CS/SB 72 by **JU, Flores (CO-INTRODUCERS) Negron, Brandes**; (Similar to CS/H 0009) Legislature

CS/SB 244 by **TR, Braynon**; (Compare to H 0145) Specialty License Plates

305644	A	S	RCS	RC, Diaz de la Portilla	btw L.32 - 33:	04/02 08:37 PM
102654	A	S	RCS	RC, Diaz de la Portilla	btw L.32 - 33:	04/02 08:37 PM

CS/SB 1344 by **BI, Braynon**; (Similar to CS/H 1035) Insurance Association Appointments

789392	A	S	RCS	RC, Smith	Before L.13:	04/02 08:42 PM
652420	A	S	WD	RC, Smith	Before L.13:	04/02 12:47 PM
615690	A	S	RCS	RC, Smith	Before L.13:	04/02 08:42 PM
435710	A	S	RCS	RC, Smith	btw L.44 - 45:	04/02 08:42 PM

CS/CS/SB 278 by **RI, HP, Grimsley**; (Compare to CS/H 0323) Pharmacy

490438	A	S	RCS	RC, Latvala	Delete L.42 - 53:	04/02 08:43 PM
468864	A	S	RCS	RC, Latvala	btw L.53 - 54:	04/02 08:43 PM
182652	AA	S	RCS	RC, Latvala	Delete L.5 - 23.	04/02 08:43 PM

CS/SB 1254 by **HP, Grimsley**; (Similar to CS/H 7105) Health Care Services

438848	A	S	RCS	RC, Galvano	btw L.83 - 84:	04/02 08:44 PM
633456	A	S	RCS	RC, Galvano	btw L.434 - 435:	04/02 08:44 PM
938180	A	S	WD	RC, Latvala	btw L.1110 - 1111:	04/01 06:24 PM

CS/SB 280 by **GO, Garcia**; (Similar to CS/H 0109) Public Records/Participants in Treatment-based Drug Court Programs

889430	A	S	RCS	RC, Diaz de la Portilla	Delete L.39:	04/02 08:45 PM

SB 290 by **Hukill (CO-INTRODUCERS) Brandes, Detert**; (Identical to H 0513) State Poet Laureate

CS/SB 998 by **JU, Hukill**; (Similar to CS/CS/H 0757) Estates

CS/SB 298 by **CJ, Soto (CO-INTRODUCERS) Dean, Sachs**; Arrest Booking Photographs

SB 374 by **Detert**; (Similar to H 0189) Growth Management

CS/SB 546 by **GO, Simpson (CO-INTRODUCERS) Bean, Bradley**; (Similar to CS/H 0525) Public Records/Personal Identifying Information/License to Carry a Concealed Weapon or Firearm

CS/SB 926 by **JU, Simpson**; (Compare to CS/H 0957) Local Regulation of Wage Theft

182618	D	S	RCS	RC, Richter	Delete everything after	04/03 10:30 AM
974662	AA	S	RCS	RC, Latvala	btw L.95 - 96:	04/03 10:30 AM
401526	A	S	WD	RC, Richter	btw L.127 - 128:	04/03 10:30 AM
309326	A	S	WD	RC, Richter	Delete L.128 - 130:	04/03 10:30 AM

SB 1108 by **CA**; (Identical to H 7049) OGSR/Children of Agency Officers and Employees/Identifying Information

CS/SB 826 by **JU, Joyner**; (Identical to CS/CS/H 0405) Trusts

CS/SB 828 by **JU, Bradley**; (Similar to CS/H 7003) Court System

CS/SB 1002 by **BI, Hays**; (Similar to CS/CS/H 0415) Public Records/Office of Financial Regulation

SB 1262 by **Brandes**; (Similar to H 7159) Public Records and Meetings/Insurance Flood Loss Model

CS/SB 540 by **EP, Simmons (CO-INTRODUCERS) Soto, Abruzzo**; (Compare to H 0449) Sharks

CS/CS/SB 1300 by **GO, BI, Simmons**; (Similar to CS/CS/H 1273) Public Records/Office of Insurance Regulation

CS/CS/SB 1308 by **JU, BI, Simmons**; (Similar to CS/H 1271) Insurer Solvency

SB 566 by **Lee**; (Identical to H 0557) Florida Bright Futures Scholarship Program

CS/SB 650 by **GO, JU**; (Similar to H 7101) OGSR/Inventories of an Estate or Elective Estate

CS/CS/SB 602 by **JU, EE, Latvala**; (Similar to H 0495) Residency of Candidates and Public Officers

442740	A	S		RC, Latvala	btw L.134 - 135:	04/01 02:34 PM

CS/CS/SB 808 by **GO, RI, Galvano**; (Similar to CS/CS/H 0775) Public Records/Florida State Boxing Commission

CS/SR 894 by **ED, Sobel (CO-INTRODUCERS) Brandes**; Israeli Universities and Institutions of Higher Learning

CS/SB 990 by **GO, Ring**; (Similar to H 1357) Public Officers and Employees

SB 1678 by **GO**; (Similar to H 7143) OGSR/Agency Personnel Information

CS/CS/SB 1278 by **GO, BI, Richter**; (Similar to CS/CS/H 0675) Public Records/Office of Financial Regulation

CS/SB 1396 by **ED, Montford**; (Similar to CS/H 0543) Public Records and Meetings/Public-private Partnerships/State Universities

173944	A	S		RC, Montford	Delete L.23 - 28:	04/01 03:33 PM

CS/SB 1524 by **CM, Thrasher**; (Similar to H 7085) Security of Confidential Personal Information

676834	D	S	RCS	RC, Thrasher	Delete everything after	04/02 08:48 PM
687424	AA	S	RCS	RC, Thrasher	Delete L.85:	04/02 08:48 PM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Smith, Vice Chair

MEETING DATE: Wednesday, April 2, 2014
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Thrasher, Chair; Senator Smith, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Galvano, Gardiner, Latvala, Lee, Margolis, Montford, Negron, Richter, Ring, Simmons, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 72** Judiciary / Flores (Similar CS/H 9)	Legislature; Fixing the date for convening the regular session of the Legislature in the year 2016, etc. EE 09/23/2013 Favorable JU 03/25/2014 Fav/CS RC 04/02/2014 Favorable	Favorable Yeas 13 Nays 0
2	**CS/SB 244** Transportation / Braynon (Compare H 145)	Specialty License Plates; Authorizing the collection of annual use fees for the Sun, Sea, and Smiles license plate; limiting the authorized uses of collected annual use fees; creating a Sun, Sea, and Smiles license plate; providing for the distribution of use fees received from the sale of such plates; revising provisions relating to audit and attestation requirements for annual use fee proceeds; requiring the Department of Highway Safety and Motor Vehicles to discontinue the distribution of revenues to an organization that does not meet specified requirements; authorizing the department to resume the distribution of revenue under certain conditions, etc. TR 03/26/2014 Fav/CS RC 04/02/2014 Fav/CS ATD AP	Fav/CS Yeas 11 Nays 3
3	**CS/SB 1344** Banking and Insurance / Braynon (Similar CS/H 1035)	Insurance Association Appointments; Revising the entities that make recommendations to the Chief Financial Officer for appointment to the board of governors of the Joint Underwriting Association and the board of directors of the Florida Birth-Related Neurological Injury Compensation Association, etc. BI 03/19/2014 Fav/CS EE 03/24/2014 Favorable RC 04/02/2014 Fav/CS	Fav/CS Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/CS/SB 278** Regulated Industries / Health Policy / Grimsley (Compare CS/H 323)	Pharmacy; Increasing the number of registered pharmacy technicians which a licensed pharmacist may supervise; revising the composition of the Board of Pharmacy; requiring written prescriptions for specified controlled substances to be legibly dated in a specified format, etc. HP 03/11/2014 Fav/CS RI 03/20/2014 Fav/CS RC 03/26/2014 Temporarily Postponed RC 04/02/2014 Fav/CS	Fav/CS Yeas 11 Nays 1
5	**CS/SB 1254** Health Policy / Grimsley (Similar CS/H 7105, Compare S 1670, S 2512)	Health Care Services; Removing certain rulemaking authority relating to health care services; amending provisions relating to home medical equipment providers; requiring that the emergency management plan include criteria relating to the maintenance of patient equipment and supply lists; exempting certain people from the requirement to enroll in Medicaid managed care, etc. HP 03/25/2014 Fav/CS RC 04/02/2014 Fav/CS AP	Fav/CS Yeas 12 Nays 0
6	**CS/SB 280** Governmental Oversight and Accountability / Garcia (Similar CS/H 109)	Public Records/Participants in Treatment-based Drug Court Programs; Exempting from public records requirements information from the screenings for participation in a treatment-based drug court program, substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports regarding a participant or a person considered for participation in a treatment-based program; providing for exceptions to the exemption; providing for retroactive application of the public record exemption; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. JU 01/14/2014 Favorable GO 03/26/2014 Fav/CS RC 04/02/2014 Fav/CS	Fav/CS Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 290** Hukill (Identical H 513)	State Poet Laureate; Creating the honorary position of State Poet Laureate within the Department of State; establishing procedures for the acceptance of nominations, the qualifications and recommendation of nominees, and the appointment of the State Poet Laureate; specifying that a former poet laureate becomes a State Poet Laureate Emeritus or Emerita; providing that the State Poet Laureate, the State Poet Laureate Emeritus, and the State Poet Laureate Emerita serve without compensation, etc. GO 12/11/2013 Favorable ED 03/25/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 13 Nays 0
8	**CS/SB 998** Judiciary / Hukill (Similar CS/CS/H 757)	Estates; Providing that certain restrictions on gifts to lawyers and other disqualified persons apply to written instruments executed on or after a specified date; clarifying circumstances under which a burden of proof shifts in cases involving undue influence; requiring that a directive to apply certain death benefits for the payment of claims and administration expenses be specified in certain instruments; establishing which party bears the burden of proof in an action to contest the validity or revocation of a trust, etc. JU 03/11/2014 Fav/CS BI 03/25/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 13 Nays 0
9	**CS/SB 298** Criminal Justice / Soto	Arrest Booking Photographs; Prohibiting a person who publishes or disseminates an arrest booking photograph through a publicly accessible print or electronic medium from soliciting or accepting payment of a fee or other consideration to remove, correct, or modify such photograph; authorizing an action to enjoin publication or dissemination of an arrest booking photograph if the publisher or disseminator unlawfully solicits or accepts a fee or other consideration to remove, correct, or modify such photograph; specifying the time period during which an arrest booking photograph must be removed pursuant to court order; providing a civil penalty, etc. CJ 02/03/2014 Fav/CS CM 03/10/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	**SB 374** Detert (Similar H 189)	Growth Management; Revising restrictions on an initiative or referendum process with regard to local comprehensive plan amendments and map amendments, etc. CA 03/11/2014 Favorable CM 03/24/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 13 Nays 0
11	**CS/SB 546** Governmental Oversight and Accountability / Simpson (Similar CS/H 525, Compare CS/CS/H 523, Link CS/S 544)	Public Records/Personal Identifying Information/License to Carry a Concealed Weapon or Firearm; Creating an exemption from public records requirements for certain personal identifying information held by the tax collector when an individual applies for a license to carry a concealed weapon or firearm pursuant to specified provisions; providing for retroactive application of the exemption; providing for disclosure of such information under specified conditions; providing for review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/03/2014 Favorable GO 03/13/2014 Fav/CS RC 04/02/2014 Favorable	Favorable Yeas 11 Nays 2
12	**CS/SB 926** Judiciary / Simpson (Compare CS/H 957)	Local Regulation of Wage Theft; Requiring a county that decides to create a local solution to wage theft to adopt one of two processes and specifying the requirements of those processes; providing an exception for an ordinance enacted by a specified date, etc. CA 03/05/2014 Favorable JU 03/18/2014 Temporarily Postponed JU 03/25/2014 Fav/CS RC 04/02/2014 Fav/CS	Fav/CS Yeas 8 Nays 7
13	**SB 1108** Community Affairs (Identical H 7049)	OGSR/Children of Agency Officers and Employees/Identifying Information; Amending provisions relating to an exemption from public record requirements for personal identifying information of certain dependent children of current or former agency officers or employees; removing the scheduled repeal of the exemption, etc. GO 03/26/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**CS/SB 826** Judiciary / Joyner (Identical CS/CS/H 405)	Trusts; Limiting the liability of excluded trustees; providing that certain powers to direct the actions of a trustee are not applicable under certain circumstances, etc. JU 03/11/2014 Fav/CS BI 03/25/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 14 Nays 0
15	**CS/SB 828** Judiciary / Bradley (Similar CS/H 7003)	Court System; Repealing provisions relating to a prohibition on the practice of law by a retired justice of the Supreme Court; repealing provisions relating to the appointment and duties of a Clerk of the Supreme Court; repealing provisions relating to compensation of the Marshal of the Supreme Court; excluding retired judges practicing law from the Conference of Circuit Judges of Florida; removing a requirement that circuit court judges attend and participate in such conference; revising the number of members of the Judicial Qualifications Commission to conform to requirements of the State Constitution; repealing provisions relating to an evidentiary rule regarding evidence of title to land passing from the United States, etc. JU 03/11/2014 Fav/CS CA 03/25/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 14 Nays 0
16	**CS/SB 1002** Banking and Insurance / Hays (Similar CS/CS/H 415, Compare CS/CS/H 413, Link CS/S 1006)	Public Records/Office of Financial Regulation; Providing a public records exemption for information held by the Office of Financial Regulation pursuant to an investigation or examination of consumer collection agencies; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. BI 03/05/2014 Fav/CS GO 03/26/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 14 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	**SB 1262** Brandes (Similar H 7159, Compare H 581, CS/H 879, Link CS/CS/CS/S 542)	Public Records and Meetings/Insurance Flood Loss Model; Providing an exemption from public records and public meetings requirements for trade secrets used to design an insurance flood loss model held in records or discussed in meetings of the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the appointed consumer advocate; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. BI 03/11/2014 Favorable GO 03/26/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 14 Nays 0
18	**CS/SB 540** Environmental Preservation and Conservation / Simmons (Compare H 449)	Sharks; Providing penalties for possession of separated shark fins on state waters; conforming a cross-reference, etc. EP 03/06/2014 Fav/CS CJ 03/24/2014 Favorable RC 04/02/2014 Favorable	Favorable Yeas 14 Nays 0
19	**CS/CS/SB 1300** Governmental Oversight and Accountability / Banking and Insurance / Simmons (Similar CS/CS/H 1273, Compare CS/H 1271, Link CS/CS/S 1308)	Public Records/Office of Insurance Regulation; Creating an exemption from public records requirements for proprietary business information and information that is confidential when held by another entity in this state, the Federal Government, or another state or nation, and which is held by the Office of Insurance Regulation; providing for future legislative review and repeal; providing a statement of public necessity, etc. BI 03/11/2014 Fav/CS GO 03/26/2014 Fav/CS RC 04/02/2014 Favorable	Favorable Yeas 14 Nays 0
20	**CS/CS/SB 1308** Judiciary / Banking and Insurance / Simmons (Similar CS/H 1271, Compare H 471, CS/CS/H 565, CS/CS/H 1273, CS/S 1260, Link CS/CS/S 1300)	Insurer Solvency; Providing additional definitions applicable to the Florida Insurance Code; clarifying that production of documents does not waive the attorney-client or work-product privileges; requiring an insurer's annual statement to include an actuarial opinion summary; revising the Standard Valuation Law and the Standard Nonforfeiture Law; providing for the groupwide supervision of international insurance groups, etc. BI 03/11/2014 Fav/CS JU 03/25/2014 Fav/CS RC 04/02/2014 Not Considered	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	**SB 566** Lee (Identical H 557)	Florida Bright Futures Scholarship Program; Requiring a student, as a prerequisite for the Florida Academic Scholars award, the Florida Medallion Scholars award, or the Florida Gold Seal Vocational Scholars award, to identify a social or civic issue or a professional area of interest and develop a plan for his or her personal involvement in addressing the issue or learning about the area; prohibiting the student from receiving remuneration or academic credit for the volunteer service work performed, etc. ED 03/25/2014 Favorable RC 04/02/2014 Not Considered	Not Considered
22	**CS/SB 650** Governmental Oversight and Accountability / Judiciary (Similar H 7101)	OGSR/Inventories of an Estate or Elective Estate; Amending provisions which provide exemptions from public records requirements for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed with the clerk of court in an estate proceeding; saving the exemptions from repeal under the Open Government Sunset Review Act, etc. GO 03/13/2014 Fav/CS RC 04/02/2014 Not Considered	Not Considered
23	**CS/CS/SB 602** Judiciary / Ethics and Elections / Latvala (Similar H 495, Compare H 571)	Residency of Candidates and Public Officers; Requiring a candidate or public officer required to reside in a specific geographic area to have only one domicile at a time; providing factors that may be considered when determining residency; providing exceptions for active duty military members, etc. EE 03/03/2014 Fav/CS JU 03/18/2014 Not Considered JU 03/25/2014 Fav/CS RC 04/02/2014 Not Considered	Not Considered
24	**CS/CS/SB 808** Governmental Oversight and Accountability / Regulated Industries / Galvano (Similar CS/CS/H 775, Compare CS/H 773, Link CS/S 810)	Public Records/Florida State Boxing Commission; Providing an exemption from public records requirements for the information in the reports required to be submitted to the Florida State Boxing Commission by a promoter or obtained by the commission through audit of a promoter's records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. RI 03/13/2014 Fav/CS GO 03/26/2014 Fav/CS RC 04/02/2014 Not Considered	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
25	**CS/SR 894** Education / Sobel	Israeli Universities and Institutions of Higher Learning; Expressing opposition to the academic boycott of Israeli universities and institutions of higher learning and support of academic and political freedom and collaboration with Israeli universities, etc. ED 03/11/2014 Temporarily Postponed ED 03/25/2014 Fav/CS RC 04/02/2014 Favorable	Favorable Yeas 14 Nays 0
26	**CS/SB 990** Governmental Oversight and Accountability / Ring (Similar H 1357)	Public Officers and Employees; Removing an exception from prohibited employment or a prohibited contractual relationship for an officer or employee of certain special tax districts or an agency organized pursuant to ch. 298, F.S., etc. GO 03/13/2014 Fav/CS EE 03/24/2014 Favorable RC 04/02/2014 Temporarily Postponed	Temporarily Postponed
27	**SB 1678** Governmental Oversight and Accountability (Similar H 7143)	OGSR/Agency Personnel Information; Amending provisions which provide an exemption from public records requirements for social security numbers of current and former agency employees held by an employing agency; saving the exemption from repeal under the Open Government Sunset Review Act; authorizing an employing agency to disclose the social security number of a current or former agency employee under certain circumstances, etc. CA 03/25/2014 Favorable RC 04/02/2014 Not Considered	Not Considered
28	**CS/CS/SB 1278** Governmental Oversight and Accountability / Banking and Insurance / Richter (Similar CS/CS/H 675, Compare CS/H 673, Link CS/S 1012)	Public Records/Office of Financial Regulation; Providing an exemption from public records requirements for certain informal enforcement actions by the Office of Financial Regulation, to which penalties apply for willful disclosure of such confidential information; providing an exemption from public records requirements for certain trade secrets held by the office, to which penalties apply for willful disclosure of such confidential information; providing for future legislative review and repeal of the section; providing a statement of public necessity, etc. BI 03/11/2014 Fav/CS GO 03/26/2014 Fav/CS RC 04/02/2014 Not Considered	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
29	**CS/SB 1396** Education / Montford (Similar CS/H 543, Compare CS/H 541, Link CS/CS/S 900)	Public Records and Meetings/Public-private Partnerships/State Universities; Amending provisions relating to public-private projects for the upgrade of state university facilities and infrastructure; creating an exemption from public records requirements for unsolicited proposals held by a state university board of trustees for a specified period; creating an exemption from public meetings requirements for portions of meetings of a state university board of trustees at which confidential and exempt information is discussed; providing for future review and repeal of the exemptions under the Open Government Sunset Review Act; providing statements of public necessity, etc. ED 03/11/2014 Fav/CS GO 03/26/2014 Favorable RC 04/02/2014 Temporarily Postponed	Temporarily Postponed
30	**CS/SB 1524** Commerce and Tourism / Thrasher (Similar H 7085, Compare CS/H 7087, Link S 1526)	Security of Confidential Personal Information; Citing this act as the "Florida Information Protection Act of 2014"; repealing provisions relating to a breach of security concerning confidential personal information in third-party possession; requiring specified entities to take reasonable measures to protect and secure data containing personal information in electronic form; requiring notice to individuals of data security breaches in certain circumstances, etc. CM 03/24/2014 Fav/CS RC 04/02/2014 Fav/CS	Fav/CS Yeas 14 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 72

INTRODUCER: Judiciary Committee and Senators Flores and Others

SUBJECT: Legislature

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Favorable**
2.	Davis	Cibula	JU	**Fav/CS**
3.	Carlton	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 72 requires the Legislature to convene in Regular Session on January 12, 2016.

II. Present Situation:

The date to convene the 60-day Regular Session[1] of the Legislature is prescribed by the State Constitution. Specifically, Subsection (b) of Section 3 of Article III of the State Constitution provides:

> A regular session of the legislature shall convene on the first Tuesday after the first Monday in March of each odd-numbered year, and on the first Tuesday after the first Monday in March, or such other date as may be fixed by law, of each even-numbered year.[2]

Because the Legislature has not chosen to establish another date in law for the beginning of the legislative session in an even-numbered year, the session begins on the first Tuesday after the first Monday in March. The exception to this generally occurs in an apportionment year which is the second year following the decennial census. For example, in 2012, the Legislature chose an early start date and convened on January 10, 2012.[3]

[1] The length of the Regular Session is prescribed in article III, s. 3(d) of the Florida Constitution.
[2] FLA. CONST. art. III, s. 3(b).
[3] Chapter 2010-91, s. 1, Laws of Fla.

III. Effect of Proposed Changes:

CS/SB 72 requires that the Regular Session of the Legislature convene on Tuesday, January 12, 2016.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to be a mandate. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority counties or municipalities have to raise revenue, or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

By moving the legislative session 6 weeks earlier into the year, this bill will require the Legislature to enact the state budget 6 weeks earlier than otherwise would occur. Staff has been unable to find any statutory conflict with this earlier start date. However, the Governor is required to submit a copy of his or her recommended balanced budget[4] for the state at least 30 days before the scheduled annual legislative session, unless a later date is requested and approved in writing by the President of the Senate and the Speaker of the House of Representatives. This bill will require the submission of the Governor's budget several weeks earlier than usual. Additionally, revenue estimates for the projected budget would be based on data further removed from the beginning of the fiscal year.

[4] Section 216.162(1), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section 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 Judiciary on March 25, 2014:
The CS differs from the original bill by changing the date for the Legislature to convene for the year 2016 only, and not for all future even-numbered years.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senators Flores, Negron, and Brandes

590-03167-14 201472c1

A bill to be entitled

An act relating to the Legislature; fixing the date for convening the regular session of the Legislature in the year 2016; providing an effective date.

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

Section 1. In accordance with subsection (b) of Section 3 of Article III of the State Constitution and in lieu of the date fixed therein, the 2016 Regular Session of the Legislature shall convene on January 12, 2016.

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

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)

4 / 2 /2014
Meeting Date

Topic _____ Bill Number 72 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

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E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 244

INTRODUCER: Rules Committee; Transportation Committee and Senator Braynon

SUBJECT: Specialty License Plates

DATE: April 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	**Fav/CS**
2.	Everette	Phelps	RC	**Fav/CS**
3.			ATD	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 244 creates "Sun, Sea, and Smiles," "Team Hammy," and "Play Ball" specialty license plates and establishes an annual use fee of $25 for each plate. Annual use fees shall be collected and the Highway Safety and Motor Vehicles (department) shall design and development these plates as specified in the bill.

Additionally, the bill enhances directives of accountability to organizations to the department, for all specialty license plates. The bill:

- Requires annual use fee funds to be used only in Florida;
- Provides the guidelines for compliance determinations;
- Extends the department 90 day audit or attestation period to 120 days to determine compliance;
- Provides guidelines for corrective actions, including hiring an actuarial or CPA for organizations necessitating assistance in becoming revenue compliant; and
- Extends the moratorium on the issuance of new specialty license plates from July 1, 2014 to July 1, 2016.

II. Present Situation:

Presently, there are 120 specialty license plates available for purchase, and four in the pre-sale phase. Specialty license plates are available to any owner or lessee of a motor vehicle who is

willing to pay an annual use fee for the privilege. Annual use fees ranging from $15 to $25, paid in addition to required license taxes and service fees, are distributed to an organization in support of a particular cause or charity signified in the plate's design and designated in statute. The Legislature may create a specialty license plate under its own initiative or it can do so at the request of an organization.

Pre-Sale Requirements

The approved specialty license plate organization must presell a minimum of 1,000 vouchers within 24 months before the department can begin manufacturing the specialty license plate. If, at the end of the 24-month presale period, the minimum sales requirements have not been met, the department will de-authorize the specialty plate, discontinue development, and discontinue issuance of the presale voucher.

Department Costs Defrayed

The department collects annual use fees from the sale of the specialty license plates and from these proceeds the department retains a sufficient amount to defray their costs for inventory, distribution, and other direct costs associated with the specialty license plate program. The remainder of the proceeds collected are distributed as provided by law.[1]

Discontinuance of Specialty Plate

The department must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter shall be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 1,000 plates (collegiate plates not included).[2]

Audits and Attestation of Specialty Plates

Any organization not subject to an audit shall attest annually, under penalties of perjury, that the annual use fee proceeds were used as stipulated under the law. The attestation report shall be submitted in accordance with rules promulgated by the Auditor General. Organizations annual attestation shall be submitted to the department within nine months after FY end. The department has 90 days of receiving an organization's audit or attestation to determine which recipients of revenues from such annual use fees have not complied. If the determination is made that an organization has not complied or has failed to use revenues as stipulated, the department must discontinue that organization's revenues. If the organization fails to comply within 12 months after the revenue is withheld, the proceeds are deposited into the Highway Safety Operating Trust Fund to offset the department's cost of issuing the plate. In lieu of discontinuing an organization's revenue, the department may opt to request the Legislative Budget Commission to approve to redirect previously collected and future revenue to an organization capable of performing the same or similar purposes as the original recipient.

[1] Section 320.08056(7)
[2] Section 320.08056(8)(a)

Currently, there is a statutory moratorium on the issuance of new specialty license plates. Section 45, ch. 2008-176, L.O.F., as amended by s. 21, ch. 2010-223, L.O.F., provides that "[e]except for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, F. S., prior to October 1, 2008, or which was included in a bill filed during the 2008 Legislative Session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, F.S., between July 1, 2008, and July 1, 2014."

III. Effect of Proposed Changes:

Section 1 amends s. 320.08056, F.S., to:

- Establish a $25 annual use fee for the "Sun, Sea, and Smiles," "Team Hammy," Play Ball" specialty license plates authorized in Section 2 of the bill;
- Clarify the accountability of all organizations collecting specialty license plate annual use fees; and
- Authorizing that such fees or interest earned from these fees may only be used in the State of Florida.

Use of annual use fees for "administrative expenses," (defined as expenditures that are considered direct operating costs of the organization) include, but are not limited to:

- Administrative salaries of employees and officers of the organization who do not, or cannot prove, via detailed daily time sheets, that they actively participate in program activities;
- bookkeeping and support services;
- office supplies and equipment not directly used for the specified program;
- Travel time, per diem, mileage reimbursement, and lodging expenses not directly associated with a specified program purpose;
- Paper, printing, envelopes, and postage not directly associated with a specified program purpose; or
- Miscellaneous expenses such as food, beverage, entertainment, and conventions.

Section 2 amends s. 320.08058, F.S., creating "Sun, Sea, and Smiles," "Team Hammy," and "Play Ball" specialty license plates.

"Sun, Sea, and Smiles" specialty license plate

The bill creates the "Sun, Sea, and Smiles" specialty license plate. The specialty license plate must bear the colors and design approved by the department, the word "Florida" must appear at the top of the plate, and the words "Sun-Sea-Smiles" must appear at the bottom of the plate. The bill provides for the distribution of the annual use fees to the sponsoring organization after the department collects and reimburses itself for all start up and developmental costs of the specialty license plate.

The organizations receiving annual use fee funds are:
Florida Caribbean Charitable Foundation, Inc., a civic and social organization, is a domestic non-profit corporation located in North Miami Beach, established in 2007.

American Friends of Jamaica, Inc., is a non-profit organization "dedicated to supporting Jamaican charitable organizations and social initiatives targeted at improving the lives of Jamaicans through Systemic development in the areas of education, healthcare, and economic development."[3]

The mission of Haitian Neighborhood Center Sant La, Inc., is to "empower, strengthen, and stabilize South Florida's Haitian community, through access for free services and resources, to ensure its successful integration."[4]

Fanm Ayisyen Nan Miyami, Inc., also known as, Haitian Women of Miami "was founded in 1991, to work for the 'social and political empowerment' of Haitian women and their families."[5]

Greater Caribbean American Cultural Coalition, Inc., is "an umbrella organization serving the Caribbean people and other members of the community, by bringing together the various Caribbean countries and islands, and their rich cultural heritage."[6]

Little Haiti Optimist Foundation, Inc., is a charitable organization located in Miami, established in 2011. The organization is a multipurpose family services, independent provider, assisting Haitian families in the Miami area of Florida.[7]

Specifically, the annual use fees will be distributed as follows:

- The Florida Caribbean Charitable Foundation, Inc., will receive 35 percent of the use fees off the top. Five percent of the use fees shall be used solely for marketing the "Sun, Sea, and Smiles" specialty license plate. 30 percent shall be distributed to the foundation of which up to five percent may be used for administrative expenses.

Of the remainder of the 35 percent received by the foundation:

- 60 percent shall be used for a college scholarship program;
- 15 percent to promote health and wellness among Florida residents of Caribbean descent; and
- 25 percent to promote awareness of Caribbean culture within the state.

The bill also provides the remaining 65 percent of the use fees to be distributed as follows:

- 20 percent to the American Friends of Jamaica, Inc., a New York-based charitable, not-for-profit organization, for use as grants to promote social and community development among

[3] See The American Friends of Jamaica's website at http://wwwtheafj.org/about/mission.html (last viewed 3/23/14)
[4] See Haitian Neighborhood Center Sant La's website at http://www.santla.org/contents/index.php?option=com_content&view=frontpage&Itemid-1 (last viewed 3/23/14)
[5] See Fanm Ayisyen Miyami's website at http://www.fanm.org/ (last viewed 3/23/14)
[6] See the Greater Caribbean American cultural Coalition's website at http://www.unifestlive.com/index.php?option=com_content&view=article&id=21&Itemid=83 (last viewed 3/23/14)
[7] See The Little Haiti Optimist Foundation's website http://non-profit-organizations.findthebest.com/l/1675274/Little-Haiti-Optimist-Foundation-Inc (last viewed on 3/23/14)

Florida residents. Of this amount, up to five percent may be used for administrative and marketing expenses;

- 10 percent to Haitian Neighborhood Center Sant La, Inc., to promote social and community development. Of this amount, up to five percent may be used for administrative expenses;
- 10 percent shall be distributed to Fanm Ayisyen Nan Miyami, Inc., to promote social and community development. Of this amount, up to five percent may be used for administrative expenses;
- 20 percent to Greater Caribbean American Cultural Coalition, Inc., to promote awareness of Caribbean culture within the state. Of this amount, up to five percent may be used for administrative expenses; and
- Five percent to Little Haiti Optimist Foundation, Inc., to promote awareness of Caribbean culture and youth development within the state. Of this amount, up to five percent may be used for administrative expenses.

The bill expressly exempts the "Sun, Sea, and Smiles" sponsoring organization from s. 320.08053, F.S., [8] with the exception that the department will recover pre-developmental startup costs.

"Team Hammy" specialty license plate

The bill creates the "Team Hammy" specialty license plate. The specialty license plate must bear the colors and design approved by the department, the word "Florida" must appear at the top of the plate, and the words "Team Hammy" must appear at the bottom of the plate. The bill provides for the distribution of the annual use fees to the sponsoring organization after the department collects and reimburses itself for all start up and developmental costs of the specialty license plate. The remaining fees will be distributed to the sponsoring organization, Team Hammy, Inc., a Florida nonprofit corporation. Team Hammy, Inc., may use up to 10 percent of the funds for administrative costs and marketing of the plate. The balance of the fees shall be used by Team Hammy, Inc., to grant wishes to families living with amyotrophic lateral sclerosis (ALS or Lou Gehrig's disease), provide continuing education to caretakers and physicians, and create awareness of ALS in the community.

"Team Hammy" was created in the name of Hamilton Vance Paris, diagnosed with ALS in July 2010. "Team Hammy" wishes to bring awareness, education and hope to families through fundraising and participating in events.[9]

"Play Ball" specialty license plate

The bill creates the "Play Ball" specialty license plate. The specialty license plate must bear the colors and design approved by the department, the word "Florida" must appear at the top of the plate, and the words "Play Ball" must appear at the bottom of the plate. The bill provides for the distribution of the annual use fees to the sponsoring organization after the department is reimbursed for startup and developmental costs of the specialty license plate. The annual use fees shall be distributed to American Dream Baseball, Inc., which shall retain all proceeds until startup costs for developing and issuing the plates have been recovered. Thereafter, the annual use fees shall be used as follows:

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[8] Section 320.08053

[9] http://teamhammy.org/about-us/ (last visited 4/2/14)

- A maximum of 10 percent of the proceeds may be used for the promotion and marketing of the plate;
- A maximum of 10 percent of the proceeds may be used for the administrative costs directly associated with the plate and with American Dream Baseball, Inc., programs.
- The balance of the proceeds shall be used by American Dream Baseball, Inc., to fund its activities, programs, and projects.

American Dream Baseball, Inc., is a 501 (c) (3) organization is based in Boca Raton, created to teach baseball fundamentals to kids of all ages that aspire to achieve success and opportunities through baseball.[10]

Section 3 amends s. 320.08062, F.S., providing the department an additional 30 days after receiving an organization's audit or attestation to determine whether recipients have complied with subsection (1) of this section. The department shall commission an independent actuarial consultant, or an independent certified public accountant, who has expertise in nonprofit and charitable organizations to make the determination.

The department is required to discontinue the distribution of revenues to an organization that fails to submit the required documentation, but may resume distribution of the revenues upon receipt of the required documentation.

If the department or its designee determines that an organization has not complied or has failed to use revenues in accordance with ss. 320.08056 and 320.08058, F.S., the department must discontinue distribution. The bill requires the department to inform such organizations of its findings and direct the changes necessary to bring the organization into compliance. If the organization's officers sign under penalties of perjury that they acknowledge the findings of the department and attest that they have taken corrective action and attest that the organization will submit to a follow-up review, the department may resume the distribution of revenues. However, if an organization fails to comply with the directives of the department to correct their actions as outlined, the revenue distributions must be discontinued until completion of the next regular session of the Legislature. The department must notify the Legislature by the first day of the regular session of noncompliant organizations, and if the Legislature does not provide direction to the organization and department regarding the status of the undistributed revenues, the department shall discontinue the plate and such revenues must be immediately deposited into the Highway Safety Operating Trust Fund.

The department will no longer seek approval from the Legislative Budget Commission to determine discontinuous of revenue disbursement for the noncompliance of or failure to use the revenue of specialty license plate recipient organizations. Authority to examine all records is extended to the department or its designee pertaining to the use of funds from the sale of specialty license plates.

Section 4 amends ch. 2008-176, L.O.F., as amended by section 21 of ch. 2010-223, L.O.F., extending the current moratorium on the issuance of new specialty license plates from July 1, 2014 to July 1, 2016.

[10] http://americandreambaseball.org/about-us/ (last visit 4/2/14)

The bill shall become effective July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons that choose to purchase "Sun, Sea, and Smiles," or "Team Hammy," or "Play Ball" specialty license plate will pay the $25 for the privilege, plus pay appropriate license tax and fees. The department shall retain all annual use fees from the sale of "Sun, Sea, and Smiles" and the "Team Hammy," plates and thereafter distribute the remainder to the organizations as prescribed in this bill.

All of the annual use fees collected through the sale of the "Play Ball" plate shall be distributed to the American Dream Baseball, Inc. This provision will result in the department's development costs going unrecovered causing a negative fiscal impact.

The "Sun, Sea, and Smiles" bill creates a very detailed distribution method for the annual use fee and has potential to impact the audit process as well as the program itself. By distributing a limited amount of funds to numerous areas, no single area will receive a significant amount of money. An example of how a single annual use fee is distributed in the method described in this bill is as follows:

Caribbean Charitable Foundation, Inc. $7.50	Marketing $1.25 (Five percent of total annual fee)	Administrative $.37	College Scholarships $4.28	Health and Wellness $1.07	Cultural Awareness $1.78
Friends of Jamaica, Inc. $5.00	Community Development $4.75	Administrative $.25			
Sant La Haitian Neighborhood Center $2.50	Community Development $2.38	Administrative $.12			
Fanm Ayisyen Nan Miyami, Inc. $2.50	Community Development $2.38	Administrative $.12			
Caribbean American Cultural Coalition, Inc. $5.00	Cultural Awareness $4.75	Administrative $.25			
Little Haiti Optimist Foundation, Inc. $1.25	Cultural Awareness $1.19	Administrative $.06			

C. Government Sector Impact:

The department's ISA will require approximately 90 hours of non-recurring programming to implement the provisions of this bill as it is related to the "Sun, Sea, and Smiles" specialty license plate.

ISA 90 hours at $40 = $3,600.00
Contractors None.

The bill requires the department to commission an independent actuarial consultant or an independent certified public accountant with expertise in nonprofit and charitable organizations, which will result in an indeterminate but negative fiscal impact.

VI. Technical Deficiencies:

The bill, on line 201 asserts that the Legislature shall provide direction to a sponsoring specialty license plate organization and the department regarding the organization's status of undistributed

revenues. This language is unclear in that the Legislature enacts laws rather than "provide direction" to organizations and departments.

VII. Related Issues:

There are over 300 entities that receive distributions from the sale of specialty license plates which are required to submit attestation for audit. Revising the bill to authorize rather than require the department to commission an independent actuarial or independent certified public accountant would allow the department to use internal resources when available and appropriate thus, potentially reducing the negative impact.

VIII. Statutes Affected:

This bill substantially amends sections 320.08056, 320.08058, and 320.08062 of the Florida Statutes.

This bill also amends chapter 2008-176, Laws of Florida.

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 April 2, 2014:
The CS adds two additional specialty license plates, "Team Hammy" and "Play Ball" at a cost of $25. The bill:

- Allows the department to develop the plates;
- Allows for distribution of the annual use fees.

CS by Transportation on March 26, 2014:
The CS enhances accountability of organizations to the department as it relates to future specialty license plates. The bill:

- Requires annual use fee funds to be used only in Florida;
- Provides the guidelines for compliance determinations;
- Extends the department 90 day audit or attestation period to 120 days to determine compliance;
- Provides guidelines for corrective actions; and
- Extends the moratorium on specialty license plate issuance from July 1, 2014 to July 1, 2016.

B. Amendments:

None.

305644

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Diaz de la Portilla) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 32 and 33
insert:
(ffff) Team Hammy license plate, $25.
Between lines 109 and 110
insert:
(84) TEAM HAMMY LICENSE PLATES.—
(a) Notwithstanding s. 45, chapter 2008-176, Laws of Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,

305644

11 and s. 320.08053(1), the department shall develop a Team Hammy
12 license plate as provided in this section. The word "Florida"
13 must appear at the top of the plate, and the words "Team Hammy"
14 must appear at the bottom of the plate.
15 (b) The department shall retain all annual use fees from the
16 sale of such plates until all startup costs for developing and
17 issuing the plates have been recovered. Thereafter, the license
18 plate annual use fees shall be distributed to Team Hammy, Inc.,
19 a Florida nonprofit corporation, which may use up to 10 percent
20 of such fees for administrative costs and marketing of the
21 plate. The balance of the fees shall be used by Team Hammy,
22 Inc., to grant wishes to families living with amyotrophic
23 lateral sclerosis (ALS), provide continuing education to
24 caretakers and physicians, and create awareness of ALS in the
25 community.
26
27 ====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
28 And the directory clause is amended as follows:
29 Delete line 26
30 and insert:
31 Section 1. Paragraphs (eeee) and (ffff) are added to subsection
32 (4) of
33 Delete line 58
34 and insert:
35 Section 2. Subsections (83) and (84) are added to section
36 320.08058,
37
38 ================ T I T L E A M E N D M E N T ================
39 And the title is amended as follows:

305644

40 Delete lines 4 - 8
41 and insert:
42 annual use fees for the Sun, Sea, and Smiles and the
43 Team Hammy license plates; limiting the authorized
44 uses of collected annual use fees; defining a term;
45 amending s. 320.08058, F.S.; creating the Sun, Sea,
46 and Smiles and the Team Hammy license plates;
47 providing for the distribution of use

102654

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Diaz de la Portilla) recommended the following:

Senate Amendment (with directory and title amendments)

Between lines 32 and 33
insert:
(ffff) Play Ball license plate, $25.
Between lines 109 and 110
insert:
(84) PLAY BALL LICENSE PLATES.—
(a) Notwithstanding s. 45 of chapter 2008-176, Laws of Florida, as amended by s. 21 of chapter 2010-223, Laws of

102654

11 Florida, and s. 320.08053(1), the department shall develop a
12 Play Ball license plate as provided in this section. The word
13 "Florida" must appear at the top of the plate, and the words
14 "Play Ball" must appear at the bottom of the plate.
15 (b) The annual use fees shall be distributed to American
16 Dream Baseball, Inc., which shall retain all proceeds until the
17 startup costs for developing and issuing the plates have been
18 recovered. Thereafter, the annual use fees shall be used as
19 follows:
20 1. A maximum of 10 percent of the proceeds may be used for
21 the promotion and marketing of the plate.
22 2. A maximum of 10 percent of the proceeds may be used for
23 the administrative costs directly associated with the plate and
24 with American Dream Baseball, Inc., programs.
25 3. The balance of the proceeds shall be used by American
26 Dream Baseball, Inc., to fund its activities, programs, and
27 projects.
28
29 ====== D I R E C T O R Y C L A U S E A M E N D M E N T ======
30 And the directory clauses are amended as follows:
31 Delete line 26
32 and insert:
33 Section 1. Paragraphs (eeee) and (ffff) are added to
34 subsection (4) of
35
36 Delete line 58
37 and insert:
38 Section 2. Subsections (83) and (84) are added to section
39 320.08058,

102654

40
41 ========== T I T L E A M E N D M E N T ==========
42 And the title is amended as follows:
43 Delete lines 4 - 8
44 and insert:
45 annual use fees for the Sun, Sea, and Smiles and the
46 Play Ball license plates; limiting the authorized uses
47 of collected annual use fees; defining a term;
48 amending s. 320.08058, F.S.; creating the Sun, Sea,
49 and Smiles and the Play Ball license plates; providing
50 for the distribution of use

By the Committee on Transportation; and Senator Braynon

596-03276-14 2014244c1

A bill to be entitled

An act relating to specialty license plates; amending s. 320.08056, F.S.; authorizing the collection of annual use fees for the Sun, Sea, and Smiles license plate; limiting the authorized uses of collected annual use fees; defining a term; amending s. 320.08058, F.S.; creating a Sun, Sea, and Smiles license plate; providing for the distribution of use fees received from the sale of such plates; amending s. 320.08062, F.S.; revising provisions relating to audit and attestation requirements for annual use fee proceeds; requiring the Department of Highway Safety and Motor Vehicles to discontinue the distribution of revenues to an organization that does not meet specified requirements; authorizing the department to resume the distribution of revenue under certain conditions; requiring a report to the Legislature; requiring the discontinuance of a specialty plate under certain circumstances; amending chapter 2008-176, Laws of Florida, as amended; extending the prohibition on the issuance of new specialty license plates; providing an effective date.

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

Section 1. Paragraph (eeee) is added to subsection (4) of section 320.08056, Florida Statutes, and subsection (10) of that section is amended, to read:

320.08056 Specialty license plates.—

596-03276-14 2014244c1

(4) The following license plate annual use fees shall be collected for the appropriate specialty license plates:

(eeee) Sun, Sea, and Smiles license plate, $25.

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may be used in this state only for purposes authorized by this chapter and may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1).

(b) As used in this subsection, the term "administrative expenses" means those expenditures that are considered direct operating costs of the organization. These expenses include, but are not limited to, the following:

1. Administrative salaries of employees and officers of the organization who do not, or cannot prove, via detailed daily time sheets, that they actively participate in program activities;

2. Bookkeeping and support services of the organization;

3. Office supplies and equipment not directly used for the specified program;

4. Travel time, per diem, mileage reimbursement, and lodging expenses not directly associated with a specified program purpose;

5. Paper, printing, envelopes, and postage not directly associated with a specified program purpose; or

6. Miscellaneous expenses such as food, beverage, entertainment, and conventions.

Section 2. Subsection (83) is added to section 320.08058,

59 Florida Statutes, to read:
60 320.08058 Specialty license plates.—
61 (83) SUN, SEA, AND SMILES LICENSE PLATES.—
62 (a) Notwithstanding s. 45, chapter 2008-176, Laws of
63 Florida, as amended by s. 21, chapter 2010-223, Laws of Florida,
64 and s. 320.08053(1), the department shall develop a Sun, Sea,
65 and Smiles license plate as provided in this section. Sun, Sea,
66 and Smiles license plates must bear the colors and design
67 approved by the department. The word "Florida" must appear at
68 the top of the plate, and the words "Sun-Sea-Smiles" must appear
69 at the bottom of the plate.
70 (b) The department shall retain all annual use fees from
71 the sale of such plates until all startup costs for developing
72 and issuing the plates have been recovered. Thereafter, the
73 license plate annual use fees shall be distributed as follows:
74 1. Five percent shall be distributed to Florida Caribbean
75 Charitable Foundation, Inc., for the sole purpose of marketing
76 the Sun, Sea, and Smiles license plate.
77 2. Thirty percent shall be distributed to Florida Caribbean
78 Charitable Foundation, Inc. Of this amount, up to 5 percent may
79 be used for administrative expenses, and the remainder shall be
80 used as follows:
81 a. Sixty percent shall be used for a college scholarship
82 program.
83 b. Fifteen percent shall be used to promote health and
84 wellness among residents of this state of Caribbean descent.
85 c. Twenty-five percent shall be used to promote awareness
86 of Caribbean culture within the state.
87 3. Twenty percent shall be distributed to the American

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

88 Friends of Jamaica, Inc., a New York-based charitable, not-for-
89 profit organization under s. 501(c)(3) of the Internal Revenue
90 Code, to be used solely to fund grants to promote social and
91 community development among residents of this state. Of this
92 amount, up to 5 percent may be used for administrative and
93 marketing expenses.
94 4. Ten percent shall be distributed to the Sant La Haitian
95 Neighborhood Center to promote social and community development.
96 Of this amount, up to 5 percent may be used for administrative
97 expenses.
98 5. Ten percent shall be distributed to Fanm Ayisyen Nan
99 Miyami, Inc., to promote social and community development. Of
100 this amount, up to 5 percent may be used for administrative
101 expenses.
102 6. Twenty percent shall be distributed to Greater Caribbean
103 American Cultural Coalition, Inc., to promote awareness of
104 Caribbean culture within the state. Of this amount, up to 5
105 percent may be used for administrative expenses.
106 7. Five percent shall be distributed to Little Haiti
107 Optimist Foundation, Inc., to promote awareness of Caribbean
108 culture and youth development within the state. Of this amount,
109 up to 5 percent may be used for administrative expenses.
110 Section 3. Section 320.08062, Florida Statutes, is amended
111 to read:
112 320.08062 Audits and attestations required; annual use fees
113 of specialty license plates.—
114 (1)(a) All organizations that receive annual use fee
115 proceeds from the department are responsible for ensuring that
116 proceeds are used in accordance with ss. 320.08056 and

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

320.08058.

