Technical Assistance (TA) GRANTS AWARDED FY 18-19 Totals \$1,222,300

Grantee		County	Project Description	Amount Awarded
1	Apalachee Regional Planning Council #1	Wakulla, Gulf and Jefferson	Continuation of Hwy 98 project funded FY 2016-2017 by adding Wakulla, Gulf and Jefferson Counties to the three already in (Dixie, Taylor and Franklin).	\$45,000.00
2	Apalachee Regional Planning Council #2	Calhoun, Franklin, Gadsden, Gulf, Jackson, Jefferson, Liberty and Wakulla	<i>Apalachee Online</i> : planning and mapping tool for ARPC region; will include story boards and GIS analyses, digitized FLUMs and zoning maps.	\$63,450.00
3	Apalachicola	Franklin	Resiliency to sea level rise; draft fill regulations for flood-prone areas, establish floodplain management permitting system, and update coastal management element in the comprehensive plan to include peril of flood requirements in s. 163.3178(2)(f), F.S. (ACSC)	\$40,000.00
4	Central Florida Regional Planning Council	DeSoto, Glades, Hardee, Hendry, Highlands, Okeechobee, Polk	Interactive website for Heartland Regional TPO; data from Heartland 2060 visioning process and Building a Resilient Region to be used to forecast regional data for Heartland Regional TPO long range transportation plan.	\$60,000.00
5	Chattahoochee, City of (Grantee declined the grant 2/3/19)	Gadsden	Hwy. 90 (Washington Street) Streetscape Plan to be adopted by City Council.	\$32,600.00
6	Citrus County	Citrus	Report and recommendations for long range planning for Suncoast Parkway II.	\$40,000.00

7	Cocoa, City of	Brevard	Peril of Flood/Economic Resiliency Analysis; create a model to estimate business losses due to periodic flooding or loss of a critical city asset. Additional funding for data and analysis provided by DEP's Resilient Coastlines Program.	\$20,000.00
8	DeFuniak Springs	Walton	Create a new comprehensive plan, FLUM and zoning maps, and analyze consistency of LDRs with the new comprehensive plan.	\$40,000.00
9	DeLand, City of (Grantee declined the grant, 1st quarter)	Volusia	Update City's comprehensive plan to incorporate its 2012 Mobility Study and add policies/strategies to encourage development and redevelopment within the major transportation corridors linking the recently developed Sun Rail Commuter Train corridor.	\$35,000.00
10	Frostproof	Polk	Downtown Master Plan	\$30,000.00
11	Hendry County	Hendry	Conduct planning study addressing updated land uses for Wheeler Estate. Comp plan amendments and LDR update. Includes land use for commercial and industrial guidelines for intensity, location and supporting infrastructure. Will also address household farm animals and nonresidential uses.	\$33,250.00
12	Hernando County	Hernando	Affordable housing needs analysis for County, including cities of Weeki Wachee and Brooksville; proposed housing action plan with recommendations for amendments to the comp plan and LDRs; implementation component.	\$35,000.00
13	Highlands County	Highlands	Financial feasibility and analysis and Housing Market Study; draft amendments to Housing Element, Future Land Use Element, and FLUM in the comprehensive plan to address workforce housing and economics.	\$40,000.00

14	Howey in the Hills, Town of	Lake	Bike/ped Master Plan to implement comprehensive plan requirement.	\$35,000.00
15	Indian River County	Indian River	Living Shoreline project design and signage.	\$13,500.00
16	Jay	Santa Rosa	Locate and assemble maps of existing water system infrastructure so city can assess current infrastructure and make repairs where necessary.	\$16,000.00
17	Lake Alfred	Polk	Green Swamp related plan amendments and LDRs and guidebook to developing in the Green Swamp. (ACSC)	\$20,000.00
18	Lake County	Lake	Master Plan research report and recommendations for redevelopment of approximately 475 acres in the Mount Plymouth-Sorrento CRA.	\$30,000.00
19	Laurel Hill	Okaloosa	Locate and assemble maps of existing water system infrastructure so city can assess current infrastructure and make repairs where necessary.	\$20,000.00
20	Marianna, City of	Jackson	Redevelopment plan for growing blighted area adjacent to Jackson Hospital (closed school); proposed Medical Service District overlay.	\$32,000.00
21	Mary Esther	Okaloosa	Update zoning, FLUM, and stormwater maps.	\$25,000.00
22	Palm Beach Gardens (on behalf of 10 municipalities)	Palm Beach	Smart Connected Cities - Palm Beach Gardens, Riviera Beach, Juno Beach, Jupiter, Jupiter Inlet Colony, Mangonia Park, Lake Park, Palm Beach Shores, Tequesta	\$48,000.00
23	Port St. Lucie	St. Lucie	Feasibility study for development of Southern Grove (former DRI and a portion of the Tradition development). Property is 1,391 acres along I-95. City advises there is a potential to provide 22,500 jobs.	\$40,000.00

24	Sanford, City of	Seminole	Multi-Modal Connectivity Plan from the Downtown area to the Waterfront/Riverwalk and outline visions for connectivity to other communities along Lake Monroe/St. Johns River. The emphasis will be to establish Sanford as a destination city for the Coast-to-Coast Trail and the St. Johns River.	\$48,500.00
25	South Florida Regional Planning Council	Broward, Miami-Dade, Monroe	Peril of Flood amendments for 4 communities, 2 in the Florida Keys ACSC: Lauderdale by the Sea, Bal Harbor, Islamorada and Marathon	\$40,000.00
26	Southwest Florida Regional Planning Council #2	Lee, Collier, Sarasota, Glades, Charlotte, Hendry	Food Safety Plan for Small to Mid-Sized Growers	\$30,000.00
27	St. Cloud, City of Priority #1	Osceola	Update Housing Element	\$20,000.00
28	St. Cloud, City of Priority #2	Osceola	Transportation Master Plan	\$20,000.00
29	St. Marks, City of	Wakulla	GIS analysis to evaluate the effects of spring tides and storm surge (using the SLOSH model), soil analysis related to stormwater, and potential for flash flood events; prepare Peril of Flood amendments and conduct transmittal public hearings.	\$25,000.00
30	Suwannee County	Suwannee	Strategic Sites Inventory, Phase II, for 8 parcels that have been identified as potential sites for economic development; quantify potential costs for development, mitigation and permitting; and identify a candidate site meeting the FDOT Intermodal Logistics Center (ILC) definition for potential future request to FDOT to establish a freight logistics zone.	\$40,000.00
31	Taylor County (Steinhatchee)	Taylor	Bike/ped Master Plan that stands on its own and also connects to Florida National Scenic Trail, Sun Trail, and other regional trails; part of plan to make Steinhatchee a "trail town."	\$36,000.00

32	Volusia County	Volusia	Economic opportunity assessment (study and report) for the southern part of the county to profile commercial space launch industry suppliers and service organizations, which will provide information to help define infrastructure needs and guide recruitment of businesses in the aerospace industry. Present the report to the County and the public; prepare a comprehensive plan amendment that might include development of an aerospace industrial center. County is part of the Cape Canaveral Spaceport Technologies Triangle.	\$45,000.00
33	Washington County	Washington	Comprehensive water and sewer plan that includes central facilities for three sites identified through SSI process as suitable for economic development; geotechnical analysis; proposed plan amendment to adopt water and sewer plan into comprehensive plan.	\$35,000.00
34	Wauchula #2	Hardee	Update Water Supply Plan	\$10,000.00
35	Winter Haven	Polk	Florence Villa CRA Plan Update	\$35,000.00
36	Zephyrhills #1	Pasco	Industrial Corridor Master Plan	\$44,000.00
Total				\$1,222,300.00