(b) Any organization not subject to audit pursuant to s. 215.97 shall annually attest, under penalties of perjury, that such proceeds were used in compliance with ss. 320.08056 and 320.08058. The attestation shall be made annually in a form and format determined by the department.

(c) Any organization subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules promulgated by the Auditor General. The annual attestation shall be submitted to the department for review within 9 months after the end of the organization's fiscal year.

(2)~~(a)~~ Within 120 ~~90~~ days after receiving an organization's audit or attestation, the department shall determine which recipients of revenues from specialty license plate annual use fees have not complied with subsection (1). In determining compliance, the department shall commission an independent actuarial consultant, or an independent certified public accountant, who has expertise in nonprofit and charitable organizations.

(a) The department must discontinue the distribution of revenues to an organization that fails to submit the documentation required in subsection (1), but may resume distribution of the revenues upon receipt of the required documentation.

(b) If the department or its designee determines that an organization has not complied or has failed to use the revenues in accordance with ss. 320.08056 and 320.08058, the department must discontinue the distribution of the revenues to the organization. The department must notify the organization of its

findings and direct the organization to make the changes necessary in order to comply with this chapter. If the officers of the organization sign under penalties of perjury that they acknowledge the findings of the department and attest that they have taken corrective action and attest that the organization will submit to a follow-up review by the department, the department may resume the distribution of revenues ~~until the department determines that the organization has complied~~.

(c) If an organization fails to comply with the department's directive requiring corrective actions as outlined in paragraph (b), the revenue distributions must be discontinued until completion of the next regular session of the Legislature. The department must notify the Legislature by the first day of the regular session of an organization whose revenues have been withheld pursuant to this paragraph. If the Legislature does not provide direction to the organization and the department regarding the status of the undistributed revenues, the department shall discontinue the plate, and undistributed revenues must ~~within 12 months after the annual use fee proceeds are withheld by the department, the proceeds shall~~ be immediately deposited into the Highway Safety Operating Trust Fund ~~to offset department costs related to the issuance of specialty license plates~~.

~~(b) In lieu of discontinuing revenue disbursement pursuant to this subsection, upon determining that a recipient has not complied or has failed to use the revenues in accordance with ss. 320.08056 and 320.08058, and with the approval of the Legislative Budget Commission, the department is authorized to redirect previously collected and future revenues to an~~

175 ~~organization that is able to perform the same or similar~~
176 ~~purposes as the original recipient.~~
177 (3) The department or its designee has the authority to
178 examine all records pertaining to the use of funds from the sale
179 of specialty license plates.
180 Section 4. Section 45 of chapter 2008-176, Laws of Florida,
181 as amended by section 21 of chapter 2010-223, Laws of Florida,
182 is amended to read:
183 Section 5. Except for a specialty license plate proposal
184 which has submitted a letter of intent to the Department of
185 Highway Safety and Motor Vehicles before ~~prior to~~ May 2, 2008,
186 and which has submitted a valid survey, marketing strategy, and
187 application fee as required by s. 320.08053, Florida Statutes,
188 before October 1, 2008 ~~prior to the effective date of this act~~,
189 or which was included in a bill filed during the 2008
190 Legislative Session, the Department of Highway Safety and Motor
191 Vehicles may not issue any new specialty license plates pursuant
192 to ss. 320.08056 and 320.08058, Florida Statutes, between July
193 1, 2008, and July 1, 2016 ~~2011~~.
194 Section 6. This act shall take effect July 1, 2014.

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)

4/2/14
Meeting Date

Topic: SPECIALTY LICENSE PLAY BALL AMENDMENT

Bill Number: 244 C1 (if applicable)

Name: JEFF SHARKEY

Amendment Barcode: 102654 (if applicable)

Job Title: CAG, PRESIDENT

Address: 106 E College Ave
Street

TLH FL 32301
City State Zip

Phone: FSU 224 1600

E-mail: jsharkey@fsu.edu

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

Representing: AMERICAN DREAM BASEBALL

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II
Democratic Whip
36th District

March 26, 2014

Senator John Thrasher, Chair
Committee on Rules,
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Thrasher:

This letter is to request that CS/SB 244, relating to ***Specialty License Plates*** be placed on the agenda of the next scheduled meeting. CS/SB 244 has passed its first committee of reference unanimously.

CS/SB 244 *Creating a Sun, Sea, and Smiles license plate; establishing an annual use fee for the plate; providing for the distribution of use fees received from the sale of such plates.*

Thank you for your consideration of this request.

Sincerely,

Senator Braynon
District 36

cc. *John B. Phelps, Staff Director,*
Tamra Lyon, Committee Administrative Assistant

REPLY TO:
☐ 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1344

INTRODUCER: Rules Committee; Banking and Insurance Committee and Senator Braynon

SUBJECT: Insurance Association Appointments

DATE: April 4, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Fox	Roberts	EE	**Favorable**
3.	Billmeier	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1344 provides that the Property Casualty Insurers Association of America and the Florida Insurance Council will make recommendations to the Chief Financial Officer (CFO) for an appointment to the board of governors of the Florida Medical Malpractice Joint Underwriting Association. Current law provides that the recommendations be made by the Alliance of American Insurers and the National Association of Independent Insurers. Those entities have merged to form the Property Casualty Insurers Association of America.

This bill provides that the CFO may select the representative of casualty insurers on the Florida Birth-Related Neurological Injury Compensation Association (NICA) board of directors from a list of at least three names, one recommended by the Property Casualty Insurers Association of America, one recommended by the Florida Insurance Council, and one recommended by the American Insurance Association. Current law provides that those recommendations are made by the American Insurance Association, the Alliance of American Insurers, and the National Association of Independent Insurers. This bill provides that the American Congress of Obstetricians and Gynecologists, District XII will make recommendations to the CFO for an appointment to the NICA board of directors. The CFO is not required to make a selection from the trade association nominees.

This bill provides that the Governor must appoint one member to the eleven member board of directors of the Florida Workers' Compensation Insurance Guaranty Association. This member

must have commercial insurance experience. This bill reduces from 3 to 2 the members of the board of directors that are selected by self-insurance funds and appointed by the CFO.
This bill changes the information that must be filed with the Office of Insurance Regulation as part of an application for a certificate of authority to act as an insurance administrator and allows an insurer that uses the services of an administrator to contract with a qualified third party to conduct the required semiannual review of an administrator.

This bill amends sections 626.9541 and 627.7283, F.S., to allow the refund of unearned motor vehicle insurance premium by electronic transfer.

This bill takes effect July 1, 2014.

II. Present Situation:

Florida Medical Malpractice Joint Underwriting Association

Section 627.351, F.S., creates the Florida Medical Malpractice Joint Underwriting Association (Association). The Association was created in 1975 to assure the availability of medical liability insurance to Florida health care providers.[1] The Association is a source of insurance for those medical providers who may be unable to obtain coverage from the competitive voluntary insurance market.[2]

Section 627.351(4)(c), F.S., provides that the Association operates under the supervision of a board of governors. The board of governors consists of:

- Representatives of five of the insurers participating in the Joint Underwriting Association;
- An attorney to be named by The Florida Bar;
- A physician to be named by the Florida Medical Association;
- A dentist to be named by the Florida Dental Association; and
- A hospital representative to be named by the Florida Hospital Association.[3]

The CFO selects the representatives of the five insurers. The insurer representatives are selected as follows:

- One insurer representative is selected from recommendations of the American Insurance Association.
- One insurer representative is selected from recommendations of the Alliance of American Insurers.
- One insurer representative is selected from recommendations of the National Association of Independent Insurers.
- Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations.[4]

---

[1] *See* https://www.fmmjua.com/fmmjua/Controller?page=faq (accessed March 14, 2014).
[2] *Id*.
[3] *See* s. 627.351(4)(c), F.S.
[4] *Id*.

Florida Birth-Related Neurological Injury Compensation Association

The Florida Birth-Related Neurological Injury Compensation Plan (Plan) was enacted by the Legislature in 1988.[5] The Plan was created to provide compensation, long-term medical care, and other services to persons with birth-related neurological injuries. Although the benefits paid under the Plan are limited, the Plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing to resolve the claim.[6]

The entity charged with administering the Plan is the NICA. Under s. 766.315(4), F.S., NICA's duties include:

- Administering the plan, itself.
- Administering the funds collected.
- Reviewing and paying claims.
- Directing the investment and reinvestment of any surplus funds over losses and expenses.
- Reinsuring the risks of the plan in whole or in part.
- Suing and being sued, appearing and defending, in all actions and proceedings in its name.
- Taking such legal action as may be necessary to avoid payment of improper claims.[7]

The Plan is governed by a board of five directors.[8] The directors are appointed for staggered terms of 3 years or until their successors are appointed and have qualified.[9] The directors are appointed by the CFO as follows:

- One citizen representative.
- One representative of participating physicians.
- One representative of hospitals.
- One representative of casualty insurers.
- One representative of physicians other than participating physicians.[10]

Section 766.315(2)(a), F.S., provides that the CFO may select:

- The representative of the participating physicians from a list of at least three names to be recommended by the Florida Obstetric and Gynecologic Society.
- The representative of hospitals from a list of at least three names to be recommended by the Florida Hospital Association.
- The representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one by the Alliance of American Insurers, and one by the National Association of Independent Insurers.
- The representative of physicians other than participating physicians from a list of three names to be recommended by the Florida Medical Association and a list of three names to be recommended by the Florida Osteopathic Medical Association.[11]

---

[5] Chapter 88-1, ss. 60-75, L.O.F., was enacted by the Legislature in an attempt to stabilize and reduce malpractice insurance premiums for physicians practicing obstetrics, according to the legislative findings and intent cited in s. 766.301(1)(c), F.S.
[6] See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).
[7] Section 766.315(4), F.S.
[8] *See* s. 766.315(1)(a), F.S.
[9] *See* s. 766.315(1)(b), F.S.
[10] *See* s. 766.315(1)(c), F.S.
[11] *See* s. 766.315(2)(a), F.S.

The CFO is not required to make any appointment from among the nominees of such respective associations.[12]

Property Casualty Insurers Association of America

The Property Casualty Insurers Association of America is a trade association representing more than 1,000 companies. Its purpose is to advocate its members' public policy positions at the state and federal levels and to provide its members with targeted industry information. Its members write over $190 billion in annual premium, 46 percent of the U.S. automobile insurance market, 32 percent of the homeowners market, 38 percent of the commercial property and liability market, and 41 percent of the private workers compensation market.[13]
The Property Casualty Insurers Association of America was formed in a merger between the Alliance of American Insurers and the National Association of Independent Insurers.[14]

Florida Insurance Council

The Florida Insurance Council is a trade association representing 236 companies. Its purpose is to represent the insurance sector in legislative, regulatory, judicial and executive branch forums. Its members write $33 billion in premium and provide all lines of coverage. It was established in 1962.[15]

American Congress of Obstetricians and Gynecologists, District XII

The American Congress of Obstetricians and Gynecologists has over 57,000 members. Its goals are to serve as an advocate for quality health care for women, to maintain high standards of clinical practice and continuing education, and to promote patient education and involvement in medical care. It was founded in 1951.[16] District XII of the College includes Florida.[17] The Florida Obstetrics and Gynecologic Society does not elect its board. Its board members are members of the board of the American Congress of Obstetricians and Gynecologists, District XII.[18]

Florida Workers' Compensation Insurance Guaranty Association

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) provides a mechanism for the payment of covered claims in the event of the insolvency of a member insurer.[19] FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds and determines if such claims are covered claims which should be paid or settled with funds from FWCIGA. FWCIGA also determines whether an assessment

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[12] *See* s. 766.315(2)(a), F.S.
[13] http://www.pciaa.net/web/sitehome.nsf/lcpublic/8?opendocument (last accessed March 20, 2014).
[14] *See* News Release by the National Association of Independent Insurers and the Alliance of American Insurers, December 14, 2003, and New Release by the National Association of Independent Insurers, January 2, 2004.
[15] http://www.flains.org/about-us.html (last accessed March 20, 2014).
[16] http://www.acog.org/About_ACOG/Leadership_and_Governance (last accessed March 20, 2014).
[17] http://www.acog.org/About_ACOG/ACOG_Districts (last accessed March 20, 2014).
[18] https://www.flobgyn.org/about/bylaws/ (last accessed March 20, 2014).
[19] *See* http://www.fwciga.org/home (last accessed April 3, 2014).

against its members is necessary to pay covered claims of an insolvent insurer, or to reimburse FWCIGA for expenses associated with carrying out its statutory functions.[20]

Section 631.912, Florida Statutes, creates an eleven member board of directors to govern the FWCIGA. The board consists of:

- The insurance consumer advocate appointed under s. 627.0613 or designee.
- One person appointed by the CFO.
- Six persons appointed by the Department of Financial Services selected by private carriers from among the 20 workers' compensation insurers with the largest amount of net direct written premium. At least two of the private carriers shall be foreign carriers authorized to do business in this state.
- Three persons appointed by the Department of Financial Services selected by the self-insurance funds.[21]

Each board member serves for a 4-year term and may be reappointed.[22]

Insurance Administrators

An insurance administrator is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with an insurance policy. To operate as an insurance administrator, a person must obtain a certificate of authority to act as an administrator from the Office of Insurance Regulation.[23] An insurer who utilizes an insurance administrator must at least semiannually conduct a review of the operations of an administrator that administers more than 100 certificateholders of that insurer.[24] An administrator must have a written agreement between itself and each insurer for which it performs administrative functions.[25] Administrators must also file an annual financial statement with the OIR containing the administrator's financial condition, transactions, and affairs no later than March 1 of each year.[26]

Electronic Transfer of Funds

If the insured cancels a policy of motor vehicle insurance, section 627.7283, F.S., requires the insurer to mail the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice or request for cancellation. If an insurer cancels a policy of motor vehicle insurance, section 627.7283, F.S., requires the insurer to mail the unearned premium portion of any premium within 15 days after the effective date of the policy cancellation. If the unearned premium is not mailed within the statutory period, the insurer is required to pay to the insured 8 percent interest on the amount due.[27]

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[20] *Id*.
[21] *See* s. 631.912(1), F.S.
[22] *Id*.
[23] *See* s. 626.8805, F.S.
[24] *See* s. 626.8817, F.S.
[25] *See* s. 626.882, F.S.
[26] *See* s. 626.89, F.S.
[27] *See* s. 627.7283(3), F.S.

III. Effect of Proposed Changes:

Appointments to Boards

This bill provides that the Property Casualty Insurers Association of America will recommend appointments to the board of governors of the Florida Medical Malpractice Joint Underwriting Association and to the board of directors of the NICA instead of the Alliance of American Insurers and the National Association of Independent Insurers. This bill provides that the Florida Insurance Council will also recommend appointments to those two boards.

This bill changes the entities that will make recommendations to the CFO for appointment as insurer representatives on the Florida Medical Malpractice Joint Underwriting Association Board of Governors. The CFO will make selections from recommendations as follows:

- One insurer representative is selected from recommendations of the American Insurance Association.
- One insurer representative is selected from recommendations of the Property Casualty Insurers Association of America.
- One insurer representative is selected from recommendations of the Florida Insurance Council.
- Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations.

Selections will no longer have to be made from recommendations by the Alliance of American Insurers and the National Association of Independent Insurers.

The bill provides that the CFO may select the representative of casualty insurers on the NICA board of directors from a list of at least three names, one recommended by the Property Casualty Insurers Association of America, one recommended by the Florida Insurance Council, and one recommended by the American Insurance Association. The bill also provides that the CFO may select the representative of the participating physicians from a list of at least three names recommended by the American Congress of Obstetricians and Gynecologists, District XII instead of the Florida Obstetric and Gynecologic Society. The CFO is not required to make a selection from the trade association nominees.

This bill changes the appointments made to the FWCIGA board of directors. It provides that the Governor must make one appointment. The Governor's appointment must have commercial insurance experience. This bill provides that the Department of Financial Services will appoint two persons selected by the self-insurance funds instead of the current three.

Insurance Administrators

This bill amends s. 626.8805, F.S., changing the information that must be filed with the OIR or made available for OIR inspection as part of an application for a certificate of authority to act as an insurance administrator. The bill requires the applicant to provide the names, addresses, official positions and professional qualifications of individuals who are employed or retained by the administrator and who are responsible for the conduct of the affairs of the administrator.

Current law contains a broader standard, requiring information of any person who exercises control or influence over the affairs of the administrator.

This bill allows an insurer who uses the services of an administrator to contract with a qualified third party to conduct the required semiannual review of an administrator that administers benefits for more than 100 certificate holders on behalf of the insurer.

This bill also specifies that the written agreement between an insurer and an administrator that details the responsibilities of the insurer and administrator specifies the rights, duties, and obligations of the administrator and insurer. Any restrictions regarding the proprietary rights of the insurer and administrator related to continuing access to books and records maintained by the administrator are governed by the written agreement between the parties required under s. 626.8817, F.S.

This bill amends s. 626.89, F.S., to change the filing date for annual reports with the Office of Insurance Regulation from March 1 to within three months after the end of the administrator's fiscal year. This bill also allows the financial statement to cover the previous fiscal year, rather than a calendar year, if the administrator's accounting is on a fiscal year basis.

Electronic Transfer of Funds

This bill amends sections 626.9541 and 627.7283, F.S., to allow the refund of unearned motor vehicle insurance premium by electronic transfer.

This bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.8805, 626.8817, 626.882, 626.883, 626.884, 626.89, 626.9541, 627.351, 627.7283, 631.912, 766.315.

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 April 2, 2014:
The Rules Committee adopted an amendment to provide that the Governor must make an appointment to the Florida Workers' Compensation Insurance Guaranty Association board of directors. A second amendment allows the refund of unearned motor vehicle insurance premium by electronic transfer. A third amendment allows insurers to use a qualified third party to conduct required reviews of insurance administrator and allows annual financial statements of insurance administrators to cover the prior fiscal year.

CS by Banking and Insurance on March 19, 2014:
The Banking and Insurance Committee adopted amendments to provide that the Florida Insurance Council will make recommendations for appointment to the board of governors of the Florida Medical Malpractice Joint Underwriting Association and the NICA board of directors and to provide that the American Congress of Obstetricians and Gynecologists, District XII will make recommendations for appointment to the NICA board of directors instead of the Florida Obstetric and Gynecologic Society.

B. Amendments:

None.

789392

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
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The Committee on Rules (Smith) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Before line 13
4 insert:
5 Section 1. Paragraph (c) of subsection (2) and subsection
6 (3) of section 626.8805, Florida Statutes, are amended to read:
7 626.8805 Certificate of authority to act as administrator.—
8 (2) The administrator shall file with the office an
9 application for a certificate of authority upon a form to be
10 adopted by the commission and furnished by the office, which
11 application shall include or have attached the following

789392

12 information and documents:
13 (c) The names, addresses, official positions, and
14 professional qualifications of the individuals employed or
15 retained by the administrator who are responsible for the
16 conduct of the affairs of the administrator, including all
17 members of the board of directors, board of trustees, executive
18 committee, or other governing board or committee, and the
19 principal officers in the case of a corporation or~~,~~ the partners
20 or members in the case of a partnership or association~~, and any~~
21 ~~other person who exercises control or influence over the affairs~~
22 of the administrator.
23
24 The applicant shall also include such other information as the
25 office requires in order to review the current financial
26 condition of the applicant.
27 (3) The applicant shall make available for inspection by
28 the office copies of all contracts relating to services provided
29 by the administrator to ~~with~~ insurers or other persons using
30 ~~utilizing~~ the services of the administrator.
31 Section 2. Subsections (1) and (3) of section 626.8817,
32 Florida Statutes, are amended to read:
33 626.8817 Responsibilities of insurance company with respect
34 to administration of coverage insured.—
35 (1) If an insurer uses the services of an administrator,
36 the insurer is responsible for determining the benefits, premium
37 rates, underwriting criteria, and claims payment procedures
38 applicable to the coverage and for securing reinsurance, if any.
39 The rules pertaining to these matters shall be provided, in
40 writing, by the insurer or its designee to the administrator.

789392

41 The responsibilities of the administrator as to any of these
42 matters shall be set forth in a ~~the~~ written agreement binding
43 upon ~~between~~ the administrator and the insurer.
44 (3) If ~~In cases in which~~ an administrator administers
45 benefits for more than 100 certificateholders on behalf of an
46 insurer, the insurer shall, at least semiannually, conduct a
47 review of the operations of the administrator. At least one such
48 review must be an onsite audit of the operations of the
49 administrator. The insurer may contract with a qualified third
50 party to conduct such review.
51 Section 3. Subsections (1) and (4) of section 626.882,
52 Florida Statutes, are amended to read:
53 626.882 Agreement between administrator and insurer;
54 required provisions; maintenance of records.—
55 (1) A ~~No~~ person may not act as an administrator without a
56 written agreement, as required under s. 626.8817, which
57 specifies the rights, duties, and obligations of the ~~between~~
58 ~~such person as~~ administrator and ~~an~~ insurer.
59 (4) If a policy is issued to a trustee or trustees, a copy
60 of the trust agreement and any amendments to that agreement
61 shall be furnished to the insurer or its designee by the
62 administrator and shall be retained as part of the official
63 records of both the administrator and the insurer for the
64 duration of the policy and for 5 years thereafter.
65 Section 4. Subsections (3), (4), and (5) of section
66 626.883, Florida Statutes, are amended to read:
67 626.883 Administrator as intermediary; collections held in
68 fiduciary capacity; establishment of account; disbursement;
69 payments on behalf of insurer.—

789392

70 (3) If charges or premiums deposited in a fiduciary account
71 have been collected on behalf of or for more than one insurer,
72 the administrator shall keep records clearly recording the
73 deposits in and withdrawals from such account on behalf of or
74 for each insurer. The administrator shall, upon request of an
75 insurer or its designee, furnish such insurer or designee with
76 copies of records pertaining to deposits and withdrawals on
77 behalf of or for such insurer.
78 (4) The administrator may not pay any claim by withdrawals
79 from a fiduciary account. Withdrawals from such account shall be
80 made as provided in the written agreement required under ss.
81 626.8817 and 626.882 ~~between the administrator and the insurer~~
82 for any of the following:
83 (a) Remittance to an insurer entitled to such remittance.
84 (b) Deposit in an account maintained in the name of such
85 insurer.
86 (c) Transfer to and deposit in a claims-paying account,
87 with claims to be paid as provided by such insurer.
88 (d) Payment to a group policyholder for remittance to the
89 insurer entitled to such remittance.
90 (e) Payment to the administrator of the commission, fees,
91 or charges of the administrator.
92 (f) Remittance of return premium to the person or persons
93 entitled to such ~~return~~ premium.
94 (5) All claims paid by the administrator from funds
95 collected on behalf of the insurer shall be paid only on drafts
96 of, and as authorized by, such insurer or its designee.
97 Section 5. Subsection (3) of section 626.884, Florida
98 Statutes, is amended to read:

789392

626.884 Maintenance of records by administrator; access; confidentiality.—

(3) The insurer shall retain the right of continuing access to books and records maintained by the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insured persons, subject to any restrictions in the written agreement pertaining to ~~between the insurer and the administrator on~~ the proprietary rights of the parties in such books and records.

Section 6. Subsections (1) and (2) of section 626.89, Florida Statutes, are amended to read:

626.89 Annual financial statement and filing fee; notice of change of ownership.—

(1) Each authorized administrator shall annually file with the office a full and true statement of its financial condition, transactions, and affairs within 3 months after the end of the administrator's fiscal year~~. The statement shall be filed annually on or before March 1~~ or within such extension of time ~~therefor~~ as the office for good cause may have granted. The statement must ~~and shall~~ be for the preceding fiscal ~~calendar~~ year and must~~. The statement shall~~ be in such form and contain such matters as the commission prescribes and must ~~shall~~ be verified by at least two officers of the ~~such~~ administrator. ~~An administrator whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer, an administrator of a pooled governmental self-insurance program, or an administrator that is a university may submit the preceding fiscal year's statement within 2 months after its fiscal year end.~~

789392

128 (2) Each authorized administrator shall also file an
129 audited financial statement performed by an independent
130 certified public accountant. The audited financial statement
131 shall be filed with the office within 5 months after the end of
132 the administrator's fiscal year and be ~~on or before June 1~~ for
133 the preceding fiscal ~~calendar~~ year ~~ending December 31~~. ~~An~~
134 ~~administrator whose sole stockholder is an association~~
135 ~~representing health care providers which is not an affiliate of~~
136 ~~an insurer, an administrator of a pooled governmental self-~~
137 ~~insurance program, or an administrator that is a university may~~
138 ~~submit the preceding fiscal year's audited financial statement~~
139 ~~within 5 months after the end of its fiscal year.~~ An audited
140 financial statement prepared on a consolidated basis must
141 include a columnar consolidating or combining worksheet that
142 must be filed with the statement and must comply with the
143 following:
144 (a) Amounts shown on the consolidated audited financial
145 statement must be shown on the worksheet;
146 (b) Amounts for each entity must be stated separately; and
147 (c) Explanations of consolidating and eliminating entries
148 must be included.
149
150 ========== T I T L E A M E N D M E N T ==========
151 And the title is amended as follows:
152 Delete line 2
153 and insert:
154 An act relating to insurance; amending s. 626.8805,
155 F.S.; revising insurance administrator application
156 requirements; amending s. 626.8817, F.S.; authorizing

789392

157 an insurer’s designee to provide certain coverage
158 information to an insurance administrator; authorizing
159 an insurer to contract a third party to conduct a
160 review of the operations of an insurance administrator
161 under certain circumstances; amending s. 626.882,
162 F.S.; prohibiting a person from acting as an insurance
163 administrator without a specific written agreement;
164 amending s. 626.883, F.S.; requiring an insurance
165 administrator to furnish fiduciary account records to
166 an insurer or its designee; requiring administrator
167 withdrawals from a fiduciary account to be made
168 according to a specific written agreement; providing
169 that an insurer’s designee may authorize payment of
170 claims; amending s. 626.884, F.S.; revising an
171 insurer’s right of access to certain administrator
172 records; amending s. 626.89, F.S.; revising the
173 deadline for filing certain financial statements;

652420

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/02/2014	.	
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The Committee on Rules (Smith) recommended the following:

Senate Amendment (with title amendment)

Before line 13
insert:
Section 1. Subsections (1), (2), and (3) of section 627.7283, Florida Statutes, are amended to read:
627.7283 Cancellation; return of premium.—
(1) If the insured cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice

652420

12 or request for cancellation, whichever is later. This
13 requirement applies to a cancellation initiated by an insured
14 for any reason.
15 (2) If an insurer cancels a policy of motor vehicle
16 insurance, the insurer must mail or electronically transfer the
17 unearned premium portion of any premium within 15 days after the
18 effective date of the policy cancellation.
19 (3) If the unearned premium is not mailed or electronically
20 transferred within the applicable period, the insurer must pay
21 to the insured 8 percent interest on the amount due. If the
22 unearned premium is not mailed or electronically transferred
23 within 45 days after the applicable period, the insured may
24 bring an action against the insurer pursuant to s. 624.155.
25
26 ========== T I T L E A M E N D M E N T ==========
27 And the title is amended as follows:
28 Delete line 2
29 and insert:
30 An act relating to insurance; amending s. 627.7283,
31 F.S.; allowing the electronic transfer of unearned
32 premiums under specified circumstances;

615690

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
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	.	

The Committee on Rules (Smith) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Before line 13
4 insert:
5 Section 1. Paragraph (q) of subsection (1) of section
6 626.9541, Florida Statutes, is amended to read:
7 626.9541 Unfair methods of competition and unfair or
8 deceptive acts or practices defined.—
9 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
10 ACTS.—The following are defined as unfair methods of competition
11 and unfair or deceptive acts or practices:

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(q) *Certain insurance transactions through credit card facilities prohibited.*—

1. Except as provided in subparagraph 3., no person shall knowingly solicit or negotiate ~~any~~ insurance; seek or accept applications for insurance; issue or deliver any policy; receive, collect, or transmit premiums, to or for an ~~any~~ insurer; or otherwise transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, through the arrangement or facilities of a credit card facility or organization, for the purpose of insuring credit card holders or prospective credit card holders. The term "credit card holder" as used in this paragraph means a ~~any~~ person who may pay the charge for purchases or other transactions through the credit card facility or organization, whose credit with such facility or organization is evidenced by a credit card identifying such person as being one whose charges the credit card facility or organization will pay, and who is identified as such upon the credit card ~~either~~ by name, account number, symbol, insignia, or ~~any~~ other method or device of identification. This subparagraph does not apply as to health insurance or to credit life, credit disability, or credit property insurance.

2. If ~~Whenever~~ any person does or performs in this state any of the acts in violation of subparagraph 1. for or on behalf of an ~~any~~ insurer or credit card facility, such insurer or credit card facility shall be deemed ~~held~~ to be doing business in this state and, if an insurer, shall be subject to the same state, county, and municipal taxes as insurers that have been legally qualified and admitted to do business in this state by

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41 agents or otherwise are subject, the same to be assessed and
42 collected against such insurers; and such person so doing or
43 performing any of such acts is ~~shall be~~ personally liable for
44 all such taxes.
45 3. A licensed agent or insurer may solicit or negotiate ~~any~~
46 insurance; seek or accept applications for insurance; issue or
47 deliver any policy; receive, collect, or transmit premiums, to
48 or for an ~~any~~ insurer; or otherwise transact insurance in this
49 state, or relative to a subject of insurance resident, located,
50 or to be performed in this state, through the arrangement or
51 facilities of a credit card facility or organization, for the
52 purpose of insuring credit card holders or prospective credit
53 card holders if:
54 a. The insurance or policy which is the subject of the
55 transaction is noncancelable by any person other than the named
56 insured, the policyholder, or the insurer;
57 b. Any refund of unearned premium is made ~~directly~~ to the
58 credit card holder by mail or electronic transfer; and
59 c. The credit card transaction is authorized by the
60 signature of the credit card holder or other person authorized
61 to sign on the credit card account.
62
63 The conditions enumerated in sub-subparagraphs a.-c. do not
64 apply to health insurance or to credit life, credit disability,
65 or credit property insurance; and sub-subparagraph c. does not
66 apply to property and casualty insurance if ~~so long as~~ the
67 transaction is authorized by the insured.
68 4. No person may use or disclose information resulting from
69 the use of a credit card in conjunction with the purchase of

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70 insurance if~~, when~~ such information is to the advantage of the
71 ~~such~~ credit card facility or an insurance agent, or is to the
72 detriment of the insured or any other insurance agent; except
73 that this provision does not prohibit a credit card facility
74 from using or disclosing such information in a ~~any~~ judicial
75 proceeding or consistent with applicable law on credit
76 reporting.
77 5. ~~No~~ Such insurance may not ~~shall~~ be sold through a credit
78 card facility in conjunction with membership in any automobile
79 club. The term "automobile club" means a legal entity that
80 ~~which~~, in consideration of dues, assessments, or periodic
81 payments of money, promises its members or subscribers to assist
82 them in matters relating to the ownership, operation, use, or
83 maintenance of a motor vehicle; however, the term ~~definition of~~
84 ~~automobile clubs~~ does not include persons, associations, or
85 corporations that ~~which~~ are organized and operated solely for
86 the purpose of conducting, sponsoring, or sanctioning motor
87 vehicle races, exhibitions, or contests upon racetracks, or upon
88 race courses established and marked as such for the duration of
89 such particular event. The words "motor vehicle" used herein
90 shall be the same as defined in chapter 320.
91 Section 2. Subsections (1), (2), and (3) of section
92 627.7283, Florida Statutes, are amended to read:
93 627.7283 Cancellation; return of premium.—
94 (1) If the insured cancels a policy of motor vehicle
95 insurance, the insurer must mail or electronically transfer the
96 unearned portion of any premium paid within 30 days after the
97 effective date of the policy cancellation or receipt of notice
98 or request for cancellation, whichever is later. This

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99 requirement applies to a cancellation initiated by an insured
100 for any reason.
101 (2) If an insurer cancels a policy of motor vehicle
102 insurance, the insurer must mail or electronically transfer the
103 unearned premium portion of any premium within 15 days after the
104 effective date of the policy cancellation.
105 (3) If the unearned premium is not mailed or electronically
106 transferred within the applicable period, the insurer must pay
107 to the insured 8 percent interest on the amount due. If the
108 unearned premium is not mailed or electronically transferred
109 within 45 days after the applicable period, the insured may
110 bring an action against the insurer pursuant to s. 624.155.
111
112 ========== T I T L E A M E N D M E N T ==========
113 And the title is amended as follows:
114 Delete line 2
115 and insert:
116 An act relating to insurance; amending s. 626.9541,
117 F.S.; revising provisions for unfair methods of
118 competition and unfair or deceptive acts relating to
119 conducting certain insurance transactions through
120 credit card facilities; amending s. 627.7283, F.S.;
121 allowing the electronic transfer of unearned premiums
122 under specified circumstances;

435710

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	1344
	.	
	.	

The Committee on Rules (Smith) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 44 and 45
4 insert:
5 Section 2. Subsection (1) of section 631.912, Florida
6 Statutes, is amended to read:
7 631.912 Board of directors.—
8 (1) The board of directors of the corporation shall consist
9 of 11 persons, 1 of whom is the insurance consumer advocate
10 appointed under s. 627.0613 or designee and 1 of whom is
11 designated by the Chief Financial Officer. The department shall

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12 appoint to the board 6 persons selected by private carriers from
13 among the 20 workers' compensation insurers with the largest
14 amount of net direct written premium as determined by the
15 department, and 2 ~~3~~ persons selected by the self-insurance
16 funds. The Governor shall appoint 1 person who has commercial
17 insurance experience. At least two of the private carriers shall
18 be foreign carriers authorized to do business in this state. The
19 board shall elect a chairperson from among its members. The
20 Chief Financial Officer may remove any board member for cause.
21 Each board member shall be appointed to serve ~~for~~ a 4-year term
22 and may be reappointed. A vacancy on the board shall be filled
23 for the remaining period of the term in the same manner by which
24 the original appointment was made.
25
26 ========== T I T L E A M E N D M E N T ==========
27 And the title is amended as follows:
28 Between lines 8 and 9
29 insert:
30 amending s. 631.912, F.S.; revising the appointment
31 process for members of the board of directors of the
32 Florida Workers' Compensation Insurance Guaranty
33 Association;
34

By the Committee on Banking and Insurance; and Senator Braynon

A bill to be entitled

An act relating to insurance association appointments; amending ss. 627.351 and 766.315, F.S.; revising the entities that make recommendations to the Chief Financial Officer for appointment to the board of governors of the Joint Underwriting Association and the board of directors of the Florida Birth-Related Neurological Injury Compensation Association; providing an effective date.

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

Section 1. Paragraph (c) of subsection (4) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

(c) The Joint Underwriting Association shall operate subject to the supervision and approval of a board of governors consisting of representatives of five of the insurers participating in the Joint Underwriting Association, an attorney ~~to be~~ named by The Florida Bar, a physician ~~to be~~ named by the Florida Medical Association, a dentist ~~to be~~ named by the Florida Dental Association, and a hospital representative ~~to be~~ named by the Florida Hospital Association. The Chief Financial Officer shall select the representatives of the five insurers. One insurer representative shall be selected from recommendations of the American Insurance Association. One insurer representative shall be selected from recommendations of the Property Casualty Insurers Association of America ~~Alliance~~

~~of American Insurers~~. One insurer representative shall be selected from recommendations of the Florida Insurance Council ~~National Association of Independent Insurers~~. Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations. ~~The board of governors shall choose,~~ During the first meeting of the board after June 30 of each year, the board shall choose one of its members to serve as chair of the board and another member to serve as vice chair of the board. There is ~~shall be~~ no liability on the part of, and no cause of action ~~of any nature~~ shall arise against, any member insurer, self-insurer, or its agents or employees, the Joint Underwriting Association or its agents or employees, members of the board of governors, or the office or its representatives for any action taken by them in the performance of their powers and duties under this subsection.

Section 2. Paragraph (a) of subsection (2) of section 766.315, Florida Statutes, is amended to read:

766.315 Florida Birth-Related Neurological Injury Compensation Association; board of directors.—

(2)(a) The Chief Financial Officer may select the representative of the participating physicians from a list of at least three names ~~to be~~ recommended by the American Congress of Obstetricians and Gynecologists, District XII ~~Florida Obstetric and Gynecologic Society~~; the representative of hospitals from a list of at least three names ~~to be~~ recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one of which is recommended by the Florida Insurance Council ~~Alliance of~~

59 ~~American Insurers~~, and one of which is recommended by the
60 Property Casualty Insurers Association of America ~~National~~
61 ~~Association of Independent Insurers~~; and the representative of
62 physicians, other than participating physicians, from a list of
63 three names ~~to be~~ recommended by the Florida Medical Association
64 and a list of three names ~~to be~~ recommended by the Florida
65 Osteopathic Medical Association. However, ~~In no case shall~~ the
66 Chief Financial Officer is not required ~~be bound~~ to make an ~~any~~
67 appointment from among the nominees of the ~~such~~ respective
68 associations.
69 Section 3. This act shall take effect July 1, 2014.

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)

4-2-14
Meeting Date

Topic: Insurance Association Appointments

Bill Number: 1344 *(if applicable)*

Name: James McFaddin

Amendment Barcode: 789392 *(if applicable)*

Job Title:

Address: 123 S. Adams St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850-671-4401

E-mail: mcfaddin@sostrategy.com

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

Representing: Maximus, Inc.

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-2014
Meeting Date

Topic: Insurance Associations

Bill Number: CS/SB 1344 *(if applicable)*

Name: Meredith Snowden

Amendment Barcode: _____ *(if applicable)*

Job Title: Consultant

Address: 215 S Monroe St Suite 701
Street

Tall FL 32301
City *State* *Zip*

Phone: 850-577-0398

E-mail: msnowden@ftllaw.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: Property Casualty Insurance Association of America

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II
Democratic Whip
36th District

March 26, 2014

Senator John Thrasher, Chair
Committee on Rules,
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Thrasher:

This letter is to request that CS/SB 1344, relating to ***Insurance Association Appointments*** be placed on the agenda of the next scheduled meeting. CS/SB 1344 has passed its first two committees of reference unanimously.

CS/SB 1344 *revises the entities that make recommendations to the Chief Financial Officer for appointment to the board of governors of the Joint Underwriting Association and the board of directors of the Florida Birth-Related Neurological Injury Compensation Association, etc.*
Sincerely,

Thank you for your consideration of this request.

Sincerely,

Senator Braynon
District 36

cc. *John B. Phelps, Staff Director,*
Tamra Lyon, Committee Administrative Assistant

REPLY TO:
☐ 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 278

INTRODUCER: Rules Committee; Regulated Industries Committee; Health Policy Committee; and Senator Grimsley

SUBJECT: Pharmacy

DATE: April 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Stovall	HP	**Fav/CS**
2.	Niles	Imhof	RI	**Fav/CS**
3.	Peterson	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 278 removes the cap of three pharmacy technicians that the Board of Pharmacy (board) may authorize one pharmacist to supervise.

The bill also revises the composition of the board. The number of pharmacists representing both community and institutional class II pharmacies is increased from a minimum of one in each category, to a minimum of two each.

The bill amends s. 465.189, F.S., to authorize pharmacists to administer the meningococcal vaccine under physician protocol and removes the requirement for a pharmacist to have a prescription from a physician to administer the shingles vaccine.

The bill amends s. 456.42, F.S., and s. 863.04(2)(d) by permitting a date on a prescription for a controlled substance listed in ch. 893, F.S., to be in the numeric month/day/year format or the month written out in whole.

The bill removes the requirement that the date required under s. 456.42, F.S., and the written quantity and date required under s. 839.04(2), F.S. must be on the face of the prescription.

The bill amends s. 839.04(2), F.S., by adding the requirement that the notation of the date be legible.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Pharmacists

Pharmacists are regulated under ch. 465, F.S., the Florida Pharmacy Act (act), by the board within the Department of Health (department). A pharmacist is any person licensed under the act to practice the profession of pharmacy.[1]

The practice of professional pharmacy includes:[2]

- Compounding, dispensing, and consulting related to contents, therapeutic values, and uses of any medicinal drug;
- Consulting related to therapeutic values and interactions of patent or proprietary preparations; and
- Other pharmaceutical services, which include: monitoring, reviewing, or assisting a patient in the management of the patient's drug therapy and communicating with the patient's prescribing health care provider or others, as authorized by the patient, regarding the drug therapy.

A person practicing the profession of pharmacy is not authorized to alter a prescriber's instructions, diagnose or treat any disease, initiate any drug therapy, or practice medicine or osteopathic medicine, unless specifically permitted by law. A pharmacist is authorized to transmit information from persons authorized to prescribe medicinal drugs to their patients.[3]

To be licensed as a pharmacist, a person must:

- Submit an application form and the required fees.
- Submit satisfactory proof that the applicant is not less than 18 years of age and is a recipient of a degree from an accredited school or college of pharmacy; or is a graduate of a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, has demonstrated proficiency in English, has passed the Foreign Pharmacy Graduate Equivalency Examination, and has completed a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a pharmacist licensed by the department.
- Submit satisfactory proof that the applicant has completed an internship program, which must not exceed 2,080 hours.
- Successfully complete the licensure examination.[4]

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[1] Section 465.003(10), F.S.
[2] Section 465.003(13), F.S.
[3] Section 465.003(13), F.S.
[4] Section 465.007, F.S. Florida law also allows a pharmacist to obtain a license by endorsement as an alternative to licensure by examination. *See* s. 465.0075, F.S.

Pharmacy Technicians

Florida law authorizes a licensed pharmacist to delegate certain duties, exclusive of acts that constitute the practice of professional pharmacy as defined in s. 465.003(13), F.S., to a pharmacy technician who is registered with the board. All delegated acts must be performed under the direct supervision[5] of the pharmacist and the pharmacist retains the professional and personal responsibility for the acts.[6] The acts a registered pharmacy technician may perform include:[7]

- Retrieval of prescription files;
- Data entry;
- Label preparation;
- Counting, weighing, measuring, pouring, and mixing prescription medication or stock legend drugs and controlled substances;
- Initiating communication with a prescribing practitioner or medical staff regarding requests for prescription refill authorization, clarification of missing information on prescriptions, and confirmation of information such as names, medication, and strength; and
- Accepting authorization for prescription renewals.

Pharmacy technicians are prohibited from performing the following acts:[8]

- Receiving new verbal prescriptions or any change in the medication, strength, or directions;
- Interpreting a prescription or medication order for therapeutic acceptability and appropriateness;
- Conducting a final verification of dosage and directions;
- Engaging in prospective drug review;
- Providing patient counseling;
- Monitoring prescription drug usage; and
- Overriding clinical alerts without first notifying the pharmacist.

Any person desiring to become a registered pharmacy technician must register by filing an application with the board. The board must register each applicant who:

- Completes the application form and submits the required fees.
- Is at least 17 years of age.
- Has completed a pharmacy technician training program approved by the board. Approved programs include programs accredited or licensed by specified national organizations, and employer-based programs. Employer-based programs must provide 160 hours of training over a period not to exceed 6 months, limited to employees of the pharmacy, and subject to approval by the board.[9]
- A pharmacy technician who registered prior to January 1, 2011, and who has worked as a pharmacy technician for a minimum of 1,500 hours under the supervision of a licensed pharmacist or received certification as a pharmacy technician by a certification program

[5] Chapter 465, F.S., does not contain a definition of "direct supervision." The Rules Committee of the board discussed this issue at its February meeting, but did not take final action. The issue is expected to be on the committee's agenda again during its April meeting.
[6] Section 465.014(1), F.S.; Rule 64B16-27.1001(7), F.A.C.
[7] Rule 64B16-27.420, F.A.C.
[8] *Id*.
[9] Rule 64B16-26.351 F.A.C.

accredited by the National Commission for Certifying Agencies is exempt from the requirement to complete an initial training program in order to register.[10]

A person who is licensed by the state as a pharmacy intern may be employed as a registered pharmacy technician without registering as a pharmacy technician.[11]

Pharmacy technicians must complete 20 hours of continuing education in one or more of the following areas during the 24 months prior to renewal: [12]

- Pharmacy technician practice areas and special health.
- Biological, physical, behavioral, and social sciences.
- Legal aspects of health care.
- Management/administration of health care personnel and patient care.
- Teaching/learning process of health care personnel and patients.

The board also recognizes advanced coursework at an accredited educational institution as continuing education.

Pharmacist Supervision

A licensed pharmacist may not supervise more than one registered pharmacy technician, unless otherwise permitted by the guidelines adopted by the board. The board may authorize supervision of a maximum of three pharmacy technicians.[13]

The guidelines require a pharmacist to submit a written request and receive approval by the board before supervising more than one registered pharmacy technician. The board considers the following in determining the pharmacist-to-pharmacy technician ratio:[14]

- A brief description of the pharmacy's workflow justifying the request;
- The hours the pharmacy is open; and,
- The number of pharmacists, pharmacy interns, and pharmacy technicians employed.

All registered pharmacy technicians must wear a name badge that identifies them as a pharmacy technician, and verbally identify themselves as such during any communication.[15]

At the end of the first quarter of fiscal year 2013-2014, there were 44,492 registered pharmacy technicians, 31,445 pharmacists and 9,179 licensed pharmacies. Of the licensed pharmacies, 4,436 had a ratio of three pharmacy technicians to one pharmacist, and 580 pharmacies had a ratio of two pharmacy technicians to one pharmacist.[16] According to the December 2013 Aggregate Demand Index compiled by the Pharmacy Manpower Project, Inc. (project),[17] Florida

[10] Section 465.014(2), F.S.
[11] Section 465.014(5), F.S.
[12] Rule 64B16-26.103(4), F.A.C.
[13] Section 465.014(1), F.S.
[14] Rule 64B16-27.410, F.A.C.
[15] Rule 64B16-27.420(4), F.A.C.
[16] Florida Dept. of Health, *2014 Agency Legislative Bill Analysis: SB 278* (Nov. 6, 2013).
[17] Members of the Pharmacy Manpower Project, which collects, analyzes, and disseminates data on the supply of licensed pharmacists in the United States, include: the Academy of Managed Care Pharmacy, the American Association of Colleges

has a ranking of 2.33, meaning Florida does not have a shortage of pharmacists. Specifically, the Florida ranking falls between "demand is less than the pharmacist supply available" and "demand is in balance with supply" on the scale used by the project.[18]

As of 2009, Florida was among 18 states allowing a maximum 1 to 3 pharmacist-to-pharmacist technician ratio.[19] Seventeen states and the District of Columbia had no ratio limits; eight states allowed a maximum 1 to 2 pharmacist-to-pharmacist technician ratio; seven states allowed a 1 to 4 ratio; and one state allowed a 1 to 1 ratio. More recently, Indiana and Idaho have allowed a 1 to 6 ratio.[20] Some states require that higher ratios are contingent on certification or licensure of technicians, or other quality assurance measures.[21]

According to Florida Retail Federation (FRF), pharmacy technicians are trained individuals who assist pharmacists in dispensing medications by doing routine pharmacy tasks such as taking customer phone calls, creating labels, and taking payment for prescriptions. Their role allows pharmacists to delegate specific tasks.[22] Valid training programs are listed under rule 64B16-26.351, F.A.C., which also provides for curriculum and provides that alternative programs must be a minimum of 160 hours in length (about one month full time) to six months maximum.