Technical Assistance (TA) GRANTS AWARDED FY 19-20 Totals \$752,550

Grantee		County	Project	Amount Funded
1	Apalachee Regional Planning Council	Calhoun, Franklin, Gadsden, Gulf, Jackson, Jefferson, Liberty, Wakulla	<i>Apalachee Online - Phase 2:</i> Expand platform funded with a CPTA grant in FY 2018-2019 to include municipal future land use maps and create municipal websites to link the 27 municipalities in the region to the <i>Apalachee Online</i> resource.	\$65,450.00
2	Calhoun County	Calhoun	Collect data and analysis to prepare a long-term recovery plan that responds to the needs of Calhoun County following Hurricane Michael. Prepare long-term recovery plan that details specific community actions to be taken, along with responsible parties and targeted funding sources that follows the outline established by Florida's Post-Disaster Redevelopment Planning process and the National Disaster Recovery Framework.	\$40,000.00
3	Chattahoochee, City of	Gadsden	Partner with Chattahoochee Main Street to develop a US 90 (Washington Street) Conceptual Streetscape Improvement Plan	\$32,600.00
4	Havana, Town of	Gadsden	Develop Historic Main Street Overlay District Design Standards	\$34,500.00
5	Hernando County	Hernando	Develop Master Plan for Anderson Snow District Park that will optimize park assets, plan for park upgrades, plan for a 43-acre expansion to the park, identify opportunities for public/private partnerships, and prepare a long-term vision that meets the needs of County residents.	\$35,000.00
6	Hilliard, Town of	Nassau	Update comprehensive plan data and analysis and goals, objectives and policies; digitize updated comprehensive plan, including maps	\$40,000.00

7	Liberty County	Liberty	Collect data and analysis and prepare a long-term recovery plan that responds to the needs of Liberty County following Hurricane Michael. Long-term recovery plan will detail specific community actions to be taken, along with responsible parties and targeted funding sources and followss the outline established by Florida's Post-Disaster Redevelopment Planning process and the National Disaster Recovery Framework.	\$40,000.00
8	Orange Park, Town of	Clay	Develop a 20-year Strategic Vision Plan to include: performance of an assessment of current capabilities/needs; review of current budgets/capital improvement plans, and other key documents; public and staff input through surveys, establish committees; conduct town meetings; conduct a SWOT analysis; and prepare Strategic Vision Plan 2040.	\$40,000.00
9	Springfield, City of	Bay	Prepare preliminary site planning of the central government complex to replace structures that were destroyed by Hurricane Michael. The site plan will identify possible locations for city hall, police & fire stations, warehouses, and vehicle maintenance shops within a pre-identified city-owned parcel located more inland than the original structures.	\$30,000.00
10	Hallandale Beach, City of	Broward	Develop a Post-Disaster Redevelopment Plan which integrates Adaptation into Long-Term Recovery for the City.	\$40,000.00

11	Indian River County #1	Indian River	Develop an outline for a management plan specific to Indian River County's portion of the Indian River Lagoon (IRL). Once an outline for the Plan is adopted, the Research Phase will commence and will seek to identify the specific factors having the greatest negative impacts to the IRL and provide recommendations for how the County can manage these factors to revitalize the IRL.	\$30,000.00
12	Loxahatchee Groves, Town of	Palm Beach	Update and improve planning "tool box" including (1) creation of a town GIS Future Land Use Map Series and Zoning Map Atlas and (2) adoption of FLUM and Comprehensive Plan text and Zoning Map amendments to update Town planning tools necessary to address unresolved issues in Town and changing conditions within the surrounding area.	\$40,000.00
13	Miami Shores Village	Dade	Procure engineering consultant to collect data, review or prepare maps, conduct a geographic information system analysis, and prepare a Sewer Facility Plan that meets the minimum policy and regulatory requirements from the county Dept of Environmental Resources Management and the Florida Department of Environmental Protection	\$40,000.00
14	Tamarac, City of (Declined Funding)	Broward	Develop a comprehensive Multi-Modal Transportation Master Plan aligned with the Broward Metropolitan Planning Organization's Transportation Planning Guidebook.	\$40,000.00
15	Central Florida RPC	DeSoto, Glades, Hardee, Hendry, Highlands, Okeechobee, Polk	Complete Phase II of the update of the regional vision known as Heartland 2060, Building a Resilient Region based upon the updated databases for population and economic forecasts and housed on an interactive website developed in Phase I.	\$50,000.00