Concerns have been raised in past attempts to remove or alter the three technician cap. According to the Florida Pharmacy Association, pharmacists may have little say in their staffing needs or budget, and increased growth of health care needs can increase potential oversight by the supervising pharmacists who may not be able to accurately and appropriately review multiple technicians who hold no liability themselves.[23]

Section 465.004, F.S., establishes the Board of Pharmacy. The board consists of nine members appointed by the Governor and confirmed by the Senate. Seven members of the board must be licensed pharmacists who are residents of this state and engaged in the practice of pharmacy for at least 4 years. Of the pharmacist members, one must be currently engaged in the practice of pharmacy in a community pharmacy, one must be currently engaged in the practice of pharmacy

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of Pharmacy, the American College of Apothecaries, the American College of Clinical Pharmacy, the American Pharmaceutical Association, the American Society of Consultant Pharmacists, the American Society of Health-System Pharmacists, the Bureau of Health Professions, the Healthcare Distribution Management Association, the National Association of Chain Drug Stores, the National Community Pharmacists Association, the National Council of State Pharmacy Association Executives, the National Pharmaceutical Association, the Pharmaceutical Research and Manufacturers Association, and the Pharmacy Technicians Certification Board.

[18] Aggregate Demand Index, Supported by Pharmacy Manpower Project Inc., *available at* http://www.pharmacymanpower.com/about.jsp (last visited Feb. 20, 2014).

[19] National Association of Chain Drug Stores, *Standardized Pharmacy Technician Education and Training* (May 2009), *available at*: http://www.nabp.net/events/assets/AnnualMtgTechTrainStd(Nicholson).pdf (last visited Feb. 20, 2014).

[20] Indiana changed its ratio July 2, 2012. *See* Indiana Code, 25-26-13-18. *See also* Idaho Board of Pharmacy Rule 251. Pharmacy Technicians.

[21] *See* National Association of Boards of Pharmacy: Kansas News: Pharmacy Technician Ratio (2006), http://www.nabp.net/news/kansas-news-pharmacy-technician-ratio (Last visited Feb. 20, 2014).

[22] Florida Retail Technician, *Pharmacy Technician Ratio Expansion*, (2014) *available at* http://www.frf.org/index.php/government-affairs/2014-issues/pharmacy/pharmacy-technician-ratio-expansion.

[23] Conversation with Michael Jackson, Executive Vice President and CEO, Florida Pharmacy Association (March 14, 2014).

in a Class II institutional pharmacy[24] or a Modified Class II institutional pharmacy,[25] and five must be licensed pharmacists regardless of the type of practice.

Two members must be residents of this state who are not connected to the practice of pharmacy. One member of the board must be at least 60 years old. The members serve four years. Currently, there is one vacancy on the board.[26]

Written Prescriptions

Section 456.42, F.S., provides that a written prescription for a controlled substance listed under ch. 893, F.S., must have the quantity of the drugs in both textual and written formats and must be dated with the abbreviated month written out on the face of the prescription. It also must be either written on a standardized counterfeit-proof prescription pad or electronically as defined in s. 408.0611, F.S.

Section 893.04, F.S., provides that each written prescription for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include both a written and a numerical notation of the quantity of the prescription on the face of the prescription and a notation of the date with the abbreviated month written out on the face of the prescription.

Vaccine Administration

Section 465.189, F.S., authorizes a pharmacist to administer the influenza, pneumococcal, and shingles vaccines under the protocol of a licensed physician. The pharmacist must also have a prescription from a physician to administer the shingles vaccine. A pharmacist who administers vaccines must maintain at least $200,000 in liability insurance and complete a 20-hour certification course in the administration of vaccines and a 3-hour continuing education course biennially, thereafter.

III. Effect of Proposed Changes:

CS/CS/CS/SB 278 removes the cap on the number of pharmacy technicians the board may authorize a pharmacist to supervise. A licensed pharmacist may not supervise more than one technician, but may be able to supervise any number of technicians if permitted by the guidelines of the board.

The bill also revises the composition of the board to increase the number of pharmacists representing community and institutional class II pharmacies from one each to two each. The Governor is directed to make appointments in accordance with the revised composition as members' terms expire or vacancies occur.

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[24] A Class II institutional pharmacy is an institutional pharmacy which employs the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, shall provide dispensing and consulting services on the premises to patients of that institution for use on the premises of that institution. Section 465.019(2)(b), F.S.

[25] A Modified Class II institutional pharmacy is a pharmacy in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements. Section 465.019(2)(c), F.S.

[26] *See* The Board of Pharmacy, *available at* http://floridaspharmacy.gov/the-board/ (Last visited March 18, 2014).

The bill amends s. 465.189, F.S., to authorize pharmacists to administer the meningococcal vaccine under physician protocol and removes the requirement for a pharmacist to have a prescription from a physician to administer the shingles vaccine.

The bill amends s. 456.42, F.S., and s. 863.04(2)(d) F.S., by requiring that a written prescription for a controlled substance listed in ch. 893, F.S., must be dated in the numeric month/day/year format, or with the abbreviated month written out, or the month written out in whole.

The bill removes the requirement that the date required under s. 456.42, F.S., must be on the face of the prescription, and the bill removes the requirement that the written quantity and date under s. 839.04(2), F.S., must be on the face of the prescription.

The bill also amends s. 839.04(2), F.S., by adding the requirement that the notation of the date be legible.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Privately-owned pharmacies may experience greater efficiency in operations, resulting in cost savings, by utilizing more pharmacy technicians in their operations. Individuals may be able to obtain meningococcal vaccine more easily and at a lower cost in a pharmacy. Likewise, the shingles vaccine may be more readily available from a pharmacy because the bill removes the requirement for a pharmacist to have a prescription in order to administer the vaccine.

C. Government Sector Impact:

The department will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.[27] There will also be costs associated with requests made to the board to authorize a ratio greater than 1 to 1, although this cost is indeterminate because it is not possible to project how many pharmacies will make that request.

Like their private sector counterparts, publicly-owned pharmacies may experience greater efficiency in operations, resulting in cost savings, by utilizing more pharmacy technicians in their operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.42, 465.004, 465.014, 465.189, and 893.04.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS/CS by Rules on April 2, 2014:
The CS further revises the composition of the board to increase the number of representatives of community and institutional pharmacies by one each and provides for the transition in appointments to achieve the new composition.

The CS amends s. 465.189, F.S., to authorize pharmacists to administer the meningococcal vaccine under physician protocol and removes the requirement for a pharmacist to have a prescription from a physician to administer the shingles vaccine.

CS/CS by Regulated Industries on March 20, 2014:
The CS provides under s. 456.42, F.S., and s. 863.04(2)(d), F.S., that a written prescription for a controlled substance listed in ch. 893, F.S., must be dated in the numeric month/day/year format, or with the abbreviated month written out, or the month written out in whole.

The CS removes the requirement that the date required under s. 456.42, F.S., must be on the face of the prescription.

[27] Florida Dept. of Health, *2014 Agency Legislative Bill Analysis: SB 278* (Nov. 6, 2013).

The CS removes the requirement that the written quantity and date under s. 839.04(2), F.S., must be on the face of the prescription.

The CS amends s. 839.04(2), F.S., by adding the requirement that the notation of the date be legible.

CS by Health Policy on March 11, 2014:
The CS restores current law regarding the number of pharmacy technicians a pharmacist can supervise without board approval by removing the cap of six proposed by the bill as filed.

The CS restores current law regarding the board's authority to adopt guidelines for determining when a pharmacist may supervise more than one pharmacist.

The CS revises the composition of the board to increase the number of pharmacists representing community and institutional class II pharmacies from one each to three each.

B. Amendments:

None.

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

490438

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete lines 42 - 53
and insert:
various pharmacy practice settings. Of the pharmacist members, two ~~one~~ must be currently engaged in the practice of pharmacy in a community pharmacy, two ~~one~~ must be currently engaged in the practice of pharmacy in a Class II institutional pharmacy or a Modified Class II institutional pharmacy, and three must ~~five shall~~ be pharmacists licensed in this state irrespective of practice setting. The remaining two members must be residents of

490438

12 the state who have never been licensed as pharmacists and who
13 are in no way connected with the practice of the profession of
14 pharmacy. No person may be appointed as a consumer member who is
15 in any way connected with a drug manufacturer or wholesaler. At
16 least one member of the board must be 60 years of age or older.
17 The Governor shall appoint members to the board in accordance
18 with this subsection as members' terms expire or as a vacancy
19 occurs until the composition of the board complies with the
20 requirements of this subsection.

468864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 53 and 54
insert:
Section 3. Paragraph (a) of subsection (6) of section 465.009, Florida Statutes, is amended to read:
465.009 Continuing professional pharmaceutical education.—
(6) Notwithstanding subsections (1)-(5):
(a) Each pharmacist certified to administer a vaccine or epinephrine autoinjection under s. 465.189 must complete a 3-hour continuing education course, which is ~~shall be~~ offered by a

468864

12 statewide professional association of physicians in this state
13 accredited to provide educational activities designated for the
14 American Medical Association Physician's Recognition Award (AMA
15 PRA) Category I credit, on the safe and effective administration
16 of vaccines and epinephrine autoinjection as part of biennial
17 relicensure or recertification. This course may be offered in a
18 distance-learning format and must be included in the 30 hours of
19 continuing professional pharmaceutical education specified in
20 subsection (1). Effective October 1, 2014, the continuing
21 education course required by this paragraph shall be increased
22 to a 4-hour course and must include a component on the safe and
23 effective administration of the meningococcal vaccine.
24 Section 4. Subsections (1) and (2) of section 465.189,
25 Florida Statutes, are amended to read:
26 465.189 Administration of vaccines and epinephrine
27 autoinjection.—
28 (1) In accordance with guidelines of the Centers for
29 Disease Control and Prevention for each recommended immunization
30 or vaccine, a pharmacist may administer the following vaccines
31 to an adult within the framework of an established protocol
32 under a supervising physician licensed under chapter 458 or
33 chapter 459:
34 (a) Influenza vaccine.
35 (b) Pneumococcal vaccine.
36 (c) Meningococcal vaccine.
37 (d) Shingles vaccine.
38 ~~(2) In accordance with guidelines of the Centers for~~
39 ~~Disease Control and Prevention, a pharmacist may administer the~~
40 ~~shingles vaccine within the framework of an established protocol~~

468864

41 ~~and pursuant to a written or electronic prescription issued to~~
42 ~~the patient by a physician licensed under chapter 458 or chapter~~
43 ~~459.~~
44
45 ========== T I T L E A M E N D M E N T ==========
46 And the title is amended as follows:
47 Delete line 6
48 and insert:
49 the Board of Pharmacy; amending s. 465.009, F.S.;
50 revising continuing professional pharmaceutical
51 education requirements for certain pharmacists;
52 amending s. 465.189, F.S.; authorizing pharmacists to
53 administer meningococcal and shingles vaccines under
54 certain circumstances; amending ss. 456.42 and 893.04,

182652

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment to Amendment (468864) (with title amendment)

Delete lines 5 - 23.

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

And the title is amended as follows:

Delete lines 49 - 51

and insert:

the Board of Pharmacy;

By the Committees on Regulated Industries; and Health Policy; and Senator Grimsley

A bill to be entitled

An act relating to pharmacy; amending s. 465.014, F.S.; increasing the number of registered pharmacy technicians which a licensed pharmacist may supervise; amending s. 465.004, F.S.; revising the composition of the Board of Pharmacy; amending ss. 456.42 and 893.04, F.S.; requiring written prescriptions for specified controlled substances to be legibly dated in a specified format; providing an effective date.

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

Section 1. Subsection (1) of section 465.014, Florida Statutes, is amended to read:

465.014 Pharmacy technician.—

(1) A person other than a licensed pharmacist or pharmacy intern may not engage in the practice of the profession of pharmacy, except that a licensed pharmacist may delegate to pharmacy technicians who are registered pursuant to this section those duties, tasks, and functions that do not fall within the purview of s. 465.003(13). All such delegated acts must ~~shall~~ be performed under the direct supervision of a licensed pharmacist who is ~~shall be~~ responsible for all such acts performed by persons under his or her supervision. A ~~pharmacy~~ registered pharmacy technician, under the supervision of a pharmacist, may initiate or receive communications with a practitioner or his or her agent, on behalf of a patient, regarding refill authorization requests. A licensed pharmacist may not supervise more than one registered pharmacy technician unless otherwise

permitted by the guidelines adopted by the board. The board shall establish guidelines to be followed by licensees or permittees in determining the circumstances under which a licensed pharmacist may supervise more than one ~~but not more than three~~ pharmacy technician ~~technicians~~.

Section 2. Subsection (2) of section 465.004, Florida Statutes, is amended to read:

465.004 Board of Pharmacy.—

(2) Seven members of the board must be licensed pharmacists who are residents of this state and who have been engaged in the practice of the profession of pharmacy in this state for at least 4 years and, to the extent practicable, represent the various pharmacy practice settings. Of the pharmacist members, three ~~one~~ must be currently engaged in the practice of pharmacy in a community pharmacy, three ~~one~~ must be currently engaged in the practice of pharmacy in a Class II institutional pharmacy or a Modified Class II institutional pharmacy, and one ~~five~~ shall be a pharmacist ~~pharmacists~~ licensed in this state irrespective of practice setting. The remaining two members must be residents of the state who have never been licensed as pharmacists and who are in no way connected with the practice of the profession of pharmacy. No person may be appointed as a consumer member who is in any way connected with a drug manufacturer or wholesaler. At least one member of the board must be 60 years of age or older.

Section 3. Subsection (2) of section 456.42, Florida Statutes, is amended to read:

456.42 Written prescriptions for medicinal drugs.—

(2) A written prescription for a controlled substance listed in chapter 893 must have the quantity of the drug

59 prescribed in both textual and numerical formats, must be dated
60 in numeric month/day/year format, or with the abbreviated month
61 written out, or the month written out in whole ~~on the face of~~
62 ~~the prescription~~, and must be either written on a standardized
63 counterfeit-proof prescription pad produced by a vendor approved
64 by the department or electronically prescribed as that term is
65 used in s. 408.0611. As a condition of being an approved vendor,
66 a prescription pad vendor must submit a monthly report to the
67 department that ~~which~~, at a minimum, documents the number of
68 prescription pads sold and identifies the purchasers. The
69 department may, by rule, require the reporting of additional
70 information.
71 Section 4. Paragraph (d) of subsection (2) of section
72 893.04, Florida Statutes, is amended to read:
73 893.04 Pharmacist and practitioner.—
74 (2)
75 (d) Each written prescription prescribed by a practitioner
76 in this state for a controlled substance listed in Schedule II,
77 Schedule III, or Schedule IV must include both a written and a
78 numerical notation of the quantity of the controlled substance
79 prescribed ~~on the face of the prescription~~ and a legible
80 notation of the date in numeric month/day/year format, or~~,~~ with
81 the abbreviated month written out, or the month written out in
82 whole ~~on the face of the prescription~~. A pharmacist may, upon
83 verification by the prescriber, document any information
84 required by this paragraph. If the prescriber is not available
85 to verify a prescription, the pharmacist may dispense the
86 controlled substance but may insist that the person to whom the
87 controlled substance is dispensed provide valid photographic

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

88 identification. If a prescription includes a numerical notation
89 of the quantity of the controlled substance or date, but does
90 not include the quantity or date written out in textual format,
91 the pharmacist may dispense the controlled substance without
92 verification by the prescriber of the quantity or date if the
93 pharmacy previously dispensed another prescription for the
94 person to whom the prescription was written.
95 Section 5. This act shall take effect July 1, 2014.

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)

4/2/14
Meeting Date

Topic: Pharmacy

Bill Number: 278 *(if applicable)*

Name: Tammy Perdue

Amendment Barcode: *(if applicable)*

Job Title: General Counsel

Address: 516 N Adams St
Street

Tall, FL 32301
City *State* *Zip*

Phone: 850-224-7173

E-mail: tperdue@aif.com

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

Representing: Associated Industries of Florida

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic: PHARMACIST TECHNICIAN

Bill Number: 278 *(if applicable)*

Name: MICHAEL JACKSON

Amendment Barcode: *(if applicable)*

Job Title: EXECUTIVE VP & CEO

Address: 610 N. ADAMS ST
Street

TALLAHASSEE, FL 32301
City, State, Zip

Phone: (850) 222-2400

E-mail: MJACKSON@PHARMVIEW.COM

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

Representing: FLORIDA PHARMACY ASSOCIATION

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Pharmacy Technicians

Bill Number: 278 *(if applicable)*

Name: Sally West

Amendment Barcode: _____ *(if applicable)*

Job Title: Director, Govm't Affairs

Address: _____
Street

_____
City *State* *Zip*

Phone: _____

E-mail: Sally.west@walgreens.com

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

Representing: Walgreens

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Pharmacy Technician Supervision

Bill Number: SB 278 *(if applicable)*

Name: Larry Gonzalez

Amendment Barcode: _____ *(if applicable)*

Job Title: General Counsel, FSHP*

Address: 223 S. Gadsden St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850-222-0465

E-mail: lawgonz@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

Representing: Florida Society of Health-System Pharmacists

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Pharmacy Technicians

Bill Number: 278 *(if applicable)*

Name: Melissa Joiner Ramba

Amendment Barcode: _____ *(if applicable)*

Job Title: Director of Govm't Affairs

Address: _____
Street

_____
City *State* *Zip*

Phone: 850-222-4082

E-mail: melissa@frf.org

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

Representing: Florida Retail Federation

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic _____ Bill Number 278 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1254

INTRODUCER: Rules Committee; Health Policy Committee; and Senator Grimsley

SUBJECT: Health Care Services

DATE: April 2, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Stovall	HP	**Fav/CS**
2.	Looke	Phelps	RC	**Fav/CS**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1254 amends various sections of the Florida Statutes to delete unused, obsolete, and redundant rulemaking authority granted to the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) and make other technical and conforming changes.

The bill also:

- Changes "certification" to "licensure" for organ, eye, and tissue procurement organizations and amends the procurement groups specified in statute. The AHCA must substantially base their procurement organizations licensure program on the standards and guidelines of the specified organizations;[1]
- Moves Medicaid recipients under the age of 21 who are not receiving waiver services but who are authorized by the Agency for Persons with Disabilities or the Department of Children and Families to reside in a group home facility from the mandatory enrollment group to the voluntary group for statewide Medicaid managed care; and,
- Clarifies the definition of "provider service network" (PSN), and requires the AHCA to terminate its contract with a PSN that no longer meets that definition if that PSN is the only PSN under contract as a managed care plan in that region under the statewide Medicaid managed care program. The AHCA must terminate the PSN's contract, issue another notice

[1] In addition to state and federal laws.

of invitation to negotiate, and procure and contract with another PSN within 12 months after the first PSN ceases to meet the definition of a PSN.
- Allows all hospitals, rather than only specialty-licensed children's hospitals, that are authorized to provide pediatric cardiac catheterization and pediatric open-heart surgery to provide cardiovascular services to adults that the hospital treated as children for congenital heart disease.
- Reduces the frequency for a home health agency (HHA) to report certain information to the AHCA from quarterly to semiannually and requires the reports to be submitted electronically.
- Exempts from the reporting requirements HHAs that share a controlling interest with a licensee that bills Medicaid or Medicare so long as the HHA is not a Medicaid or Medicare provider itself.

II. Present Situation:

The AHCA has a number of regulatory responsibilities, among these being the licensure of health care facilities including abortion clinics, nursing homes and clinical laboratories.

In recent years, many of the facilities licensed by the AHCA have come under increasing regulatory control of federal law relating to Medicaid and Medicare, and state laws providing greater specificity than previously provided. At the same time, frequent changes to many of these overlapping legal environments have made it difficult for the AHCA to maintain rules consistent with current law. Some of this difficulty has related to unnecessary rulemaking mandates, particularly relating to statutes that provide sufficient specificity to enforce without resort to rulemaking.

Rulemaking is required by the Administrative Procedures Act (APA) whenever an agency has express authority to make rules, and must resort to rulemaking in order to implement, interpret or prescribe law, policy or requirements including mandatory forms.[2] Rulemaking is not discretionary under the APA.[3]

In 2009 and again in 2013, the Joint Administrative Procedures Committee held hearings focusing on 2007 legislation that, on its face, requires the AHCA to make rules that have yet to be finally adopted. In some cases, that legislation and similar legislation contemplated rulemaking that was either unnecessary under the APA or already promulgated under previously enacted law.

Medicaid Statewide Managed Medical Care Program

In 2011, the Legislature passed HB 7107, creating the Statewide Medicaid Managed Care Program as ch. 409, part IV, F.S. The law required AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits, for the delivery of primary and acute care as well as long-term care services. The Agency for Health Care

[2] Section 120.52(16), F.S., defines "rule" to mean "each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute…"
[3] Section 120.54(1)(a), F.S.

Administration sought and received federal authorization through two different Medicaid waivers.

In most regions, the law prescribed the minimum and the maximum number of contract awards. The law also directed that at least one plan per region be a PSN, if a responsive PSN bid was received. If no responsive bids were received from a PSN, the AHCA was to contract with one less than the maximum number of plans permitted for the region and to conduct a re-procurement within 12 months of the initial procurement in order to secure a PSN.

Ongoing litigation[4] arising from the procurement of managed care organizations as part of the implementation of statewide managed care has identified several ambiguities in the current statutes. These issues include whether any group of providers constitutes "an affiliated provider group" and whether the AHCA has a continuing responsibility to maintain a contract with at least one PSN in every region.

Under Medicaid managed care, all persons meeting applicable eligibility requirements of Title XIX of the Social Security Act must be enrolled in a managed care plan. Medicaid recipients who (a) have other creditable care coverage, excluding Medicare; (b) reside in residential commitment facilities operated through the Department of Juvenile Justice, group care facilities operated by the DCF, and treatment facilities funded through DCF Substance Abuse and Mental Health Program; (c) are eligible for refugee assistance; or, (d) are residents of a developmental disability center, may voluntarily enroll in the program. If they elect not to enroll, they will be served through the Medicaid fee for service system.

Organ Donations in Florida

Over 3,500 people in Florida are registered and waiting for organ transplants, and thousands more wait for tissue donations.[5] The most common types of organ transplants include the kidneys, liver, heart, lungs and pancreas, but many other organs and tissues can be transplanted or used for various other medical procedures.[6] Nationwide, nearly 6,000 people die each year waiting for an organ donation.[7]

Four major organ and tissue procurement agencies operate in Florida to facilitate the process of organ donation. These agencies are certified by the U.S. Centers for Medicare and Medicaid Services (CMS) and operate in Florida to increase the number of registered donors and coordinate the donation process when organs become available.[8] Each agency serves a different

---

[4] *Care Access PSN, LLC, vs. State of Florida, Agency for Health Care Administration and Prestige Health Choice, LLC, DOAH Case No. 13 4113BID, AHCA ITN 027 12/13 (*Agency for Health Care Administration Final Order, Jan. 2014) *available at* https://www.doah.state.fl.us/FLAID/HCA/2014/HCA_AHCA%20ITN%20027-12-13_02102014_095654.pdf (last visited Mar. 26, 2014.)

[5] See Donate Life Florida, 2009, *FAQs About Donation*, available at: http://www.donatelifeflorida.org/content/about/facts/faq/#faq_22 (last visited Mar. 26, 2013).

[6] Id.

[7] Id.

[8] See Donate The Gift of Life, *Organ Procurement Organizations*, available at http://organdonor.gov/materialsresources/materialsopolist.html (last visited Mar. 26, 2014).

region of the state.[9] In addition to federal certification of organ procurement organizations, the AHCA also certifies these organ procurement organizations and other eye and tissue organizations.[10]

The Organ Procurement and Transplantation Network (OPTN) is the unified network established by the United States Congress in 1984. The OPTN is a public-private partnership of professionals involved in the donation and transplantation system. The main goals of the OPTN are to increase the effectiveness and efficiency of organ sharing, increase the equity of the national system of organ allocation, and to increase the supply of donated organs.[11]

The Association of Organ Procurement Organizations (AOPO) is the national representative of the 58 federally-designated organ procurement organizations. The AOPO's main goal is to help member OPOs maximize the availability of organs and tissues for transplantation and enhance the quality, effectiveness and integrity of the donation process. The AOPO also works closely with the OPTN and has two seats on the OPTN Board of Directors.[12]

The Eye Bank Association of America (EBAA) is the oldest transplant association in the United States. The EBAA is also a nationally-recognized accrediting body for eye banks and the EBAA Medical Advisory Board develops standards to ensure consistently acceptable levels of quality, proficiency, and ethics in dealing with ocular tissue for transplantation and defines the minimum standards of practice in the recovery, preservation, storage, and distribution of eye tissue for transplantation and research, as determined by the ophthalmological medical community. The EBAA Medical Standards are reviewed semi-annually and are endorsed by the American Academy of Ophthalmology (AAO).[13]

Specialty-Licensed Children's Hospitals

Presently, s. 395.003, F.S., states that a specialty hospital may not provide any service or regularly serve any population group beyond those that are specified in its license with an exception made for specialty-licensed children's hospitals to allow them to treat certain adult patients with cardiovascular issues that the hospital treated as children. The AHCA licenses all hospital types in the state of Florida either as a Class I general acute care hospital or as a Class II specialty hospital. The options for a class II specialty hospital are a women's hospital or a children's hospital. To offer services to the population as a whole, a hospital must be licensed as a class I general acute care hospital. A hospital must also obtain a Certificate of Need (CON) from the AHCA before offering specialized types of services, including routine adult cardiac surgery.

---

[9] Id.; LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves east Florida, and LifeAlliance Organ Recovery Services serves south Florida.
[10] See AHCA's authority for certifying organ, eye, and tissue banks can be found in s. 765.542, F.S., and a list of organ, eye and tissue banks, *FloridaHealthFinder* at www.floridahealthfinder.gov (last visited on Mar. 26, 2013).
[11] See http://optn.transplant.hrsa.gov/optn/, (last visited on Mar. 26, 2013). Also see http://www.aopo.org/about-aopo, for the OPTN's policies (last visited Mar. 26, 2014).
[12] See http://www.aopo.org/about-aopo (last visited on Mar. 26, 2014).
[13] See http://www.restoresight.org/about-us/ (last visited on Mar. 26, 2014).

In addition to the three hospitals in Florida that qualify as specialty-licensed children's hospitals,[14] some Class I general acute care hospitals offer specialty services for children but are not technically considered specialty-licensed children's hospitals. One example of such an embedded children's hospital is the Palm Beach Children's Hospital located within St. Mary's Medical Center in West Palm Beach Florida. Currently, St. Mary's Hospital is authorized to perform pediatric cardiac surgeries, including pediatric open heart surgery and pediatric cardiac catheterization. However, since St. Mary's Medical Center does not have a CON for routine adult cardiac surgery and since the present exception in s. 395.003, F.S., only applies to specialty-licensed children's hospitals, St. Mary's Medical Center may not continue to treat children for the same congenital heart conditions once they reach adulthood without obtaining a waiver from the AHCA for each instance.

Home Health Agencies

A Home Health Agency (HHA) is an organization that provides home health services and staffing services.[15] Home health services provided by an HHA include health and medical services and medical equipment provided to an individual in his or her home, such as nursing care, physical and occupational therapy, and home health aide services.[16] Home health agencies are regulated by the AHCA pursuant to ch. 400, part III, F.S.

In 2008 the Florida Legislature passed ch. 2008-246, L.O.F., with anti-fraud measures including the requirement for an HHA quarterly report to be submitted to the AHCA within 15 days following the end of each quarter. The Legislature passed ch. 2008-246, L.O.F., to combat an increase in Medicaid fraud in HHAs during the early to mid 2000s. In Fiscal Year 2004-2005, the AHCA's Bureau of Medicare Program Integrity (MPI) opened 47 investigations of HHAs for Medicaid fraud, 72 in Fiscal Year 2005-2006, and 144 in Fiscal Year 2006-2007.[17] Between 2004 and 2007, 19 HHAs were terminated from the Medicaid program in Miami-Dade County alone.[18]

Section 400.474(6)(f), F.S., enacted in ch. 2008-246, L.O.F., requires HHAs to report data as it existed on the last day of the quarter for four items that are markers for possible fraudulent activity. These items include:

- The number of insulin-dependent diabetic patients receiving insulin injection services;
- The number of patients receiving both home health services from the HHA and a hospice services;
- The number of patients receiving HHA services; and
- Name and license number of nurses whose primary job responsibility is to provide home health services to patients and who received remuneration from the HHA in excess of $25,000 during the quarter.

[14] All Children's Hospital in Saint Petersburg, Miami Children's Hospital in Miami, and Nemours Children's Hospital in Orlando. See AHCA bill analysis for SB 1264, dated Mar. 15, 2013, on file with the Senate Health Policy Committee.
[15] S. 400.462(12), F.S.
[16] S. 400.462(14)(a)-(c), F.S.
[17] Staff analysis of SB 1374 (2008), dated Mar. 7, 2008, on file with the Senate Health Policy Committee.
[18] Id.

The AHCA is required to impose a fine of $200 per day, up to $5,000 per reporting period, if the report is not submitted within the first 15 days following the close of the quarter. From January 1, 2009, through December 31, 2012, there were a total of 1,407 fines imposed.[19] For the 2012-2013 state fiscal year, fines of $932,750 were imposed by final order. Also, the number of HHAs that fail to submit the reports each quarter has decreased. For the quarter ending December 31, 2012, 42 of the 2,250 licensed HHAs failed to submit their reports.[20]

The data from each quarter's reports is shared with the federal Centers for Medicare and Medicaid Services' (CMS), MPI, Miami Satellite Division; the Medicare Fraud Investigations Manager at SafeGuard Services, LLC; the CMS contractor; and the AHCA's MPI office. Their investigators use multiple sources of information to identify fraudulent activities.[21]

The AHCA also uses the data on the number of patients on the last day of the quarter as an indicator of the number of patients when a home health agency is closing. In addition, the data on numbers of patients is used as an indicator that the home health agency may not be operational, along with other information. Failing to provide at least one service directly for a period of 60 days is grounds to deny or revoke a license under s. 400.474(1)(2)(e), F.S. The AHCA already collects the number of patients admitted over a 12-month period, from each home health agency on the biennial license renewal application as required by s. 400.471(2)(c), F.S.[22]

III. Effect of Proposed Changes:

Section 1 amends s. 390.012, F.S., relating to the disposal of fetal remains, to repeal the requirement that the AHCA adopt rules to require that abortion clinics be in compliance with s. 390.0111, F.S., relating to termination of pregnancies. This rule requirement is not necessary since abortion clinics must already comply with that section of law.

Section 2 amends s. 395.003, F.S., to allow all hospitals, rather than only specialty-licensed children's hospitals, that are authorized to provide pediatric cardiac catheterization and pediatric open-heart surgery to provide cardiovascular services to adults that the hospital treated as children for congenital heart disease. This change will allow St. Mary's Medical Center in West Palm Beach to continue to offer cardiac services to adult patients that were by the Medical Center treated for congenital cardiac disorders as children without obtaining a waiver from the AHCA.

Sections 3 - 5 amend ss. 400.021, 400.0712, and 400.23, F.S., relating to the regulation of nursing homes, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to implement part II of ch. 400, F.S.

Section 6 amends 400.474, F.S., to reduce the frequency of reports that HHAs are required to submit to the AHCA from quarterly to every six months, adjusting the remuneration amount required to be reported from $25,000 to $50,000 to account for the extended reporting period, and to require that the reports be submitted electronically. The bill also exempts from the

[19]AHCA analysis of HB 4031 (SB 1094), dated Mar. 14, 2013, on file with the Senate Health Policy Committee.
[20] Id.
[21]Supra n. 19
[22]Supra n. 19

reporting requirements HHAs that share a controlling interest with a licensee that bills Medicaid or Medicare so long as the HHA is not a Medicaid or Medicare provider itself.

Sections 7 - 10 amend ss. 400.487, 400.497, 400.506, and 400.509, F.S., relating to home health agencies, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to implement part III of ch. 400, F.S.

Sections 11, 23, and 24 amend ss. 400.6095, 429.255, and 429.73, F.S., respectively, to repeal the requirement to adopt rules to implement do not resuscitate orders pursuant to s. 401.45, F.S., in hospice, assisted living facilities and adult family-care homes. These grants of rulemaking authority are unnecessary since the statute is self-executing.

Sections 12-13 amend s. 400.914, F.S., and create s. 400.9141, F.S., respectively, to substitute mandatory rulemaking with discretionary rulemaking authority as needed to administer part VI of ch. 400, F.S., relating to prescribed pediatric extended care centers. Section 400.9141, F.S., is created with language moved from s. 400.914, F.S., to make the conditions self-executing.

Sections 14-15 amend ss. 400.934 and 400.935, F.S., relating to home medical equipment providers, to repeal certain specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer part VII of ch. 400, F.S. In addition s. 400.934, F.S., requires the comprehensive emergency management plan of a home medical equipment provider to include criteria for a patient's equipment and supply list to accompany a patient who is transported from his or her home.

Sections 16-17 amend ss. 400.962 and 400.967, F.S., relating to intermediate care facilities for developmentally disabled persons, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer part VIII of ch. 400, F.S.

Section 18 amends s. 400.980, F.S., relating to health care service pools, to repeal a mandate that the AHCA adopt rules for the registration of health care services pools.

Section 19 amends s. 409.912, F.S., relating to the cost-effective purchasing of health care in the Medicaid program, to repeal the requirement for the AHCA to adopt rules to administer subsection 409.912(43), F.S., related to provider lock in programs. The subsection expires on October 1, 2014.

Sections 20 and 22 amend ss. 409.962 and 409.974, F.S., respectively relating to the statewide Medicaid managed care program, to clarify under the definition of "provider service network" that a group of providers must be affiliated for the purpose of providing health care and to require that the AHCA terminate its contract with a PSN that no longer meets the definition in s. 409.962, F.S., and is the only PSN in that region. The AHCA must terminate the PSN's contract, issue another notice of invitation to negotiate, and procure and contract with another PSN within 12 months after the first PSN no longer meets the definition of a PSN.

Section 21 amends s. 409.972, F.S., to exempt from mandatory enrollment in Medicaid managed care Medicaid recipients under the age of 21 who are not receiving waiver services but who are

authorized by the Agency for Persons with Disabilities or the Department of Children and Families to reside in a group home facility, and instead make enrollment in Medicaid managed care voluntary.

Section 25 amends s. 440.102, F.S., to clarify the AHCA's rulemaking responsibilities pertaining to drug-free workplace laboratories.

Section 26 amends s. 483.245, F.S., to repeal the requirement that the AHCA adopt rules to assess administrative penalties for clinical laboratories that pay or receive kickbacks.

Sections 27 and 28 amend ss. 765.541 and 765.544, F.S., relating to organ and tissue procurement agencies, to repeal specific mandatory rule requirements and replace them with general authority allowing the AHCA to adopt rules to administer ss. 765.541 - 765.546, F.S. The bill also changes "certification" to "licensure" for organ, eye, and tissue procurement organizations and amends the procurement groups specified in statute. The AHCA must substantially base its procurement organizations licensure program on the standards and guidelines of the specified organizations.

The bill also makes technical, clarifying, and conforming changes as necessary throughout the sections of law amended by the bill.

Section 29 establishes an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 390.012, 395.003, 400.021, 400.0712, 400.23, 400.474, 400.487, 400.497, 400.506, 400.509, 400.6095, 400.914, 400.934, 400.935, 400.962, 400.967, 400.980, 409.912, 409.962, 409.972, 409.974, 429.255, 429.73, 440.102, 483.245, 765.541, and 765.544.

This bill creates section 400.9141 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 April 2, 2014:
The CS amends CS/SB 1254 to:

- Allow all hospitals, rather than only specialty-licensed children's hospitals, that are authorized to provide pediatric cardiac catheterization and pediatric open-heart surgery to provide cardiovascular services to adults that the hospital treated as children for congenital heart disease; and
- Reduce the frequency of reports that HHAs are required to submit to the AHCA from quarterly to every six months and to require that the reports be submitted electronically. The CS also exempts from the reporting requirements HHAs that share a controlling interest with a licensee that bills Medicaid or Medicare so long as the HHA is not a Medicaid or Medicare provider itself.

CS by Health Policy on March 25, 2014:
The CS amends SB 1254 to:

- Reinstate some of the minimum standards the AHCA is required to adopt in rule to regulate home medical equipment providers;
- Change certification to licensure for organ, eye, and tissue procurement organizations and amend which groups are specified in statute. The AHCA must substantially base its procurement organizations licensure program on the standards and guidelines of the specified organizations as well as federal and state laws;
- Make technical changes to the rulemaking authority over nurse registries and drug-free workplace laboratories.

- Allow voluntary enrollment in Medicaid managed care for Medicaid recipients under the age of 21 who are not receiving waiver services but who are authorized by the Agency for Persons with Disabilities or the Department of Children and Families to reside in a group home facility; and,
- Clarify the definition of "provider service network" and require contract termination as a Medicaid managed care plan if a PSN no longer meets that definition and that a PSN is the only PSN in that region. The AHCA must re-procure another PSN within 12 months after the first PSN no longer meets the definition of a PSN.

B. Amendments:

None.

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

438848

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
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The Committee on Rules (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 83 and 84
insert:
Section 2. Paragraph (a) of subsection (6) of section 395.003, Florida Statutes, is amended to read:
395.003 Licensure; denial, suspension, and revocation.—
(6)(a) A specialty hospital may not provide any service or regularly serve any population group beyond those services or groups specified in its license. A ~~specialty-licensed children's~~ hospital that is authorized to provide pediatric cardiac

438848

12 catheterization and pediatric open-heart surgery services may
13 provide cardiovascular service to adults who, as children, were
14 previously served by the hospital for congenital heart disease,
15 or to ~~those~~ patients who are referred only for a specialized
16 procedure ~~only~~ for congenital heart disease by an adult
17 hospital, without obtaining additional licensure as a provider
18 of adult cardiovascular services. The agency may request
19 documentation as needed to support patient selection and
20 treatment. This subsection does not apply to a specialty-
21 licensed children's hospital that is already licensed to provide
22 adult cardiovascular services.
23
24 ========== T I T L E A M E N D M E N T ==========
25 And the title is amended as follows:
26 Delete line 30
27 and insert:
28 procurement program; amending s. 395.003, F.S.;
29 revising provisions relating to the provision of
30 cardiovascular services by a hospital; creating s.
31 400.9141, F.S.; limiting

633456

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 434 and 435
insert:
Section 5. Subsection (7) of section 400.474, Florida Statutes, is amended to read:
400.474 Administrative penalties.—
(7) A home health agency shall electronically submit to the agency~~, within 15 days after the end of each calendar quarter,~~ a ~~written~~ report for each 6-month period ending March 31 and September 30.

633456

12 (a) Each report must include ~~that includes~~ the following
13 data as it ~~they~~ existed on the last day of the reporting period
14 ~~quarter~~:
15 1.~~(a)~~ The number of insulin-dependent diabetic patients who
16 receive insulin-injection services from the home health agency.
17 2.~~(b)~~ The number of patients who receive both home health
18 services from the home health agency and hospice services.
19 3.~~(c)~~ The number of patients who receive home health
20 services from the home health agency.
21 4.~~(d)~~ The name and license number of each nurse whose
22 primary job responsibility is to provide home health services to
23 patients and who received remuneration from the home health
24 agency in excess of $50,000 ~~$25,000~~ during the reporting period
25 ~~calendar quarter~~.
26 (b) If the home health agency fails to submit the ~~written~~
27 ~~quarterly~~ report within 15 days after the end of the applicable
28 reporting period ~~each calendar quarter~~, the agency ~~for Health~~
29 ~~Care Administration~~ shall impose a fine of $200 per day against
30 the home health agency ~~in the amount of $200 per day~~ until the
31 agency ~~for Health Care Administration~~ receives the report,
32 except that the total fine imposed pursuant to this subsection
33 may not exceed $5,000 per reporting period ~~quarter~~. A home
34 health agency is exempt from submission of the report and the
35 imposition of the fine if it is not a Medicaid or Medicare
36 provider ~~or if it does not share a controlling interest with a~~
37 ~~licensee, as defined in s. 408.803, which bills the Florida~~
38 ~~Medicaid program or the Medicare program~~.
39
40 ========== T I T L E A M E N D M E N T ==========

633456

41 And the title is amended as follows:
42 Delete line 30
43 and insert:
44 procurement program; amending s. 400.474, F.S.;
45 revising the report requirements for home health
46 agencies; creating s. 400.9141, F.S.; limiting

938180

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 1110 and 1111
insert:
Section 24. Paragraph (a) of subsection (6) of section 465.009, Florida Statutes, is amended to read:
465.009 Continuing professional pharmaceutical education.—
(6) Notwithstanding subsections (1)-(5):
(a) Each pharmacist certified to administer a vaccine or epinephrine autoinjection under s. 465.189 must complete a 3-hour continuing education course, which is ~~shall be~~ offered by a

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12 statewide professional association of physicians in this state
13 accredited to provide educational activities designated for the
14 American Medical Association Physician's Recognition Award (AMA
15 PRA) Category I credit, on the safe and effective administration
16 of vaccines and epinephrine autoinjection as part of biennial
17 relicensure or recertification. This course may be offered in a
18 distance-learning format and must be included in the 30 hours of
19 continuing professional pharmaceutical education specified in
20 subsection (1). Effective October 1, 2014, the continuing
21 education course required by this paragraph shall be increased
22 to a 4-hour course and include a component on the safe and
23 effective administration of the meningococcal vaccine.
24 Section 25. Subsections (1) and (2) of section 465.189,
25 Florida Statutes, are amended to read:
26 465.189 Administration of vaccines and epinephrine
27 autoinjection.—
28 (1) In accordance with guidelines of the Centers for
29 Disease Control and Prevention for each recommended immunization
30 or vaccine, a pharmacist may administer the following vaccines
31 to an adult within the framework of an established protocol
32 under a supervising physician licensed under chapter 458 or
33 chapter 459:
34 (a) Influenza vaccine.
35 (b) Pneumococcal vaccine.
36 (c) Meningococcal vaccine.
37 (d) Shingles vaccine.
38 ~~(2) In accordance with guidelines of the Centers for~~
39 ~~Disease Control and Prevention, a pharmacist may administer the~~
40 ~~shingles vaccine within the framework of an established protocol~~

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41 ~~and pursuant to a written or electronic prescription issued to~~
42 ~~the patient by a physician licensed under chapter 458 or chapter~~
43 ~~459.~~
44
45 ========== T I T L E A M E N D M E N T ==========
46 And the title is amended as follows:
47 Delete line 43
48 and insert:
49 provider service network; amending s. 465.009, F.S.;
50 revising continuing professional pharmaceutical
51 education requirements for certain pharmacists;
52 amending s. 465.189, F.S.; authorizing pharmacists to
53 administer meningococcal and shingles vaccines under
54 certain circumstances; providing an effective date.

By the Committee on Health Policy; and Senator Grimsley

588-03230-14 20141254c1

A bill to be entitled

An act relating to health care services; amending ss. 390.012, 400.021, 400.0712, 400.23, 400.487, 400.497, 400.506, 400.509, 400.6095, 400.914, 400.935, 400.962, 400.967, 400.980, 409.912, 429.255, 429.73, 440.102, 483.245, 765.541, and 765.544, F.S.; removing certain rulemaking authority relating to the disposal of fetal remains by abortion clinics, nursing home equipment and furnishings, license applications for nursing home facilities, evaluation of nursing home facilities, home health agencies and cardiopulmonary resuscitation, home health agency standards, nurse registry emergency management plans, registration of certain service providers, hospice and cardiopulmonary resuscitation, standards for prescribed pediatric extended care facilities, minimum standards relating to home medical equipment providers, standards for intermediate care facilities for the developmentally disabled, rules and the classification of deficiencies for intermediate care facilities for the developmentally disabled, the registration of health care service pools, participation in a Medicaid provider lock-in program, assisted living facilities and cardiopulmonary resuscitation, adult family-care homes and cardiopulmonary resuscitation, guidelines for drug-free workplace laboratories, penalties for rebates, standards for organ procurement organizations; administrative penalties for violations of the organ and tissue donor education and

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588-03230-14 20141254c1

procurement program; creating s. 400.9141; limiting services at PPEC centers; amending s. 400.934, relating to home medical equipment providers; requiring that the emergency management plan include criteria relating to the maintenance of patient equipment and supply lists; amending s. 409.962, F.S.; redefining the term “provider service network”; amending s. 409.972; exempting certain people from the requirement to enroll in Medicaid managed care; amending s. 409.974, F.S.; providing for contracting with eligible plans; revising provisions relating to negotiation with a provider service network; providing requirements for termination of a contract with a provider service network; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 390.012, Florida Statutes, is amended to read:

390.012 Powers of agency; rules; disposal of fetal remains.—

(3) For clinics that perform or claim to perform abortions after the first trimester of pregnancy, the agency shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter, including the following:

(d) Rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum, these rules must ~~shall~~ require:

1. A medical history including reported allergies to

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59 medications, antiseptic solutions, or latex; past surgeries; and
60 an obstetric and gynecological history.
61 2. A physical examination, including a bimanual examination
62 estimating uterine size and palpation of the adnexa.
63 3. The appropriate laboratory tests, including:
64 a. Urine or blood tests for pregnancy performed before the
65 abortion procedure.
66 b. A test for anemia.
67 c. Rh typing, unless reliable written documentation of
68 blood type is available.
69 d. Other tests as indicated from the physical examination.
70 4. An ultrasound evaluation for all patients. The rules
71 must ~~shall~~ require that if a person who is not a physician
72 performs an ultrasound examination, that person shall have
73 documented evidence that he or she has completed a course in the
74 operation of ultrasound equipment as prescribed in rule. ~~The~~
75 ~~rules shall require clinics to be in compliance with s.~~
76 ~~390.0111.~~
77 5. That the physician is responsible for estimating the
78 gestational age of the fetus based on the ultrasound examination
79 and obstetric standards in keeping with established standards of
80 care regarding the estimation of fetal age as defined in rule
81 and shall write the estimate in the patient's medical history.
82 The physician shall keep original prints of each ultrasound
83 examination of a patient in the patient's medical history file.
84 Section 2. Subsection (11) of section 400.021, Florida
85 Statutes, is amended to read:
86 400.021 Definitions.—When used in this part, unless the
87 context otherwise requires, the term:

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88 (11) "Nursing home bed" means an accommodation that ~~which~~
89 is ready for immediate occupancy, or is capable of being made
90 ready for occupancy within 48 hours, excluding the provision of
91 staffing, ~~,~~ and that ~~which~~ conforms to minimum space
92 requirements, including the availability of appropriate
93 equipment and furnishings within the 48 hours, as specified by
94 ~~rule of~~ the agency, for the provision of services specified in
95 this part to a single resident.
96 Section 3. Subsection (3) of section 400.0712, Florida
97 Statutes, is amended to read:
98 400.0712 Application for inactive license.—
99 ~~(3) The agency shall adopt rules pursuant to ss. 120.536(1)~~
100 ~~and 120.54 necessary to implement this section.~~
101 Section 4. Section 400.23, Florida Statutes, is amended to
102 read:
103 400.23 Rules; evaluation and deficiencies; licensure
104 status.—
105 (1) It is the intent of the Legislature that rules
106 published and enforced pursuant to this part and part II of
107 chapter 408 ~~shall~~ include criteria by which a reasonable and
108 consistent quality of resident care may be ensured, ~~and~~ the
109 results of such resident care can be demonstrated, and ~~by which~~
110 safe and sanitary nursing homes can be provided. It is further
111 intended that reasonable efforts be made to accommodate the
112 needs and preferences of residents to enhance the quality of
113 life in a nursing home. In addition, efforts shall be made to
114 minimize the amount of paperwork associated with the reporting
115 and documentation requirements of these rules.
116 (2) Pursuant to the intention of the Legislature, the

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117 agency, in consultation with the Department of Health and the
118 Department of Elderly Affairs, may ~~shall~~ adopt ~~and enforce~~ rules
119 to administer ~~implement~~ this part and part II of chapter 408.
120 The rules must specify, but are not limited to, ~~which shall~~
121 ~~include~~ reasonable and fair criteria relating ~~in relation~~ to:
122 (a) The location of the facility and housing conditions
123 that will ensure the health, safety, and comfort of residents,
124 including an adequate call system. In adopting ~~making~~ such
125 rules, the agency shall be guided by criteria recommended by
126 nationally recognized reputable professional groups and
127 associations that have ~~with~~ knowledge of such subject matters.
128 The agency shall update or revise the ~~such~~ criteria as the need
129 arises. The agency may require alterations to a building if it
130 determines that an existing condition constitutes a distinct
131 hazard to life, health, or safety. In performing ~~any~~ inspections
132 of facilities authorized by this part or part II of chapter 408,
133 the agency may enforce the special-occupancy provisions of the
134 Florida Building Code and the Florida Fire Prevention Code which
135 apply to nursing homes. A resident ~~Residents~~ or his or her
136 representative must ~~their representatives shall~~ be able to
137 request a change in the placement of the bed in his or her ~~their~~
138 room if, ~~provided that~~ at admission, the resident is ~~they are~~
139 presented with a room that meets requirements of the Florida
140 Building Code. The location of a bed may be changed if the
141 requested placement does not infringe on the resident's roommate
142 or interfere with the resident's care or safety as determined by
143 the care planning team in accordance with facility policies and
144 procedures. In addition, the bed placement may not be used as a
145 restraint. Each facility shall maintain a log of resident rooms

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146 with beds that are not in strict compliance with the Florida
147 Building Code in order for such log to be used by surveyors and
148 nurse monitors during inspections and visits. A resident or a
149 resident's ~~resident~~ representative who requests that a bed be
150 moved must ~~shall~~ sign a statement indicating that he or she
151 understands that the room will not be in compliance with the
152 Florida Building Code, but that he or she ~~they~~ would prefer to
153 exercise the ~~their~~ right to self-determination. The statement
154 must be retained as part of the resident's care plan. A ~~Any~~
155 facility that offers this option must submit a letter signed by
156 the nursing home administrator of record to the agency notifying
157 it of this practice along with a copy of the policies and
158 procedures of the facility. The agency is directed to provide
159 assistance to the Florida Building Commission in updating the
160 construction standards of the code relating ~~relative~~ to nursing
161 homes.
162 (b) The number and qualifications of all personnel,
163 including management, medical, nursing, and other professional
164 personnel, and nursing assistants, orderlies, and support
165 personnel, having responsibility for any part of the care given
166 residents.
167 (c) All sanitary conditions within the facility and its
168 surroundings, including water supply, sewage disposal, food
169 handling, and general hygiene which will ensure the health and
170 comfort of residents.
171 (d) The equipment essential to the health and welfare of
172 the residents.
173 (e) A uniform accounting system.
174 (f) The care, treatment, and maintenance of residents and

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175 measurement of the quality and adequacy thereof, based on rules
176 developed under this chapter and the Omnibus Budget
177 Reconciliation Act of 1987, ~~(~~Pub. L. No. 100-203~~) (December 22,~~
178 ~~1987)~~, Title IV (Medicare, Medicaid, and Other Health-Related
179 Programs), Subtitle C (Nursing Home Reform), as amended.
180 (g) The preparation and annual update of a comprehensive
181 emergency management plan. The agency shall establish ~~adopt~~
182 ~~rules establishing~~ minimum criteria for the plan after
183 consultation with the Division of Emergency Management. At a
184 minimum, the ~~rules must provide for~~ plan components must provide
185 ~~that address~~ emergency evacuation transportation; adequate
186 sheltering arrangements; postdisaster activities, including
187 emergency power, food, and water; postdisaster transportation;
188 supplies; staffing; emergency equipment; individual
189 identification of residents and transfer of records; and
190 responding to family inquiries. The comprehensive emergency
191 management plan is subject to review and approval by the local
192 emergency management agency. During the ~~its~~ review, the local
193 emergency management agency shall ensure that the following
194 agencies, at a minimum, are given the opportunity to review the
195 plan: the Department of Elderly Affairs, the Department of
196 Health, the Agency for Health Care Administration, and the
197 Division of Emergency Management. ~~Also,~~ Appropriate volunteer
198 organizations must also be given the opportunity to review the
199 plan. The local emergency management agency shall complete its
200 review within 60 days and ~~either~~ approve the plan or advise the
201 facility of necessary revisions.
202 (h) The availability, distribution, and posting of reports
203 and records pursuant to s. 400.191 and the Gold Seal Program

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204 pursuant to s. 400.235.
205 (3)(a)~~1.~~ The agency shall enforce ~~adopt rules providing~~
206 minimum staffing requirements for nursing home facilities.
207 1. These requirements must include, for each facility:
208 a. A combined minimum weekly average of certified nursing
209 assistant and licensed nursing staffing ~~combined~~ of 3.6 hours of
210 direct care per resident per day. As used in this sub-
211 subparagraph, a week is defined as Sunday through Saturday.
212 b. A minimum certified nursing assistant staffing of 2.5
213 hours of direct care per resident per day. A facility may not
214 staff below one certified nursing assistant per 20 residents.
215 c. A minimum licensed nursing staffing of 1.0 hour of
216 direct care per resident per day. A facility may not staff below
217 one licensed nurse per 40 residents.
218 2. Nursing assistants employed under s. 400.211(2) may be
219 included in computing the staffing ratio for certified nursing
220 assistants if their job responsibilities include only nursing-
221 assistant-related duties.
222 3. Each nursing home facility must document compliance with
223 staffing standards ~~as~~ required under this paragraph and post
224 daily the names of staff on duty for the benefit of facility
225 residents and the public.
226 4. The agency shall recognize the use of licensed nurses
227 for compliance with the minimum staffing requirements for
228 certified nursing assistants if the nursing home facility
229 otherwise meets the minimum staffing requirements for licensed
230 nurses and the licensed nurses are performing the duties of ~~a~~
231 certified nursing assistants ~~assistant~~. Unless otherwise
232 approved by the agency, licensed nurses counted toward the

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233 minimum staffing requirements for certified nursing assistants
234 must exclusively perform the duties of ~~a~~ certified nursing
235 assistants ~~assistant~~ for the entire shift and not also be
236 counted toward the minimum staffing requirements for licensed
237 nurses. If the agency approved a facility's request to use a
238 licensed nurse to perform both licensed nursing and certified
239 nursing assistant duties, the facility must allocate the amount
240 of staff time specifically spent on certified nursing assistant
241 duties for the purpose of documenting compliance with minimum
242 staffing requirements for certified and licensed nursing staff.
243 The hours of a licensed nurse with dual job responsibilities may
244 not be counted twice.
245 (b) Nonnursing staff providing eating assistance to
246 residents does ~~shall~~ not count toward compliance with minimum
247 staffing standards.
248 (c) Licensed practical nurses licensed under chapter 464
249 who are providing nursing services in nursing home facilities
250 under this part may supervise the activities of other licensed
251 practical nurses, certified nursing assistants, and other
252 unlicensed personnel providing services in such facilities in
253 accordance with rules adopted by the Board of Nursing.
254 (4) ~~Rules developed pursuant to~~ This section does ~~shall~~ not
255 restrict the use of shared staffing and shared programming in
256 facilities that ~~which~~ are part of retirement communities that
257 provide multiple levels of care and otherwise meet the
258 requirement of law or rule.
259 (5) ~~The agency, in collaboration with the Division of~~
260 ~~Children's Medical Services of the Department of Health, must~~
261 ~~adopt rules for:~~

262 (a) Minimum standards of care for persons under 21 years of
263 age who reside in nursing home facilities may be established by
264 the agency, in collaboration with the Division of Children's
265 Medical Services of the Department of Health. A facility may be
266 exempted from these standards and the provisions of paragraph
267 (b) for specified ~~specific~~ persons between 18 and 21 years of
268 age~~,~~ if the person's physician agrees that minimum standards of
269 care based on age are not necessary.
270 (b) The following ~~Minimum~~ staffing requirements for persons
271 under 21 years of age who reside in nursing home facilities~~,~~
272 ~~which~~ apply in lieu of the requirements contained in subsection
273 (3):~~.~~
274 1. For persons under 21 years of age who require skilled
275 care:
276 a. A minimum combined average of 3.9 hours of direct care
277 per resident per day must be provided by licensed nurses,
278 respiratory therapists, respiratory care practitioners, and
279 certified nursing assistants.
280 b. A minimum licensed nursing staffing of 1.0 hour of
281 direct care per resident per day ~~must be provided~~.
282 c. Up to ~~No more than~~ 1.5 hours of certified nursing
283 assistant care per resident per day may be counted in
284 determining the minimum direct care hours required.
285 d. One registered nurse must be on duty on the site 24
286 hours per day on the unit where children reside.
287 2. For persons under 21 years of age who are medically
288 fragile:
289 a. A minimum combined average of 5.0 hours of direct care
290 per resident per day must be provided by licensed nurses,

291 respiratory therapists, respiratory care practitioners, and
292 certified nursing assistants.
293 b. A minimum licensed nursing staffing of 1.7 hours of
294 direct care per resident per day must be provided.
295 c. Up to ~~No more than~~ 1.5 hours of certified nursing
296 assistant care per resident per day may be counted in
297 determining the minimum direct care hours required.
298 d. One registered nurse must be on duty on the site 24
299 hours per day on a ~~the~~ unit where children reside.
300 (6) Before ~~Prior to~~ conducting a survey of the facility,
301 the survey team shall obtain a copy of the local long-term care
302 ombudsman council report on the facility. Problems noted in the
303 report shall be incorporated into and followed up through the
304 agency's inspection process. This procedure does not preclude
305 the local long-term care ombudsman council from requesting the
306 agency to conduct a followup visit to the facility.
307 (7) The agency shall, at least every 15 months, evaluate
308 all nursing home facilities and determine ~~make a determination~~
309 ~~as to~~ the degree of compliance by each licensee with the
310 established rules adopted under this part as a basis for
311 assigning a licensure status to a ~~that~~ facility. The agency
312 shall base its evaluation on the most recent inspection report,
313 taking into consideration findings from other official reports,
314 surveys, interviews, investigations, and inspections. In
315 addition to license categories authorized under part II of
316 chapter 408, the agency shall assign a ~~licensure status of~~
317 standard or conditional licensure status to each nursing home.
318 (a) A standard licensure status means that a facility has
319 no class I or class II deficiencies and has corrected all class

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320 III deficiencies within the time established by the agency.
321 (b) A conditional licensure status means that a facility,
322 due to the presence of one or more class I or class II
323 deficiencies, or class III deficiencies not corrected within the
324 time established by the agency, is not in substantial compliance
325 at the time of the survey with criteria established under this
326 part or with rules adopted by the agency. If the facility has no
327 class I, class II, or class III deficiencies at the time of the
328 followup survey, a standard licensure status may be assigned.
329 (c) In evaluating the overall quality of care and services
330 and determining whether the facility will receive a conditional
331 or standard license, the agency shall consider the needs and
332 limitations of residents in the facility and the results of
333 interviews and surveys of a representative sampling of
334 residents, families of residents, ombudsman council members in
335 the planning and service area in which the facility is located,
336 guardians of residents, and staff of the nursing home facility.
337 (d) The current licensure status of each facility must be
338 indicated in bold print on the face of the license. A list of
339 the deficiencies of the facility shall be posted in a prominent
340 place that is in clear and unobstructed public view at or near
341 the place where residents are being admitted to that facility.
342 Licensees receiving a conditional licensure status for a
343 facility shall prepare, within 10 working days after receiving
344 notice of deficiencies, a plan for correction of all
345 deficiencies and ~~shall~~ submit the plan to the agency for
346 approval.
347 (e) The agency shall ~~adopt rules that~~:
348 1. Establish uniform procedures for the evaluation of

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349 facilities.
350 2. Provide criteria in the areas referenced in paragraph
351 (c).
352 3. Address other areas necessary for carrying out the
353 intent of this section.
354 (8) The agency shall ensure ~~adopt rules pursuant to this~~
355 ~~part and part II of chapter 408 to provide~~ that, if ~~when~~ the
356 criteria established under subsection (2) are not met, such
357 deficiencies shall be classified according to the nature and the
358 scope of the deficiency. The scope shall be cited as isolated,
359 patterned, or widespread. An isolated deficiency is a deficiency
360 affecting one or a very limited number of residents, or
361 involving one or a very limited number of staff, or a situation
362 that occurred only occasionally or in a very limited number of
363 locations. A patterned deficiency is a deficiency in which ~~where~~
364 more than a very limited number of residents are affected, or
365 more than a very limited number of staff are involved, or the
366 situation has occurred in several locations, or the same
367 resident or residents have been affected by repeated occurrences
368 of the same deficient practice but the effect of the deficient
369 practice is not found to be pervasive throughout the facility. A
370 widespread deficiency is a deficiency in which the problems
371 causing the deficiency are pervasive in the facility or
372 represent systemic failure that has affected or has the
373 potential to affect a large portion of the facility's residents.
374 The agency shall indicate the classification on the face of the
375 notice of deficiencies as follows:
376 (a) A class I deficiency is a deficiency that the agency
377 determines presents a situation in which immediate corrective

378 action is necessary because the facility's noncompliance has
379 caused, or is likely to cause, serious injury, harm, impairment,
380 or death to a resident receiving care in a facility. The
381 condition or practice constituting a class I violation must
382 ~~shall~~ be abated or eliminated immediately, unless a fixed period
383 of time, as determined by the agency, is required for
384 correction. A class I deficiency is subject to a civil penalty
385 of $10,000 for an isolated deficiency, $12,500 for a patterned
386 deficiency, and $15,000 for a widespread deficiency. The fine
387 amount is ~~shall be~~ doubled for each deficiency if the facility
388 was previously cited for one or more class I or class II
389 deficiencies during the last licensure inspection or during an
390 ~~any~~ inspection or complaint investigation since the last
391 licensure inspection. A fine must be levied notwithstanding the
392 correction of the deficiency.
393 (b) A class II deficiency is a deficiency that the agency
394 determines has compromised a ~~the~~ resident's ability to maintain
395 or reach his or her highest practicable physical, mental, and
396 psychosocial well-being, as defined by an accurate and
397 comprehensive resident assessment, plan of care, and provision
398 of services. A class II deficiency is subject to a civil penalty
399 of $2,500 for an isolated deficiency, $5,000 for a patterned
400 deficiency, and $7,500 for a widespread deficiency. The fine
401 amount is ~~shall be~~ doubled for each deficiency if the facility
402 was previously cited for one or more class I or class II
403 deficiencies during the last licensure inspection or an ~~any~~
404 inspection or complaint investigation since the last licensure
405 inspection. A fine shall be levied notwithstanding the
406 correction of the deficiency.

(c) A class III deficiency is a deficiency that the agency determines will result in no more than minimal physical, mental, or psychosocial discomfort to a ~~the~~ resident or has the potential to compromise a ~~the~~ resident's ability to maintain or reach his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. A class III deficiency is subject to a civil penalty of $1,000 for an isolated deficiency, $2,000 for a patterned deficiency, and $3,000 for a widespread deficiency. The fine amount is ~~shall be~~ doubled for each deficiency if the facility was previously cited for one or more class I or class II deficiencies during the last licensure inspection or an ~~any~~ inspection or complaint investigation since the last licensure inspection. A citation for a class III deficiency must specify the time within which the deficiency is required to be corrected. If a class III deficiency is corrected within the time specified, a civil penalty may not be imposed.

(d) A class IV deficiency is a deficiency that the agency determines has the potential for causing no more than a minor negative impact on a ~~the~~ resident. If the class IV deficiency is isolated, no plan of correction is required.

(9) Civil penalties paid by a ~~any~~ licensee under subsection (8) shall be deposited in the Health Care Trust Fund and expended as provided in s. 400.063.

(10) Agency records, reports, ranking systems, Internet information, and publications must be promptly updated to reflect the most current agency actions.

Section 5. Subsection (7) of section 400.487, Florida

Statutes, is amended to read:

400.487 Home health service agreements; physician's, physician assistant's, and advanced registered nurse practitioner's treatment orders; patient assessment; establishment and review of plan of care; provision of services; orders not to resuscitate.—

(7) Home health agency personnel may withhold or withdraw cardiopulmonary resuscitation if presented with an order not to resuscitate executed pursuant to s. 401.45. ~~The agency shall adopt rules providing for the implementation of such orders.~~ Home health personnel and agencies are ~~shall~~ not ~~be~~ subject to criminal prosecution or civil liability and are not~~, nor be~~ considered to have engaged in negligent or unprofessional conduct~~,~~ for withholding or withdrawing cardiopulmonary resuscitation pursuant to such ~~an~~ order ~~and rules adopted by the agency~~.

Section 6. Section 400.497, Florida Statutes, is amended to read:

400.497 Rules establishing minimum standards.—The agency may ~~shall~~ adopt~~, publish, and enforce~~ rules to administer ~~implement~~ part II of chapter 408 and this part, including the provider's duties and responsibilities under~~, as applicable,~~ ss. 400.506 and 400.509. Rules shall specify, but are not limited to, ~~which must provide~~ reasonable and fair minimum standards relating to:

(1) The home health aide competency test and home health aide training. The agency shall create the home health aide competency test and establish the curriculum and instructor qualifications for home health aide training. Licensed home

465 health agencies may provide this training and shall furnish
466 documentation of such training to other licensed home health
467 agencies upon request. Successful passage of the competency test
468 by home health aides may be substituted for the training
469 required under this section and agency ~~any~~ rule ~~adopted pursuant~~
470 ~~thereto~~.
471 (2) Shared staffing. ~~The agency shall allow~~ Shared staffing
472 is allowed if the home health agency is part of a retirement
473 community that provides multiple levels of care, is located on
474 one campus, is licensed under this chapter or chapter 429, and
475 otherwise meets the requirements of law and rule.
476 (3) The criteria for the frequency of onsite licensure
477 surveys.
478 (4) Licensure application and renewal.
479 (5) Oversight by the director of nursing, including~~. The~~
480 ~~agency shall develop rules related to~~:
481 (a) Standards that address oversight responsibilities by
482 the director of nursing for ~~of~~ skilled nursing and personal care
483 services provided by the home health agency's staff;
484 (b) Requirements for a director of nursing to provide to
485 the agency, upon request, a certified daily report of the home
486 health services provided by a specified direct employee or
487 contracted staff member on behalf of the home health agency. The
488 agency may request a certified daily report for up to ~~only for a~~
489 ~~period not to exceed~~ 2 years before ~~prior to~~ the date of the
490 request; and
491 (c) A quality assurance program for home health services
492 provided by the home health agency.
493 (6) Conditions for using a recent unannounced licensure

494 inspection for the inspection required under ~~in~~ s. 408.806
495 related to a licensure application associated with a change in
496 ownership of a licensed home health agency.
497 (7) The requirements for onsite and electronic
498 accessibility of supervisory personnel of home health agencies.
499 (8) Information to be included in patients' records.
500 (9) Geographic service areas.
501 (10) Preparation of a comprehensive emergency management
502 plan pursuant to s. 400.492.
503 ~~(a) The Agency for Health Care Administration shall adopt~~
504 ~~rules establishing minimum criteria for the plan and plan~~
505 ~~updates, with the concurrence of the Department of Health and in~~
506 ~~consultation with the Division of Emergency Management.~~
507 (a) ~~(b)~~ An emergency plan ~~The rules~~ must ~~address the~~
508 ~~requirements in s. 400.492. In addition, the rules shall~~ provide
509 for the maintenance of patient-specific medication lists that
510 can accompany patients who are transported from their homes.
511 (b) ~~(c)~~ The plan is subject to review and approval by the
512 county health department. During its review, the county health
513 department shall contact state and local health and medical
514 stakeholders when necessary. The county health department shall
515 complete its review to ensure that the plan is in accordance
516 with the requirements of law ~~criteria in the Agency for Health~~
517 ~~Care Administration rules~~ within 90 days after receipt of the
518 plan and shall approve the plan or advise the home health agency
519 of necessary revisions. If the home health agency fails to
520 submit a plan or fails to submit the requested information or
521 revisions to the county health department within 30 days after
522 written notification from the county health department, the

523 county health department shall notify the Agency for Health Care
524 Administration. The agency shall notify the home health agency
525 that its failure constitutes a deficiency, subject to a fine of
526 $5,000 per occurrence. If the plan is not submitted, information
527 is not provided, or revisions are not made as requested, the
528 agency may impose the fine.
529 (c) ~~(d)~~ For a ~~any~~ home health agency that operates in more
530 than one county, the Department of Health shall review the plan,
531 after consulting with state and local health and medical
532 stakeholders when necessary. The department shall complete its
533 review within 90 days after receipt of the plan and shall
534 approve the plan or advise the home health agency of necessary
535 revisions. The department shall make every effort to avoid
536 imposing differing requirements on a home health agency that
537 operates in more than one county as a result of differing or
538 conflicting comprehensive plan requirements of the counties in
539 which the home health agency operates.
540 (d) ~~(e)~~ The requirements in this subsection do not apply to:
541 1. A facility that is certified under chapter 651 and has a
542 licensed home health agency used exclusively by residents of the
543 facility; or
544 2. A retirement community that consists of both residential
545 units for independent living and ~~either~~ a licensed nursing home
546 or an assisted living facility~~,~~ and has a licensed home health
547 agency used exclusively by ~~the~~ residents of the retirement
548 community, if~~, provided~~ the comprehensive emergency management
549 plan for the facility or retirement community provides for
550 continuous care of all residents with special needs during an
551 emergency.

552 Section 7. Paragraph (f) of subsection (12) and subsection
553 (17) of section 400.506, Florida Statutes, are amended to read:
554 400.506 Licensure of nurse registries; requirements;
555 penalties.—
556 (12) Each nurse registry shall prepare and maintain a
557 comprehensive emergency management plan that is consistent with
558 the criteria in this subsection and with the local special needs
559 plan. The plan shall be updated annually. The plan shall include
560 the means by which the nurse registry will continue to provide
561 the same type and quantity of services to its patients who
562 evacuate to special needs shelters which were being provided to
563 those patients prior to evacuation. The plan shall specify how
564 the nurse registry shall facilitate the provision of continuous
565 care by persons referred for contract to persons who are
566 registered pursuant to s. 252.355 during an emergency that
567 interrupts the provision of care or services in private
568 residences. Nurse registries may establish links to local
569 emergency operations centers to determine a mechanism by which
570 to approach specific areas within a disaster area in order for a
571 provider to reach its clients. Nurse registries shall
572 demonstrate a good faith effort to comply with the requirements
573 of this subsection by documenting attempts of staff to follow
574 procedures outlined in the nurse registry's comprehensive
575 emergency management plan which support a finding that the
576 provision of continuing care has been attempted for patients
577 identified as needing care by the nurse registry and registered
578 under s. 252.355 in the event of an emergency under this
579 subsection.
580 ~~(f) The Agency for Health Care Administration shall adopt~~

581 ~~rules establishing minimum criteria for the comprehensive~~
582 ~~emergency management plan and plan updates required by this~~
583 ~~subsection, with the concurrence of the Department of Health and~~
584 ~~in consultation with the Division of Emergency Management.~~
585 ~~(17) The Agency for Health Care Administration shall adopt~~
586 ~~rules to implement this section and part II of chapter 408.~~
587 Section 8. Subsection (7) of section 400.509, Florida
588 Statutes, is amended to read:
589 400.509 Registration of particular service providers exempt
590 from licensure; certificate of registration; regulation of
591 registrants.—
592 ~~(7) The Agency for Health Care Administration shall adopt~~
593 ~~rules to administer this section and part II of chapter 408.~~
594 Section 9. Subsection (8) of section 400.6095, Florida
595 Statutes, is amended to read:
596 400.6095 Patient admission; assessment; plan of care;
597 discharge; death.—
598 (8) The hospice care team may withhold or withdraw
599 cardiopulmonary resuscitation if presented with an order not to
600 resuscitate executed pursuant to s. 401.45. ~~The department shall~~
601 ~~adopt rules providing for the implementation of such orders.~~
602 Hospice staff are ~~shall~~ not ~~be~~ subject to criminal prosecution
603 or civil liability, nor ~~be~~ considered to have engaged in
604 negligent or unprofessional conduct, for withholding or
605 withdrawing cardiopulmonary resuscitation pursuant to such an
606 order and applicable rules. The absence of an order to
607 resuscitate executed pursuant to s. 401.45 does not preclude a
608 physician from withholding or withdrawing cardiopulmonary
609 resuscitation as otherwise permitted by law.

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610 Section 10. Section 400.914, Florida Statutes, is amended
611 to read:
612 400.914 Rulemaking; ~~Rules establishing~~ standards.—
613 (1) Pursuant to the intention of the Legislature to provide
614 safe and sanitary facilities and healthful programs, the agency
615 in conjunction with the Division of Children's Medical Services
616 of the Department of Health may ~~shall~~ adopt ~~and publish~~ rules to
617 administer ~~implement the provisions of~~ this part and part II of
618 chapter 408~~, which shall include reasonable and fair standards~~.
619 Any conflict between these rules ~~standards~~ and those established
620 ~~that may be set forth~~ in local, county, or city ordinances shall
621 be resolved in favor of those having statewide effect.
622 (2) The rules must specify, but are not limited to,
623 reasonable and fair standards relating ~~Such standards shall~~
624 ~~relate~~ to:
625 (a) The assurance that PPEC services are family centered
626 and provide individualized medical, developmental, and family
627 training services.
628 (b) The maintenance of PPEC centers, not in conflict with
629 ~~the provisions of~~ chapter 553 and based upon the size of the
630 structure and number of children, relating to plumbing, heating,
631 lighting, ventilation, and other building conditions, including
632 adequate space, which will ensure the health, safety, comfort,
633 and protection from fire of the children served.
634 (c) The application of the appropriate provisions of the
635 most recent edition of the "Life Safety Code" (NFPA-101) ~~shall~~
636 ~~be applied~~.
637 (d) The number and qualifications of all personnel who have
638 responsibility for the care of the children served.

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639 (e) All sanitary conditions within the PPEC center and its
640 surroundings, including water supply, sewage disposal, food
641 handling, and general hygiene, and maintenance thereof, which
642 will ensure the health and comfort of children served.
643 (f) Programs and basic services promoting and maintaining
644 the health and development of the children served and meeting
645 the training needs of the children's legal guardians.
646 (g) Supportive, contracted, other operational, and
647 transportation services.
648 (h) Maintenance of appropriate medical records, data, and
649 information relative to the children and programs. Such records
650 shall be maintained in the facility for inspection by the
651 agency.
652 ~~(2) The agency shall adopt rules to ensure that:~~
653 ~~(a) No child attends a PPEC center for more than 12 hours~~
654 ~~within a 24-hour period.~~
655 ~~(b) No PPEC center provides services other than those~~
656 ~~provided to medically or technologically dependent children.~~
657 Section 11. Section 400.9141, Florida Statutes, is created
658 to read:
659 400.9141 Limitations.—
660 (1) A child may not attend a PPEC center for more than 12
661 hours within a 24-hour period.
662 (2) A PPEC center may provide services only to medically or
663 technologically dependent children.
664 Section 12. Paragraph (a) of subsection (20) of section
665 400.934, Florida Statutes, is amended to read:
666 400.934 Minimum standards.—As a requirement of licensure,
667 home medical equipment providers shall:

668 (20)(a) Prepare and maintain a comprehensive emergency
669 management plan that meets minimum criteria established by
670 agency rule, including criteria for the maintenance of patient
671 equipment and supply lists that accompany patients who are
672 transported from their homes. Such rules shall be formulated in
673 consultation with the Department of Health and the Division of
674 Emergency Management ~~under s. 400.935~~. The plan shall be updated
675 annually and shall provide for continuing home medical equipment
676 services for life-supporting or life-sustaining equipment, as
677 defined in s. 400.925, during an emergency that interrupts home
678 medical equipment services in a patient's home. The plan must
679 ~~shall~~ include:
680 1. The means by which the home medical equipment provider
681 will continue to provide equipment to perform the same type and
682 quantity of services to its patients who evacuate to special
683 needs shelters which were being provided to those patients
684 before ~~prior to~~ evacuation.
685 2. The means by which the home medical equipment provider
686 establishes and maintains an effective response to emergencies
687 and disasters, including plans for:
688 a. Notification of staff when emergency response measures
689 are initiated.
690 b. Communication between staff members, county health
691 departments, and local emergency management agencies, which
692 includes provisions for a backup communications system.
693 c. Identification of resources necessary to continue
694 essential care or services or referrals to other organizations
695 subject to written agreement.
696 d. Contacting and prioritizing patients in need of

697 continued medical equipment services and supplies.
698 Section 13. Section 400.935, Florida Statutes, is amended
699 to read:
700 400.935 Rule authority ~~Rules establishing minimum~~
701 ~~standards~~.—The agency shall adopt~~, publish, and enforce~~ rules as
702 necessary to implement this part and part II of chapter 408. The
703 rules must specify, but not be limited to,~~ which must provide~~
704 reasonable and fair minimum standards relating to:
705 (1) The qualifications and minimum training requirements of
706 all home medical equipment provider personnel.
707 ~~(2) Financial ability to operate.~~
708 (2)~~(3)~~ The administration of the home medical equipment
709 provider.
710 ~~(4) Procedures for maintaining patient records.~~
711 (3)~~(5)~~ Ensuring that the home medical equipment and
712 services provided by a home medical equipment provider are in
713 accordance with the plan of treatment established for each
714 patient, when provided as a part of a plan of treatment.
715 (4)~~(6)~~ Contractual arrangements for the provision of home
716 medical equipment and services by providers not employed by the
717 home medical equipment provider providing for the consumer's
718 needs.
719 (5)~~(7)~~ Physical location and zoning requirements.
720 (6)~~(8)~~ Home medical equipment requiring home medical
721 equipment services.
722 ~~(9) Preparation of the comprehensive emergency management~~
723 ~~plan under s. 400.934 and the establishment of minimum criteria~~
724 ~~for the plan, including the maintenance of patient equipment and~~
725 ~~supply lists that can accompany patients who are transported~~

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726 ~~from their homes. Such rules shall be formulated in consultation~~
727 ~~with the Department of Health and the Division of Emergency~~
728 ~~Management.~~
729 Section 14. Subsection (5) of section 400.962, Florida
730 Statutes, is amended to read:
731 400.962 License required; license application.—
732 (5) The applicant must agree to provide or arrange for
733 active treatment services by an interdisciplinary team in order
734 to maximize individual independence or prevent regression or
735 loss of functional status. ~~Standards for active treatment shall~~
736 ~~be adopted by the Agency for Health Care Administration by rule~~
737 ~~pursuant to ss. 120.536(1) and 120.54.~~ Active treatment services
738 shall be provided in accordance with the individual support plan
739 and shall be reimbursed as part of the per diem rate as paid
740 under the Medicaid program.
741 Section 15. Subsections (2) and (3) of section 400.967,
742 Florida Statutes, are amended to read:
743 400.967 Rules and classification of deficiencies.—
744 (2) ~~Pursuant to the intention of the Legislature,~~ The
745 agency, in consultation with the Agency for Persons with
746 Disabilities and the Department of Elderly Affairs, may ~~shall~~
747 adopt and enforce rules as necessary to administer this part and
748 part II of chapter 408, which ~~shall~~ include ~~reasonable and fair~~
749 criteria governing:
750 (a) The location and construction of the facility;
751 including fire and life safety, plumbing, heating, cooling,
752 lighting, ventilation, and other housing conditions that ensure
753 the health, safety, and comfort of residents. The agency shall
754 establish standards for facilities and equipment to increase the

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extent to which new facilities, and a new wing or floor added to an existing facility after July 1, 2000, are structurally capable of serving as shelters only for residents, staff, and families of residents and staff, and equipped to be self-supporting during and immediately following disasters. The agency shall update or revise the criteria as the need arises. ~~All~~ Facilities must comply with the ~~those~~ lifesafety code requirements and building code standards applicable when ~~at the time of approval of~~ their construction plans are approved. The agency may require alterations to a building if it determines that an existing condition constitutes a ~~distinct~~ hazard to life, health, or safety. The agency may state the ~~shall adopt fair and reasonable rules setting forth~~ conditions under which existing facilities undergoing additions, alterations, conversions, renovations, or repairs are required to comply with the most recent updated or revised standards.

(b) The number and qualifications of all personnel, including management, medical, nursing, and other personnel, having responsibility for any part of the care given to residents.

(c) ~~All~~ Sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, which ~~will~~ ensure the health and comfort of residents.

(d) ~~The~~ Equipment essential to the health and welfare of the residents.

(e) A uniform accounting system.

(f) The care, treatment, and maintenance of residents and the assessment ~~measurement~~ of the quality and adequacy thereof.

(g) The preparation and annual update of a comprehensive emergency management plan. After consultation with the Division of Emergency Management, the agency may establish ~~shall adopt rules establishing~~ minimum criteria for ~~the plan after consultation with the Division of Emergency Management. At a minimum, the rules must provide for~~ plan components that address emergency evacuation transportation; adequate sheltering arrangements; postdisaster activities, including emergency power, food, and water; postdisaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. The comprehensive emergency management plan is subject to review and approval by the local emergency management agency. During the ~~its~~ review, the local emergency management agency shall ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Agency for Health Care Administration, and the Division of Emergency Management. ~~Also,~~ Appropriate volunteer organizations must also be given the opportunity to review the plan. The local emergency management agency shall complete its review within 60 days and ~~either~~ approve the plan or advise the facility of necessary revisions.

(h) The use of restraint and seclusion. Such criteria ~~rules~~ must be consistent with recognized best practices; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of clients and staff during an incident of restraint or seclusion;

813 establish procedures for staff to follow before, during, and
814 after incidents of restraint or seclusion, including
815 individualized plans for the use of restraints or seclusion in
816 emergency situations; establish professional qualifications of
817 and training for staff who may order or be engaged in the use of
818 restraint or seclusion; establish requirements for facility data
819 collection and reporting relating to the use of restraint and
820 seclusion; and establish procedures relating to the
821 documentation of the use of restraint or seclusion in the
822 client's facility or program record.
823 (3) If ~~The agency shall adopt rules to provide that, when~~
824 the criteria established under this part and part II of chapter
825 408 are not met, such deficiencies shall be classified according
826 to the nature of the deficiency. The agency shall indicate the
827 classification on the face of the notice of deficiencies as
828 follows:
829 (a) Class I deficiencies are those which the agency
830 determines present an imminent danger to ~~the~~ residents or guests
831 of the facility or a substantial probability that death or
832 serious physical harm will ~~would~~ result therefrom. The condition
833 or practice constituting a class I violation must be abated or
834 eliminated immediately, unless the agency determines that a
835 fixed period of time~~, as determined by the agency,~~ is required
836 for correction. A class I deficiency is subject to a civil
837 penalty in an amount of at least ~~not less than~~ $5,000 but not
838 more than ~~and not exceeding~~ $10,000 for each deficiency. A fine
839 may be levied notwithstanding the correction of the deficiency.
840 (b) Class II deficiencies are those which the agency
841 determines have a direct or immediate relationship to the

842 health, safety, or security of ~~the~~ facility residents but do not
843 meet the criteria established for~~, other than~~ class I
844 deficiencies. A class II deficiency is subject to a civil
845 penalty in an amount of at least ~~not less than~~ $1,000 and not
846 more than ~~not exceeding~~ $5,000 for each deficiency. A citation
847 for a class II deficiency must ~~shall~~ specify the time within
848 which the deficiency must be corrected. If a class II deficiency
849 is corrected within the time specified, a ~~no~~ civil penalty may
850 not ~~shall~~ be imposed, unless it is a repeated offense.
851 (c) Class III deficiencies are those which the agency
852 determines to have an indirect or potential relationship to the
853 health, safety, or security of ~~the~~ facility residents but do not
854 meet the criteria for~~, other than~~ class I or class II
855 deficiencies. A class III deficiency is subject to a civil
856 penalty of at least ~~not less than~~ $500 and not more than
857 ~~exceeding~~ $1,000 for each deficiency. A citation for a class III
858 deficiency must ~~shall~~ specify the time within which the
859 deficiency must be corrected. If a class III deficiency is
860 corrected within the time specified, a ~~no~~ civil penalty may not
861 ~~shall~~ be imposed, unless it is a repeated offense.
862 Section 16. Subsection (2) of section 400.980, Florida
863 Statutes, is amended to read:
864 400.980 Health care services pools.—
865 (2) The requirements of part II of chapter 408 apply to the
866 provision of services that require licensure or registration
867 pursuant to this part and part II of chapter 408 and to entities
868 registered by or applying for such registration from the agency
869 pursuant to this part. Registration or a license issued by the
870 agency is required for the operation of a health care services

871 pool in this state. In accordance with s. 408.805, an applicant
872 or licensee shall pay a fee for each license application
873 submitted using this part, part II of chapter 408, and
874 applicable rules. The agency shall ~~adopt rules and~~ provide forms
875 required for such registration and shall impose a registration
876 fee in an amount sufficient to cover the cost of administering
877 this part and part II of chapter 408. In addition to the
878 requirements in part II of chapter 408, the registrant must
879 provide the agency with any change of information contained on
880 the original registration application within 14 days before
881 ~~prior to~~ the change.
882 Section 17. Subsection (43) of section 409.912, Florida
883 Statutes, is amended to read:
884 409.912 Cost-effective purchasing of health care.—The
885 agency shall purchase goods and services for Medicaid recipients
886 in the most cost-effective manner consistent with the delivery
887 of quality medical care. To ensure that medical services are
888 effectively utilized, the agency may, in any case, require a
889 confirmation or second physician's opinion of the correct
890 diagnosis for purposes of authorizing future services under the
891 Medicaid program. This section does not restrict access to
892 emergency services or poststabilization care services as defined
893 in 42 C.F.R. part 438.114. Such confirmation or second opinion
894 shall be rendered in a manner approved by the agency. The agency
895 shall maximize the use of prepaid per capita and prepaid
896 aggregate fixed-sum basis services when appropriate and other
897 alternative service delivery and reimbursement methodologies,
898 including competitive bidding pursuant to s. 287.057, designed
899 to facilitate the cost-effective purchase of a case-managed

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900 continuum of care. The agency shall also require providers to
901 minimize the exposure of recipients to the need for acute
902 inpatient, custodial, and other institutional care and the
903 inappropriate or unnecessary use of high-cost services. The
904 agency shall contract with a vendor to monitor and evaluate the
905 clinical practice patterns of providers in order to identify
906 trends that are outside the normal practice patterns of a
907 provider's professional peers or the national guidelines of a
908 provider's professional association. The vendor must be able to
909 provide information and counseling to a provider whose practice
910 patterns are outside the norms, in consultation with the agency,
911 to improve patient care and reduce inappropriate utilization.
912 The agency may mandate prior authorization, drug therapy
913 management, or disease management participation for certain
914 populations of Medicaid beneficiaries, certain drug classes, or
915 particular drugs to prevent fraud, abuse, overuse, and possible
916 dangerous drug interactions. The Pharmaceutical and Therapeutics
917 Committee shall make recommendations to the agency on drugs for
918 which prior authorization is required. The agency shall inform
919 the Pharmaceutical and Therapeutics Committee of its decisions
920 regarding drugs subject to prior authorization. The agency is
921 authorized to limit the entities it contracts with or enrolls as
922 Medicaid providers by developing a provider network through
923 provider credentialing. The agency may competitively bid single-
924 source-provider contracts if procurement of goods or services
925 results in demonstrated cost savings to the state without
926 limiting access to care. The agency may limit its network based
927 on the assessment of beneficiary access to care, provider
928 availability, provider quality standards, time and distance

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929 standards for access to care, the cultural competence of the
930 provider network, demographic characteristics of Medicaid
931 beneficiaries, practice and provider-to-beneficiary standards,
932 appointment wait times, beneficiary use of services, provider
933 turnover, provider profiling, provider licensure history,
934 previous program integrity investigations and findings, peer
935 review, provider Medicaid policy and billing compliance records,
936 clinical and medical record audits, and other factors. Providers
937 are not entitled to enrollment in the Medicaid provider network.
938 The agency shall determine instances in which allowing Medicaid
939 beneficiaries to purchase durable medical equipment and other
940 goods is less expensive to the Medicaid program than long-term
941 rental of the equipment or goods. The agency may establish rules
942 to facilitate purchases in lieu of long-term rentals in order to
943 protect against fraud and abuse in the Medicaid program as
944 defined in s. 409.913. The agency may seek federal waivers
945 necessary to administer these policies.
946 (43) Subject to the availability of funds, the agency shall
947 mandate a recipient's participation in a provider lock-in
948 program, when appropriate, if a recipient is found by the agency
949 to have used Medicaid goods or services at a frequency or amount
950 not medically necessary, limiting the receipt of goods or
951 services to medically necessary providers after the 21-day
952 appeal process has ended, for at least ~~a period of not less than~~
953 1 year. The lock-in programs must ~~shall~~ include, but are not
954 limited to, pharmacies, medical doctors, and infusion clinics.
955 The limitation does not apply to emergency services and care
956 provided to the recipient in a hospital emergency department.
957 The agency shall seek any federal waivers necessary to implement

958 this subsection. ~~The agency shall adopt any rules necessary to~~
959 ~~comply with or administer this subsection.~~ This subsection
960 expires October 1, 2014.
961 Section 18. Subsection (13) of section 409.962, Florida
962 Statutes, is amended to read:
963 409.962 Definitions.—As used in this part, except as
964 otherwise specifically provided, the term:
965 (13) "Provider service network" means an entity qualified
966 pursuant to s. 409.912(4)(d) of which a controlling interest is
967 owned by a health care provider, or group of ~~affiliated~~
968 providers affiliated for the purpose of providing health care,
969 or a public agency or entity that delivers health services.
970 Health care providers include Florida-licensed health care
971 practitioners ~~professionals~~ or licensed health care facilities,
972 federally qualified health care centers, and home health care
973 agencies.
974 Section 19. Paragraph (e) of subsection (2) of section
975 409.972, Florida Statutes, is amended to read:
976 409.972 Mandatory and voluntary enrollment.—
977 (2) The following Medicaid-eligible persons are exempt from
978 mandatory managed care enrollment required by s. 409.965, and
979 may voluntarily choose to participate in the managed medical
980 assistance program:
981 (e) Medicaid recipients enrolled in the home and community
982 based services waiver pursuant to chapter 393, ~~and~~ Medicaid
983 recipients waiting for waiver services, and Medicaid recipients
984 under the age of 21 who are not receiving waiver services but
985 are authorized by the Agency for Persons with Disabilities or
986 the Department of Children and Families to reside in a group

987 home facility licensed pursuant to chapter 393.
988 Section 20. Subsection (1) of section 409.974, Florida
989 Statutes, is amended to read:
990 409.974 Eligible plans.—
991 (1) ELIGIBLE PLAN SELECTION.—The agency shall select and
992 contract with eligible plans through the procurement process
993 described in s. 409.966. The agency shall notice invitations to
994 negotiate by ~~no later than~~ January 1, 2013.
995 (a) The agency shall procure and contract with two plans
996 for Region 1. At least one plan shall be a provider service
997 network if any provider service networks submit a responsive
998 bid.
999 (b) The agency shall procure and contract with two plans
1000 for Region 2. At least one plan shall be a provider service
1001 network if any provider service networks submit a responsive
1002 bid.
1003 (c) The agency shall procure and contract with at least
1004 three plans and up to five plans for Region 3. At least one plan
1005 must be a provider service network if any provider service
1006 networks submit a responsive bid.
1007 (d) The agency shall procure and contract with at least
1008 three plans and up to five plans for Region 4. At least one plan
1009 must be a provider service network if any provider service
1010 networks submit a responsive bid.
1011 (e) The agency shall procure and contract with at least two
1012 plans and up to four plans for Region 5. At least one plan must
1013 be a provider service network if any provider service networks
1014 submit a responsive bid.
1015 (f) The agency shall procure and contract with at least

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1016 four plans and up to seven plans for Region 6. At least one plan
1017 must be a provider service network if any provider service
1018 networks submit a responsive bid.
1019 (g) The agency shall procure and contract with at least
1020 three plans and up to six plans for Region 7. At least one plan
1021 must be a provider service network if any provider service
1022 networks submit a responsive bid.
1023 (h) The agency shall procure and contract with at least two
1024 plans and up to four plans for Region 8. At least one plan must
1025 be a provider service network if any provider service networks
1026 submit a responsive bid.
1027 (i) The agency shall procure and contract with at least two
1028 plans and up to four plans for Region 9. At least one plan must
1029 be a provider service network if any provider service networks
1030 submit a responsive bid.
1031 (j) The agency shall procure and contract with at least two
1032 plans and up to four plans for Region 10. At least one plan must
1033 be a provider service network if any provider service networks
1034 submit a responsive bid.
1035 (k) The agency shall procure and contract with at least
1036 five plans and up to 10 plans for Region 11. At least one plan
1037 must be a provider service network if any provider service
1038 networks submit a responsive bid.
1039
1040 If no provider service network submits a responsive bid, the
1041 agency shall procure up to ~~no more than~~ one less than the
1042 maximum number of eligible plans permitted in that region and,~~.~~
1043 within the next 12 months after the initial invitation to
1044 negotiate, shall issue an invitation to negotiate in order ~~the~~

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1045 ~~agency shall attempt~~ to procure and contract with a provider
1046 service network. In a region in which the agency has contracted
1047 with only one provider service network and changes in the
1048 ownership or business structure of the network result in the
1049 network no longer meeting the definition of a provider service
1050 network under s. 409.962, the agency must, within the next 12
1051 months, terminate the contract, provide ~~shall~~ notice of another
1052 invitation to negotiate, and procure and contract ~~only~~ with a
1053 provider service network in that region ~~networks in those~~
1054 ~~regions where no provider service network has been selected~~.
1055 Section 21. Subsection (4) of section 429.255, Florida
1056 Statutes, is amended to read:
1057 429.255 Use of personnel; emergency care.—
1058 (4) Facility staff may withhold or withdraw cardiopulmonary
1059 resuscitation or the use of an automated external defibrillator
1060 if presented with an order not to resuscitate executed pursuant
1061 to s. 401.45. ~~The department shall adopt rules providing for the~~
1062 ~~implementation of such orders.~~ Facility staff and facilities are
1063 ~~shall~~ not ~~be~~ subject to criminal prosecution or civil liability,
1064 nor ~~be~~ considered to have engaged in negligent or unprofessional
1065 conduct, for withholding or withdrawing cardiopulmonary
1066 resuscitation or use of an automated external defibrillator
1067 pursuant to such an order ~~and rules adopted by the department~~.
1068 The absence of an order to resuscitate executed pursuant to s.
1069 401.45 does not preclude a physician from withholding or
1070 withdrawing cardiopulmonary resuscitation or use of an automated
1071 external defibrillator as otherwise permitted by law.
1072 Section 22. Subsection (3) of section 429.73, Florida
1073 Statutes, is amended to read:

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1074 429.73 Rules and standards relating to adult family-care
1075 homes.—
1076 (3) ~~The department shall adopt rules providing for the~~
1077 ~~implementation of orders not to resuscitate.~~ The provider may
1078 withhold or withdraw cardiopulmonary resuscitation if presented
1079 with an order not to resuscitate executed pursuant to s. 401.45.
1080 The provider is ~~shall~~ not ~~be~~ subject to criminal prosecution or
1081 civil liability, nor ~~be~~ considered to have engaged in negligent
1082 or unprofessional conduct, for withholding or withdrawing
1083 cardiopulmonary resuscitation pursuant to such an order ~~and~~
1084 ~~applicable rules~~.
1085 Section 23. Subsection (10) of section 440.102, Florida
1086 Statutes, is amended to read:
1087 440.102 Drug-free workplace program requirements.—The
1088 following provisions apply to a drug-free workplace program
1089 implemented pursuant to law or to rules adopted by the Agency
1090 for Health Care Administration:
1091 (10) RULES.~~The Agency for Health Care Administration shall~~
1092 ~~adopt rules~~ Pursuant to s. 112.0455, part II of chapter 408, and
1093 using criteria established by the United States Department of
1094 Health and Human Services, the agency shall adopt rules ~~as~~
1095 ~~general guidelines~~ for ~~modeling~~ drug-free workplace
1096 laboratories, including ~~concerning~~, but not limited to:
1097 (a) Standards for licensing drug-testing laboratories and
1098 suspension and revocation of such licenses.
1099 (b) Urine, hair, blood, and other body specimens and
1100 minimum specimen amounts that are appropriate for drug testing.
1101 (c) Methods of analysis and procedures to ensure reliable
1102 drug-testing results, including standards for initial tests and

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1103 confirmation tests.
1104 (d) Minimum cutoff detection levels for each drug or
1105 metabolites of such drug for the purposes of determining a
1106 positive test result.
1107 (e) Chain-of-custody procedures to ensure proper
1108 identification, labeling, and handling of specimens tested.
1109 (f) Retention, storage, and transportation procedures to
1110 ensure reliable results on confirmation tests and retests.
1111 Section 24. Subsection (2) of section 483.245, Florida
1112 Statutes, is amended to read:
1113 483.245 Rebates prohibited; penalties.—
1114 (2) The agency may establish and ~~shall adopt rules that~~
1115 assess administrative penalties for acts prohibited by
1116 subsection (1). If ~~In the case of~~ an entity is licensed by the
1117 agency, such penalties may include any disciplinary action
1118 available to the agency under the appropriate licensing laws. If
1119 ~~In the case of~~ an entity is not licensed by the agency, such
1120 penalties may include:
1121 (a) A fine not to exceed $1,000;
1122 (b) If applicable, a recommendation by the agency to the
1123 appropriate licensing board that disciplinary action be taken.
1124 Section 25. Subsection (2) of section 765.541, Florida
1125 Statutes, is amended to read:
1126 765.541 Licensure ~~Certification~~ of procurement
1127 organizations; agency responsibilities.—The agency shall:
1128 (1) Establish a program for the licensure ~~certification~~ of
1129 organizations, corporations, or other entities engaged in the
1130 procurement of organs, tissues, and eyes within the state for
1131 transplantation.