16	Everglades City, City of	Collier	Water resource study	\$40,000.00
17	Frostproof, City of	Polk	Create Technical Memo on how best to expand the City's Sewage Treatment Plant effluent disposal capacity.	\$35,000.00
18	Apalachicola, City of	Franklin	Create a new 10-year plan that will outline specific community projects to be completed that support the mandates outlined by the Florida Legislature in section 380.0555(2), Florida Statutes.	\$40,000.00
19	Monroe County	Monroe	Update and streamline Monroe County Code Sections 114-2(a)(5) and 114-3 to reflect best practices in floodplain management. Update and republish the "Manual of Stormwater Management Practices" and "Layman's Brochure".	\$40,000.00
TOTAL				\$752,550.00

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: SR 1704

INTRODUCER: Senator Flores

SUBJECT: Taiwan

DATE: February 10, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Argote</u>	<u>McKay</u>	<u>CM</u>	Favorable
2. <u>Argote</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SR 1704 recognizes the economic and cultural ties between Florida and the Republic of China, also known as Taiwan, and expresses support for future opportunities of international trade.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

II. Present Situation:

Taiwan is an island located in Eastern Asia and has a population of roughly 23.5 million.¹ In comparison to the United States, Taiwan is somewhat smaller than the combined area of Maryland and Delaware.² Taiwan is a semi-presidential republic and operates in a capitalist economy that is driven primarily by industrial manufacturing and the exports of electronics, machinery, and crude petroleum.³

1979 Taiwan Relations Act

In 1979, the U.S. recognized the Government of the People's Republic of China as the sole legal government of China, thereby acknowledging Taiwan as a part of China.⁴ The 1979 Taiwan Relations Act authorizes the continuation of commercial, cultural, and other relations between the U.S. and Taiwan to help preserve peace, security, and stability in the Western Pacific.⁵ The 41st anniversary of The 1979 Taiwan Relations Act will be celebrated in 2020.

¹ Central Intelligence Agency, *The World Factbook, Taiwan, East & Southeast Asia*, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html> (last visited February 3, 2020)

² *Id.*

³ *Id.*

⁴ United States Department of State, *U.S. Relations with Taiwan Fact Sheet*, available at <https://www.state.gov/r/pa/ei/bgn/35855.htm> (last visited February 3, 2020).

⁵ American Institute in Taiwan, *Taiwan Relations Act (1979)*, available at <https://www.ait.org.tw/our-relationship/policy-history/key-u-s-foreign-policy-documents-region/taiwan-relations-act/> (last visited February 3, 2020)

Bilateral Relations

The United States has upheld and furthered its commercial relations with Taiwan since 1979. Taiwan is the United States' tenth largest trading partner and Florida's sixth largest export market in Asia. This partnership garnered Florida roughly 8,000 jobs and \$944.3 million in trade and investment ties in 2018.⁶ Taiwan enjoys Export-Import Bank financing, Overseas Private Investment Corporation guarantees, normal trade relation status, and ready access to U.S. markets.⁷ As of 2013, Taiwanese corporations employed more than 12,000 workers in the U.S. with total compensation equaling over \$1 billion.⁸

Taiwan partakes in more than 50 international organizations and holds membership status in organizations that do not call for statehood as a condition of membership. The Legislature encourages and supports Taiwan's participation in international organizations, including its bid for observer status in the International Criminal Police Organization (INTERPOL) and the World Health Assembly, which promote ideals in which the U.S. shares.

Sister-state relations exist between the State of Florida and the Republic of China.⁹ Tsai Ing-wen, the first female president of Taiwan, visited Florida in June 2016 to meet with Senator Marco Rubio and discuss ways to strengthen the security and economic relationship between the U.S. and Taiwan, in which Florida plays an important role.¹⁰ The Speaker of Tainan City, Kuo Hsin-liang, along with his delegation, will be visiting Florida in 2020 to further enhance the bilateral relationship between the Republic of China and Florida.