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1132 (2) Adopt rules as necessary to implement ~~that set forth~~
1133 ~~appropriate standards and guidelines for the program in~~
1134 ~~accordance with~~ ss. 765.541-765.546 and part II of chapter 408.
1135 ~~These~~ Standards and guidelines for the program adopted by the
1136 agency must be substantially based on the ~~existing~~ laws of the
1137 Federal Government and this state, and the ~~existing~~ standards
1138 and guidelines of the Organ Procurement and Transplantation
1139 Network (OPTN), the Association of Organ Procurement
1140 Organizations (AOPO)~~United Network for Organ Sharing (UNOS), the~~
1141 ~~American Association of Tissue Banks (AATB), the South-Eastern~~
1142 ~~Organ Procurement Foundation (SEOPF), the North American~~
1143 ~~Transplant Coordinators Organization (NATCO)~~, and the Eye Bank
1144 Association of America (EBAA). ~~In addition, the agency shall,~~
1145 ~~before adopting these standards and guidelines, seek input from~~
1146 ~~all procurement organizations based in this state.~~
1147 Section 26. Subsection (2) of section 765.544, Florida
1148 Statutes, is amended to read:
1149 765.544 Fees; organ and tissue donor education and
1150 procurement.—
1151 ~~(2) The agency shall specify by rule the administrative~~
1152 ~~penalties for the purpose of ensuring adherence to the standards~~
1153 ~~of quality and practice required by this chapter, part II of~~
1154 ~~chapter 408, and applicable rules of the agency for continued~~
1155 ~~certification.~~
1156 Section 27. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Health Care Services

Bill Number: 1254 *(if applicable)*

Name: James McFaddin

Amendment Barcode: 438848 *(if applicable)*

Job Title:

Address: 123 S. Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-671-4401

E-mail: mcfaddin@sosstrategy.com

Speaking: [X] For (amendment) [ ] Against [ ] Information

Representing: Tenet Healthcare and St. Mary's Medical Center

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Health Care Services

Bill Number: 1254 (if applicable)

Name: Christopher Lipson

Amendment Barcode: 633456 (if applicable)

Job Title: Director of Government Affairs

Address: 1363 E Lafayette St.
Street

Tallahassee, FL 32301
City, State, Zip

Phone: 850-222-8967

E-mail: Clipson@homecareofla.org

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

Representing: Home Care Association of Florida

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/13
Meeting Date

Topic: Home health care

Bill Number: 1254 *(if applicable)*

Name: Kyle Simon

Amendment Barcode: 633456 *(if applicable)*

Job Title: Associate Director

Address: 151 E Washington St
Street

Orlando, FL 32801
City, State, Zip

Phone: 407.520.6944

E-mail: ksimon@~~gmail~~bayada.com

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

Representing: BAYADA Home Health Care

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2
Meeting Date

Topic: Home Health

Bill Number: 1254 *(if applicable)*

Name: DAN CROW

Amendment Barcode: 653495 *(if applicable)*

Job Title: Spokesman

Address: 2400 SE Monterey Rd
Street

Stuart, FL 34996
City *State* *Zip*

Phone:

E-mail:

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

Representing: VNA of Florida

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 280

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; and Senator Garcia

SUBJECT: Public Records/Participants in Treatment-based Drug Court Programs

DATE: April 3, 2014 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Favorable**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Munroe	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 280 creates a public records exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records:

- Screenings for participation in the program.
- Substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

This bill provides that records may be released by consent of the participant and to governmental entities.

The bill provides that the exemption is subject to legislative review and repeal under the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the Florida Constitution.

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

II. Present Situation:

Treatment-Based Drug Court Programs

Section 397.334, F.S., allows counties to fund a treatment-based drug court program under which persons in the justice system identified as having a substance abuse problem can receive individually tailored treatment.[1] Entry into a treatment-based drug court program must be voluntary. Written consent of the individual is necessary for a court to order him or her into a program.[2] As part of a program, a person may be required to receive substance abuse screenings and continual monitoring and evaluations.[3] Records of the screenings and evaluations can be reviewed by court officials as part of a process of determining the individual's compliance with the treatment-based drug court program.[4]

Confidentiality of Treatment-based Drug Court Program Records

There is no existing public records exemption for records specific to participation in a treatment-based drug court program. A court may order records to be made confidential on a case-by-case basis; however, only the Legislature may create a new general public records exemption for judicial records.[5] Under existing law, drug court-related records contained in court files are not confidential, and a motion to make the records confidential must be filed, a hearing on the motion must be held, and the court must issue an order granting or denying the motion.[6] This motion driven process has a significant impact on judicial and court workload.[7]

Nevertheless, federal law may restrict the disclosure of some records relating to participants in a treatment-based drug court program. Specifically, federal law prohibits the disclosure of information that:

- Identifies a person who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program. Such individuals include any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a treatment program.
- Is information obtained by a federally assisted drug abuse or alcohol abuse program for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.[8]

An alcohol abuse or drug abuse program is considered to be federally assisted if it is:

- Conducted in whole or in part by any department or agency of the United States;
- Carried out under a license or other authorization granted by any department or agency of the United States;

---

[1] Section 397.334(1), F.S.
[2] Section 397.334(2), F.S.
[3] Section 397.334(4), F.S.
[4] Section 397.334(5), F.S.
[5] *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228, 229-230 (Fla. 2011).
[6] Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 280* (December 2, 2013) (on file with the Senate Committee on Judiciary).
[7] *Id.*
[8] See 42 C.F.R. ss. 2.11-2.12.

- Supported by funds provided by any department or agency of the United States; or
- Assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.[9]

Confidentiality of Substance Abuse Treatment Records

Florida law provides a public records exemption for substance abuse service providers. A service provider can be public agency, a private or not-for-profit agency, a practitioner or hospital.[10] Current law provides that the records of service providers revealing the identity, diagnosis, and prognosis of and service provision to any individual are confidential and exempt from public disclosure.[11] These records may be released with the written consent of the individual receiving treatment. If written consent is not given, records may be released in a medical emergency, to provide treatment or by court order. Records that do not identify an individual may be released for auditing and research purposes without written consent.

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[12] The records of the legislative, executive, and judicial branches are specifically included.[13]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act guarantees every person's right to inspect and copy

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[9] 42 C.F.R. s. 2.12(b).
[10] Section 397.331(33), F.S.
[11] Section 397.501(7), F.S. provides:
RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—
(a) The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such records may not be disclosed without the written consent of the individual to whom they pertain except that appropriate disclosure may be made without such consent:
1. To medical personnel in a medical emergency.
2. To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.
3. To the secretary of the department or the secretary's designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual's name and other identifying information will not be disclosed.
4. In the course of review of service provider records by persons who are performing an audit or evaluation on behalf of any federal, state, or local government agency, or third-party payor providing financial assistance or reimbursement to the service provider; however, reports produced as a result of such audit or evaluation may not disclose names or other identifying information and must be in accordance with federal confidentiality regulations.
5. Upon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself.
[12] FLA. CONST., Art. I, s. 24(a).
[13] *Id.*

any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[14]

Only the Legislature may create an exemption to public records requirements.[15] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[16]

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

III. Effect of Proposed Changes:

The bill provides that information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records is confidential and exempt[19] from public records disclosure requirements:

- Records created or compiled during screenings for participation in the program.
- Records created or compiled during substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

This bill provides that confidential and exempt records may be released by a participant in the drug court program or the participant's legal representative. Confidential and exempt records may also be released to governmental entities in furtherance of duties insofar as those duties are associated with drug screenings or treatment.[20]

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[14] Section 119.07(1)(a), F.S.
[15] FLA. CONST., Art I s. 24(c).
[16] *Id*.
[17] Section 119.15, F.S.
[18] *Id*.
[19] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[20] The drug court program can involve treatment providers, agencies, law enforcement as well as the court system. Section 397.334(5), F.S., provides: Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs as provided in ss. 948.01, 948.06, and 948.20, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is

This bill also provides that a service provider's records containing the identity, diagnosis or prognosis of a participant may be released pursuant to s. 397.501(7), F.S.

This exemption applies retroactively to all drug court records currently held by the courts and agencies.

The bill provides that the public records exemption is subject to legislative review and repeal under the Open Government Sunset Review Act and as such, stands repealed October 2, 2019, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill also contains a statement of public necessity as required by the Florida Constitution.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority counties or municipalities have to raise revenue, or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption. To become law, bills creating a public records exemption must be approved by a two-thirds vote of the members present and voting in each house of the Legislature.

According to the public necessity statement included in the bill, maintaining the confidentiality of records is necessary to encourage individuals to participate in treatment-based drug court programs.

C. Trust Funds Restrictions:

None.

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subject to a coordinated strategy developed by a drug court team under subsection (4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Information relating to a person's participation in a treatment-based drug court program will be kept confidential.

C. Government Sector Impact:

By maintaining the confidentiality of records relating to a person's participation in a treatment-based drug court program, more people may be willing to participate. The exemption for drug court-related records will eliminate the need for motions, hearings, and orders to protect these records from disclosure. The Office of the State Court Administrator did not have any statewide statistics but did estimate that there were 70-100 motion hearings to make drug court records confidential annually in Broward County.[21] The precise impact will depend upon the number of motions and hearings that will be eliminated statewide. The fiscal impact on the expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the decreased court workload.[22]

VI. Technical Deficiencies:

Florida courts are generally open to the public[23] and drug courts are no exception. The public necessity statement provides that this bill is necessary because the public disclosure of sensitive information could have a chilling effect on participation. While this bill makes certain drug court records confidential and exempt from public disclosure, this bill does not keep the public outside of the courtroom when the subject matter contained in the records are being discussed.

This bill does not provide for retroactive application of the public records exemption.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 387.334 of the Florida Statutes.

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[21] Email from the Office of the State Courts Administrator, on file with the Senate Governmental Oversight and Accountability Committee.
[22] Office of the State Courts Administrator, *supra* note 6.
[23] *Barron v. Florida Freedom Newspapers, Inc*., 531 So.2d 113 (1988).

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 April 2, 2014:
The committee substitute makes a minor change to clarify when or for what purpose information made confidential and exempt by the bill may be disclosed to another governmental entity.

CS by Governmental Oversight and Accountability on March 26, 2014:
The CS makes the following changes:

- Clarifies and narrows the types of records that are confidential and exempt.
- Allows a records custodian to release records to another entity.
- Clarifies that service providers may release records pursuant to existing law.
- Provides for retroactive application of the exemption.

B. Amendments:

None.

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

889430

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Diaz de la Portilla) recommended the following:

1 **Senate Amendment**
2
3 Delete line 39
4 and insert:
5 responsibilities associated with the screening of a person
6 considered for participation in or the provision of

By the Committee on Governmental Oversight and Accountability; and Senator Garcia

585-03260-14 2014280c1

A bill to be entitled

An act relating to public records; amending s. 397.334, F.S.; exempting from public records requirements information from the screenings for participation in a treatment-based drug court program, substance abuse screenings, behavioral health evaluations, and subsequent treatment status reports regarding a participant or a person considered for participation in a treatment-based program; providing for exceptions to the exemption; providing for retroactive application of the public record exemption; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (10) is added to section 397.334, Florida Statutes, to read:

397.334 Treatment-based drug court programs.—

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

1. Records created or compiled during screenings for participation in the program.

2. Records created or compiled during substance abuse

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585-03260-14 2014280c1

screenings.

3. Behavioral health evaluations.

4. Subsequent treatment status reports.

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

1. Pursuant to a written request of the participant or person considered for participation, or his or her legal representative.

2. To another governmental entity in the furtherance of its responsibilities associated with the screening of or providing treatment to a person in a treatment-based drug court program.

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

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

(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, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information relating to a participant or person considered for participation in a treatment-based drug court program under s. 397.334, Florida Statutes, which is contained in certain records be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Protecting information contained in records

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59 created or compiled during screenings for participation in a
60 treatment-based drug court program, records created or compiled
61 during substance abuse screenings, behavioral health
62 evaluations, and subsequent treatment status reports is
63 necessary to protect the privacy rights of participants or
64 individuals considered for participation in treatment-based drug
65 court programs. Protecting against the release of information
66 that is sensitive and personal in nature prevents unwarranted
67 damage to the reputation of treatment-based drug court program
68 participants. Public disclosure of such information could result
69 in a substantial chilling effect on participation in treatment-
70 based drug court programs. Preventing such chilling effect by
71 making this information confidential substantially outweighs any
72 public benefit derived from public disclosure of such
73 information. Accordingly, it is a public necessity that this
74 information be made confidential to protect the privacy rights
75 of program participants, encourage individuals to participate in
76 such programs, and promote the effective and efficient
77 administration of treatment-based drug court programs.
78 Section 3. This act shall take effect upon becoming a law.

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)

4/2/14
Meeting Date

Topic: public records/drug court participants

Bill Number: 280 *(if applicable)*

Name: Lisa Goodner

Amendment Barcode: _____ *(if applicable)*

Job Title: State Courts Administrator

Address: 500 S. Duval St.
Street

Tallahassee FL 32399
City *State* *Zip*

Phone: 850-922-5081

E-mail: goodnerl@flcourts.org

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

Representing: State Courts System

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: public records/drug court participants

Bill Number: 280 (if applicable)

Name: Judge Steve Leifman

Amendment Barcode: _____ (if applicable)

Job Title: Associate Administrative Judge, Criminal Division

Address: 175 NW 1st Avenue (1351 NW 12 St, Miami 33125)
Street

Phone: 305-548-5394

Miami FL 33128
City State Zip

E-mail: sleifman@jud11.flcourts.org

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

Representing: Supreme Court Task Force on Substance Abuse & Mental Health Issues in the Courts

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 2 /2014
Meeting Date

Topic _____ Bill Number 280 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Communications, Energy, and Public Utilities, Vice Chair
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:
Joint Committee on Administrative Procedures, Chair

SENATOR RENE GARCIA
38th District

March 28, 2014

The Honorable John Thrasher
Chair, Rules Committee
400 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

This letter should serve as a request to have my bill *SB 280 Public Records/Participants in Treatment-based Drug Court Programs* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

State Senator René García
District 38
RG:dm

CC: John B. Phelps, Staff Director

REPLY TO:
☐ 1490 West 68 St., Suite 201 Hialeah, FL 33014 (305) 364-3100
☐ 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 290

INTRODUCER: Senator Hukill and others

SUBJECT: State Poet Laureate

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	McVaney	GO	**Favorable**
2.	Letarte	Klebacha	ED	**Favorable**
3.	McVaney	Phelps	RC	**Favorable**

I. Summary:

SB 290 creates the position of State Poet Laureate and provides requirements for the selection, terms of service, and duties of the State Poet Laureate. The bill also provides for the designation of past State Poets Laureate as State Poets Laureate Emeritus or Emerita. The bill assigns the Florida Council on Arts and Culture certain responsibilities related to the promotion of poetry and grants the Department of State rulemaking authority to implement the bill's provisions.

The bill takes effect on July 1, 2014.

II. Present Situation:

State Poets Laureate

A poet laureate is a poet who is "acclaimed as the most excellent or most representative of a locality or group."[1] According to the Library of Congress, 42 states have an official State Poet Laureate position.[2] Duties of such poets laureate vary, but generally include the promotion of the reading, writing, and appreciation of poetry.[3]

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[1] The American Heritage Dictionary, "poet laureate," http://ahdictionary.com/word/search.html?q=poet+laureate (last visted Mar. 21, 2014).
[2] Library of Congress, *U.S. State Poets Laureate: Frequently Asked Questions*, http://www.loc.gov/rr/main/poets/faq.html (last visited Mar. 21, 2014).
[3] *Id.*

In Florida, the position of Poet Laureate of the State of Florida was established in 1928 by the governor's proclamation and is a lifetime appointment.[4] Three poet laureates have been appointed since the inception of the position.[5]

Current statutory law does not contain provisions relating to a state poet laureate.

Florida Council on Arts and Culture

The Florida Council on Arts and Culture (Council) is an advisory body within the Department of State.[6] The duties of the Council are to:

- Advocate for arts and culture;
- Advise the Secretary of State in matters pertaining to arts and cultural programs and grants administered by the Division of Cultural Affairs;[7]
- Encourage the participation in and appreciation of arts and culture;
- Encourage public interest in the state's cultural heritage and expand its resources;
- Encourage and assist freedom of artistic expression;
- Advise the Secretary of State in matters concerning the awarding of grants for arts and culture; and
- Review applications for grants for the acquisition, renovation, or construction of cultural facilities and recommend a priority for the disbursement of such grants.[8]

III. Effect of Proposed Changes:

SB 290 creates the position of State Poet Laureate and provides requirements for the selection, terms of service, and duties of the State Poet Laureate. The bill also provides for the designation of past State Poets Laureate as State Poets Laureate Emeritus or Emerita. The bill assigns the Florida Council on Arts and Culture (Council) certain responsibilities related to the promotion of poetry and grants the Department of State (Department) rulemaking authority to implement the bill's provisions.

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[4] Library of Congress, *U.S. State Poets Laureate: Florida*, http://www.loc.gov/rr/main/poets/florida.html (last visited Mar. 21, 2014).

[5] *Id.* The position is currently vacant, as the most recent state poet laureate, Edmund Skellings, passed away in August 2012. He was appointed by Governor Robert Graham in 1980, after a competition and selection by an anonymous national panel. Florida Department of State: Florida Division of Cultural Affairs, *Florida's Poet Laureate*, http://www.florida-arts.org/programs/poetlaureate/ (last visited Mar. 21, 2014).

[6] Section 265.285(1)(a), F.S.

[7] The Division of Cultural Affairs of the Department of State is the state arts administrative agency. Among its duties are the acceptance and administration of state and federal funds provided for the fine arts, grants, and certain programs. Section 265.284, F.S.

[8] Section 265.285(2), F.S.

Duties of the Florida Council on Arts and Culture

The bill amends the current duties of the Council to also require the Council to:
- Promote the reading, writing, and appreciation of poetry throughout the state; and
- Accept nominations and recommend nominees for appointment as the State Poet Laureate.

Establishment, Selection, and Duties of the State Poet Laureate

The bill establishes the honorary position of State Poet Laureate within the Department.

The bill requires the Council, in accordance with procedures adopted by the Department, to accept nominations for State Poet Laureate. The Council must solicit nominations from a broad array of literary sources and members of the public.

The bill also requires the Council to recommend at least five nominees to the Secretary of State. Each nominee must be:
- A permanent resident of the state;
- A public literary poet who has significant standing inside and outside of the state; and
- Willing and physically able to perform the duties of the State Poet Laureate as prescribed by the Department, which may include, but are not limited to, engaging in outreach and mentoring for the benefit of schools and communities throughout the state and performing readings of his or her own poetry.

The bill requires the Secretary of State to submit three of the Council's nominees to the Governor. The Governor must appoint one of the Secretary of State's nominees as the State Poet Laureate.

Terms of Service of the State Poet Laureate

The bill specifies that the State Poet Laureate will serve a term of four years. A vacancy for the remainder of an unexpired term must be filled in the same manner as the original appointment.

The bill also provides that each of the state's poets laureate appointed before the effective date of the bill, and each State Poet Laureate appointed under the bill's provisions (upon the appointment of his or her successor), will be designated a State Poet Laureate Emeritus or State Poet Laureate Emerita in recognition of his or her service to the state.

The bill specifies that the State Poet Laureate and State Poets Laureate Emeritus or Emerita serve without compensation. The bill does not authorize reimbursement of any expenses incurred by a State Poet Laureate.

Rulemaking Authority

The bill authorizes the Department to adopt rules to administer the section.

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill adds duties relating to promotion of poetry and selection of State Poet Laureate nominees for the Florida Council on Arts and Culture, and creates duties relating to the selection and appointment of the State Poet Laureate for the Department of State (Department) and for the Governor. The bill also authorizes the Department to adopt rules to implement the act. Department staff states that costs incurred by solicitation and review of nominations and by rule promulgation will be absorbed by the agency within existing resources.[9]

The bill prohibits compensation for State Poets Laureate and does not authorize reimbursement for expenses incurred by State Poets Laureate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Rulemaking

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain

[9] Email from the Department of State (Nov. 13, 2013) (on file with the Senate Committee on Education).

types of forms.[10] An agency may only adopt rules that implement or interpret the specific powers and duties granted by the enabling statute.[11] Because legislative power involves the exercise of policy-related discretion over the content of law,[12] any discretion given an agency to implement a law must be "pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program."[13]

The bill authorizes the Department of State (Department) to adopt rules to administer the section, but does not explicitly require it. However, the bill appears to implicitly require rulemaking because it requires the Council's acceptance of nominees to be in accordance with procedures created by the Department and requires the Department to prescribe duties of the State Poet Laureate.[14]

Other Comments

The bill does not provide a process by which a State Poet Laureate may be removed from the position.

VIII. Statutes Affected:

This bill substantially amends section 265.285 of the Florida Statutes.
This bill creates section 265.2863 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.

[10] Section 120.52(16), F.S.
[11] Section 120.536(1), F.S.
[12] *See State ex rel. Taylor v. City of Tallahassee*, 177 So. 2d 719, 720-721 (Fla. 1937).
[13] *Askew v. Cross Key Waterways*, 372 So. 2d 913, 825 (Fla. 1978).
[14] SB 290, lines 39-41 and 49-50 (2014 Reg. Session).

By Senators Hukill, Brandes, and Detert

A bill to be entitled

An act relating to the State Poet Laureate; amending s. 265.285, F.S.; assigning duties to the Florida Council on Arts and Culture relating to the promotion of poetry and recommendations for the appointment of the State Poet Laureate; creating s. 265.2863, F.S.; creating the honorary position of State Poet Laureate within the Department of State; establishing procedures for the acceptance of nominations, the qualifications and recommendation of nominees, and the appointment of the State Poet Laureate; providing for filling vacancies; specifying that a former poet laureate becomes a State Poet Laureate Emeritus or Emerita; providing that the State Poet Laureate, the State Poet Laureate Emeritus, and the State Poet Laureate Emerita serve without compensation; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Present paragraph (g) of subsection (2) of section 265.285, Florida Statutes, is redesignated as paragraph (h), and a new paragraph (g) is added to that subsection, to read:

265.285 Florida Council on Arts and Culture; membership, duties.—

(2) The council shall:

(g) Promote the reading, writing, and appreciation of

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

poetry throughout the state and accept nominations and recommend nominees for appointment as the State Poet Laureate under s. 265.2863.

Section 2. Section 265.2863, Florida Statutes, is created to read:

265.2863 State Poet Laureate.—

(1) The honorary position of State Poet Laureate is created within the Department of State.

(2) The Florida Council on Arts and Culture, in accordance with procedures adopted by the department, shall solicit and accept nominations for appointment as the State Poet Laureate. The council shall solicit nominations from a broad array of literary sources and members of the public.

(a) The council shall recommend at least five nominees to the Secretary of State, each of whom must be:

1. A permanent resident of this state;

2. A public literary poet who has significant standing inside and outside the state; and

3. Willing and physically able to perform the duties of the State Poet Laureate as prescribed by the department, which may include, but are not limited to, engaging in outreach and mentoring for the benefit of schools and communities throughout the state and performing readings of his or her own poetry, as requested.

(b) From among the nominees recommended by the council, the Secretary of State shall submit three nominees to the Governor, who shall appoint one nominee as the State Poet Laureate.

(3) The State Poet Laureate shall serve a term of 4 years. A vacancy shall be filled for the remainder of the unexpired

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

59 term in the same manner as the original appointment.
60 (4) Each of the state's poets laureate appointed before
61 July 1, 2014, and each State Poet Laureate appointed under this
62 section shall be designated a State Poet Laureate Emeritus or
63 State Poet Laureate Emerita in recognition of his or her service
64 to the state upon the appointment of his or her successor.
65 (5) The State Poet Laureate and each State Poet Laureate
66 Emeritus or State Poet Laureate Emerita shall serve without
67 compensation.
68 (6) The department may adopt rules to administer this
69 section.
70 Section 3. This act shall take effect July 1, 2014.

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)

4-2-14
Meeting Date

Topic: State Poet Laureate

Bill Number: 290 *(if applicable)*

Name: Patricia Stevenson-Gingrich

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 1800 E. Texas Hill Rd, ~~Monticello~~ #22
Street

Monticello, FL 32344
City *State* *Zip*

Phone: 850-445-1302

E-mail: patriciasg.bhp.@gmail.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: Florida State Poets Assoc

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: State Poet Laureate

Bill Number: 290 (if applicable)

Name: Lena Juarez

Amendment Barcode: _____ (if applicable)

Job Title: _____

Address: P. O. Box 10390
Street

Tallahassee FL 32302
City State Zip

Phone: 850 212 8330

E-mail: lena@jejassoc.com

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

Representing: Florida Humanities Council

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

March 25, 2014

The Honorable John Thrasher
400 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 290 – State Poet Laureate

Dear Chairman Thrasher:

Senate Bill 290, relating to State Poet Laureate, has been referred to the Committee on Rules. I am requesting your consideration to include SB 290 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: John Phelps, Staff Director of the Committee on Rules
Tamra Lyon, Administrative Assistant Committee on Rules

REPLY TO:
☐ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
☐ Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 998

INTRODUCER: Judiciary Committee and Senator Hukill

SUBJECT: Estates

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Billmeier	Knudson	BI	**Favorable**
3.	Davis	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 998 amends provisions in the Probate Code and Trust Code. The amendments are recommended by the Real Property, Probate, and Trust Law Section of the Florida Bar. Those changes:

- Clarify the effective date of legislation passed last session which renders void any part of a written instrument making gifts to a lawyer or lawyer's relatives.
- Clarify that the party who is contesting the validity of a trust or seeking to revoke a trust bears the burden of establishing the grounds of the invalidity on all issues.
- Specify that death benefits, often in the form of life insurance, which are payable to a trust are not available to pay the expenses of administration of a settlor's estate or creditor's claims unless specific language and references are made.
- Align the anti-lapse provisions of the Trust Code to mirror the same provisions of the Probate Code involving outright devises of gifts to certain relatives.

Several of these provisions are designed to clarify existing law and are remedial in nature and apply retroactively while others have prospective application.

II. Present Situation:

The Florida Probate Code is found in chs. 731–735, F.S., and the Florida Trust Code is contained in ch. 736, F.S.

Gifts to Lawyers and Other Disqualified Persons

Chapter 2013-172, Laws of Florida makes void, with certain exceptions, any gift to a lawyer or his or her relatives from a written instrument[1] prepared by the lawyer. The legislation contained a general effective date in the final section of the bill but did not contain any specific language stating whether the statute applied to gifts made in preexisting written instruments. This has apparently led to some confusion among attorneys who practice in this area of the law.

Will and Trust Contests

The Florida Probate Code and the Florida Trust Code provide that a will, trust, or revocation of a will or trust, is void if it is procured by fraud, duress, mistake, or undue influence.[2] Both codes specify grounds for a will or trust contest that challenges the validity of the document, but the Probate Code alone specifies which party bears the burden of proof in a contest.[3] There is no statute specifying who carries the burden of proof in an inter vivos trust contest.[4]

Pursuant to the statute governing will contests, the proponent of a will bears the initial burden of establishing the formal execution and attestation of the will.[5] If formal execution and attestation is established, the burden of proof shifts to the person contesting the will to prove the grounds of the contest. Generally, under Florida law, a plaintiff or petitioner bears the burden of proof in a proceeding. It would then seem that a person contesting a trust initially bears the burden of proof since there is no specific statute addressing the issue. However, because trusts are similar to wills in their purpose and are often referred to as substitutes for wills, courts and attorneys practicing in that area are often confused as to who bears the initial burden of proof and when that burden shifts.[6]

Death Benefits

Statutory Law

Life insurance proceeds usually pass outside of an estate and are generally exempt from administration expenses and claims of creditors as provided in s. 222.13(1), F.S. The exemption is lost, however, if the insurance proceeds are paid to the insured's estate. Section 222.13(1), F.S., states that:

---

[1] "Written instrument" "includes, but is not limited to, a will, a trust, a deed, a document exercising a power of appointment, or a beneficiary designation under a life insurance contract or any other contractual arrangement that creates an ownership interest or permits the naming of a beneficiary."
[2] Sections 732.5165 and 736.0406, F.S.
[3] Section 733.107, F.S.
[4] Real Property, Probate, & Trust Law Section of The Florida Bar, *White Paper: Proposed Legislative Clarification Regarding the Burden of Proof in Trust Contests* (2014) (on file with the Senate Committee on Judiciary).
[5] Section 733.107, F.S.
[6] Unlike a will, an inter vivos trust takes effect when it is created by a settlor while the settlor is living. No court process needs to be initiated for the trust to take effect, unlike a probate proceeding for a will. Therefore, the burden is on the contestant of the trust to initiate proceedings to contest the trust's validity. Email from William Hennessey, Trust Law Committee of the Real Property Probate & Trust Law Section, The Florida Bar (March 8, 2014) (on file with the Senate Committee on Judiciary).

> [w]henever the insurance, by designation or otherwise, is payable to the insured or to the insured's estate or to his or her executors, administrators, or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and shall be administered by the personal representative of the estate of the insured in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

Section 733.808, F.S., relates to death benefits and the disposition of proceeds of life insurance policies, certain benefit plans, an annuity or endowment contract, and a health or accident policy. Subsection (1) provides that death benefits of any kind, including a life insurance policy, may be payable to the trustee of a trust. If those insurance proceeds are paid to a trustee of a trust, then the proceeds are to be held and disposed of in accordance with the terms of the trust. Section 733.808(2), F.S., provides very similar rules for insurance proceeds made payable to the trustee named in a will that is admitted to probate.

Section 733.808(3), F.S., provides that if no trustee makes a proper claim to the insurance proceeds within a 6-month period after the date of death of the insured or if satisfactory evidence is furnished that there will be no trustee to receive the proceeds, the insurance company must pay the insurance proceeds to the personal representative of the person making the designation, unless otherwise provided by agreement between the insurance company and the insured.

Section 733.808(4), F.S., states that:

> Death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.

Case Law and Conflicting Interpretation

In 2012, the First District Court of Appeal issued the decision *Morey v. Everbank*[7] interpreting ss. 222.131(1), F.S., and 733.808(1), F.S. In that case, Mr. Morey, the decedent, designated his revocable trust as the beneficiary of his life insurance policy. After Mr. Morey's death, the trustee filed a petition requesting a determination as to whether the life insurance proceeds, which were payable to the trust, were exempt from all death obligations and therefore unavailable to the deceased settlor's estate or its creditors. The trust instrument instructed the trustee to pay the personal representative amounts that were certified by the personal representative to be required to pay Mr. Morey's "death obligations." The "death obligations" included expenses for the administration of the estate, enforceable debts, and estate taxes. The court held that the language of the trust and the structure of the trust indicated an intent and result that were the same as if the proceeds from the life insurance policy had been paid directly to the estate.

[7] *Morey v. Everbank*, 93 So.3d 482 (Fla 1st DCA 2012).

Many practitioners in this area of the law have concluded that this decision "is contrary to the generally accepted interpretations" of ss. 222.13(1) and 733.808(4), F.S.[8] Their position is that the generally accepted interpretation of those statutes, when read together, "is that insurance proceeds payable to a trustee of a revocable trust are entitled to the statutory exemption from the claims of creditors of the insured's estate" regardless of any trust provisions directing the trustee to apply trust assets to cover estate administration expenses or the claims of creditors.[9]

Antilapse Provisions

Section 736.1106, F.S., is the antilapse statute for trusts. The purpose of an antilapse statute is to save certain gifts from lapsing or failing if a named recipient of a gift does not survive the decedent. Currently, the antilapse provisions of the Probate Code and the Trust Code are not consistent in the treatment of outright devises to certain people who do not survive the settlor of a trust or the testator of a testamentary trust.[10] The Trust Law Committee of the Real Property, Probate, & Trust Law Section of The Florida Bar recommends that the Trust Code provisions be amended to mirror the Probate Code provision.[11]

The Probate Code provides that if the will is silent, the share of a beneficiary who dies before the testator dies passes to his or her heirs as long as the heirs are related no more distantly than descendants of grandparents. If the descendants are not alive, the gift fails, which is a desirable result. Under the Trust Code, that is not the case.

Presently, the antilapse statute of the Trust Code saves all devises without regard to the familial relationship between the recipient and the creator of the gift.[12] This was apparently done for administrative convenience. This approach differs from the Probate Code and what was an earlier version of the Trust Code. It often results in unintended consequences and litigation under the Trust Code.

III. Effect of Proposed Changes:

Gifts to Lawyers and Other Disqualified Persons – Sections 1 and 2

Section 732.806, F.S., generally prohibits an attorney or any of the attorney's relatives from being the beneficiary of a gift in a written instrument drafted by the attorney. The bill provides that the prohibition applies to written instruments executed on or after October 1, 2013. This effectively grandfathers such gifts in written instruments preexisting the effective date of the 2013 legislation. The bill further provides that this change is intended to clarify existing law and is remedial in nature.

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[8] Probate and Trust Litigation Committee of the Real Property Probate & Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to Section 733.808(4) and Section 736.05053(1), Florida Statutes* (2014) (on file with the Senate Committee on Judiciary).
[9] *Id*., at 2.
[10] Trust Law Committee of the Real Property Probate & Trust Law Section of the Florida Bar, *White Paper: Proposed Legislation Regarding Trust Antilapse and Amendment to s. 736.1106, Florida Statutes* (2013) (on file with the Senate Committee on Judiciary).
[11] *Id*.
[12] *Id*.

Will or Trust Contests – Sections 3, 4, 7, and 8

Sections 3 and 7 amends ss. 733.107, F.S., and 736.0207, F.S., to clarify that the party contesting the validity of a trust or seeking to revoke a trust, in whole or in part, bears the burden of establishing the grounds for invalidity on all issues. Because the current trust code is silent on this matter, these changes may provide clarity to the courts and attorneys involved in trust disputes as to which party bears the burden of proof. Unlike a will contest, these changes place the complete burden on the contestant.

Section 4 of the bill provides that the changes to the burden shifting provisions in s. 733.107, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively to proceedings pending on or before the bill becomes law and all cases that are begun on or after the effective date of this bill.

Section 8 provides that the changes made to s. 736.0207, F.S., trusts contests, apply to all cases commenced on or after the effective date of the act. The effective date of the act is "upon becoming a law."

Death Benefits – Sections 5, 6, 9, and 10

These proposed changes are a response to the 2012 *Morey v. Everbank* decision, discussed in the Present Situation, and are intended to clarify the circumstances under which death benefits, such as life insurance, payable to a trust are exempt from any obligation to pay the expenses of the administration and obligations of the decedent's estate.

Section 5 amends s. 733.808, F.S., to provide that a waiver of the statutory exemption, protecting death benefits from claims of creditors or the decedent's estate, must be explicit. It clarifies that a general provision directing the trustee to pay all debts does not waive the statutory exemption from creditor claims for death benefits paid to the trustee.Section 6 provides that the changes to s. 733.808, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the decedent's death.

Section 9 amends s. 736.05053, F.S., and is designed to insure that a trustee, paying the expenses of administration and obligations of the settlor's estate, cannot use the death benefits described in s. 733.808(1), (2), or (3), F.S., unless the settlor specifically waived the prohibition of the use of those benefits in accordance with s. 733.808(4), F.S. If the settlor desires to waive the exemption, there must be a specific waiver. This language establishes that a general direction to pay all of the settlor's debts is not sufficient.Section 10 provides that the changes made to s. 736.05053, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the settlor's death.

Antilapse Provision – Section 11

The purpose of this section is to make the antilapse statute of the Trust Code consistent with the antilapse statute of the Probate Code in the area of outright devises to persons who do not survive the settlor of a revocable trust or the testator of a testamentary trust. The bill amends the antilapse provisions of the Trust Code to cause an outright devise to a deceased beneficiary to

lapse unless the beneficiary was a grandparent, or lineal descendant of a grandparent of the settlor of a revocable trust, or the testator of a testamentary trust. It is the opinion of some practitioners of probate and trust law that people enter into trust arrangements thinking that a trust devise operates the same as a will. When the results under the terms of a trust are not what the individuals had hoped for litigation ensues.This provision amending s. 736.1106, F.S., applies to trusts that become irrevocable after June 30, 2014.

Effective Date & Application

This bill takes effect upon becoming a law and applies retroactively as discussed in other sections of this analysis.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Supreme Court issued a decision[13] last year addressing the retroactive nature of statutes. The Court held that the retroactive application of a statute is constitutionally permissible if the Legislature expresses a clear intent that the law apply retroactively and the law is procedural or remedial in nature. Remedial statutes, by their nature, further a remedy or confirm rights that already exist. A procedural law "provides the means and methods for the application and enforcement of existing duties and rights." If the retroactive provisions contained in this bill could operate to remove a vested right such as the distribution of assets in a closed estate, then the retroactive application might not be constitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[13] *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Association, Inc.*, 127 So.3d 1258, 1272 (Fla. 2013).

B. Private Sector Impact:

The provisions of this bill may facilitate the distribution of a decedent's assets in the way intended by the decedent. The clarifying changes made by this bill may reduce litigation relating to wills or trusts.

C. Government Sector Impact:

If this bill reduces litigation, fewer resources from the state court system will be used for litigation relating to wills and trusts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 732.806, 733.107, 733.808, 736.0207, 736.05053, and 736.1106.

IX. Additional Information:

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

CS by Judiciary on March 11, 2014:
The committee substitute adds two sections to the underlying bill to clarify the application of a provision passed during the 2013 Legislative Session, which generally prohibits an attorney or any of the attorney's relatives from being the beneficiary of a gift in a written instrument drafted by the attorney.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Hukill

590-02447-14 2014998c1

A bill to be entitled

An act relating to estates; amending s. 732.806, F.S.; providing that certain restrictions on gifts to lawyers and other disqualified persons apply to written instruments executed on or after a specified date; providing for applicability; amending s. 733.107, F.S.; clarifying circumstances under which a burden of proof shifts in cases involving undue influence; providing for retroactive application; amending s. 733.808, F.S.; requiring that a directive to apply certain death benefits for the payment of claims and administration expenses be specified in certain instruments; providing for retroactive application; amending s. 736.0207, F.S.; establishing which party bears the burden of proof in an action to contest the validity or revocation of a trust; providing for applicability; amending s. 736.05053, F.S.; requiring a specific directive for certain assets and death benefits to be used to pay estate expenses; providing for retroactive application; amending s. 736.1106, F.S.; providing for the vesting of outright devises in certain trust documents; providing for applicability; providing an effective date.

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

Section 1. Subsection (9) is added to section 732.806, Florida Statutes, to read:

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

590-02447-14 2014998c1

732.806 Gifts to lawyers and other disqualified persons.—

(9) This section applies only to written instruments executed on or after October 1, 2013.

Section 2. The changes made by this act to s. 732.806, Florida Statutes, are intended to clarify existing law and are remedial in nature.

Section 3. Section 733.107, Florida Statutes, is amended to read:

733.107 Burden of proof in contests; presumption of undue influence.—

(1) In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. A self-proving affidavit executed in accordance with s. 732.503 or an oath of an attesting witness executed as required in s. 733.201(2) is admissible and establishes prima facie the formal execution and attestation of the will. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought.

(2) In any transaction or event to which the presumption of undue influence applies, the presumption ~~of undue influence~~ implements public policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under ss. 90.301-90.304.

Section 4. The changes made by this act to s. 733.107, Florida Statutes, are intended to clarify existing law, are remedial in nature, and shall apply retroactively to all proceedings pending on or before this act becomes a law and all cases commenced on or after the effective date.

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

Section 5. Subsection (4) of section 733.808, Florida Statutes, is amended to read:

733.808 Death benefits; disposition of proceeds.—

(4) Unless the trust agreement, declaration of trust, or will expressly refers to this subsection and directs that it does not apply, death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate~~,~~ and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.

Section 6. The changes made by this act to s. 733.808, Florida Statutes, are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the decedent's death.

Section 7. Section 736.0207, Florida Statutes, is amended to read:

736.0207 Trust contests.—

(1) In an action to contest the validity or revocation of all or part of a trust, the contestant has the burden of establishing the grounds for invalidity.

(2) An action to contest the validity of all or part of a revocable trust, or the revocation of part of a revocable trust, may not be commenced until the trust becomes irrevocable by its terms or by the settlor's death. If all of a revocable trust has been revoked, an action to contest the revocation may not be

commenced until after the settlor's death. This section does not prohibit such action by the guardian of the property of an incapacitated settlor.

Section 8. The changes made by this act to s. 736.0207, Florida Statutes, apply to all cases commenced on or after the effective date.

Section 9. Subsection (1) of section 736.05053, Florida Statutes, is amended to read:

736.05053 Trustee's duty to pay expenses and obligations of settlor's estate.—

(1) A trustee of a trust described in s. 733.707(3) shall pay to the personal representative of a settlor's estate any amounts that the personal representative certifies in writing to the trustee are required to pay the expenses of the administration and obligations of the settlor's estate. Payments made by a trustee, unless otherwise provided in the trust instrument, must be charged as expenses of the trust without a contribution from anyone. The interests of all beneficiaries of such a trust are subject to the provisions of this subsection; however, the payments must be made from assets, property, or the proceeds of the assets or property that are included in the settlor's gross estate for federal estate tax purposes and may not be made from~~, other than~~ assets proscribed in s. 733.707(3), or death benefits described in s. 733.808(4) unless the trust instrument expressly refers to s. 733.808(4) and directs that it does not apply ~~that are included in the settlor's gross estate for federal estate tax purposes~~.

Section 10. The changes made by this act to s. 736.05053, Florida Statutes, are intended to clarify existing law, are

117 remedial in nature, and apply retroactively without regard to
118 the date of the settlor's death.
119 Section 11. Present subsection (5) of section 736.1106,
120 Florida Statutes, is renumbered as subsection (6) and amended,
121 and a new subsection (5) is added to that section, to read:
122 736.1106 Antilapse; survivorship with respect to future
123 interests under terms of inter vivos and testamentary trusts;
124 substitute takers.—
125 (5) Unless a contrary intent appears in the trust
126 instrument, subsections (2)-(4) do not apply to an outright
127 devise that vests upon the death of the settlor unless the
128 beneficiary is a grandparent, or a lineal descendant of a
129 grandparent, of the settlor or testator and the beneficiary:
130 (a) Is dead at the time of the execution of the revocable
131 trust or will;
132 (b) Fails to survive the settlor or testator; or
133 (c) Is required by the inter vivos trust or by operation of
134 law to be treated as having predeceased the settlor or testator.
135
136 A devise in a revocable trust or a testamentary trust that is to
137 take effect at the death of the settlor or testator does not
138 vest until the death of the settlor or testator.
139 (6) ~~(5)~~ Subsections (1)-(4) apply to all trusts other than
140 trusts that were irrevocable before the effective date of this
141 code. Sections 732.603, 732.604, and 737.6035, as they exist on
142 June 30, 2007, continue to apply to other trusts executed on or
143 after June 12, 2003. Subsection (5) applies to those trusts that
144 become irrevocable after June 30, 2014.
145 Section 12. This act shall take effect upon becoming a law.

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)

4·2·13
Meeting Date

Topic: Estates - Support the bill

Bill Number: 998 *(if applicable)*

Name: Martha Edenfield

Amendment Barcode: *(if applicable)*

Job Title:

Address: 215 So Monroe Street #815
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850-999-4100

E-mail: medenfield@deanmead.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: The Real Property, Probate + Trust Law Section of the 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic _____ Bill Number 998 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

March 25, 2014

The Honorable John Thrasher
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 998 – Estates

Dear Chairman Thrasher:

Senate Bill 998, relating to Estates, has been referred to the Rules Committee. I am requesting your consideration to include SB 998 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill, District 8

cc: John B. Phelps, Staff Director of the Rules Committee
Tamra Lyon, Administrative Assistant of the Rules Committee

REPLY TO:
☐ 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
☐ Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 298

INTRODUCER: Criminal Justice Committee and Senators Soto and Dean

SUBJECT: Arrest Booking Photographs

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Fav/CS**
2.	Siples	Hrdlicka	CM	**Favorable**
3.	Erickson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 298 prohibits a person engaged in publishing or otherwise disseminating arrest booking photographs through a publicly accessible print or electronic medium from soliciting or accepting a fee or other consideration to remove, correct, or modify an arrest booking photograph of an arrestee.

An arrestee who is the subject of an arrest booking photograph that has been published may file a civil action enjoining publication of the photograph if the publisher solicits or accepts a fee or other consideration to remove, correct, or modify that photograph. If the court enjoins publication, the court must issue an order specifying that the photograph be removed from publication no later than 14 days after the order is entered. A civil penalty of $1,000 per day will be imposed by the court for each day of noncompliance with the order.

A prevailing arrestee is entitled to attorney fees and costs relating to issuance of the injunction and any appeal of the injunction in which the arrestee is the prevailing party.

If, subsequent to the 14-day period for removal, the publisher subject to the injunction demonstrates to the court that it has complied with statutory requirements, the court will terminate the injunction.

The provisions of the bill do not apply to state and local governments or government agencies.

II. Present Situation:

Public Disclosure of Criminal Record Information

Unless a specific exemption applies, all "materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge" are public records and open for public inspection.[1]

Criminal record information may be obtained and published by non-governmental publishers. This information includes, but is not limited to, booking photographs, arrest reports, charging documents, sentencing orders, and criminal history information.[2] Like all other records prepared by Florida government agencies, criminal record information is subject to public disclosure unless specifically exempted. If the record contains exempt and non-exempt information, the record is provided with exempt information redacted.[3] For example, if a law enforcement record contains non-exempt information but also contains active criminal intelligence information or active criminal investigative information, both of which are exempt from public disclosure,[4] the law enforcement record must be provided upon request with exempt information excised.[5]

Arrest Record Information

The public record information that is perhaps most relevant to the bill is public record information pertaining to a person's arrest for the alleged commission of a crime.[6] This information includes, but is not limited, to the arrest report and "booking" photograph (often referred to as a "mug shot").[7]

With few exceptions, arrest record information (including booking photographs) is not exempt from public disclosure.[8] An example of an exemption would be the name of an alleged victim of

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[1] Office of the Attorney General Pam Bondi, *Public Records: A Guide for Law Enforcement Agencies* (2012 Edition), at p.1. and endnote 1, citing *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc*., 379 So.2d 633, 640 (Fla. 1980) and endnote 2, citing *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979) *available at* http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/$file/2012LEGuide.pdf (last viewed on Feb. 28, 2014).

[2] The Florida Department of Law Enforcement is the central repository of criminal history information for the State of Florida. For a fee, a search of Florida criminal history information regarding a person may be performed. Excluded from the search is sealed or expunged information. *See* https://web.fdle.state.fl.us/search/app/default (last viewed on Feb. 28, 2014).

[3] Office of the Attorney General, *Public Records*, at p. 15 and endnote 67, citing *City of Riviera Beach v. Barfield*, 642 So.2d 1135, 1137 (Fla. 4th DCA 1994), *review denied*, 651 So.2d 1192 (Fla. 1995).

[4] Section 119.071(2)(c)1., F.S.

[5] Office of the Attorney General, *Public Records*, at p. 5 and endnote 21, citing Op. Att'y Gen. 91-74 (Oct. 1, 1991), and *Palm Beach Daily News v. Terlizzese* (Fla. 15th Cir. Ct. Apr. 5, 1991).

[6] An arrest does not establish that a person committed the crime for which he or she is arrested. An arrestee is presumed innocent of committing the crime until such time as guilt has been determined in a court of law. However, if guilt is not determined, e.g., the prosecutor does not file a charge or the arrestee is acquitted, this does not necessarily mean that the arrest itself was invalid.

[7] There is an intake process involved if an arrestee is to be jailed. Some law enforcement agencies refer to "booking" as one part of a multi-component intake process; others refer to the intake process as "booking." Regardless of how the term is used, a photograph is taken of the arrestee prior to being jailed and that photograph is referred to as a "booking" photograph.

[8] "This office has consistently stated that crime and arrest reports are public records that are generally open to inspection…. Thus, an arrest report, including the booking photograph, prepared by a law enforcement agency is subject to disclosure." Op. Att'y Gen. 94-90 (Oct. 25, 1994) (footnotes omitted), Office of the Attorney General (Florida), *available at* http://www.myfloridalegal.com/ago.nsf/Opinions/83A1D5004064269D852562210063168E (last viewed on Feb. 28, 2014).

sexual battery that appears in the arrest report.[9] In providing the arrest report pursuant to a public record request, this name would be redacted from the copy of the report provided to the requestor.

Arrest record information is requested by many persons and entities, including members of the public, traditional news companies, companies that provide criminal history or criminal record information for a service or subscriber fee (e.g., so that a private employer may determine if a job applicant has a criminal history), and companies that are often referred to as "mug shot companies." This information is often available to the public within hours of the booking process being completed.[10] For this reason, an expungement of criminal records relevant to a particular crime would not capture arrest record information that was obtained by the public when access to that information was authorized.

A "mug shot company" may be described as a business that obtains publicly-available arrest record information (primarily booking photographs) and publishes that information, typically by posting it on a website. Generally, this information remains on the website until a fee is paid to the publisher or the publisher is compensated by a third-party that advertises that it will obtain removal of the information from the website upon payment of a fee to the third-party. Since few, if any, mug shot companies appear to provide sufficient information on their company structure, location of company offices, and company officers, it may be difficult to determine whether the mug shot publisher and the third-party offering publication removal services are under the same ownership or are affiliated.

Traditional news companies that publish arrest record information (like booking photographs) and private companies that provide arrest record information for a service or subscriber fee may also profit, directly or indirectly, from the publication of arrest record information, but the removal of this information, if it occurs, is neither contingent upon nor results from payment of a fee or receipt of compensation. Further, unlike the mug shot companies, this information may only be available to subscribers, or if publicly available, often becomes less accessible after a certain period of time has elapsed.

The charge or fee for removal of the booking photograph and other arrest record information from publication on mug shot companies' websites varies but is typically in the hundreds of dollars. Even if the mug shot company removes the arrest record information from its website upon payment of fee or receipt of compensation, there is no guarantee that this information will not appear on the website of another mug shot company that may or may not be affiliated with the mug shot company that previously removed the information from its website. Therefore, the person who paid to have his or her arrest record information removed from one website may find

[9] Section 119.071(2)(j)1., F.S.

[10] Recent news articles have reported that mug shot companies often obtain booking photographs by "web scraping" the photographs from law enforcement websites that publish the photographs. *See, e.g.*, Adam Geller, *Don't Want Arrest Mug Shot Online? 'Pay us,' Sites Say*, MSN NEWS, June 23, 2013, *available at* http://news.msn.com/crime-justice/dont-want-arrest-mug-shot-online-pay-us-sites-say (last viewed on Feb. 28, 2014) and David Segal, *Mugged by a Mug Shot Online*, THE NEW YORK TIMES, Oct. 5, 2013, *available at* http://www.nytimes.com/2013/10/06/business/mugged-by-a-mug-shot-online.html?pagewanted=all&_r=0 (last visited Mar. 4, 2014). Techopedia® defines "web scraping" as "a term for various methods used to collect information from across the Internet. Generally, this is done with software that simulates human Web surfing to collect specified bits of information from different websites." This information is available at http://www.techopedia.com/definition/5212/web-scraping (last viewed on Mar. 3, 2014).

himself or herself subsequently engaged in what has been described as "an expensive game of Whac-A-Mole."[11]

Criminal Use of Public Records

Section 817.569, F.S., provides that a person who knowingly uses any public record, or who knowingly uses information obtainable only through such public record, to facilitate or further the commission of:

- A first degree misdemeanor, commits a first degree misdemeanor; or
- A felony, commits a third degree felony.

The fee-for-removal practice used by mug shot companies as described above is not a first degree misdemeanor or felony in Florida.

Right of Publicity

Section 540.08(1), F.S., prohibits a person from publishing, printing, displaying, or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the person's express written or oral consent to such use. There are exceptions to the statute for:

- Publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes; and
- The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use on or in connection with the initial sale or distribution.[12]

The statute also provides that, in the event the necessary consent is not obtained, the person whose name, portrait, photograph, or other likeness is so used may bring an action to enjoin such unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.

Recently, a Florida federal district court held that a person who claimed that the operator of two websites who published her booking photograph and advertised the service of removing booking photographs from a particular website in exchange for payment stated a cause of action for violation of s. 540.08, F.S.[13] It remains to be determined whether the operator violated the

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[11] Andrew Knapp, *South Carolina attorneys, lawmakers aim to disrupt business of publishing jail mug shots*, THE POST AND COURIER (Charleston, S.C.), Nov. 17, 2013, *available at* http://www.postandcourier.com/article/20131117/PC1610/131119492 (last viewed on Mar. 3, 2014).
[12] Section 540.08(4), F.S.
[13] Order (January 10, 2014), *Shannon L. Bilotta v. Citizen Information Associates, LLC, et al.*, Case No. 8:13-cv-2811-T-30GW, U.S. District Court (Middle District-Tampa Division) (on file with the Senate Committee on Commerce and Tourism).

statute, and if so determined, what impact the decision would have on any similar suits that might be filed in other federal district courts or in the state courts.

Laws and Legislation of Other States

The National Conference of State Legislatures (NCSL) states that "[s]ince 2012, several states have considered or passed legislation related to the release of booking photographs or mug shots, including legislation that requires removal of mug shots if criminal charges are dropped or prohibits charges for removing photographs."[14] According to the NCSL, Georgia, Illinois, Oregon, Texas, and Utah have passed legislation to prohibit commercial sites from charging fees for removing inaccurate mug shots upon request or by prohibiting law enforcement from releasing mug shots to sites that charge a fee.

All of these bills were enacted into law in 2013. Therefore, it is too early to know if these bills will be challenged in court, and if so, whether they will pass constitutional scrutiny.

Private Sector Response

According to recent news reports, the private sector is also taking steps to address the fee-for-removal practice. Google® has adjusted algorithms so that the mug shot companies will not appear on the first page of Google search results. MasterCard®, Visa®, Discover®, American Express®, PayPal®, and Wells Fargo® appear to be in the process of terminating or determining whether to terminate their relationship with mug shot companies.[15]

Florida Law Enforcement Response

The Pinellas County Sheriff's Office announced that it would no longer post booking photographs on its agency's website.[16] The names, addresses, and initial charges of those arrested will still be available on the website. The agency will still provide access to the mug shots to other law enforcement agencies and the media, but those entities must request access to those photographs and must log into a newly created system to retrieve them. Members of the public may also submit requests for mug shots.

III. Effect of Proposed Changes:

Section 1 creates s. 119.17, F.S., to establish a procedure for the removal of arrest booking photographs that are publicly accessible through a print or electronic medium and makes the fee-for-removal practice unlawful.[17]

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[14] National Conference of State Legislatures, "Mug Shots and Booking Photo Websites" (Feb. 17, 2014), *available at* http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx (last visited Mar. 6, 2014).

[15] *See* David Segal, *Mugged by a Mug Shot Online*, and Jose Pagliery *Mug Shot Extortion Sites Still Up and Running … for Now*, CNN Money, Oct. 16, 2013, *available at* http://money.cnn.com/2013/10/16/technology/mug-shot-websites/index.html (last viewed on Mar. 3, 2014).

[16] Stephen Thompson, *Pinellas Sheriff Limiting Access to Mugshots Online*, THE ST. PETERSBURG TRIBUNE, Jan. 9, 2014, *available at* http://tbo.com/pinellas-county/pinellas-sheriff-targeting-websites-limits-access-to-mug-shots-20140109/ (last visited Mar. 4, 2014).

[17] The practice under the bill is not a crime.

The bill prohibits a person engaged in publishing or otherwise disseminating arrest booking photographs through a publicly accessible print or electronic medium from soliciting or accepting a fee or other consideration to remove, correct, or modify an arrest booking photograph of an arrestee.[18]

The bill's prohibition is directed at the fee-for-removal practice and not at publication of an arrest booking photograph if the publisher is not engaged in the fee-for-removal practice. Nothing in the bill prohibits a publisher from profiting from publication of arrest booking photographs (such as through subscriber fees or advertising). What the bill prohibits is the publisher profiting from unpublishing the arrest booking photographs.

An arrestee who is the subject of an arrest booking photograph that has been published may file a civil action enjoining publication of the photograph if the publisher solicits or accepts a fee or other consideration to remove, correct, or modify that photograph. If the court enjoins publication, the court must order that the photograph be removed from publication no later than 14 days after entry of the order. The court shall impose a civil penalty of $1,000 per day for each day of noncompliance with the order.

If the court enjoins publication, the arrestee is entitled to reasonable attorney fees and costs relating to issuance of the injunction and any appeal of the injunction in which the arrestee is the prevailing party.

If, subsequent to the 14-day period for removal, the publisher subject to the injunction demonstrates to the court that it has complied with statutory requirements, the court shall terminate the injunction. Consistent with the bill's approach to prohibit the fee-for-removal practice, if the publisher demonstrates to the court that it has ceased to engage in this practice ("cured" the statutory violation), the injunction is terminated and the publisher is free to publish the photographs.

The provisions of this bill do not apply to state and local governments or government agencies.[19]

Section 2 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[18] "Fee or other consideration" does not include a fee or consideration, including attorney fees, solicited or accepted in connection with the actual or attempted settlement of an actual or threatened lawsuit or arbitration claim or other judicial or quasi-judicial proceeding.

[19] Specifically, the bill provides that s. 119.17, F.S., the new section created by the bill, does not apply to any state, regional, county, local, or municipal governmental entity of this state, whether executive, judicial, or legislative, or any department, division, bureau, commission, authority, or political subdivision of this state.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

An arrestee who is the subject of an arrest booking photograph that has been published may file a civil action enjoining publication of the photograph if the publisher solicits or accepts a fee or other consideration to remove, correct, or modify that photograph. The bill's prohibition is directed at the fee-for-removal practice. The bill does not authorize a civil action for simply publishing the photograph or information.[20] Staff did not find any case in which a civil action for engaging in a similar fee-for-removal practice was held to be unconstitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private publishers of arrest booking photographs who engage in the fee-for-removal practice may be subject to a civil action enjoining publication of an arrest booking photograph. Publishers subject to an order enjoining publication may be ordered to pay attorney fees and costs to the prevailing arrestee(s). Additionally, those publishers who fail to comply with an injunction may incur civil penalties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[20] *See e.g.*, *Florida Star v. B.J.F.*, 491 U.S. 524 (1989) (imposing damages on a Florida newspaper that lawfully obtained and published the name of a rape victim violated the First Amendment). In *Florida Star*, the Court opined: "We do not hold that truthful publication is automatically constitutionally protected, or that there is no zone of personal privacy within which the State may protect the individual from intrusion by the press, or even that a State may never punish publication of the name of a victim of a sexual offense. We hold only that where a newspaper publishes truthful information which it has lawfully obtained, punishment may lawfully be imposed, if at all, only when narrowly tailored to a state interest of the highest order…" 491 U.S. at 541. In regard to commercial speech (rather than "core" speech), "'the Supreme Court held that '[c]ommercial free speech that is not false or deceptive and does not concern unlawful activities ... may be restricted only in the service of a substantial government interest, and only through means that directly advance that interest.'" *Innovative Database Systems v. Morales*, 990 F.2d 217, 220 (5th Cir. 1993) (quoting *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 638 (1985)).

VIII. Statutes Affected:

This bill creates section 119.172 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.)

CS by Criminal Justice on February 3, 2014:

- Provides that an arrestee who is the subject of an arrest booking photograph that has been published may file a civil action enjoining publication of the photograph if the publisher solicits or accepts a fee or other consideration to remove, correct, or modify that photograph.
- Provides that, if the court enjoins publication, the court shall order that the photograph be removed from publication no later than 14 days after the order is entered.
- Provides that the court shall impose a civil penalty of $1,000 per day for each day of noncompliance with the order.
- Provides that if the court enjoins publication, the arrestee is entitled to attorney fees and costs relating to issuance of the injunction and any appeal of the injunction in which the arrestee is the prevailing party.
- Provides that, if, subsequent to the 14-day period for removal, the publisher subject to the injunction demonstrates to the court that it has complied with statutory requirements, the court shall terminate the injunction.

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; and Senators Soto, Dean, and Sachs

A bill to be entitled

An act relating to arrest booking photographs; creating s. 119.17, F.S.; defining terms; prohibiting a person who publishes or disseminates an arrest booking photograph through a publicly accessible print or electronic medium from soliciting or accepting payment of a fee or other consideration to remove, correct, or modify such photograph; authorizing an action to enjoin publication or dissemination of an arrest booking photograph if the publisher or disseminator unlawfully solicits or accepts a fee or other consideration to remove, correct, or modify such photograph; specifying the time period during which an arrest booking photograph must be removed pursuant to court order; providing a civil penalty; providing for reasonable attorney fees and costs; requiring the court to terminate an injunction under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Section 119.17, Florida Statutes, is created to read:

119.17 Arrest booking photographs.—

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

(a) "Arrestee" means an individual who has been arrested for a violation of law in this state.

(b) "Arrest booking photograph" means a photograph of an

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

arrestee taken for the purpose of recording the arrestee's image as part of the arrest and booking process.

(c) "Fee or other consideration" does not include a fee or consideration, including attorney fees and costs, solicited or accepted in connection with the actual or attempted settlement or compromise of a lawsuit, threatened lawsuit, arbitration claim, threatened arbitration claim, or other judicial or quasi-judicial proceeding.

(2) A person engaged in publishing or otherwise disseminating arrest booking photographs through a publicly accessible print or electronic medium may not solicit or accept a fee or other consideration to remove, correct, or modify an arrest booking photograph of an arrestee.

(3) If a person engaged in publishing or otherwise disseminating arrest booking photographs through a publicly accessible print or electronic medium solicits or accepts a fee or other consideration to remove, correct, or modify an arrest booking photograph in violation of subsection (2), the arrestee who is the subject of the arrest booking photograph may bring an action to enjoin the publication or other dissemination of the arrest booking photograph.

(a) If the court enjoins the publication or other dissemination of the arrest booking photograph, the court shall specify in its order that the arrest booking photograph must be removed from publication or other dissemination not later than 14 days after the date the order is entered. The court shall impose a civil penalty of $1,000 per day for each day of noncompliance with the order.

(b) If the court enjoins publication or other dissemination

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59 of an arrestee's arrest booking photograph, the arrestee is
60 entitled to reasonable attorney fees and costs relating to
61 issuance of the injunction and to any appeal of the order
62 issuing the injunction in which the arrestee is the prevailing
63 party.
64 (c) If, subsequent to the 14-day period for removal
65 pursuant to paragraph (a), the person subject to the injunction
66 demonstrates to the court that he or she is in compliance with
67 this section, the court shall terminate the injunction.
68 (4) This section does not apply to any state, regional,
69 county, local, or municipal governmental entity of this state,
70 whether executive, judicial, or legislative, or any department,
71 division, bureau, commission, authority, or political
72 subdivision of this state.
73 Section 2. This act shall take effect October 1, 2014.

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)

4/2/14
Meeting Date

Topic: Arrest Booking Photos

Bill Number: SB 0298 (if applicable)

Name: Don Heaton

Amendment Barcode: _____ (if applicable)

Job Title: Sergeant Volusia County Sheriff's Office

Address: 250 N. Beach St.
Street

Daytona Bch, FL 32119
City, State, Zip

Phone: 386-804-6825

E-mail: dheaton@vcso.us

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

Representing: FSA / Volusia County Sheriff Ben Johnson

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 2 /2014
Meeting Date

Topic _____ Bill Number 298 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☑ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DARREN SOTO
Deputy Democratic Whip
14th District

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on General Government
Community Affairs
Environmental Preservation and Conservation
Ethics and Elections

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act

March 12, 2014

The Honorable John Thrasher
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Thrasher,

I respectively request that Senate Bill 298, Booking Photographs, be placed on the agenda as soon as possible.

Senate Bill 298 prohibits individuals and businesses from collecting compensation for the removal of a booking photograph or other information related to a criminal charge or conviction from the Internet or other public medium. This bill also requires individuals and businesses that publish booking photographs or criminal record information on an Internet website or other public medium to provide contact information.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

Darren M. Soto

Darren M. Soto
State Senator, District 14

Cc: John B. Phelps, Staff Director
Tamra Lyon, Committee Administrative Assistant

REPLY TO:
☐ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 374

INTRODUCER: Senator Detert

SUBJECT: Growth Management

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Askey	Hrdlicka	CM	**Favorable**
3.	Stearns	Phelps	RC	**Favorable**

I. Summary:

SB 374 removes the prohibition against some local initiative and referendum processes related to comprehensive plan amendments and map amendments. Current law allows local initiatives and referendums if they:

- Were in effect on June 1, 2011;
- Affect more than five parcels of land; and
- Were expressly authorized for comprehensive plan or map amendments in a local government charter.

The bill removes the requirement that the initiative or referendum affect more than five parcels of land.

II. Present Situation:

Growth Management

The Local Government Comprehensive Planning and Land Development Regulation Act,[1] also known as Florida's Growth Management Act, was adopted in 1985. The act requires all counties and municipalities to adopt local government comprehensive plans that guide future growth and development.[2] Comprehensive plans contain chapters or "elements" that address topics including future land use, housing, transportation, conservation, and capital improvements, among others.[3] The state land planning agency that administers these provisions is the Department of Economic Opportunity.[4]

[1] *See* ch. 163, part II, F.S.
[2] Section 163.3167, F.S.
[3] Section 163.3177, F.S.
[4] Section 163.3221(14), F.S.

Local Initiatives and Referenda on Land Use Changes

In 2006, voters in St. Pete Beach amended the city's charter to require voter referenda on all future changes to comprehensive plans, redevelopment plans, and building height regulations.[5] This process, often called "Hometown Democracy," caused delay in the local development process.[6] In November 2010, Florida voters decided against implementing Hometown Democracy statewide with a 67.1 percent 'no' vote on Amendment 4.[7] Shortly thereafter, in March 2011, voters in St. Pete Beach repealed the town's Hometown Democracy provisions by 54.07 percent.[8]

The 2011 Legislature passed HB 7207, known as the "Community Planning Act." Section 7 of the bill, amending s. 163.3167, F.S., prohibited local governments from adopting initiative or referendum processes for any development orders, comprehensive plan amendments, or map amendments, irrespective of the number of parcels affected.[9]

At the time, very few local governments had a land use referendum or initiative process in place.[10] One of these affected governments, The Town of Yankeetown (Yankeetown), had a charter provision which specifically authorized a referendum vote on comprehensive plan amendments affecting more than five parcels of land.[11] Following the enactment of HB 7207 (2011), Yankeetown filed a complaint seeking to maintain its ability to hold referenda on growth management issues. The suit led to an agreement with the Department of Community Affairs (now the Department of Economic Opportunity) that called for the two parties to jointly seek passage of a proposed amendment to the Community Planning Act.[12]

The resulting bill, CS/HB 7081 (2012), was designed to allow charter provisions like that of Yankeetown to remain valid. The bill was intended to have a limited impact, protecting only those local government charter provisions that: 1) were in effect as of June 1, 2011, and 2) authorized an initiative or referendum process for development orders, comprehensive plan amendments, or map amendments.[13] The Legislature passed the bill on March 7, 2012, and the Governor signed CS/HB 7081 (2012) into law on April 6, 2012.

In October 2012, a Palm Beach County Circuit Court interpreted CS/HB 7081 as extending the "grandfather" exception to include all local government charter provisions related to *general*

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[5] "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 19, 2010. Available at: http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/ (last visited March 18, 2014).
[6] *Id*.
[7] *See*, November 2, 2010 General Election Official Results provided by the Florida Department of State. Available at: https://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE= (last visited March 18, 2014).
[8] *See*, 2011 Municipal Election Results provided by the Pinellas County Supervisor of Elections. Available at: http://www.votepinellas.com/index.php?id=1789 (last visited March 18, 2014).
[9] *See*, "The Community Planning Act," s.7, ch. 2011-139, L.O.F., 2011 HB 7207.
[10] Longboat Key, Key West, Miami Beach, and the Town of Yankeetown.
[11] *See, Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.,* No. 37 2011-CA-002036 (Fla. 2d Cir. Ct. 2011), Town of Yankeetown's Amended Complaint for Declaratory Judgment, p. 3 (Aug. 9, 2011).
[12] Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011-CA-002036 (9/28/2011).
[13] Section 1, ch. 2012-99, L.O.F.

referendum or initiative processes in effect as of June 1, 2011.[14] As a result, the Legislature revisited the issue again in 2013. The bill, CS/CS/HB 537, was intended to clarify that the grandfathering provision only applied to local government charter provisions enabling initiatives or referenda that were specifically related to comprehensive plan amendments or map amendments. The Legislature passed the bill on May 2, 2013, and the Governor signed CS/CS/HB 537 (2013) into law on June 5, 2013.

The Town of Longboat Key

In 1984, the Town of Longboat Key adopted an amendment to its charter to create provisions controlling the creation and alteration of the town's comprehensive plan. The amendment, which added Art. II, s. 22 to its charter, required any increase to the town's then-existing density limitations to garner referendum approval from the town's electors, including requests to increase the allowable density on single parcels. However, CS/CS/HB 537, enacted in 2013 by the Legislature, only grandfathered in local government charter provisions that affected five or more parcels. As such, there is some question regarding whether the passage of the bill has entirely or partially invalidated Longboat Key's charter provision. Because of the retroactive nature of the statute, there is also some question as to its effects on developments that had obtained permission to increase density through referendum approval after June 1, 2011, but before CS/CS/HB 537 took effect on July 1, 2013.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 163.3167(8), F.S., to remove the requirement that the local initiative or referendum be related to a comprehensive plan or map amendment affecting more than five parcels of land. The bill also makes technical changes to subsection (c).

Section 2 provides that the bill shall take 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.

[14] *City of Boca Raton v. Kennedy, et. al.*, No. 2012-CA-009962-MB (Fla. 15th Cir. Ct. 2012), Order denying plaintiff, City of Boca Raton's and Intervener/Co-Plaintiff, Archstone Palmetto Park, LLC's Motions for Summary Judgment and Granting Defendants' Motion for Summary Judgment. J. Chernow Brown, Oct. 16, 2012.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases the number of development projects in Longboat Key potentially subject to the initiative or referendum process prior to final approval. This may delay projects and thereby increase costs for implementation.

C. Government Sector Impact:

The bill restores Longboat Key's established procedure for managing density increases to the town comprehensive plan. The management of initiatives and referenda on growth management issues will require more costs to local government than the prohibition of such processes. However, these costs may be offset by a reduction in legal fees associated with litigating whether the town's law was only partially or wholly invalidated by CS/CS/HB 537 (2013) and the effects of the statute's retroactive nature on developments that had obtained permission to increase density prior to its passage.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.3167 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 Detert

28-00548-14 2014374__

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; revising restrictions on an initiative or referendum process with regard to local comprehensive plan amendments and map amendments; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (8) of section 163.3167, Florida Statutes, are amended to read:

163.3167 Scope of act.—

(8)

(b) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless~~. However, an initiative or referendum process in regard to any local comprehensive plan amendment or map amendment that affects more than five parcels of land is allowed if~~ it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011. A general local government charter provision for an initiative or referendum process is not sufficient.

(c) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by ~~permitted in~~ paragraph (b) ~~with regard to local comprehensive plan amendments that affect more than five parcels of land or map amendments that affect more than five parcels of land~~. Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (b) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process ~~that has been~~ commenced or completed thereafter is ~~hereby~~ deemed null and void and of no legal force and effect.

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

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

Florida Senate - 2014 **SB 374**

28-00548-14 2014374__

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)

4/2/14
Meeting Date

Topic: GROWTH MANAGEMENT

Bill Number: 374 *(if applicable)*

Name: DAVID RAMBA

Amendment Barcode: *(if applicable)*

Job Title: RAMBA LAW GROUP

Address: 120 S. MONROE ST.
Street

TALLAHASSEE, FL 32301
City *State* *Zip*

Phone: 850.443.4444

E-mail:

Speaking: [✓] For [ ] Against [ ] Information

Representing: TOWN OF LONGBOAT KEY

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

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

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 25, 2014

I respectfully request that **374**, relating to Growth Management, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

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 546

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Simpson

SUBJECT: Public Records/Personal Identifying Information/License to Carry a Concealed Weapon or Firearm

DATE: April 1, 2014 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	**Favorable**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Cellon	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 546 amends s. 790.0601, F.S., to expand the current confidential and exempt status of personal identifying information collected from a person applying for a license to carry a concealed weapon or firearm, or the renewal of a license, and held by the Department of Agriculture and Consumer Services (DACS).

Companion bill SB 544 authorizes DACS to enter into a Memorandum of Understanding with county tax collectors to accept concealed weapon or firearm license or renewal applications and fees at the local level.

CS/SB 546 expands an existing public records exemption so that personal identifying information held by county tax collectors on behalf of DACS will maintain their confidential and exempt status. CS/SB 546 provides for an Open Government Sunset Review of this exemption and repeal on October 2, 2019, if the exemption is not reenacted.

This bill includes a statement of public necessity consistent with the findings related to the current exemption being expanded. The inference that can be drawn from the statement of public purpose is that it is a matter of personal safety that an individual who carries a concealed firearm or weapon keep the weapon's presence out of the public view or scrutiny, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

Because this bill expands a public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).

The Open Government Sunset Review Act[10] requires a newly created or expanded public records exemption to be repealed on October 2nd of the fifth year after enactment, unless reviewed and reenacted by the Legislature.[11] It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.[12]

Concealed Weapon or Firearm Licensure

The Department of Agriculture and Consumer Services (DACS) is responsible for issuing concealed weapon licenses to those applicants who qualify.[13] DACS has received 96,840 new license applications and 2,153 applications for license renewal since July 1, 2013.[14] During the same time period, DACS issued 99,606 new concealed weapon licenses and 2,239 renewals.[15] As of December 31, 2013, there were 1,215,708 valid Florida concealed weapon licenses.[16]

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee no greater than $70 for a new license or no greater than $60 for a renewal.[17]

Existing Exemption for Concealed Weapon Applicants' Personal Identifying Information

Current law provides that personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.061, F.S., held by the Division of Licensing of the Department of Agriculture and Consumer Services, is confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

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[10] Section 119.15, F.S.
[11] Section 119.15(3), F.S.
[12] Section 119.15(5)(b), F.S.
[13] s. 790.06(1), F.S.
[14] Applications and Dispositions by County, July 1, 2013-June 30, 2014. Statistic found at www.freshfromflorida.com, last visited January 15, 2014.
[15] Summary Report, October 1987-June 2014. www.freshfromflorida.com, last visited January 15, 2014.
[16] Number of Valid Florida Concealed Licenses as of December 31, 2013. www.freshfromflorida.com, last visited January 15, 2014.
[17] s. 790.06(1)-(5), F.S.

The exemption applies to such information held by the division before, on, or after the effective date of the exemption.[18] Such information shall be disclosed:

- With the express written consent of the applicant or licensee or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the Department of Agriculture and Consumer Services.[19]

In Chapter 2006-102, Laws of Florida, in which the exemption was created, the Legislature found that an identifiable public purpose existed for the creation of the exemption under review, and that it is no more broad than necessary to meet the public purpose it serves. Section 2 of the 2006 chapter law, the statement of public purpose, invokes personal safety issues tied to the Department of Agriculture and Consumer Services divulging the personal information of concealed weapons permit applicants and holders.

Specifically, the statement speaks of the contradiction between a person carrying a concealed firearm or weapon and making public that individual's personally identifying information. The inference that can be drawn from the statement of public purpose is that it is a matter of personal safety that an individual who carries a concealed firearm or weapon keep the weapon's presence out of the public view or scrutiny, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

The public records exemption created in s. 790.0601, F.S., was reenacted in 2011 pursuant to the Open Government Sunset Review Act.[20]

Senate Bill 544 is linked to Senate Bill 546

Linked SB 544 creates a new section of law within Chapter 790, F.S., to allow DACS to appoint county tax collectors for the purpose of accepting applications for concealed weapon or firearm licenses or renewals on behalf of the Division of Licensing (the Division).

County tax collectors who are interested in the appointment by DACS will submit a request to the Division. The Division then has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector. Both the DACS and the Division have the authority to rescind the MOU.

Regardless of the passage of SB 544, appointed tax collectors may not maintain a list of persons who own firearms. Maintaining such a list makes the person subject to the provisions of s. 790.335, F.S.[21]

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[18] s. 790.0601(1), F.S.
[19] s. 790.0601(2), F.S.
[20] Ch. 2011-136, L.O.F.
[21] Section 790.335, F.S. states: "PROHIBITIONS.—No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned

Any personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU arrangement with DACS does not currently have confidential and exempt status.

III. Effect of Proposed Changes:

Linked SB 544 authorizes DACS to enter into a Memorandum of Understanding with county tax collectors to provide the service of accepting concealed weapon or firearm license or license renewal applications and fees at the local level.

CS/SB 546 amends s. 790.0601, F.S., to expand the current confidential and exempt status of the personal identifying information collected from a person applying for a license to carry a concealed weapon or firearm, or the renewal of a license, and held by DACS to the county tax collectors who will be collecting and holding the same information pursuant to the authorization in SB 544.

CS/SB 546 provides for an Open Government Sunset Review of the exemption and repeal on October 2, 2019, if the exemption is not reenacted.

Section 2 of the bill includes a statement of public necessity which makes many of the same Legislative findings as those set forth in Chapter 2006-102, L.O.F., the law that created the exemption that is being expanded by this bill. The statement of public necessity in CS/SB 546 finds that:

> The knowledge that an individual has applied for a license to carry a concealed weapon or firearm may logically lead to the conclusion that he or she is carrying a concealed weapon or firearm. This defeats the purpose of carrying a concealed weapon or firearm. The Legislature has found in past legislative sessions and has expressed in s. 790.335(1)(a)3., Florida Statutes, that a record of legally owned firearms or law-abiding firearm owners is "an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution." Release of personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm could be used to harass an innocent individual based solely on his or her exercised right to carry a concealed weapon or firearm.

The exemption expanded by this bill applies to personal identifying information held by a county tax collector appointed by DACS to receive that information from a person who is applying through the county tax collector to DACS for a concealed weapon or firearm license or renewal. It applies to such information held by the tax collector before, on, or after the effective date of the bill.

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firearms or any list, record, or registry of the owners of those firearms." Such conduct is subject to third degree felony penalties and a $5 million dollar fine.

This act will take effect on the same date as SB 544 or similar legislation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. Because this bill expands a public records exemption, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. Because this bill expands a public records exemption, it contains a public necessity statement.

Single Subject Requirement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill expands a public records exemption, it does not contain other substantive provisions.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including a concealed weapon or firearm license applicant's personal identifying information to that information which is held by a county tax collector who is acting under linked SB 544.

Currently this same personal identifying information has confidential and exempt status if the applicant files their application directly with DACS. This bill expands the confidential and exempt status not to a greater amount or different type of information, but rather to the same information held by a different agency (county tax collectors) pursuant to an agreement with DACS.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

As set forth in the linked bill, SB 544, a convenience fee of $22 may be charged by the county tax collector to perform the services agreed upon with DACS. This fee will only be incurred if a person chooses to avail him or herself of the tax collector's service.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 546 currently provides that information held by tax collectors will be confidential and exempt from public disclosure and that information may be released by the written consent, by court order and to law enforcement upon request. This bill does not include a provision which explicitly states that tax collectors can release confidential and exempt information to DACS.[22] It is unclear if taken as a whole, CS/SB 546's expansion of DACS's current public records exemption to include tax collectors as appointees is sufficient to allow tax collectors to release confidential and exempt information to DACS without a separate statutory provision.

VIII. Statutes Affected:

This bill amends section 790.0601 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.)

CS by Governmental Oversight and Accountability on March 13, 2014:
The CS adds a missing bill number in the enactment clause. CS/SB 546 now states that this act will take effect on the same date at SB 544, or similar legislation.

[22] See footnote 6.

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 Governmental Oversight and Accountability; and Senators Simpson, Bean, and Bradley

585-02541-14 2014546c1

A bill to be entitled

An act relating to public records; amending s. 790.0601, F.S.; creating an exemption from public records requirements for certain personal identifying information held by the tax collector when an individual applies for a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.; providing for retroactive application of the exemption; providing for disclosure of such information under specified conditions; providing for review and repeal of the exemption; providing a statement of public necessity; providing a conditional effective date.

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

Section 1. Section 790.0601, Florida Statutes, is amended to read:

790.0601 Public records exemption for concealed weapons.—

(1) Personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.06 held by the Division of Licensing of the Department of Agriculture and Consumer Services is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the division before, on, or after the effective date of this section.

(2) Personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm

585-02541-14 2014546c1

pursuant to s. 790.0625 which is held by a tax collector appointed by the Department of Agriculture and Consumer Services to receive applications and fees is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such information held by the tax collector before, on, or after the effective date of this section.

(3) ~~(2)~~ Information made confidential and exempt by this section shall be disclosed:

(a) With the express written consent of the applicant or licensee or his or her legally authorized representative.

(b) By court order upon a showing of good cause.

(c) Upon request by a law enforcement agency in connection with the performance of lawful duties, which shall include access to any automated database containing such information maintained by the Department of Agriculture and Consumer Services.

(4) Subsection (2) is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that, with certain exceptions, it is a public necessity that personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm which is held by a tax collector be made confidential and exempt from public records requirements. The carrying of a concealed weapon or firearm in this state by members of the general public requires an individual to file an application containing personal

59 identifying information. The Legislature has made the Department
60 of Agriculture and Consumer Services the responsible agency for
61 collecting this information and issuing the concealed weapon or
62 firearm license. The collected information must include a
63 statement from the applicant that he or she seeks a concealed
64 weapon or firearm license as a means of lawful self-defense.
65 (2) There has been substantial demand for the concealed
66 weapon or firearm license. The availability of additional
67 licensure locations would benefit individuals who require self-
68 protection.
69 (3) The potential addition of licensure locations raises
70 issues of confidentiality. The knowledge that an individual has
71 applied for a license to carry a concealed weapon or firearm may
72 logically lead to the conclusion that he or she is carrying a
73 concealed weapon or firearm. This defeats the purpose of
74 carrying a concealed weapon or firearm. The Legislature has
75 found in past legislative sessions and has expressed in s.
76 790.335(1)(a)3., Florida Statutes, that a record of legally
77 owned firearms or law-abiding firearm owners is "an instrument
78 that can be used as a means to profile innocent citizens and to
79 harass and abuse American citizens based solely on their choice
80 to own firearms and exercise their Second Amendment right to
81 keep and bear arms as guaranteed under the United States
82 Constitution." Release of personal identifying information of an
83 individual who has applied for a license to carry a concealed
84 weapon or firearm could be used to harass an innocent individual
85 based solely on his or her exercised right to carry a concealed
86 weapon or firearm. Therefore, the Legislature finds that the
87 personal identifying information of an individual who has

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88 applied for a license to carry a concealed weapon or firearm
89 pursuant to chapter 790, Florida Statutes, must be held
90 confidential and exempt from public records requirements.
91 Section 3. This act shall take effect on the same date that
92 SB 544 or similar legislation takes effect, if such legislation
93 is adopted in the same legislative session or an extension
94 thereof and becomes a law.

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)

4/2/14
Meeting Date

Topic: ~~Resend~~ SB 546 –

Bill Number: SB 546 *(if applicable)*

Name: Carole Jean Jordan

Amendment Barcode: _____ *(if applicable)*

Job Title: Tax Collector – Indian River Cnty

Address: P.O. Box 1509
Street

Vero Beach, FL
City *State* *Zip*

Phone: 772-226-1337

E-mail: CJJordan@IRCtax.org

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

Representing: Indian River Tax Collector's office

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Apr. 2, 2014
Meeting Date

Topic: Public Records / Tax Collectors

Bill Number: 546 *(if applicable)*

Name: Grace Lovett

Amendment Barcode: _____ *(if applicable)*

Job Title: Dir of Legislative Affairs

Address: PL 10 The Capitol
Street

Tallahassee FL 32399
City *State* *Zip*

Phone: 850 617 7200

E-mail: grace.lovett@freshfromflorida.com

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

Representing: FL. Dept. of Agriculture & Consumer Services

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: SB-546

Bill Number: SB 546 *(if applicable)*

Name: Tim Qualls

Amendment Barcode: _____ *(if applicable)*

Job Title: Executive Director - FL Tax Collector Assn

Address: 215 S. Monroe St
Street

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

Representing: Florida Tax Collectors Association

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 2 /2014
Meeting Date

Topic _____ Bill Number 546 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
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SAINT PETERSBURG FLORIDA 33705
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Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR WILTON SIMPSON
18th District

COMMITTEES:
Community Affairs, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:
Joint Legislative Auditing Committee

March 19, 2014

Senator John Thrasher, Chair
Senate Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Senator Thrasher,

Please place Senate Bill 546 relating to public records, on the next Committee on Rules agenda.

Please contact my office with any questions.

Wilton Simpson
Senator, 18th District

REPLY TO:
☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
☐ Post Office Box 938, Brooksville, Florida 34605
☐ Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 926

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Simpson

SUBJECT: Local Regulation of Wage Theft

DATE: April 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	**Favorable**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Stearns	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 926 generally preempts local regulation of wage theft issues and provides a specific civil action in the court system for wage theft claims. Under the bill, "wage theft" is defined as an illegal or improper underpayment or nonpayment of an individual employee's wage, salary, commission, or other similar form of compensation.

II. Present Situation:

Wage Theft

"Wage theft" is a general term sometimes used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Wage theft may occur if:

- An employee is paid below the state or federal minimum wage;
- An employee is paid partial wages or not paid at all;
- A non-exempt employee is not paid time and a half for overtime hours;
- An employee is required to work off the clock;
- An employee has their time card altered;
- An employee is misclassified as an independent contractor; or
- An employee does not receive a final paycheck after the termination of employment.

Employee Protection: Federal and State

A variety of federal and state laws protect employees from wage theft. Federal laws are administered by the United States Department of Labor, and may be enforced by federal authorities or by private lawsuits.[1] The Fair Labor Standards Act (FLSA)[2] is the federal law most often used to address wage theft. State court actions to recover unpaid wages can be brought under Florida's minimum wage laws or through a common law breach of contract claim.

Federal Protection of Employees: Fair Labor Standards Act

The FLSA establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States. Currently, the federal minimum wage is $7.25 per hour.[3] A state may set the rate higher than the federal minimum but not lower.[4]

The FLSA also requires employers to pay one and one-half times regular wages for any time worked in excess of 40 hours during a workweek.[5] In addition, it establishes standards for recordkeeping and child labor. The FLSA applies to most classes of workers, but a major exception is that it does not apply to most employees of businesses doing less than $500,000 in annual business.[6]

The FLSA provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;
- Criminal prosecutions by the United States Department of Justice; or
- Private lawsuits by employees or workers, which includes individual lawsuits and collective actions.

An employer who violates section 206 (minimum wage) or section 207 (maximum hours) of the FLSA is liable to the employee for the amount of the unpaid wages and may be liable for liquidated damages equal to the amount of the unpaid wages.

State Protection of Employees

State law provides for protection of employees, including anti-discrimination,[7] work safety,[8] and a state minimum wage. Article X, s. 24(c) of the Florida Constitution provides that "Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida."

If an employer does not pay the state minimum wage, the Constitution provides that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages

---

[1] Links to most federal laws and regulations that affect wage and hour issues are located at www.dol.gov/whd/reg-library.htm (last visited March 13, 2014).
[2] 29 U.S.C. ch. 8.
[3] The U.S. Department of Labor Wage and Hour Division provides information about the minimum wage and minimum wage laws at http://www.dol.gov/whd/minimumwage.htm (last visited February 28, 2014).
[4] 29 U.S.C. s. 218(a).
[5] 29 U.S.C. s. 207(a)(1).
[6] The U.S. Department of Labor provides lists of the types of employees covered and exempt from the FLSA at http://www.dol.gov/compliance/guide/minwage.htm#who (last visited March 13, 2014).
[7] Section 760.10, F.S.
[8] Sections 448.20-26 and 487.2011-2071, F.S.

withheld. If the employee prevails, in addition to the unpaid wages, a court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs. Further, any employer that willfully violates the minimum wage law is subject to a fine of $1,000 for each violation. The Attorney General is also empowered to bring a civil action to enforce the state's minimum wage laws.

The current state minimum wage is $7.93 per hour, which is higher than the federal minimum wage.[9] Federal law requires the payment of the higher of the federal or state minimum wages.[10]

Chapter 448, F.S., includes the Florida Minimum Wage Act, which implements the constitutional minimum wage requirements. Chapter 448, F.S., also prohibits an employer from retaliating against the employee for enforcing his or her rights, and it preserves the rights that an employee has under any collective bargaining agreement or employee contract.[11]

In addition to remedies under state minimum wage laws, an employee may bring a common law breach of contract claim for unpaid wages. Section 448.08, F.S., allows the court to award attorney's fees and costs to the prevailing party in an action for unpaid wages.

Home Rule and Preemption

Article VIII, ss. 1 and 2 of the State Constitution establish two types of local governments: counties[12] and municipalities. Local governments have wide authority to enact various ordinances to accomplish their local needs.[13] Under home rule powers, a municipality or county may legislate concurrently with the Legislature on any subject that has not been preempted to the state.

Preemption reserves the power to legislate on specific topics exclusively to the state and thereby abrogates the typical broad home-rule powers of local governments.[14] Florida law recognizes two types of preemption: express and implied.[15] Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.[16]

In the absence of express preemption a court may still find that the state's regulation of an area of law is so pervasive as to constitute implied preemption.[17] However, courts "are careful in imputing intent on behalf of the Legislature to preclude a local government from using its home rule powers."[18] A court will then consider whether strong public policy reasons exist for finding

[9] *See* http://www.floridajobs.org/minimumwage/Announcement_2014.pdf (last visited March 13, 2014).
[10] 29 U.S.C. §218(a).
[11] Section 448.105, F.S.
[12] Florida has both charter and non-charter counties.
[13] Article VIII of the State Constitution establishes the powers of charter counties, non-charter counties, and municipalities. Chapters 125 and 166, F.S., provide additional powers and constraints on counties and municipalities.
[14] *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006) (citations omitted).
[15] *Id*.
[16] *Id*.
[17] *See Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).
[18] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d. 880, 886 (Fla. 2010) (citations omitted).

an area to be preempted by the Legislature.[19] Regulation of public records is an example of an area where the courts have found implied preemption.[20]

Currently, there is no express preemption of the enforcement of wage laws to the federal or state government. It is unclear whether a court would find that the existing laws regarding employee wages are an implied preemption of the subject.

Local Regulation of Wage Theft

Florida's two most populous counties, Miami-Dade County and Broward County, have passed ordinances dealing with wage theft claims. Alachua County has also passed a wage theft ordinance.[21] In addition, Palm Beach County has passed a resolution condemning wage theft and has created a program for wage theft claimants to be represented by the Legal Aid Society of Palm Beach County.[22]

Miami-Dade's ordinance,[23] passed in February 2010, was one of the first local wage theft ordinances in the United States. The ordinance is administered by the county's Department of Small Business Development (SBD) and provides a local process for employees to file claims for unpaid wages. The process cannot be used if the employee has made a claim under state or federal law; however, a claim under the ordinance does not preclude later claims under state or federal law. The ordinance only applies to claims for payment of more than $60 in wages, and claims must be filed within one year after the last day the unpaid work was performed. Claims that are not resolved before the hearing are heard by a hearing examiner who is deemed to be qualified to hear wage theft matters. If the hearing officer determines by a preponderance of the evidence that back wages are owed, the employee must be awarded three times the amount of the wages found to be owed and the employer must pay the county's administrative processing costs and costs of the proceeding. If the employee is not successful, neither party reimburses the county's costs.