III. Effect of Proposed Changes:

The resolution recognizes the relationship and shared interests between the people of Taiwan and the U.S. and further expresses the Senate's support for future opportunities of international trade with Taiwan. A copy of this resolution, with the Seal of the Senate affixed, will be transmitted to President Tsai Ing-wen and Speaker Kuo Hsin-liang through the Taipei Economic and Cultural Office in Miami and the Executive Office of the Governor as a tangible token of the sentiments of the Florida Senate.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

⁶ City of Jacksonville, *Proclamation (2019)*, available at [https://www.coj.net/mayor/docs/proclamations/2019/10-oct-2019/09-16-19-proc-national-day-of-taiwan-\(october-10\).aspx](https://www.coj.net/mayor/docs/proclamations/2019/10-oct-2019/09-16-19-proc-national-day-of-taiwan-(october-10).aspx) (last visited February 3, 2020)

⁷ United States Department of State, *U.S. Relations with Taiwan Fact Sheet*, available at <https://www.state.gov/r/pa/ei/bgn/35855.htm> (last visited February 3, 2020).

⁸ *Id.*

⁹ The following foster the sister-state relations between Florida and the Republic of China: Miami-Dade County and New Taipei City; the Port of Miami and the Port of Kaohsiung; Tainan City the City of Orlando; and Kaohsiung City and the City of Fort Lauderdale, the City of Miami, and the City of Pensacola.

¹⁰ Office of Senator Marco Rubio, *Rubio Welcomes Taiwanese President to Miami* (2016), available at <https://www.rubio.senate.gov/public/index.cfm/press-releases?ID=5061149F-F0E3-4FF5-B4AC-C6E2AD09B785> (last visited February 3, 2020).

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Flores

39-01824-20

20201704__

Senate Resolution

A resolution encouraging the enhancement of the sister-state relationship and bilateral economic and cultural ties between Florida and the Republic of China, also known as Taiwan, and reaffirming and maintaining the commitment of the State of Florida to its strong and deepening relationship with the Republic of China, as the two embrace the same fundamental values of freedom, democracy, and the protection of human rights.

WHEREAS, Tsai Ing-wen, the first female president of the Republic of China, also known as Taiwan, was welcomed to this state in June 2016, as will be the Speaker of Tainan City, Kuo Hsin-liang, and his delegation in 2020, further enhancing the bilateral relationship between the Republic of China and Florida, as well as strengthening the common values the republic shares with the United States, and

WHEREAS, the United States and the Republic of China have maintained and enhanced a close friendship over the decades, encompassing commercial, cultural, and other interactions based on the 1979 Taiwan Relations Act, the cornerstone of United States-Republic of China ties, and the 41st anniversary of enactment of the act will be celebrated in 2020, and

WHEREAS, the Republic of China is an East Asian partner and promoter of regional stability in the Western Pacific with the United States, which continues to provide defensive weaponry and arms to the Republic of China through the sale of naval vessels, equipment, and munitions, including 60 Sikorsky UH-60M Black

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

39-01824-20

20201704__

Hawk helicopters, the ownership of which was officially transferred in Florida, with most post-sale training conducted in this state, creating local job opportunities and helping the Republic of China maintain its defensive capabilities in the region, and

WHEREAS, the launch of FORMOSAT-7/COSMIC-2 on June 25, 2019, a collaborative space program advanced by the United States and the Republic of China, which involves the deployment of six satellites designed to enhance the accuracy of atmospheric weather prediction, has demonstrated the mutual benefit born of the relationship, and

WHEREAS, the Legislature encourages and supports the Republic of China's meaningful participation in international organizations, including its bid for observer status in the International Criminal Police Organization and the World Health Assembly, along with meaningful participation in the United Nations Framework Convention on Climate Change and the International Civil Aviation Organization for aviation safety in East Asia, which is in the best interests of both regional and global economic and civil activities, and

WHEREAS, the Republic of China participates in, observes, or cooperates with more than 50 international organizations and holds membership status in both the Asia-Pacific Economic Cooperation and the World Trade Organization, and

WHEREAS, the Republic of China has been a member of the United States Visa Waiver Program since November 1, 2012, reflecting the cooperation between the United States and the Republic of China and making two-way travel for business and tourism more convenient, and

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

39-01824-20

20201704__

WHEREAS, in regard to the Republic of China's contributions in the global market of both traditional and innovative industries, support for continued bilateral dialogue under the Trade and Investment Framework Agreement, with efforts toward exploring the possibilities for a future bilateral trade agreement with the United States, will globalize the Republic of China's economy and eliminate trade barriers, thus solidifying the Republic of China as a robust and trustworthy partner to the United States for trade and security in East Asia, and

WHEREAS, the Republic of China is the United States' tenth largest trading partner and Florida's sixth largest export market in Asia, garnering the Sunshine State more than 7,850 jobs and \$944.3 million in trade and investment ties in 2018, and

WHEREAS, sister-state relations exist between the State of Florida and the Republic of China; Miami-Dade County and New Taipei City, formerly known as Taipei County; the Port of Miami and the Port of Kaohsiung; Tainan City and the City of Orlando; and Kaohsiung City and the City of Fort Lauderdale, the City of Miami, and the City of Pensacola, NOW, THEREFORE,

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

That the relationship and shared interests between the people of the Republic of China, also known as Taiwan, and the United States, are recognized, and the aforementioned interests and efforts for partnership are supported, and

BE IT FURTHER RESOLVED that the Senate expresses its support for future opportunities of international trade

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

39-01824-20

20201704__

developments with the Republic of China to further strengthen the substantive relationship between Florida and the Republic of China, and

BE IT FURTHER RESOLVED that a copy of this resolution, with the Seal of the Senate affixed, be transmitted to President Tsai Ing-wen and Speaker Kuo Hsin-liang through the Taipei Economic and Cultural Office in Miami and the Executive Office of the Governor as a tangible token of the sentiments of the Florida Senate.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Infrastructure and Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR TOM LEE
20th District

February 12, 2020

The Honorable Lizbeth Benacquisto
Chairman
Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Benacquisto,

Please excuse me from today's Rules Committee meeting.

Thank you,

Two handwritten signatures are shown. The first signature, on the left, is "Tom Lee" in a cursive script. The second signature, on the right, is "Lizbeth Benacquisto" in a cursive script.

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

REPLY TO:

- ☐ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 853-7061
- ☐ 418 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case No.:
Judge:

Type:

Started: 2/12/2020 4:02:23 PM

Ends: 2/12/2020 4:53:36 PM

Length: 00:51:14

4:02:22 PM Meeting called to order
4:02:26 PM Roll call
4:02:32 PM Quorum is present
4:02:59 PM Chair instructions to audience
4:03:11 PM Tab 4 SB 630
4:03:38 PM Explained by Senator Mayfield
4:03:47 PM Questions: none
4:04:27 PM Michael Beedie, City Manager Ft. Walton Beach, in support
4:04:41 PM Mark Ryan, City Manager Indian Harbour Beach in support/ Larisa Svechin, Vice Mayor Sunny Isles Beach in support
4:05:03 PM Casey Cook, Florida League of Cities, in support / Natalie Fausel, Indian River County, in support
4:05:07 PM Ashley Lyerly, Director of Advocacy Hoover AL for American Lung Association in support
4:05:11 PM Dawn Steward, Winter Park Florida PTA, is against
4:05:16 PM Kloe Ciuperger Martin County in support Leg Coordinator
4:05:21 PM Tonnelle Graham, FL Association of Counties, in support
4:05:32 PM David Cullen, Sierra Club Florida, in support
4:05:36 PM Kelly Horton, American Cancer Society Tallahassee, in support
4:05:45 PM Sarah Stoeckel, Council Member of Titusville, in support
4:05:46 PM Tyler Payne, City Commissioner Treasure Island, in support
4:05:48 PM Greg Pound Saving Families for information Largo FL
4:06:41 PM No debate on the bill
4:06:45 PM Senator Mayfield waives close
4:06:53 PM Roll call
4:06:56 PM SB 630 is reported favorably
4:07:21 PM Tab 5 SB 716
4:07:26 PM Senator Mayfield explains the bill
4:07:55 PM No questions
4:08:05 PM Natalie Kato, St Lucie County, in support
4:08:09 PM No debate
4:08:15 PM Senator Mayfield waives close
4:08:21 PM Roll call
4:08:35 PM SB 716 is reported favorably
4:08:53 PM Chair - housekeeping issue
4:09:03 PM Bills not to be heard in this meeting today CS/SB 364, CS/SB 7010
4:09:09 PM Tab 7 SB 1292
4:09:21 PM Senator Perry explains the bill
4:09:28 PM Questions- none
4:09:43 PM Kristina Wiggins, Executive Director Florida Public Defender Association, in support
4:09:49 PM Dawn Steward, Winter Park Florida PTA, in support
4:09:54 PM No debate
4:09:58 PM Senator Perry waives close
4:10:00 PM Roll call
4:10:06 PM SB 1292 is reported favorably
4:10:32 PM Tab 8 SB 7036
4:10:42 PM Senator Perry explains the bill
4:10:56 PM No questions
4:11:00 PM No testimony
4:11:04 PM No debate
4:11:06 PM Senator Perry waives close
4:11:09 PM Roll call
4:11:16 PM SB 7036 is reported favorably
4:11:34 PM Tab 9 SB 7038