Broward County's ordinance took effect on January 2, 2013.[24] It provides a process that is similar to Miami-Dade County's ordinance but with some significant differences. These differences include:

- A claim cannot be considered unless the employee gave the employer written notice of the failure to pay wages within 60 days after the date the wages were due and the employer had a minimum of 15 days to pay or resolve the claim before it was filed.
- A successful claimant is awarded double the amount of unpaid wages, rather than triple wages as in the Miami-Dade County ordinance.

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[19] *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996) (citations omitted).
[20] *See Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).
[21] Kelcee Griffis, Gainesville Sun, *County commission passes wage-theft ordinance Tuesday*, THE INDEPENDENT FLORIDA ALLIGATOR, April 17, 2013, http://www.alligator.org/news/local/article_7074e0f8-a710-11e2-bf3b-0019bb2963f4.html (last visited March 13, 2014).
[22] Andy Reid, *Palm Beach County renews compromise wage theft effort*, SUN-SENTINEL, January 15, 2014, http://articles.sun-sentinel.com/2014-01-15/news/sfl-palm-beach-county-renews-compromise-wage-theft-effort-20140115_1_wage-county-commission-low-income-workers (last visited March 13, 2014).
[23] Miami Dade County, Fla., Code ch. 22.
[24] Broward County Code of Ordinances, ch. 20½, Non-Payment of Earned Wages.

- In addition to paying the county's costs as is required by the Miami-Dade County ordinance, a losing employer is also required to reimburse the employee for reasonable costs and attorney's fees incurred in connection with the hearing.
- Like the Miami-Dade County ordinance, an unsuccessful claimant is not required to pay either the employer's or the county's costs. However, under the Broward County ordinance the employee must be ordered to pay the employer's reasonable costs and attorney's fees and the county's costs if the hearing officer finds that the claim had no basis in law or fact.

Alachua County's ordinance was implemented on January 1, 2014. It is similar to the Broward ordinance in several respects. It also provides that an employee must contact an employer regarding a claim within 60 days after the date that wages were due to be paid and allow the employer 15 days to respond. The ordinance awards twice the amount of unpaid wages to a successful claimant. However, the Alachua County ordinance requires that a complaint be filed within 180 days after the date that wages were due to be paid (as opposed to one year). The Alachua County ordinance does not provide a minimum dollar threshold that claims must meet in order to be filed.

Palm Beach County has also considered passing a wage theft ordinance since a proposed ordinance was brought before the commissioners in February 2011. Following that time, Palm Beach County supported a Wage Recovery Program administered by the Legal Aid Society of Palm Beach County. The Legal Aid Society program assists employees in collecting unpaid wages through existing civil or administrative remedies. On January 11, 2014, the commission passed a resolution renewing a contract for $104,000 with the Legal Aid Society to manage the Wage Recovery Program.[25]According to the society, the program has recovered approximately $200,000 in back wages.[26]

Small Claims Court Costs

Fees for filing an action in Small Claims Court, which is a part of the County Court, are set by s. 34.041(1)(a), F.S., as follows:

- $50 for claims less than $100;
- $75 for claims from $100 - $500;
- $170 for claims from $500.01 - $2500; and
- $295 for claims of more than $2,500.

In addition to the filing fee, the claimant must serve the employer with notice of the suit. Process may be served on a Florida defendant by certified mail, which costs approximately $6. If that is unsuccessful, process must be served by the sheriff or an authorized process server. The cost for service by the sheriff is $40 as provided in s. 30.231(1)(a), F.S.

[25] Andy Reid, *Palm Beach County renews compromise wage theft effort*, SUN-SENTINEL (January 15, 2014), http://articles.sun-sentinel.com/2014-01-15/news/sfl-palm-beach-county-renews-compromise-wage-theft-effort-20140115_1_wage-county-commission-low-income-workers (last visited March 13, 2014).
[26] *Id.*

III. Effect of Proposed Changes:

The bill generally preempts local regulation of wage theft issues and provides a specific civil action in the court system for wage theft claims.

Section 1 amends s. 34.01, F.S., to expand the jurisdiction of county courts to include actions for collection of unpaid wages that are brought under the new process created in Section 2 of the bill. The expanded jurisdiction includes an exception that allows the county court to have jurisdiction of these cases even if the amount in controversy exceeds $15,000.

Section 2 creates s. 448.115, F.S., which provides a new civil claim for wage theft that is brought in the county court and governed by Florida Small Claims Rules. Under the bill, wage theft is the illegal or improper underpayment or nonpayment of an individual employee's wage, salary, commission, or similar compensation within a reasonable time from the date the employee should have been paid. If there is no established pay schedule, a reasonable time for payment is deemed to be two weeks from the date on which the work is performed.

A claim for wage theft under s. 448.115, F.S., must be brought in the county where the unpaid work was alleged to have been performed within one year of the last date of performance. The filing fee for wage theft claims may not exceed $50. Prior to filing a claim, the employee must give the employer oral or written notice of the particulars of the allegations and of the intent to file a claim. The employer has seven days after receiving notice to pay the total amount of unpaid compensation or otherwise resolve the action to the satisfaction of the claimant before the claim can be filed.

The claim is generally governed by Florida Small Claims Rules. However, the amount claimed can exceed the small claims threshold of $5,000. A claimant must prove wage theft by a preponderance of the evidence. Damages are limited to twice the amount of compensation owed. The court may not award noneconomic or punitive damages or attorney fees.

Local Government Administrative Process: The bill allows local governments to establish an administrative, nonjudicial process to help an employee recover unpaid wages. The process must give the parties an opportunity to negotiate a resolution of the claim, but it cannot include adjudication of the dispute or an award of damages. The program can provide for the payment of the filing fee for a county court action or assistance with filing an application for determination of civil indigent status under s. 57.082, F.S.

Preemption of Local Ordinances: The bill preempts any local regulation of wage theft enacted on or after January 1, 2014, that exceeds the provisions of the bill. However, a local ordinance enacted before January 1, 2014, may be amended, revised or repealed. Any other local regulation for the recovery of unpaid compensation is expressly prohibited and preempted.

The bill explicitly states that it does not preclude a person who commits wage theft from being prosecuted for theft under s. 812.014, F.S.

Section 3 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As noted in the discussion of the present situation, the State Constitution sets forth certain requirements and remedies regarding minimum wage claims. This bill cannot be interpreted to preclude an employee from exercising those state constitutional rights, which are currently implemented in ch. 448, F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may facilitate the resolution of more wage theft claims through nonjudicial processes, which might result in economic benefits to employees. It may also result in reduced legal costs for both employees and employers, as the parties will have a means to resolve wage theft claims in addition to formal legal action.

C. Government Sector Impact:

Because the bill creates a new civil action for redress of wage theft claims in county court, there may be an increase in costs to the judiciary to the extent that the new procedure is utilized by aggrieved employees who would not have otherwise pursued their claims in court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill states that any local wage theft regulation or ordinance that departs from the provisions provided by the bill is expressly prohibited and preempted. However, the bill also provides that

local wage theft regulations or ordinances enacted before January 1, 2014, may be amended, revised, or repealed. The bill does not expressly state that such ordinances are not preempted. Therefore, it is unclear whether local ordinances are preempted to the extent that they deviate from the bill.

VIII. Statutes Affected:

This bill substantially amends section 34.01 of the Florida Statutes.

This bill creates section 448.115 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 April 2, 2014:

- Expands the original jurisdiction of county courts to cover wage theft claims.
- Authorizes an employee to initiate a civil action for wage theft.
- Specifies requirements that must be met prior to initiation of a claim.
- Authorizes a local jurisdiction to establish an administrative process to assist in the conciliation of wage theft disputes.
- Preempts regulation of wage theft claims to the state after a specified date.

CS by Judiciary on March 25, 2014:

The underlying bill allowed counties to adopt a wage theft ordinance that would authorize only a legal services organization process to address wage theft claims. The committee substitute allows a county to pursue the legal services organization process or an administrative process.

B. Amendments:

None.

182618

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

The Committee on Rules (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts;

(b) Of all violations of municipal and county ordinances;

182618

12 (c) Of all actions at law in which the matter in
13 controversy does not exceed the sum of $15,000, exclusive of
14 interest, costs, and attorney's fees, except those within the
15 exclusive jurisdiction of the circuit courts; ~~and~~
16 (d) Of disputes occurring in the homeowners' associations
17 as described in s. 720.311(2)(a), which shall be concurrent with
18 jurisdiction of the circuit courts; and~~.~~
19 (e) Of actions for the collection of compensation under s.
20 448.115, notwithstanding the amount in controversy prescribed in
21 paragraph (c).
22 Section 2. Section 448.115, Florida Statutes, is created to
23 read:
24 448.115 Civil action for wage theft; notice; civil penalty;
25 preemption.—
26 (1)(a) As used in this section, the term "wage theft" means
27 an illegal or improper underpayment or nonpayment of an
28 individual employee's wage, salary, commission, or other similar
29 form of compensation within a reasonable time from the date on
30 which the employee performed the work to be compensated.
31 (b) A wage theft occurs when an employer fails to pay a
32 portion of wages, salary, commissions, or other similar form of
33 compensation due to an employee within a reasonable time from
34 the date on which the employee performed the work, according to
35 the already applicable rate and the pay schedule of the employer
36 established by policy or practice. In the absence of an
37 established pay schedule, a reasonable time from the date on
38 which the employee performed the work is 2 weeks.
39 (2)(a) If an employer commits wage theft, an aggrieved
40 employee may initiate a civil action pursuant to this section.

182618

41 (b) County courts have original and exclusive jurisdiction
42 in all actions involving wage theft, as provided in s.
43 34.01(1)(e). Notwithstanding s. 34.041, the filing fee for a
44 claim brought pursuant to this section may not exceed $50.
45 (c) The action shall:
46 1. Be brought in the county court in the county where the
47 employee performed the work; and
48 2. Be governed by the Florida Small Claims Rules.
49 (3)(a) Before bringing an action, the claimant must notify,
50 orally or in writing, the employer who is alleged to have
51 engaged in wage theft of his or her intent to initiate a civil
52 action.
53 (b) The notice must identify the amount that the claimant
54 alleges is owed, the actual or estimated work dates and hours
55 for which compensation is sought, and the total amount of
56 compensation unpaid through the date of the notice.
57 (c) The employer has 7 days after the date of service of
58 the notice to pay the total amount of unpaid compensation or
59 otherwise resolve the action to the satisfaction of the
60 claimant.
61 (4) The action must be filed within 1 year after the last
62 date that the alleged unpaid work was performed by the employee.
63 (5) The claimant must prove wage theft by a preponderance
64 of the evidence. A prevailing claimant is entitled to damages
65 limited to twice the amount of compensation due and owing. The
66 court may only award economic damages expressly authorized in
67 this subsection and may not award noneconomic or punitive
68 damages or attorney fees to a prevailing party, notwithstanding
69 s. 448.08.

182618

70 (6)(a) A county, municipality, or political subdivision may
71 establish an administrative, nonjudicial process under which an
72 assertion of unpaid compensation may be submitted by, or on
73 behalf of, an employee in order to assist in the collection of
74 compensation owed to the employee. At a minimum, any such
75 process shall afford the parties involved an opportunity to
76 negotiate a resolution regarding the compensation in question.
77 The county, municipality, or political subdivision may, as part
78 of the process, assist the employee in completing an application
79 for a determination of civil indigent status under s. 57.082 and
80 may pay the filing fee under s. 34.041 on behalf of the
81 employee, if applicable. The process may not adjudicate a
82 compensation dispute between an employee and an employer nor
83 award damages to the employee.
84 (b) Any local regulation of wage theft enacted on or after
85 January 1, 2014, by a county, municipality, or other political
86 subdivision that exceeds the provisions of this section is
87 preempted to the state. A county, municipality, or other
88 political subdivision that has enacted a local ordinance or
89 resolution regulating wage theft before January 1, 2014, may
90 amend, revise, or repeal its ordinance or resolution on or after
91 January 1, 2014.
92 (c) Any other regulation, ordinance, or provision for the
93 recovery of unpaid compensation by a county, municipality, or
94 political subdivision is expressly prohibited and is preempted
95 to the state.
96 Section 3. This act shall take effect upon becoming a law.
97
98 ========== T I T L E A M E N D M E N T ==========

182618

99 And the title is amended as follows:
100 Delete everything before the enacting clause
101 and insert:
102 A bill to be entitled
103 An act relating to wage theft; amending s. 34.01,
104 F.S.; expanding the original jurisdiction of county
105 courts; creating s. 448.115, F.S.; defining the term
106 “wage theft”; describing the occurrence of a wage
107 theft; authorizing an aggrieved employee to initiate a
108 civil action for wage theft; granting county courts
109 original and exclusive jurisdiction over actions
110 involving wage theft; specifying requirements to bring
111 a civil action for wage theft; authorizing a county,
112 municipality, or political subdivision to establish an
113 administrative process to assist in the collection of
114 compensation owed to an employee; preempting
115 regulation of wage theft to the state after a
116 specified date; exempting certain counties,
117 municipalities, and political subdivisions; providing
118 an effective date.

974662

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

1 **Senate Amendment to Amendment (182618)**
2
3 Between lines 95 and 96
4 insert:
5 (7) This section does not preclude a person who commits
6 wage theft from being prosecuted for theft under s. 812.014.
7

401526

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/03/2014	.	
	.	
	.	
	.	

The Committee on Rules (Richter) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Between lines 127 and 128
4 insert:
5 (4) LIMITATION OF APPLICATION.—Ordinances adopted under
6 this section do not apply to companies that have a gross annual
7 revenue of $500,000 or more and that engage in interstate
8 commerce.
9
10 ========== T I T L E A M E N D M E N T ==========
11 And the title is amended as follows:

401526

12 Delete line 6
13 and insert:
14 requirements of those processes; providing an
15 exemption for certain companies; providing an

309326

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/03/2014	.	
	.	
	.	
	.	

The Committee on Rules (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 128 - 130
and insert:
(4) PREEMPTION.—Any local regulation of wage theft enacted on or after January 1, 2014, by a county, municipality, or other political subdivision which exceeds the provisions of this section is preempted to the state. A county, municipality, or other political subdivision that has enacted a local ordinance or resolution regulating wage theft before January 1, 2014, may amend, revise, or repeal its ordinance or resolution on or after

309326

12 January 1, 2014. Such counties, municipalities, or other
13 political subdivisions may also partner with law schools for the
14 purpose of assisting the county, municipality, or political
15 subdivision in addressing claims of wage theft.
16
17 ========== T I T L E A M E N D M E N T ==========
18 And the title is amended as follows:
19 Delete lines 6 - 8
20 and insert:
21 requirements of those processes; preempting to the
22 state local regulation of wage theft which does not
23 comply with this act; authorizing certain counties,
24 municipalities, and other political subdivisions to
25 amend, revise, or repeal their ordinances or
26 resolutions on or after a specified date; authorizing
27 certain counties, municipalities, and other political
28 subdivisions to partner with law schools to assist
29 with claims of wage theft; providing an effective
30 date.

By the Committee on Judiciary; and Senator Simpson

A bill to be entitled

An act relating to local regulation of wage theft; creating s. 448.111, F.S.; defining terms; requiring a county that decides to create a local solution to wage theft to adopt one of two processes and specifying the requirements of those processes; providing an exception for an ordinance enacted by a specified date; providing an effective date.

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

Section 1. Section 448.111, Florida Statutes, is created to read:

448.111 Local regulation of wage theft.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Legal services organization" means an organization that provides free or low-cost legal services to qualified persons and meets the minimum standards established by The Florida Bar for providing such services, including a legal practice clinic operated by an accredited Florida law school.

(b) "Wage theft" means an illegal or improper underpayment or nonpayment of an individual employee's wage, salary, commission, or other similar form of compensation within a reasonable time after the date on which the employee performed the work to be compensated. A wage theft occurs when an employer fails to pay a portion of the wages, salary, commissions, or other similar forms of compensation due to an employee within a reasonable time after the date on which the employee performed the work, according to the current applicable rate and the pay

schedule of the employer established by policy or practice.

(2) LOCAL ORDINANCES.—Upon the determination by a county that a local solution to wage theft is necessary, the county shall adopt a local ordinance that includes one of the following processes:

(a) *Legal services organization process.*—The county may partner with a local legal services organization for the purpose of establishing a local process through which claims of wage theft shall be addressed by the legal services organization. The county may partner with a legal services organization located in that county or in an adjoining county.

1. An individual who has experienced wage theft may contact the legal services organization for assistance in recovering wages. The legal services organization shall determine whether the individual has a bona fide claim for unpaid wages.

2. The legal services organization shall notify the employer and provide the employer with an opportunity to resolve the matter of unpaid wages in the manner deemed most appropriate to each claim. The notification may occur by telephone, written correspondence, or any other means deemed appropriate by the legal services organization.

3. The legal services organization shall work with the employee and employer to resolve the issue informally but expeditiously. The informal resolution may include obtaining attorney fees and costs from the employer.

4. The legal services organization shall file court actions as appropriate and refer unresolved claims to local pro bono or other counsel for resolution.

5. The county shall establish a reporting mechanism through

59 which the county receives regular reports regarding the legal
60 services organization's work on cases of wage theft. The county
61 may require periodic reports.
62 (b) *Administrative process.*—The county may establish an
63 administrative process that gives the parties involved the
64 opportunity to negotiate a resolution with regard to the wages
65 in question.
66 1. The county shall establish a system that provides for:
67 a. A complaint process by which a complaint, which must
68 allege a wage theft violation, may be submitted to the county by
69 or on behalf of an aggrieved employee; and
70 b. Service of the complaint and written notice on the
71 respondent employer alleged to have committed a wage theft
72 violation, which sets forth the allegations made in the
73 complaint and the rights and obligations of the parties. Such
74 rights and obligations shall include the right of the respondent
75 to file an answer to the complaint and the rights of both
76 parties to a conciliation process and to a hearing on the matter
77 before a county hearing officer. The hearing officer must have
78 either a legal background or specialized training in the subject
79 matter. The final determination of a hearing officer is subject
80 to appeal to a court of competent jurisdiction.
81 2. The system established must encourage the parties to
82 conciliate the charges and resolve the matter. A hearing officer
83 may not be appointed unless the matter is not resolved using the
84 process established in this paragraph.
85 3. If a preponderance of the evidence demonstrates a wage
86 theft violation, the hearing officer shall order the employer to
87 pay wage theft restitution to the affected employee along with

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

88 liquidated damages and any administrative costs.
89 4. The regulation of wage theft through local ordinance
90 shall be limited to requiring that employers pay their employees
91 for work performed at the agreed upon rate of pay plus any
92 penalties as set forth herein and establishing a fair procedure
93 and program to review and enforce wage agreements.
94 5. Any wage recovery system established pursuant to this
95 paragraph must provide that an employee who is not timely paid
96 wages, final compensation, or wage supplements by his or her
97 employer as required is entitled to recover through a claim
98 filed in a process or program established under this paragraph
99 in the employee's county of employment or in a civil action, but
100 not both.
101 6. The county shall establish a reporting mechanism through
102 which the county receives regular reports regarding cases of
103 wage theft. The county may require periodic reports.
104 7.a. Upon a finding of wage theft, the employer shall be
105 liable for the actual back wages due and owing and may be liable
106 for administrative costs in an amount not to exceed $1,500. If
107 the employer is found to have acted in good faith or if the
108 hearing officer has reason to believe that the act or omission
109 was not intentional or was not wage theft, the administrative
110 costs against the employer may be waived. In addition,
111 liquidated damages shall be awarded to the employee but are
112 limited to twice the amount a respondent employer is found to
113 have unlawfully failed to pay the complainant employee.
114 b. In addition to the actual back wages due and liquidated
115 damages, an employer found to have committed a second violation
116 shall be fined $1,000 and an employer found to have committed a

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

117 third and subsequent violation shall be fined $2,000. An
118 employer who commits a second or subsequent violation may be
119 liable for administrative costs in an amount not to exceed
120 $2,500.
121 8. Any claim brought under this paragraph is subject to a
122 statute of limitations of 1 year from the last date upon which
123 wages were due to the employee for the wage theft incident that
124 is the subject of the wage theft claim.
125 (3) FUNDING.—The county may dedicate county funds to assist
126 the legal services organization process or the administrative
127 process under subsection (2) in addressing claims of wage theft.
128 (4) CURRENT ORDINANCES.—A local ordinance governing wage
129 theft which was enacted on or before January 1, 2014, is not
130 preempted by this section.
131 Section 2. This act shall take effect upon becoming a law.

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)

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: 926

Name: Vicki Stanley

Amendment Barcode: [redacted] *(if applicable)*

Job Title: Transportation

182418 *(if applicable)*

Address: 5502 D Curdeplane Park
Street

Orlando, FL 32808
City *State* *Zip*

Phone: 407-452-1196

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic: Regulation of Wage theft

Bill Number: ~~S 926~~ S926 *(if applicable)*

Name: Ana Cicereszko

Amendment Barcode: 182618 *(if applicable)*

Job Title: educator / lobbyist / retiree

Address: 7550 SW 61 St.
Street

Miami
City *State* *Zip*

Phone: 305 321 0016

E-mail: acicereszko@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-2014
Meeting Date

Topic: Wage Theft

Bill Number: 0926 *(if applicable)*

Name: Shawn Beal

Amendment Barcode: 182618 *(if applicable)*

Job Title: Electronic Technician

Address: 1740 Newfound Harbor Dr.
Street

Merritt Island FL 32952
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: Ephraim Riggins

Amendment Barcode: 182618 *(if applicable)*

Job Title: N/A

Address: 2796 Summer Meadow Drive
Street

Tallahassee, Fl 32303
City *State* *Zip*

Phone: 904-945-0354

E-mail: ephnav2293@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4.2.14
Meeting Date

Topic: Wage Theft

Bill Number: 926 *(if applicable)*

Name: Ken Williams

Amendment Barcode: 182612 *(if applicable)*

Job Title:

Address: 7411 Meadow Dr
Street

Tampa Fl 33634
City *State* *Zip*

Phone: 813-493-7685

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: WAGE THEFT

Bill Number: 926 (if applicable)

Name: WALTER CROSSON

Amendment Barcode: 182618 (if applicable)

Job Title:

Address: 1700 NW 66 AVE #102
Street

FT LAUDERDALE FL 33313
City State Zip

Phone: 954-327-9007

E-mail: BROWAFLC@AOL.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing: SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: SB 924 (if applicable)

Name: Gerard Sommers

Amendment Barcode: 182618 (if applicable)

Job Title:

Address: 8164 English Elm Cir
Street

Spring Hill, FL 34606
City, State, Zip

Phone: 585-613-5571

E-mail: gerardfsommers@aol.com

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

Representing: self

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-15
Meeting Date

Topic: Wage theft

Bill Number: 926 *(if applicable)*

Name: Amy Datz

Amendment Barcode: ~~180~~ 182618 *(if applicable)*

Job Title: Retired State employee

Address: 1130 Crestview Ave
Street

Tallahassee FL 32303
City *State* *Zip*

Phone: 850 322-7599

E-mail: amaliedatz@mac.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Mother of Wage theft victim

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic: Local Regulation of Wage Theft

Bill Number: SB 0926 *(if applicable)*

Name: Ashley Molozaiy

Amendment Barcode: 182618 *(if applicable)*

Job Title:

Address: 4921 Strauss Court, Apt. 12
Street

Melbourne, FL 32905
City *State* *Zip*

Phone: (321) 676-5479

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Amendment to Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: David Bryant

Amendment Barcode: 182618 *(if applicable)*

Job Title:

Address: 8853 Atler Ln.
Street

Jacksonville, FL 32216
City, State, Zip

Phone: 904-928-3744

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

SB 926

Meeting Date

Topic _____ Bill Number 182618 *(if applicable)*

Name Scott Bevan Amendment Barcode _____ *(if applicable)*

Job Title General Maintenance Worker

Address 3183 Wavering Lane Phone _____

Street

Middleburg FL 32068 E-mail _____

City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing myself

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: Melanie Andrade

Amendment Barcode: 182618 *(if applicable)*

Job Title:

Address: 1080 W Virginia St Apt 326
Street

Tallahassee FL 32304
City *State* *Zip*

Phone: (863) 949-3786

E-mail: Melwresthev@gmail.com

Speaking: [ ] For [✓] Against [ ] Information

Representing: myself (oppose amendment)

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/02/14
Meeting Date

Topic: Wage Theft

Bill Number: 926 *(if applicable)*

Name: Rich Templin

Amendment Barcode: 182018 *(if applicable)*

Job Title: Legislative & Political Director

Address: 135 S. Monroe
Street

Tallahassee
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Local Regulation of Wage Theft

Bill Number: 926 *(if applicable)*

Name: Carol Bowen

Amendment Barcode: 182618 *(if applicable)*

Job Title: VP Gov't Affairs Associated Builders & Contractors

Address: 3730 Coconut Creek Pkwy, Suite 200
Street

Coconut Creek, FL 33066
City, State, Zip

Phone: 954-465-6811

E-mail: cbowen@abceastflorida.com

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

Representing: Associated Builders and Contractors Florida East Coast Chapter

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Carolyn Johnson

Name: Wage Protection

Job Title: Policy Director

Address: 136 S Bronough
Street

City *State* *Zip*

Bill Number: SB 926 *(if applicable)*

Amendment Barcode: 182618 *(if applicable)*

Phone: 521-1235

E-mail:

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

Representing: FL Chamber of Commerce

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: CS/926 *(if applicable)*

Name: Karen Woodall

Amendment Barcode: 182618 *(if applicable)*

Job Title:

Address: 519 E. Call St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850-321-9386

E-mail: fcsp@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Farmworker's Self-Help, Fl. New Majority

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Dispute Policy

Bill Number: 926 *(if applicable)*

Name: Samantha Padgett

Amendment Barcode: 182618 *(if applicable)*

Job Title: General Counsel

Address: 227 South Adams St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 222-4082

E-mail: Samantha@frf.org

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

Representing: Florida Retail Federation

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: WAGE THEFT

Bill Number: 926 *(if applicable)*

Name: Arthur Rosenberg

Amendment Barcode: 782618 *(if applicable)*

Job Title: Attorney

Address: 3000 Biscayne BLVD
Street

MIAMI FL 33137
City *State* *Zip*

Phone: 850-504 2085

E-mail: arthur@floridalegal.org

Speaking: [ ] For [✓] Against [ ] Information

Representing: Florida Legal Services

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: ~~401527~~ 926 *(if applicable)*

Name: Rosa Banda

Amendment Barcode: ~~182618~~ 182618 *(if applicable)*

Job Title: Transportation

Address: 1935 S. Conway Rd #7
Street

Orlando, FL 32812
City *State* *Zip*

Phone: 4023946940

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Local Regulation of Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: Matthew Van Vonc

Amendment Barcode: ~~[illegible]~~ 182618 *(if applicable)*

Job Title: Legislative Director

Address: *Street*

City *State* *Zip*

Phone: 786-459-1798

E-mail: matthew.vanvonc@1199.org

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

Representing: SEIU FL

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: CS/SB 926 *(if applicable)*

Name: Faviola Vargas

Amendment Barcode: _____ *(if applicable)*

Job Title: Server

Address: 5100 15th Ct SW
Street

Naples FL 34116
City *State* *Zip*

Phone: _____

E-mail: _____

Speaking: [x] For [ ] Against [ ] Information CS/SB926 w/o additional amendments

Representing: Collier County Neighborhood Stories Project.

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2 APR 2014
Meeting Date

Topic: WAGE THEFT

Bill Number: 926 *(if applicable)*

Name: PAUL JESS

Amendment Barcode: 182618 *(if applicable)*

Job Title:

Address: 218 S. MONROE ST
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone: 850 224-9403

E-mail:

Speaking: ☐ For ☒ Against ☐ Information AGAINST AMENDMENT

Representing: FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: CS/SB 926 *(if applicable)*

Name: Andy mario Martinez

Amendment Barcode: _____ *(if applicable)*

Job Title: Store Clerk

Address: 5418 Carlton St.
Street

Naples, FL 34113
City *State* *Zip*

Phone: 239-398-7904

E-mail: andymrct@gmail.com

Speaking: [✓] For [ ] Against [ ] Information CS/SB 926 w/o additional amendments

Representing: Collier County Neighborhood Stories project CCNSP

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: CS/SB926 *(if applicable)*

Name: Grey Tarrico

Amendment Barcode: _____ *(if applicable)*

Job Title: Regional Organizer

Address: _____
Street

Naples, FL 34110
City *State* *Zip*

Phone: _____

E-mail: _____

Speaking: [✓] For [ ] Against [ ] Information CS/SB926 w/o additional amendments

Representing: FL Immigrant 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: CS/SB 926 *(if applicable)*

Name: Francesca Menes

Amendment Barcode: _____ *(if applicable)*

Job Title: Policy and Advocacy Coordinator

Address: 2800 Biscayne Blvd., Suite 300
Street

Miami, FL 33137
City *State* *Zip*

Phone: (305) 571-7254

E-mail: _____

Speaking: [✓] For [ ] Against [ ] Information CS/SB 926 w/o additional amendments

Representing: FL Wage Theft Task Force

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: CS/SB 926 *(if applicable)*

Name: Nestor Orime

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: _____
Street

Immokalee, Fl 34142
City *State* *Zip*

Phone: _____

E-mail: _____

Speaking: [✓] For [ ] Against [ ] Information

CS/SB 926 w/o additional amendments

Representing: Collier County Neighborhood Stories Project

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-8-14
Meeting Date

Topic: WAGE DISPUTE

Bill Number: SB 926 *(if applicable)*

Name: KARI HEBRANK

Amendment Barcode: *(if applicable)*

Job Title:

Address: 113 EAST COLLEGE, #200
Street

TALLAHASSEE, FL 32301
City *State* *Zip*

Phone: 566-7824

E-mail: khebrank@aol.com

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

Representing: FLORIDA HOME BUILDERS

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: 926 *(if applicable)*

Name: Barbara DeVane

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 625 E. Brevard St
Street

Tallahassee FL 32308
City *State* *Zip*

Phone: 850-222-3969

E-mail: barbaradevane1@yahoo.com

Speaking: [✓] For [ ] Against [ ] Information

unless a bad amendment is put on today!!

Representing: FL NOW

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

5/2/14
Meeting Date

Topic: WAGE THEFT

Bill Number: ~~1019~~ 926 (if applicable)

Name: GAIL MARIE PERRY

Amendment Barcode: _____ (if applicable)

Job Title: CHAIR

Address: PO BOX 1766
Street

POMPANO BEACH FL 33061
City State Zip

Phone: 954 850 4055

E-mail: workingjob@yahoo.com

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

Representing: COUNCIL OF FLORIDA COMMUNICATIONS WORKERS OF AMERICA

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/20
Meeting Date

Topic: WAGE THEFT

Bill Number: 926 (if applicable)

Name: GAIL MARIE PERRY

Amendment Barcode: _____ (if applicable)

Job Title: CHAIR

Address: PO BOX 1766
Street

POMPANO BCH FLA 33061
City State Zip

Phone: 954 850 4055

E-mail: workingjobs@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Representing: AMENDMENT COMMUNICATION WORKERS of AMERICA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: LOCAL REGULATION OF WAGE THEFT

Bill Number: SB 0926 *(if applicable)*

Name: DON PEACE

Amendment Barcode: *(if applicable)*

Job Title: Teacher

Address: 6735 Temple Ave.
Street

New Port Richey FL 34653
City *State* *Zip*

Phone: 727-847-6775

E-mail: dpax221@hotmail.com

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

Representing: myself

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage theft

Bill Number: 926 *(if applicable)*

Name: RICHARD GENTRY

Amendment Barcode: *(if applicable)*

Job Title:

Address: 2305 BRAEBURN CIR
Street

TLH FL 32309
City *State* *Zip*

Phone: 251-1837

E-mail:

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

Representing: Palm Bch Economic Council

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Local/Regulation of Wage Theft

Bill Number: SB0926 (if applicable)

Name: LISA MAZZA

Amendment Barcode: _____ (if applicable)

Job Title: Teacher

Address: 37213 Price Drive
Street

Zephyrhills, FL 33541
City, State, Zip

Phone: 813-770-9223

E-mail: lisajomazza@gmail.com

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

Representing: Myself

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-2014
Meeting Date

Topic: Local regulation of Wage Theft

Bill Number: SB 0926 *(if applicable)*

Name: Marie S. Baker

Amendment Barcode: _____ *(if applicable)*

Job Title: Teacher

Address: 34110 Brown Bayou
Street

Wesley Chapel, FL 33543
City *State* *Zip*

Phone: (813) 716-4402

E-mail: msbakersnowman@gmail.com

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

Representing: Myself

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: 926 *(if applicable)*

Name: Pamela Burch Fort

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 104 S. Monroe St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 850-425-1344

E-mail: TegLobby@aol.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: _____

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: Shawn Beal

Amendment Barcode: _____ *(if applicable)*

Job Title: Electronic Technician

Address: 1740 Newfound Harbor Dr
Street

Merritt Island FL 32952
City *State* *Zip*

Phone: _____

E-mail: _____

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

Representing: Myself

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: 926 *(if applicable)*

Name: Larry Kidd

Amendment Barcode: *(if applicable)*

Job Title: Construction worker

Address: 820 Virginia Dr
Street

Orlando FL 32803
City *State* *Zip*

Phone: 407-896-7271

E-mail: Lkidd01@Aol.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage theft

Bill Number: 926

Name: Barbara DeVane

Amendment Barcode (if applicable): delete all and any amendments offered by Retail Federation

Job Title:

Address: 625 E. Brevard St
Street

Tallahassee, FL 32308
City, State, Zip

Phone: 850-222-3969

E-mail: barbaradevane1@yahoo.com

Speaking: [ ] For [✓] Against [ ] Information

Representing: FL NOW

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.2.14
Meeting Date

Topic: Wage Theft

Bill Number: 926 *(if applicable)*

Name: Ken Williams

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 7411 Meadow Drive
Street

Tampa Fl 33634
City *State* *Zip*

Phone: 813.493.7685

E-mail: _____

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wages

Bill Number: 926 *(if applicable)*

Name: Tammy Perdue

Amendment Barcode: *(if applicable)*

Job Title: Gen Counsel

Address: 516 N Adams
Street

Tall, FL 32301
City *State* *Zip*

Phone: 8502247173

E-mail: tperdue@aif.com

Speaking: ☑ For ☐ Against ☐ Information

Representing: Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: CS/926 *(if applicable)*

Name: Karen Woodall

Amendment Barcode: *(if applicable)*

Job Title:

Address: 519 E. Call St.
Street

Tallahassee, Fl 32301
City *State* *Zip*

Phone: 850-321-9586

E-mail: fcfp@yahoo.com

Speaking: [✓] For [ ] Against [ ] Information

if not amended

Representing: Farmworker's Self-Help, Fl New Majority

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: SB926 *(if applicable)*

Name: Melanie Andrade

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 680 W Virginia St Apt 36
Street

Tallahassee, FL 32304
City *State* *Zip*

Phone: (863) 949-3786

E-mail: Melwrestles@gmail.com

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

Representing: Myself

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: S-926 *(if applicable)*

Name: Mark A Boston

Amendment Barcode: _____ *(if applicable)*

Job Title: Retired

Address: 579 Nathlas Blvd
Street

Jupiter Beach FL 34957
City *State* *Zip*

Phone: 772-229-8237

E-mail: NECAA@Fastmail.fm

Speaking: ☐ For ☐ Against ☑ Information

Representing: _____

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: Scott Bevan

Amendment Barcode: _____ *(if applicable)*

Job Title: General Maintenance Worker

Address: 3183 Wavering Lane
Street

Phone: _____

Middleburg, Fl. 32068
City, State, Zip

E-mail: _____

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

Representing: myself

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/4/2014
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: David Bryant

Amendment Barcode: _____ *(if applicable)*

Job Title: Electrician

Address: 8853 Aftes Lane
Street

Jacksonville, FL 32216
City, State, Zip

Phone: 904-928-3744

E-mail: davidbryant177@comcast.net

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

Representing: Myself

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic: Local Regulation of Wage Theft

Bill Number: SB 0926 *(if applicable)*

Name: Ashley Molozaiy

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 4921 Strauss Court, Apt. 12
Street

Melbourne, FL 32905
City, State, Zip

Phone: (321) 676-5479

E-mail: _____

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

Representing: Self

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-12
Meeting Date

Topic: WAGE THEFT

Bill Number: SB 926 *(if applicable)*

Name: WALTER CROSSON

Amendment Barcode: *(if applicable)*

Job Title: RETIRED

Address: 1845 NE 214 TERR
Street

MIAMI, FL 33179
City, State, Zip

Phone: 954-327-9007

E-mail: BROWAFLCIO@AOL.COM

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

Representing: SELF

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic _____

Bill Number SB 0926 (if applicable)

Name Gerard Sommers

Amendment Barcode _____ (if applicable)

Job Title _____

Address 8164 English Elm Cir
Street

Spring Hill FL 34606
City State Zip

Phone 585-613-5571

E-mail gerardsommers@aol.com

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

Representing self

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Local Regulation of Wage Theft

Bill Number: 926 *(if applicable)*

Name: Carol Bowen

Amendment Barcode: _____ *(if applicable)*

Job Title: VP Gov't Affairs Associated Builders + Contractors

Address: 3730 Coconut Creek Pkwy, Suite 200
Street

Coconut Creek, FL 33066
City *State* *Zip*

Phone: 954-465-6811

E-mail: cbowen@associatedflorida.com

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

Representing: Associated Builders and Contractors Florida East Coast Chapter

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Protection

Bill Number: 926 *(if applicable)*

Name: Carolyn Johnson

Amendment Barcode: _____ *(if applicable)*

Job Title: Policy Director

Address: 136 S Bronough St
Street

Tallahassee FL
City *State* *Zip*

Phone: 850-521-1235

E-mail: cjohnson@flchamber.com

Speaking: ☐ For ☐ Against ☐ Information

Representing: FL Chamber of Commerce

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: Vicki Stanley

Amendment Barcode: *(if applicable)*

Job Title: & Transportation

Address: 5502-D Cinderlane Pkwy
Street

Orlando FL 32808
City *State* *Zip*

Phone: 407-432-1194

E-mail:

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

Representing:

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: ROSA BAUZA

Amendment Barcode: *(if applicable)*

Job Title: Transportation.

Address: 1935 CONWAY Rd. E7
Street

ORLANDO, FL 32812
City, State, Zip

Phone: 407-394 6940

E-mail: rosiebauza@me.com

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

Representing:

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: WAGE THEFT

Bill Number: CS/SB 926 *(if applicable)*

Name: Arthur Rosenberg

Amendment Barcode: _____ *(if applicable)*

Job Title: Attorney

Address: 3000 Biscayne BLVD,
Street

Miami FL 33137
City *State* *Zip*

Phone: 850-509-2085

E-mail: arthur@floridalegal.org

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

Representing: Florida Legal Services

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: Amy Datz

Amendment Barcode: *(if applicable)*

Job Title: Retired AFSCME

Address: 1130 Coertview Ave.
Street

Tallahassee FL 32303
City *State* *Zip*

Phone: 850 322-7599

E-mail: amalie datz@mac.com

Speaking: [✓] For [ ] Against [ ] Information

Depending on Amendments.

Representing: Mother of Victim of wage Theft.

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Dispute Resolution

Bill Number: 926 *(if applicable)*

Name: Samantha Padgett

Amendment Barcode: *(if applicable)*

Job Title: General Counsel

Address: 227 S. Adams St
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 222-4082

E-mail: samantha@frf.org

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

Representing: Florida Retail Federation

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: 826 C1 *(if applicable)*

Name: Rich Templin

Amendment Barcode: *(if applicable)*

Job Title: Legislative & Political Director

Address: 135 S. Monroe
Street

Tallahassee, FL
City *State* *Zip*

Phone: 850 - 224 - 6526

E-mail:

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

Representing: Florida AFL-CIO

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Protection

Bill Number: SB 926 *(if applicable)*

Name: Caralyn Johnson

Amendment Barcode: 401526 *(if applicable)*

Job Title: Policy Director

Address: 136 S Bronough St
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 521-1235

E-mail: cjohnson@flchamber.com

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

Representing: FL Chamber of Commerce

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/02/14
Meeting Date

Topic: Wage Theft

Bill Number: 926 *(if applicable)*

Name: Rick Templin

Amendment Barcode: 401526 *(if applicable)*

Job Title: Leg. & Political Director

Address: 135 S. Monroe
Street

Tallahassee
City *State* *Zip*

Phone: 224-6926

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic WAGE THEFT

Bill Number 926 *(if applicable)*

Name Arthur Rosenberg

Amendment Barcode 401526 *(if applicable)*

Job Title Attorney

Address 3000 Biscayne BLVD
Street

Miami FL 33137
City *State* *Zip*

Phone 850-509-2085

E-mail arthur@floridalegal.org

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Legal Services

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Dispute Policy

Bill Number: 926 *(if applicable)*

Name: Samantha Padgett

Amendment Barcode: 401526 *(if applicable)*

Job Title: General Counsel

Address: 227 South Adams St.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone: 222-4082

E-mail: samantha@frf.org

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

Representing: Florida Retail Federation

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Local Regulation of wage theft

Bill Number: 926 *(if applicable)*

Name: Carol Bowen

Amendment Barcode: 401526 *(if applicable)*

Job Title: VP Gov't Affairs

Address: 3730 Coconut Creek Pkwy, Suite 200
Street

Coconut Creek, FL 33066
City *State* *Zip*

Phone: 954-465-1081

E-mail: cbowen@abcsouthflorida.com

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

Representing: Associated Builders & Contractors Florida East Coast Chapter

Appearing at request of Chair: [ ] Yes [X] 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 2, 2014
Meeting Date

Topic: Wage Theft

Bill Number: CS/926 *(if applicable)*

Name: Karen Woodall

Amendment Barcode: 401526 *(if applicable)*

Job Title: [illegible]

Address: 579 E. Call St.
Street

Tallahassee, Fl 32301
City *State* *Zip*

Phone: 850-321-9386

E-mail: fcfep@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Farmworker Self-Help, Fla. New Majority

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage theft

Bill Number: 926 *(if applicable)*

Name: Amy Datz

Amendment Barcode: 401527 *(if applicable)*

Job Title: Retired State employee

Address: 1130 Crestview Ave
Street

Tallahassee FL 32303
City *State* *Zip*

Phone: (850) 322-7529

E-mail: amalie datz@mac.com

Speaking: [ ] For [✓] Against [ ] Information

Representing: Mother of wage theft victim

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: S-726 *(if applicable)*

Name: Mark A. Bostow

Amendment Barcode: 401507 *(if applicable)*

Job Title: Lobbyist

Address: 579 Nassau Blvd
Street

Jupiter Beach FL 33458
City *State* *Zip*

Phone: 772-229-8237

E-mail:

Speaking: ☐ For ☑ Against ☐ Information

Representing: SCPB

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: SB 926 (if applicable)

Name: Gerard Sommers

Amendment Barcode: 401527 (if applicable)

Job Title:

Address: 8164 English Elm Ci
Street

Spring Hill, FL 34606
City, State, Zip

Phone: 585-613-5571

E-mail: GERARDSOMMERS@AOL.COM

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

Representing: self

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date: _____

Topic: _____

Bill Number: SB 920 401527 (if applicable)

Name: Scott Bevan

Amendment Barcode: _____ (if applicable)

Job Title: General Maintenance Worker

Address: 3183 Waverly Lane (Street)

Middleburg (City) Fl (State) 32068 (Zip)

Phone: _____

E-mail: _____

Speaking: ☐ For ☒ Against ☐ Information

Representing: myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Amendment to Wage Theft

Bill Number: SB 926 *(if applicable)*

Name: David Bryant

Amendment Barcode: 401527 *(if applicable)*

Job Title:

Address: 8853 Atter Lane
Street

Jacksonville, FL 32216
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic: Local Regulation of Wage Theft

Bill Number: SB 0926 *(if applicable)*

Name: Ashley Molozaiy

Amendment Barcode: 401527 *(if applicable)*

Job Title:

Address: 4921 Strauss Court, Apt. 12
Street

Melbourne, FL 32905
City, State, Zip

Phone: (321) 676-5479

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: 926 *(if applicable)*

Name: Ken Williams

Amendment Barcode: 401527 *(if applicable)*

Job Title:

Address: 7411 Meadow Dr
Street

Tampa Fl 33634
City *State* *Zip*

Phone: 813-493-7685

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-2014
Meeting Date

Topic: Wave Theft

Bill Number: 0926 *(if applicable)*

Name: Shawn Bar

Amendment Barcode: 401527 *(if applicable)*

Job Title: Electronic Tech

Address: 1740 Newfound Harbor DR
Street

Merritt Island FL 32952
City *State* *Zip*

Phone:

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing: myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: WAGE THEFT

Bill Number: 926 *(if applicable)*

Name: WALTER CROSSON

Amendment Barcode: 401527 *(if applicable)*

Job Title:

Address: 1845 NE 214 TERR
Street

MIAMI, FL 33179
City, State, Zip

Phone: 305-933-0419

E-mail: WCROSS894@AOL.COM

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

Representing: SELF

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

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic _____

Bill Number S 926 *(if applicable)*

Name Ana Ciereszko

Amendment Barcode ~~[illegible]~~ 401527 *(if applicable)*

Job Title educator / lobbyist / retiree

Address 7550 SW 61 St.
Street

Miami FL 33143
City *State* *Zip*

Phone 305 321 0016

E-mail aciereszk@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

Representing myself

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-12.
Meeting Date

Topic: Wage theft

Bill Number: ~~[illegible]~~ 926 *(if applicable)*

Name: Rosa I Bauza

Amendment Barcode: 401527 *(if applicable)*

Job Title: Transportation

Address: 1935 S. CONWAY
Street

Orlando FL 32
City *State* *Zip*

Phone: 4073946940

E-mail:

Speaking: ☐ For ☑ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Wage Theft

Bill Number: ~~[illegible]~~ S 926 *(if applicable)*

Name: Vicki Hawley

Amendment Barcode: 401527 *(if applicable)*

Job Title: Transportation

Address: 5500-D Cidco Lane Pkwy
Street

Orlando FL 32810
City *State* *Zip*

Phone: 407 450 1176

E-mail:

Speaking: ☐ For ☒ Against ☐ Information

Representing:

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage Theft

Bill Number: CS/926 *(if applicable)*

Name: Karen Woodall

Amendment Barcode: 309326 *(if applicable)*

Job Title:

Address: 579 E Call St.
Street

Tallahassee, Fl 32301
City *State* *Zip*

Phone: 850-321-9386

E-mail: fcfp@yahoo.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Florida New Majority, Farmworker's Self-Help

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Wage theft

Bill Number: 926 *(if applicable)*

Name: Arthur Rosenberg

Amendment Barcode: 309 326 *(if applicable)*

Job Title: Attorney

Address: 3000 Biscayne BLVD
Street

Miami, FL 33137
City *State* *Zip*

Phone: 850-509-2085

E-mail: arthur@floridalegal.org

Speaking: ☐ For ☑ Against ☐ Information

Representing: Florida Legal Services

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 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1108

INTRODUCER: Community Affairs Committee

SUBJECT: OGSR/Children of Agency Officers and Employees/Identifying Information

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stearns	Yeatman		**CA SPB 7042 as introduced**
1.	Kim	McVaney	GO	**Favorable**
2.	Stearns	Phelps	RC	**Favorable**

I. Summary:

SB 1108 continues the public records exemption for the personal identifying information of an agency employee's dependent child covered by an agency insurance plan. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.