4:11:42 PM Senator Perry explains the bill
 4:11:49 PM No questions
 4:11:58 PM No testimony
 4:12:02 PM No debate
 4:12:04 PM Senator Perry waives close
 4:12:07 PM Roll call
 4:12:10 PM SB 7038 is reported favorably
 4:12:32 PM Tab 3 SB 384
 4:12:43 PM Senator Baxley explains the bill
 4:12:50 PM No questions
 4:13:02 PM No testimony
 4:13:05 PM No debate
 4:13:07 PM Senator Baxley waives close
 4:13:11 PM Roll call
 4:13:15 PM SB 384 is reported favorably
 4:13:40 PM Tab 15 SB 1398
 4:13:46 PM Senator Flores explains the bill
 4:13:53 PM No questions
 4:14:07 PM Take up Amendment 934738
 4:14:24 PM Late filed Amendment 934738 is accepted
 4:14:25 PM Senator Flores explains the amendment
 4:14:31 PM No questions
 4:14:36 PM No testimony
 4:14:42 PM Amendment 934738 is adopted
 4:14:47 PM Back on the bill
 4:14:50 PM No questions
 4:14:52 PM No testimony
 4:14:56 PM No debate
 4:14:59 PM Senator Flores waives close
 4:15:03 PM Roll call
 4:15:06 PM SB 1398 is reported favorably
 4:15:30 PM Tab 16 SR 1704
 4:15:42 PM Senator Flores explains the resolution
 4:15:49 PM No questions
 4:16:07 PM No public appearance
 4:16:11 PM No debate
 4:16:12 PM Senator Flores waives close
 4:16:15 PM Roll call
 4:16:17 PM SR 1704 is reported Favorably
 4:16:45 PM Tab 14 CS/SB 994
 4:16:53 PM Senator Passidomo explains the bill
 4:17:29 PM Questions - none
 4:17:53 PM Take up Amendment 309876
 4:18:04 PM Senator Passidomo explains amendment
 4:18:15 PM No questions on the amendment
 4:18:22 PM Bryan Jogerst, Elder Law Section/Florida Bar, in support
 4:18:36 PM Amendment is adopted
 4:18:40 PM No questions
 4:18:42 PM Bryan Cherry, Consultant FL Public Guardian coalition, in support
 4:19:00 PM Tim Parson, Lutheran Services Florida, in support
 4:19:01 PM Zayne Smith, AARP Associate State Director, in support
 4:19:07 PM Doug Franks, Free Ernestine.com, waives in support
 4:19:17 PM Doug Franks wishes to speak in support
 4:22:23 PM Angela Victoria Woodhull, Licensed Private Investigator Guardianship Victims Gainesville, speaks
 4:25:53 PM Sabrina Schwartz, Lake Worth representing Lila H. Schwartz (ward/mother)
 4:29:05 PM Daniel Olson Office of the Attorney General/Ken Kniepmann, Florida Conference Catholic Bishops, both in support
 4:29:39 PM Greg Pound Saving families with information
 4:30:08 PM That concludes public testimony
 4:30:38 PM In debate
 4:30:55 PM Senator Stargel in debate
 4:31:27 PM Senator Passidomo closes

4:31:51 PM Roll call
 4:32:12 PM CS/SB 994 is reported favorably
 4:32:24 PM Tab 1 CS/SB 290 Senator Hooper
 4:32:44 PM Senator Hooper explains the bill
 4:33:06 PM Questions
 4:33:34 PM Senator Montford with question
 4:33:45 PM Senator Hooper responds
 4:34:24 PM Senator Montford with follow up
 4:34:33 PM Senator Hooper responds
 4:35:03 PM Senator Montford comments
 4:35:58 PM Take up amendment 146020- late filed by Senator Brandes
 4:36:04 PM Senator Brandes to explain
 4:36:13 PM Barcode 146020
 4:36:53 PM Amendment is withdrawn
 4:36:59 PM No testimony
 4:37:01 PM Chase Daniels, Assistant Executive Director Pasco Sheriff's Office, in support
 4:37:05 PM David Cullen, Advocacy Institute for Children, in support
 4:37:12 PM Wayne Bertsch, Gov Relations Pasco County Schools, in support
 4:37:18 PM Monte Stevens, representing AAA, in support
 4:37:26 PM Greg Pound Saving Families information
 4:38:05 PM Gary W. Hester, Florida Police Chiefs Association Govt Affairs Chief, in support
 4:39:07 PM Senator Gibson in debate
 4:40:04 PM Senator Hooper closes on the bill
 4:41:08 PM Roll call
 4:41:13 PM CS/SB 290 is reported favorably
 4:41:39 PM Tab 6 - Senator Gainer explains the bill
 4:41:59 PM SB 936
 4:42:47 PM Questions none
 4:43:47 PM Dan Hendrickson, President Tallahassee Veterans Legal Collaborative, in support
 4:43:51 PM John Haynes, Chairman Emeritus Florida Veterans, in support
 4:43:56 PM Bill Helmich, VFW / American Legion, in support
 4:44:03 PM Cody Farrill, Deputy Chief of Staff FL Dept Management Services, in support
 4:44:19 PM No debate
 4:44:21 PM Senator Gainer closes on bill
 4:44:27 PM Roll call
 4:44:32 PM SB 936 is reported favorably
 4:44:57 PM Tab 11 SJR 396
 4:45:06 PM Senator Rodriguez explains the bill
 4:45:33 PM Questions
 4:45:57 PM Senator Brandes with question
 4:46:08 PM Sen Rodriguez responds
 4:46:13 PM Cesar Grajales, Coalitions Director Americans for Prosperity, in support
 4:46:39 PM No debate
 4:46:43 PM Senator Rodriguez closes
 4:46:47 PM Roll call
 4:46:50 PM SJR 396 is reported favorably
 4:47:30 PM Chair Benacquisto passes the gavel to Vice-Chair Gibson
 4:47:47 PM Tab 12 SB 828
 4:47:50 PM Senator Benacquisto explains the bill
 4:48:13 PM Questions - none
 4:48:38 PM John Finch, Director Florida Able Inc, with information
 4:49:46 PM Debate - none
 4:49:57 PM Senator Benacquisto closes on the bill
 4:50:08 PM Roll call
 4:50:15 PM SB 828 is reported favorably
 4:50:44 PM Tab 13 SB 830
 4:50:57 PM Senator Benacquisto explains the bill
 4:51:07 PM No questions
 4:51:20 PM John Finch Director Florida Able Inc. waives in support
 4:51:26 PM No debate
 4:51:29 PM Senator Benacquisto closes on the bill
 4:51:33 PM SB 830 is reported favorably

4:52:07 PM Senators wish to show votes recorded
4:52:17 PM Senator Simmons moves to be shown voting in the affirmative on bills SC/SB 290 CS/SB 994
4:52:32 PM Show this adopted
4:52:36 PM Senator Bradley moves to be shown voted affirmative on Tabs 1 3 4 5 6 7 8 9 14 15 16
4:52:56 PM Show this adopted
4:53:10 PM Senator Farmer moves to show vote Favorably for SB 936
4:53:15 PM President Pro Tempore Simmons moves we adjourn
4:53:24 PM Meeting is adjourned.