II. Present Situation:

Public Access

Florida has a long history of providing public access to the records of governmental and other public entities. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24, Art. I of the State Constitution provides in pertinent part:

> (a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.
>
> …
>
> (c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of

> subsection (b); provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law…..Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) and (b) and provisions governing the enforcement of this section, and shall relate to one subject.

Florida's Public Records Law

Most of Florida's public records law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record[1] must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency[2] records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public record" to include 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. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."[3]

Only the Legislature is authorized to create exemptions to open government requirements.[4] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[5] A bill enacting an exemption[6] may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.[7]

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential, such record may not be released by an agency to anyone other than the person

---

[1] Section 119.011(12), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, 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."

[2] Section 119.011(2), F.S., defines "agency" as "…any state, county, district, authority, or municipal officer, department, division, 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."

[3] *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

[4] FLA. CONST., art. I, s. 24(c).

[5] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

[6] Section 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[7] FLA. CONST., art. I, s. 24(c).

or entities designated in the statute.[8] If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[9]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] 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.[11]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[13]

The Act also requires specified questions to be considered during the review process.[14]

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[15] A public necessity statement and a

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[8] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004). *See* Attorney General Opinion 85-62, August 1, 1985.

[9] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla.1991).

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

[11] Section 119.15(3), F.S.

[12] Section 119.15(6)(b), F.S.

[13] *Id*.

[14] 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?

[15] An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception[16] to the exemption is created.[17]

Exemption of Personal Identifying Information of the Dependent Children of Agency Personnel

In 2009, the Legislature amended s. 119.071(4)(b), F.S., to create a public records exemption for the personal identifying information of a dependent child of a current or former agency employee covered by an agency health insurance plan. This exemption makes a dependent's personal identifying information exempt from public inspection and copying.

The exemption was created after a court ordered a school board to release information in response to a public records request for employees' health insurance policy information and the name, address, gender, age, title and telephone numbers of dependent children covered by the policy.[18]

This exemption will expire on October 2, 2014, pursuant to the Open Government Sunset Review Act, unless saved by reenactment by the Legislature.

In the summer of 2013, a survey of Florida agencies conducted by Senate and House committee staff found overwhelming support for the public records exemption with a number of responses indicating that the law provided important protection from identity theft for the family members of agency employees.[19]

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to remove the scheduled repeal of the public records exemption for the personal identifying information of a dependent child of an agency employee. As a result, the records will remain exempt from disclosure requirements under the public records laws.

Section 2 provides the bill takes effect on October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[16] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.
[17] *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).
[18] *Chandler v. School Board of Polk County*, Case No. 2008CA-004389 (Fla. 10th Jud. Cir. 2008).
[19] On file with the Senate Committee on Community Affairs.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The continued existence of the public records exemption may protect the family members of agency employees from identity theft.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Community Affairs

578-01867-14 20141108__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., relating to an exemption from public record requirements for personal identifying information of certain dependent children of current or former agency officers or employees; making an editorial change; removing the scheduled repeal of the exemption; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

(b)1. Medical information pertaining to a prospective, current, or former officer or employee of an agency which, if disclosed, would identify that officer or employee is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission or pursuant to court order.

2.a. Personal identifying information of a dependent child of a current or former officer or employee of an agency, which dependent child is insured by an agency group insurance plan, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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578-01867-14 20141108__

Constitution. For purposes of this exemption, "dependent child" has the same meaning as in s. 409.2554.

b. This exemption is remedial in nature and applies to such personal identifying information held by an agency before, on, or after the effective date of this exemption.

~~c. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2014.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 826

INTRODUCER: Judiciary Committee and Senator Joyner

SUBJECT: Trusts

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	**Fav/CS**
2.	Billmeier	Knudson	BI	**Favorable**
3.	Munroe	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 826 limits the liability of excluded trustees for consequences from acting in compliance with a directive from a directing cotrustee. Under existing law, the excluded trustee may be liable for complying with a directive by the directing cotrustee, if an excluded trustee has actual knowledge of the willful misconduct of the directing cotrustee. Under the bill, an excluded trustee is not liable for complying with a directive by a directing cotrustee unless the excluded trustee's conduct constitutes willful misconduct.

Similarly, under existing s. 736.0808(2), F.S., if a revocable trust authorizes a person other than the settlor to direct the actions of a trustee, the trustee must act in accordance with the directions unless the directions are manifestly contrary to the trust or the trustee knows that the directions are a serious breach of a fiduciary duty. Under the bill, the statute does not apply if the person directing a trustee is another trustee.

II. Present Situation:

"A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it."[1] A trust involves

[1] 55A FLA. JUR.2D *Trusts* § 1. See also, s. 731.201(38), F.S., "trust" means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust.

three interest holders[2]: the settlor or grantor who establishes the trust;[3] the trustee who holds legal title to the property held in the benefit of the beneficiary;[4] and lastly, the beneficiary who has an equitable interest in property held subject to the trust.[5]

A trustee has a fiduciary duty to the beneficiary for proper administration of trust assets and is liable for any breach of that duty.[6] Cotrustees are generally jointly and severably liable to the beneficiary for any breach of trust, without special trust terms changing their duties or liabilities.[7] Clauses in a trust exonerating a trustee from liability are called exculpatory terms.[8] Exculpatory terms in a trust document providing for the release of a trustee who breaches his or her fiduciary duties may be unenforceable.[9]

Frequently, a trust will contain assets for which one of multiple trustees wishes to have no responsibility. In such case, the settlor may designate the trustee as the "excluded trustee" required to follow the direction of the directing trustee who is given sole authority to give direction over the subject trust property at issue.[10] Cotrustees are governed by the trust document and s. 736.0703(9), F.S. Section 736.0703(9), F.S., provides that:

> If the terms of a trust instrument provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power. *Except in cases of willful misconduct on the part of the trustee with the authority to direct or prevent actions of the trustees of which the excluded trustee has actual knowledge, an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power, regardless of the information available to the excluded trustees.* The excluded trustees are relieved of any obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power. The trustee or trustees having the power to direct or prevent actions of the trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power (emphasis added).

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[2] 55A FLA. JUR.2D *Trusts* § 1.
[3] A "settlor" is one "who makes a settlement of the property; esp.[ecially], one who sets up a trust." BLACK'S LAW DICTIONARY (9th ed. 2009).
[4] A "trustee" is "one who stands in a fiduciary or confidential relation to another; esp.[ecially], one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary." BLACK'S LAW DICTIONARY (9th ed. 2009).
[5] A "beneficiary" is a person for whose benefit property is held in trust. BLACK'S LAW DICTIONARY (9th ed. 2009).
[6] *See* s. 736.1011, F.S.
[7] 55A FLA. JUR.2D *Trusts* § 155.
[8] *See* ss. 736.1011, and 736.0105(2)(u), F.S.
[9] Section 736.1011, F.S.
[10] 12 FLA. PRAC., ESTATE Planning § 17:50.

There have been complaints that the directed trust statute, s 736.0703(9), F.S., does not provide sufficient level of protection to excluded trustees.[11] The excluded trustee has to oversee, monitor, and intervene in the actions of a directed cotrustee to avoid liability. As a result, trustees have been reluctant to accept appointments where the trustees are subject to the directions of another trustee (the directing trustee).[12]

Section 736.0703(9), F.S., provides that the excluded trustee is protected from liability when following the instructions of the directing trustee unless the excluded trustee has "actual knowledge of willful misconduct" on the part of the directing trustee.

III. Effect of Proposed Changes:

The bill amends s. 736.0703(9), F.S., to limit the liability of an excluded trustee for misconduct under certain circumstances. Under the bill, the excluded trustee is not liable, individually or as a fiduciary, except in cases of willful misconduct for any consequence that results from compliance with exercise of power by the directing cotrustee. Under existing law, the excluded trustee may be liable for complying with a directive by the directing cotrustee, if an excluded trustee has actual knowledge of the willful misconduct of the directing cotrustee.

Similarly, under existing s. 736.0808(2), F.S., if a revocable trust authorizes a person other than the settlor of to direct the actions of a trustee, the trustee must act in accordance with the directions unless the directions are manifestly contrary to the trust or the trustee knows that the directions are a serious breach of a fiduciary duty. Under the bill, the statute does not apply if the person directing a trustee is another trustee.

The bill takes effect on July 1 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[11] Communication between committee staff of the Senate Judiciary Committee and the Trust Law Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar.
[12] *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By limiting the liability of excluded trustees, institutions and individuals may be more willing to serve as excluded trustees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 736.0703 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 Judiciary on March 11, 2014:
The committee substitute revises the way an excluded trustee's liability is limited for consequences resulting from compliance with the directions of a directing trustee.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Joyner

590-02441-14 2014826c1

A bill to be entitled

An act relating to trusts; amending s. 736.0703, F.S.; limiting the liability of excluded trustees; providing that certain powers to direct the actions of a trustee are not applicable under certain circumstances; providing an effective date.

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

Section 1. Subsection (9) of section 736.0703, Florida Statutes, is amended to read:

736.0703 Cotrustees.—

(9) If the terms of a trust ~~instrument~~ provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power. Except in cases of willful misconduct on the part of the excluded trustee ~~with the authority to direct or prevent actions of the trustees of which the excluded trustee has actual knowledge~~, an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power~~, regardless of the information available to the excluded trustees~~. An ~~The~~ excluded trustee does not have a duty or an ~~trustees are relieved of any~~ obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power. The trustee or trustees having the power to direct or prevent actions of the excluded trustees shall be liable to the

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beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power. The provisions of s. 736.0808(2) do not apply if the person entrusted with the power to direct the actions of the excluded trustee is also a cotrustee.

Section 2. This act shall take effect July 1, 2014.

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)

4/2/14
Meeting Date

Topic: Trusts

Bill Number: 826 *(if applicable)*

Name: Kenneth Pratt

Amendment Barcode: _____ *(if applicable)*

Job Title: Senior VP of Governmental Affairs

Address: 1001 Thomasville Rd, Ste 201
Street

Tallahassee, FL 32303
City *State* *Zip*

Phone: 850-224-2265

E-mail: kpratt@floridabankers.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: Florida Bankers 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 2 /2014
Meeting Date

Topic _____

Bill Number 826 *(if applicable)*

Name BRIAN PITTS

Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☑ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ARTHENIA L. JOYNER
19th District

COMMITTEES:
Appropriations Subcommittee on Criminal and Civil Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on General Government
Ethics and Elections
Health Policy
Judiciary
Transportation

SELECT COMMITTEE:
Select Committee on Indian River Lagoon and Lake Okeechobee Basin

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 25, 2014

Senator John Thrasher, Chairman
Senate Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

This is to request that CS/Senate Bill 826 related to Trusts be placed on the agenda for the Committee on Rules. Your consideration of this request is greatly appreciated.

Sincerely,

Arthenia L. Joyner
State Senator, District 19

REPLY TO:
☐ 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
☐ 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 828

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Court System

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Fav/CS**
2.	Stearns	Yeatman	CA	**Favorable**
3.	Davis	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 828 repeals or modifies court-related statutes that are unnecessary or outdated. Statutes that are a duplication of provisions in Art. V of the State Constitution are repealed as unnecessary. Statutes that create additional requirements for judicial office are repealed because they are likely to be determined to be in conflict with the constitutional qualifications for office and therefore unconstitutional. Other statutes are amended or repealed to reflect current practices or eliminate outdated provisions.

II. Present Situation:

Article V of the State Constitution establishes and governs the Judiciary. The various sections set forth the authority, jurisdiction, and structure of the court system and provide qualifications for justices and judges. Article V also establishes the Judicial Qualifications Commission, provides for funding of the judicial branch, the admission and discipline of attorneys, and contains provisions relating to clerks of circuit courts as well as state attorneys and public defenders.

Similarly, Title V of the Florida Statutes is devoted to the Judicial Branch of state government. Title V, which consists of chapters 25-44, contains laws governing the Supreme Court, circuit courts, state attorneys and public defenders, court system funding, district courts of appeal, general provisions regarding judges and courts, and other related provisions.

Over time, many of the judicial statutes found in Title V have become unnecessary duplications of provisions contained in the State Constitution. Other statutes have become outdated.

In an effort to update the statutes relating to the Judicial Branch, the House Civil Justice Subcommittee compiled a list of duplicative statutes that are unnecessary. Those provisions comprise 13 of the 19 sections of this bill. The subcommittee also determined that additional statutes needed to be amended and that a new section should be created to deal with compensation issues. The subcommittee's recommendations are the subject of this bill.

The "Effect of Proposed Changes" provides additional information describing the present situation for each section of the bill.

III. Effect of Proposed Changes:

This bill repeals or modifies court-related statutes that are unnecessary or outdated. Below is a section by section analysis of the changes proposed in this bill.

Section 1. Section 25.151, F.S., is a law passed in 1957 that prohibits a retired Supreme Court justice from engaging in the practice of law while drawing retirement compensation. The statute is not currently enforced and similar statutes have been found unconstitutional.[1] The bill repeals the statute.

Section 2. Sections 25.191 and 25.231, F.S., require the Supreme Court to appoint a clerk who must perform duties as directed by the court. Article V, s. 3(c), State Constitution, also requires the Supreme Court to appoint a clerk to "perform such duties as the court directs." The bill repeals the statutes, which will have not have an adverse effect, because the same requirements remain in the State Constitution.

Sections 3 and 4. Sections 25.241(1) and 25.281, F.S., provide that the clerk and marshal of the Supreme Court are to be paid a salary. Similarly, Art. V, s. 3(c) of the State Constitution requires that the clerk and marshal of the Supreme Court be paid by general law. Section 3 repeals a subsection in s. 25.241, F.S., relating to compensation of the clerk of the Supreme Court and section 4 repeals s. 25.281, F.S., relating to compensation of the marshal of the Supreme Court. Neither repeal will have an adverse effect, because the State Constitution requires payment of the clerk and marshal's salaries. See also s. 29.23, F.S., created by this bill in section 11.

Section 5. Section 25.351, F.S., provides that books for the Supreme Court library may be acquired by purchase or exchange with other libraries. It is unclear why this needs to be in statute. The bill repeals the statute, which is unlikely to have any practical effect.

Section 6. Section 26.01, F.S., provides that there will be 20 judicial circuits in the state. Article V, s. 1 of the State Constitution requires that the state be divided into judicial circuits that follow county lines. Section 26.021, F.S., provides which counties are in each circuit. The bill repeals s. 26.01, F.S., merging its contents into s. 26.021, F.S., for simplicity.

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[1] See *In re The Florida Bar-Code of Judicial Conduct*, 281 So. 2d 21 (Fla. 1973); see also, Art. V, s. 15, FLA. CONST. (Supreme Court's exclusive jurisdiction over the practice of law).

Section 7. Section 26.021, F.S., divides the state into judicial circuits as required by the State Constitution. The statute lists the number of the judicial circuit and which counties are in each circuit. Three of the 20 judicial circuits, the Fifth, Seventh, and Sixteenth circuits, have special statutory residency requirements stating that judges must live in a particular county in the circuit. Article V, s. 8 of the State Constitution establishes the constitutional requirements for eligibility to serve as a justice or judge. The courts have ruled that no additional requirement for judicial office may be created by statute.[2] The bill adds the language from s. 26.01, F.S., and repeals the special residential requirements for certain judicial offices at the circuit court level.

Section 8. Section 26.51, F.S., requires that the salaries of circuit court judges be paid "in equal monthly installments." The language first appeared in a 1925 statute setting the salaries of a number of state officials.[3] At the time, the salaries of state officials were set in the general statutes. The practice since 1969 has been for the salaries of these state officials to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. All of the other state officials, including county judges, appellate judges, and Supreme Court justices, are paid monthly without statutory direction. It is unclear why this clause, only applicable to one class of state officials, circuit judges, has remained in statute. The bill repeals the statutory requirement that circuit judges be paid in equal monthly installments. The repeal should have no impact on judicial salaries or when they are paid.

Section 9. Section 26.55, F.S., created the Conference of Circuit Judges of Florida. The bill amends the section at the request of the Conference to:

- Specify that a retired judge who is actively engaged in the practice of law is excluded from automatic membership.
- Delete a provision declaring it to be an official function of each circuit judge to attend meetings of the conference and participate in committee activities.
- Require the Conference to operate according to the Rules of Judicial Administration adopted by the Supreme Court.
- Eliminate the requirement that the chair of the conference submit an "annual" report concerning defects in the laws of the state and any recommended amendments to the President of the Senate and the Speaker of the House. The bill authorizes the Conference to submit such a report if it deems a report "necessary regarding the administration of justice."
- Make grammatical and technical changes.

Section 10. This section repeals s. 27.55, F.S., relating to the compensation and expenses of a public defender in a newly created judicial circuit.

Section 27.55, F.S., provides for the compensation of a public defender and the payment of expenses of a public defender should the state create a new judicial circuit. There are no current known plans for creation of a new judicial circuit, and, if there were, the payment of salaries and

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[2] See *Miller v. Mendez*, 804 So. 2d 1243, 1246 (Fla. 2001). A statute cannot require residency within a circuit at the time of qualifying when the constitution only requires residency at the time of taking office; *Levey v. Dijols*, 990 So. 2d 688, 692 (Fla. 4th DCA 2008), rev. denied, 994 So. 2d 304. ("Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid."),

[3] Chapter 11335. L.O.F., s. 1 (1925).

expenses relating to such creation would normally be a part of the law creating such circuit or would be in the General Appropriations Act for that legislative session. The bill repeals the statute regarding such expenses, which should have no impact.

Section 11. This section creates s. 29.23, F.S., relating to the salaries of certain positions in the judicial branch.

The State Constitution requires that certain employees of the court system are to be paid an annual salary. The requirement related to some of those employees is repeated in various statutes repealed by this bill. The practice since 1969 has been for the salaries of constitutional state officials, including those in the judicial branch, to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. This bill creates s. 29.23, F.S., to consolidate all of the constitutional salary provisions into one statute reflecting current practices. The section provides that salaries of justices and judges must be part of the General Appropriations Act, and salaries of appellate marshals and clerks are determined in accordance with s. 25.382(3), F.S., current law regarding court system budgeting. The newly created statute reflects long-standing policies.

Section 12. This section repeals ss. 35.12, 35.13, 35.19, and 35.21, F.S., relating to district courts of appeal.

Article V, s. 2(c), State Constitution, provides for selection of a chief judge in each district court of appeal. Section 35.12, F.S., also provides for selection of a chief judge in each district court of appeal. The bill repeals the statute, which will have no practical effect.

Article V, s. 4(a), State Constitution, requires that three judges hear a case before a district court of appeal, and that the "concurrence of two" is required for a decision. Section 35.13, F.S., requires the same. The bill repeals the statute, which will have no adverse effect, because the same provision remains in the State Constitution.

Article V, s. 14(a), State Constitution, provides that the salaries of justices and judges are to be set by general law. Section 35.19, F.S., provides that the salaries of judges of the district courts of appeal are to be set by law. The bill repeals the statute provision, which will have no adverse effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

Article V, s. 4(c), State Constitution, requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. Section 35.21, F.S., also requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. The bill repeals the statute, which will have no adverse effect, as the same provision remains in the State Constitution.

Section 13. This section amends s. 35.22, F.S., relating to the salary of the clerk of a district court of appeal. Article V, s. 4(c) of the State Constitution provides that the salary of a clerk of a district court of appeal is to be set by general law. Section 35.22(1), F.S., provides that the compensation of the clerk of a district court of appeal is to be set by law. The bill repeals the statutory provision, which will have no adverse effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

Section 14. Section 35.25, F.S., provides that the duties of the clerk of a district court of appeal "shall be as prescribed by the rules of the court." No rules have been promulgated to prescribe the specific duties of a clerk of a district court of appeal. Article V, s. 4(c), State Constitution, requires the clerk to "perform such duties as the court directs." Because a clerk of a district court of appeal serves at the pleasure of the court, formal rulemaking is unnecessary. The adoption of internal operating procedures, both formal and informal, is sufficient to govern the conduct of a clerk or any other employee who serves at the pleasure of an appointing body. The bill repeals the statute, which is anticipated to have no effect on appellate court clerks or their operation.

Section 35.27, F.S., provides that the compensation of the marshal of a district court of appeal is to be set by law. Article V, s. 4(c), State Constitution, provides that the salary of a marshal of a district court of appeal is to be set by general law. The bill repeals the statute, which will have no detrimental effect, because the compensation of the marshal will be provided by the new s. 29.23, F.S., to be created by section 11 of this bill.

Section 15. This section repeals s. 38.13, F.S., relating to the appointment of a judge ad litem in a circuit or county court.

Section 38.13, F.S., provides for the appointment of a judge ad litem in a particular civil case. The law, first enacted in 1887, provides that, where the trial judge is disqualified, the parties to the action may agree on an attorney at law to act as the judge for that particular case. The statute was helpful at a time when most rural judicial circuits had only one judge, but it is outdated today. The need for the statute has been superseded by Art. V, s. 2(b), of the State Constitution, which allows the Chief Justice to appoint a judge to another court, Fla. R. Jud. Admin. 2.215(b)(4), and the concept of arbitration found in s. 44.104, F.S. The bill repeals the statute allowing the appointment of a judge ad litem.

Section 16. Section 43.20, F.S., relating to the Judicial Qualifications Commission, is amended. The Judicial Qualifications Commission is created by Art. V, s. 12, of the State Constitution. The commission is authorized to investigate and recommend to the Supreme Court the removal of a justice or judge whose conduct demonstrates unfitness to hold office and to recommend appropriate disciplinary action. Section 43.20, F.S., implements the Judicial Qualifications Commission by statute. A 1996 constitutional amendment increased the membership of the commission to 15 from 13 members. This bill amends s. 43.20, F.S., to conform to the change to 15 from 13 members.

Section 17. This section repeals s. 57.101, F.S., relating to costs in the Supreme Court. Section 57.101, F.S., provides that a party to an appeal before the Supreme Court cannot be made to pay for copies made by the Clerk of the Supreme Court which the party did not order. It is unclear how or why copies would be made by the Clerk except where actually ordered by a party, and thus the statute has no apparent meaning. The bill repeals the statute.

Section 18. Section 92.15, F.S., relating to federal land office receipts, is repealed.

Section 92.15, F.S., provides that a receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by the receipt has passed from

the United States to the person named in the receipt as having paid for the land. Federal law in the 1800s recognized that certain settlers of land who paid a nominal registration fee would be given a receipt that was evidence of the payment of the fee giving the settlor the right to possess the land. That receipt was not a title document like a deed, and so "the statute was passed with a view to obviating the inconvenience that ensued from the delays so frequently occurring in the issuance from Washington of the letters patent, and in recognition of the fact that the full equitable title had passed from the government to the [settlor]."[4] The last appellate case under the statute was decided in 1914,[5] and the records of the Florida land grant office show that it closed in 1933.[6] All land grant properties should have had numerous recorded title transactions since then and reference to such receipts appears outdated and unnecessary. See generally, ch. 712, F.S., (the Marketable Record Title Act). The bill repeals the statute.

Section 19. This section provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator does not expect the bill to have a fiscal impact on the state courts system.[7]

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[4] *Boley v. Wynn*, 67 So. 117 (Fla. 1914). See also, generally, *Yellow River R. Co. v. Harris*, 17 So. 568 (Fla. 1895).
[5] *Boley v. Wynn*, 67 So. 117 (Fla. 1914).
[6] National Archives, *Records of the Bureau of Land Management [BLM], 49.9.7 Florida Land Offices, available at*, http://www.archives.gov/research/guide-fed-records/groups/049.html, (last visited March 14, 2014).
[7] Office of the State Courts Administrator, *Judicial Impact Statement for SB 828*, (March 1, 2014) (on file with the Senate Committee on Community Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.241(1), 26.021, 26.55, 35.22, and 43.20.

This bill creates section 29.23 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 25.151, 25.191, 25.231, 25.281, 25.351, 26.01, 26.51, 27.55, 35.12, 35.13, 35.19, 35.21, 35.25, 35.27, 38.13, 57.101, and 92.15.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 11, 2014:
The committee substitute removes the repeal of s. 27.50, F.S., relating to the qualifications and election of a public defender.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Bradley

A bill to be entitled

An act relating to the court system; repealing s. 25.151, F.S., relating to a prohibition on the practice of law by a retired justice of the Supreme Court; repealing ss. 25.191 and 25.231, F.S., relating to the appointment and duties of a Clerk of the Supreme Court; amending s. 25.241, F.S.; deleting a requirement regarding the salary of the Clerk of the Supreme Court, to conform; repealing s. 25.281, F.S., relating to compensation of the Marshal of the Supreme Court; repealing s. 25.351, F.S., relating to the acquisition of books by the Supreme Court; repealing s. 26.01, F.S., relating to the number of judicial circuits; amending s. 26.021, F.S.; specifying the number of judicial circuits; repealing certain residency requirements for circuit judges; repealing s. 26.51, F.S., relating to payment of the salaries of circuit judges; amending s. 26.55, F.S.; excluding retired judges practicing law from the Conference of Circuit Judges of Florida; removing a requirement that circuit court judges attend and participate in such conference; requiring that the conference operate according to the Rules of Judicial Administration; revising requirements for such conferences; repealing s. 27.55, F.S., relating to compensation and certain expenditures of public defenders; creating s. 29.23, F.S.; providing for certain judicial branch salaries; repealing ss. 35.12, 35.13, 35.19, and 35.21, F.S., relating to the chief judge, quorum, compensation of

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judges, and clerk, respectively, of the district courts of appeal; amending s. 35.22, F.S.; deleting a requirement for the appointment and salary of a clerk for each district court of appeal; repealing ss. 35.25 and 35.27, F.S., relating to duties of the clerk and compensation of the marshal, respectively, of the district courts of appeal; repealing s. 38.13, F.S., relating to replacement of disqualified judges of the district courts of appeal; amending s. 43.20, F.S.; revising the number of members of the Judicial Qualifications Commission to conform to requirements of the State Constitution; repealing s. 57.101, F.S., relating to the charging of costs against the losing party for certain copies of records in the Supreme Court; repealing s. 92.15, F.S., relating to an evidentiary rule regarding evidence of title to land passing from the United States; providing an effective date.

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

Section 1. Section 25.151, Florida Statutes, is repealed.

Section 2. Sections 25.191 and 25.231, Florida Statutes, are repealed.

Section 3. Subsection (1) of section 25.241, Florida Statutes, is amended to read:

25.241 Clerk of Supreme Court; compensation; assistants; filing fees, etc.—

~~(1) The Clerk of the Supreme Court shall be paid an annual~~

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~~salary to be determined in accordance with s. 25.382.~~

Section 4. Section 25.281, Florida Statutes, is repealed.

Section 5. Section 25.351, Florida Statutes, is repealed.

Section 6. Section 26.01, Florida Statutes, is repealed.

Section 7. Section 26.021, Florida Statutes, is amended to read:

26.021 Judicial circuits; judges.—The state is divided into 20 judicial circuits:

(1) The first circuit is composed of Escambia, Okaloosa, Santa Rosa, and Walton Counties.

(2) The second circuit is composed of Franklin ~~Leon~~, Gadsden, Jefferson, Leon, Liberty, and Wakulla~~, Liberty, and Franklin~~ Counties.

(3) The third circuit is composed of Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.

(4) The fourth circuit is composed of Clay, Duval, and Nassau Counties.

(5) The fifth circuit is composed of Citrus, Hernando, Lake, Marion, and Sumter Counties. ~~Two of the circuit judges authorized for the fifth circuit shall reside in either Citrus, Hernando, or Sumter County, and neither of such two judges shall reside in the same county.~~

(6) The sixth circuit is composed of Pasco and Pinellas Counties.

(7) The seventh circuit is composed of Flagler, Putnam, St. Johns, and Volusia Counties. ~~One judge shall reside in Flagler County; two judges shall reside in Putnam County; two judges shall reside in St. Johns County; and three judges shall reside in Volusia County. There shall be no residency requirement for~~

~~any other judges in the circuit.~~

(8) The eighth circuit is composed of Alachua, Baker, Bradford, Gilchrist, Levy, and Union Counties.

(9) The ninth circuit is composed of Orange and Osceola Counties.

(10) The tenth circuit is composed of Hardee, Highlands, and Polk Counties.

(11) The eleventh circuit is composed of Miami-Dade County.

(12) The twelfth circuit is composed of Desoto, Manatee, and Sarasota~~, and DeSoto~~ Counties.

(13) The thirteenth circuit is composed of Hillsborough County.

(14) The fourteenth circuit is composed of Bay, Calhoun, Gulf, Holmes, Jackson, and Washington Counties.

(15) The fifteenth circuit is composed of Palm Beach County.

(16) The sixteenth circuit is composed of Monroe County. ~~One judge in the circuit shall reside in the middle or upper Keys. There shall be no residency requirement for any other judge in the circuit.~~

(17) The seventeenth circuit is composed of Broward County.

(18) The eighteenth circuit is composed of Brevard and Seminole Counties.

(19) The nineteenth circuit is composed of Indian River, Martin, Okeechobee, and St. Lucie Counties.

(20) The twentieth circuit is composed of Charlotte, Collier, Glades, Hendry, and Lee Counties.

(21) Notwithstanding subsections (1)-(20), the territorial jurisdiction of a circuit court may be expanded as provided for

117 in s. 910.03(3).
118
119 The judicial nominating commission of each circuit, in
120 submitting nominations for any vacancy in a judgeship, and the
121 Governor, in filling any vacancy for a judgeship, shall consider
122 whether the existing judges within the circuit, together with
123 potential nominees or appointees, reflect the geographic
124 distribution of the population within the circuit, the
125 geographic distribution of the caseload within the circuit, the
126 racial and ethnic diversity of the population within the
127 circuit, and the geographic distribution of the racial and
128 ethnic minority population within the circuit.
129 Section 8. Section 26.51, Florida Statutes, is repealed.
130 Section 9. Section 26.55, Florida Statutes, is amended to
131 read:
132 26.55 Conference of Circuit Judges of Florida; duties and
133 reports.—
134 (1) There is created and established the Conference of
135 Circuit Judges of Florida. The conference consists ~~shall consist~~
136 of the active and retired circuit judges of the several judicial
137 circuits of the state, excluding retired judges practicing law.
138 (2) The conference shall annually elect a chair. The chair~~,~~
139 ~~whose duty it~~ shall ~~be to~~ call all meetings and ~~to~~ appoint
140 committees to effectuate the purposes of the conference. ~~It is~~
141 ~~declared to be an official function of each circuit judge to~~
142 ~~attend the meetings of the conference. It is also an official~~
143 ~~function of each circuit judge to participate in the activity of~~
144 ~~each committee to the membership of which such judge is~~
145 ~~appointed.~~

146 (3)~~(a) It is declared to be the responsibility of~~ The
147 conference shall operate according to the Rules of Judicial
148 Administration adopted by the Supreme Court. The
149 responsibilities of the conference include ~~to~~:
150 (a)~~1.~~ Considering and making ~~Consider and make~~
151 recommendations concerning the betterment of the judicial system
152 of the state and its various parts;
153 (b)~~2.~~ Considering and making ~~Consider and make~~
154 recommendations concerning the improvement of rules and methods
155 of procedure and practice in the several courts; ~~and~~
156 (c)~~3.~~ Reporting ~~Report~~ to the Supreme Court its ~~such~~
157 findings and recommendations under this subsection; and ~~as the~~
158 ~~conference may have with reference thereto.~~
159 (d)~~(b)~~ Providing ~~Not less than 60 days before the convening~~
160 ~~of the regular session of~~ the Legislature with~~, the chair of the~~
161 ~~conference shall report to the President of the Senate and the~~
162 ~~Speaker of the House~~ such recommendations as the conference may
163 have concerning defects in the laws of this state and such
164 amendments or additional legislation as the conference may deem
165 necessary regarding the administration of justice.
166 Section 10. Section 27.55, Florida Statutes, is repealed.
167 Section 11. Section 29.23, Florida Statutes, is created to
168 read:
169 29.23 Salaries of certain positions in the judicial
170 branch.—
171 (1) The salaries of justices, judges of the district courts
172 of appeal, circuit judges, and county judges shall be fixed
173 annually in the General Appropriations Act.
174 (2) The clerk and the marshal of the Supreme Court, or a

175 clerk or marshal of a district court of appeal, shall be paid an
176 annual salary to be determined in accordance with s. 25.382(3).
177 Section 12. Sections 35.12, 35.13, 35.19, and 35.21,
178 Florida Statutes, are repealed.
179 Section 13. Subsection (1) of section 35.22, Florida
180 Statutes, is amended to read:
181 35.22 Clerk of district court; ~~appointment;~~ compensation;
182 assistants; filing fees; teleconferencing.—
183 ~~(1) Each district court of appeal shall appoint a clerk who~~
184 ~~shall be paid an annual salary to be determined in accordance~~
185 ~~with s. 25.382.~~
186 (1) ~~(2)~~ The clerk may ~~is authorized to~~ employ ~~such~~ deputies
187 and clerical assistants as may be necessary. Their number and
188 compensation shall be approved by the court, and paid from the
189 annual appropriation for the district courts of appeal.
190 (2) ~~(3)~~(a) The clerk, upon the filing of a certified copy of
191 a notice of appeal or petition, shall charge and collect a
192 filing fee of $300 for each case docketed, and service charges
193 as provided in s. 28.24 for copying, certifying or furnishing
194 opinions, records, papers or other instruments and for other
195 services. The state ~~of Florida~~ or its agencies, when appearing
196 as appellant or petitioner, is exempt from the filing fee
197 required in this subsection. ~~From each attorney appearance pro~~
198 ~~hac vice,~~ The clerk shall collect from each attorney appearance
199 pro hac vice a fee of $100 for deposit as provided in this
200 section.
201 (b) Upon the filing of a notice of cross-appeal, or a
202 notice of joinder or motion to intervene as an appellant, cross-
203 appellant, or petitioner, the clerk shall charge and collect a

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204 filing fee of $295. The clerk shall remit the fee to the
205 Department of Revenue for deposit into the General Revenue Fund.
206 The state and its agencies are exempt from the filing fee
207 required by this paragraph.
208 (3) ~~(4)~~ The opinions of the district court of appeal may
209 ~~shall~~ not be recorded, but the original as filed shall be
210 preserved with the record in each case.
211 (4) ~~(5)~~ The clerk may ~~is authorized~~ immediately, after a
212 case is disposed of, ~~to~~ supply the judge who tried the case and
213 from whose order, judgment, or decree, appeal or other review is
214 taken, a copy of all opinions, orders, or judgments filed in
215 such case. Copies of opinions, orders, and decrees shall be
216 furnished in all cases to each attorney of record and for
217 publication in Florida reports to the authorized publisher
218 without charge, and copies furnished to other law book
219 publishers at one-half the regular statutory fee.
220 (5) ~~(6)~~ The clerk of each district court of appeal shall ~~is~~
221 ~~required to~~ deposit all fees collected in the State Treasury to
222 the credit of the General Revenue Fund, except that $50 of each
223 $300 filing fee collected shall be deposited into the State
224 Courts Revenue Trust Fund to fund court operations as authorized
225 in the General Appropriations Act. The clerk shall retain an
226 accounting of each such remittance.
227 (6) ~~(7)~~ The clerk of the district court of appeal may ~~is~~
228 ~~authorized to~~ collect a fee from the parties to an appeal
229 reflecting the actual cost of conducting the proceeding through
230 teleconferencing if ~~where~~ the parties have requested that an
231 oral argument or mediation be conducted through
232 teleconferencing. The fee collected for this purpose shall be

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233 used to offset the expenses associated with scheduling the
234 teleconference and shall be deposited in the State Courts
235 Revenue Trust Fund.
236 Section 14. Sections 35.25 and 35.27, Florida Statutes, are
237 repealed.
238 Section 15. Section 38.13, Florida Statutes, is repealed.
239 Section 16. Subsection (2) of section 43.20, Florida
240 Statutes, is amended to read:
241 43.20 Judicial Qualifications Commission.—
242 (2) MEMBERSHIP; TERMS.—The commission shall consist of 15
243 ~~13~~ members. The members of the commission shall serve for terms
244 of 6 years.
245 Section 17. Section 57.101, Florida Statutes, is repealed.
246 Section 18. Section 92.15, Florida Statutes, is repealed.
247 Section 19. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Courts

Bill Number: CS/SB 828 (if applicable)

Name: Olin Shinholser

Amendment Barcode: (if applicable)

Job Title: Circuit Judge

Address: 430 S. Commerce Ave
Street

Sebring, Fl 33870
City, State, Zip

Phone: 863-202-1061

E-mail: OShinholser@Jud10.fl.courts.org

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

Representing: Chair-Conference of Circuit Judges

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: courts system

Bill Number: 828 *(if applicable)*

Name: Lisa Goodner

Amendment Barcode: _____ *(if applicable)*

Job Title: State Courts Administrator

Address: 500 S. Duval St.
Street

Tallahassee, FL 32399
City *State* *Zip*

Phone: 850-922-5081

E-mail: goodnerl@flcourts.org

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

Representing: State Courts System

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic _____ Bill Number 828 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 25, 2014

I respectfully request that **Senate Bill # 828**, relating to Court System, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Rob Bradley
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

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 1002

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Public Records/Office of Financial Regulation

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Fav/CS**
2.	Kim	McVaney	GO	**Favorable**
3.	Billmeier	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1002 creates a public records exemption for certain information held by the Office of Financial Regulation (OFR). The bill provides that information held by the OFR pursuant to an investigation or examination under the Consumer Collection Practices Act is confidential and exempt from disclosure. Such information may, however, be disclosed to law enforcement or other administrative agencies. This bill provides that such information is no longer confidential and exempt once the investigation or examination is complete or ceases to be active unless disclosure would jeopardize another active investigation or examination, reveal the personal identifying information of a consumer, reveal the identity of a confidential source, reveal investigative techniques or procedures, or reveal trade secrets.

This bill provides that the public records exemption is repealed on October 2, 2019, unless reenacted by the Legislature.

This bill contains a statement of public necessity required by article I, s. 24, Fla. Const.

This bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

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

II. Present Situation:

Article I, s. 24(a) of the Florida Constitution provides:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Chapter 119, Florida Statutes, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.[1]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[2] All such materials are open for public inspection unless made exempt.[3]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[4] If a record is simply made exempt from

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[1] Section 119.011(12), F.S.
[2] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[3] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[4] Florida Attorney General Opinion 85-62.

disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[5]

Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.[6] The exemption must be no broader than necessary to accomplish the stated purpose of the law.[7] A bill enacting an exemption may not contain other substantive provisions.[8]

Open Government Sunset Review Act

The Open Government Sunset Review Act[9] provides for the systematic review, through a five year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. An exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[10] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[11]

The Act also requires specified questions to be considered during the review process.[12]

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.[13] A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or

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[5] *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).
[6] *See* Fla. Const., art. I, s. 24(c).
[7] *See* Fla. Const., art. I, s. 24(c).
[8] *See* Fla. Const., art. I, s. 24(c).
[9] *See* section 119.15, F.S.
[10] *See* section 119.15(6)(b), F.S.
[11] *Id*.
[12] 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?

[13] An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception[14] to the exemption is created.[15]

Regulation of Consumer Collection Agencies and Debt Collectors

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. These collection agencies are required to comply with certain registration requirements administered by the OFR. Part VI of ch. 559, F.S., provides penalties for noncompliance with certain statutory requirements.

Under current law, the OFR has no authority to withhold from disclosure any information relating to consumer complaints, investigations, examinations, and registrations except that which is specifically provided in ch. 119, F.S. (such as social security numbers and bank account numbers).[16] SB 1006, the substantive bill linked to CS/SB 1002, provides the OFR with greater power to examine and investigate consumer collection agencies. SB 1006 also authorizes the OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

III. Effect of Proposed Changes:

CS/SB 1002 provides that information held by the OFR pursuant to an investigation or examination of a violation the Florida Consumer Collection Practices Act is confidential and exempt from s. 119.07(1), F.S. and article I, section 24 of the Florida Constitution. This bill provides that information made confidential and exempt may be disclosed by the office to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

This bill provides that such information is no longer confidential and exempt once the investigation or examination is completed or ceases to be active[17] unless disclosure of the information would:

- Jeopardize the integrity of another active investigation or examination.
- Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. The complainant's personal identifying information is subject to disclosure

[14] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.
[15] *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).
[16] Section 119.0712(3), F.S., contains an agency-specific exemption for the OFR, in which any information that the OFR receives from other state or federal regulatory, administrative, or criminal justice agencies that is confidential or exempt in accordance with the laws of the other agency.
[17] This bill provides that an investigation or examination is considered active if the investigation or examination is proceeding with reasonable dispatch and the OFR has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or the denial or conditional grant of an application for registration or other approval.

after the investigation or examination is completed or ceases to be active but the complainant's personal financial and health information remains confidential and exempt.[18]
- Reveal the identity of a confidential source.
- Reveal investigative or examination techniques or procedures.
- Reveal trade secrets, as defined in s. 688.002, F.S.

This bill provides that it is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019.

This bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill requires a two-thirds vote.

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[18] This bill defines "personal financial and health information" as information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt, information relating to a consumer's financial transactions of any kind, information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth, a consumer's personal health condition, disease, or a history of a consumer's personal medical diagnosis or treatment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 559.5558 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.)

CS by Banking and Insurance on March 5, 2014:
The committee adopted an amendment to show that this bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

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 Banking and Insurance; and Senator Hays

A bill to be entitled

An act relating to public records; creating s. 559.5558, F.S.; providing a public records exemption for information held by the Office of Financial Regulation pursuant to an investigation or examination of consumer collection agencies; providing for future repeal and legislative review 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. Section 559.5558, Florida Statutes, is created to read:

559.5558 Public records exemption.—

(1) DEFINITIONS.—As used in this section, the term "personal financial and health information" means:

(a) Information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt;

(b) Information relating to a consumer's financial transactions of any kind;

(c) Information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

(d) A consumer's personal health condition, disease, or injury; or

(e) A history of a consumer's personal medical diagnosis or treatment.

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

(2) INVESTIGATIONS AND EXAMINATIONS.—

(a) Except as otherwise provided in this section, information held by the office pursuant to an investigation or examination of a violation of this part is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, information made confidential and exempt pursuant to this section may be disclosed by the office to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

(b) Such information is no longer confidential and exempt once the investigation or examination is completed or ceases to be active unless disclosure of the information would:

1. Jeopardize the integrity of another active investigation or examination;

2. Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. In the case of a complainant, the complainant's personal identifying information is subject to disclosure after the investigation or examination is completed or ceases to be active; however, the complainant's personal financial and health information remains confidential and exempt;

3. Reveal the identity of a confidential source;

4. Reveal investigative or examination techniques or procedures; or

5. Reveal trade secrets, as defined in s. 688.002.

(c) For purposes of this section, an investigation or examination shall be considered active if the investigation or examination is proceeding with reasonable dispatch and the office has a reasonable good faith belief that the investigation

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

59 or examination may lead to the filing of an administrative,
60 civil, or criminal proceeding or the denial or conditional grant
61 of an application for registration or other approval required
62 under this part.
63 (3) REVIEW AND REPEAL.—This section is subject to the Open
64 Government Sunset Review Act in accordance with s. 119.15 and
65 shall stand repealed on October 2, 2019, unless reviewed and
66 saved from repeal through reenactment by the Legislature.
67 Section 2. The Legislature finds that it is a public
68 necessity that information held by the Office of Financial
69 Regulation pursuant to an investigation or examination conducted
70 under part VI of chapter 559, Florida Statutes, be confidential
71 and exempt from public records requirements for the following
72 reasons:
73 (1) An investigation or examination conducted by the Office
74 of Financial Regulation may lead to the filing of an
75 administrative, civil, or criminal proceeding or to the denial
76 or conditional granting of a registration. The premature release
77 of such information could frustrate or thwart the investigation
78 or examination and impair the ability of the office to
79 effectively and efficiently administer part VI of chapter 559,
80 Florida Statutes.
81 (2) Information held by the Office of Financial Regulation
82 which is provided to a law enforcement agency or another
83 administrative agency for further investigation or examination
84 needs to remain confidential and exempt until the investigation
85 or examination is completed or ceases to be active. Release of
86 this information before the completion of that investigation or
87 examination would jeopardize the integrity of the investigation

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

88 and impair the ability of other agencies to carry out their
89 statutory duties.
90 (3) Investigations and examinations of consumer collection
91 agencies frequently involve the gathering of sensitive personal
92 information, including financial and health information
93 concerning complainants and consumers. The office may not
94 otherwise have access to this sensitive personal information but
95 for the investigation or examination. Because of the sensitive
96 personal nature of the information gathered, if the individuals
97 who are the subjects of such information are identifiable, the
98 disclosure of this information to the public could cause
99 unwarranted damage to the good names or reputations of the
100 individuals, especially if information associated with the
101 individuals is inaccurate. Furthermore, if the individuals who
102 are the subjects of such information are identifiable, public
103 access to such information could jeopardize the financial safety
104 of such individuals by placing them at risk of becoming the
105 subjects of identity theft. The Legislature further finds that
106 it is a public necessity that health information held by the
107 office be made confidential and exempt because matters of
108 personal health are traditionally private and confidential
109 concerns between the patient and the health care provider. The
110 private and confidential nature of personal health matters
111 pervades both the public and private health care sectors.
112 Moreover, public disclosure of health information could have a
113 negative effect upon a person's business and personal
114 relationships and could also have detrimental financial
115 consequences.
116 (4) Releasing information identifying a confidential source

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

117 could jeopardize both the integrity of a current and future
118 investigation or examination as well as the safety of the
119 confidential source.
120 (5) Revealing investigative or examination techniques and
121 procedures could allow a person to hide or conceal violations of
122 law that otherwise would have been discovered during an
123 investigation or examination. This exemption is necessary for
124 the office, as well as law enforcement and other administrative
125 agencies, in order for such agencies to effectively and
126 efficiently carry out their statutory duties, which would be
127 significantly impaired without this exemption.
128 (6) A trade secret derives independent economic value,
129 actual or potential, from not being generally known to, and not
130 readily ascertainable by, other persons who can obtain economic
131 value from its disclosure or use. Without an exemption for a
132 trade secret held by the office, that trade secret becomes a
133 public record when received and must be divulged upon request.
134 Divulging a trade secret under the public records law would
135 destroy the value of that property, causing a financial loss to
136 the person or entity submitting the trade secret. Release of
137 that information would give business competitors an unfair
138 advantage and weaken the position of the person or entity
139 supplying the trade secret in the marketplace.
140 Section 3. This act shall take effect on the same date that
141 SB 1006 or substantially similar legislation takes effect, if
142 such legislation is adopted in the same legislative session or
143 an extension thereof and becomes a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic _____

Bill Number 1082 (if applicable)

Name Frank Meisner

Amendment Barcode _____ (if applicable)

Job Title _____

Address PO Box 1633
Street

Tall FL 32302
City State Zip

Phone 591-0177

E-mail frank@chgmail.com

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

Representing FL. Collectors Assoc.

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator John Thrasher, Chair
Rules Committee
CC: John B. Phelps, Staff Director
Tamra Lyon, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: **Request to agenda SB 1002 – Public Records/Office of Financial Regulation**

Date: March 26, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

D. Alan Hays, DMD

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:
- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
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DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1262

INTRODUCER: Senator Brandes

SUBJECT: Public Records and Meetings/Insurance Flood Loss Model

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Favorable**
2.	Kim	McVaney	GO	**Favorable**
3.	Matiyow	Phelps	RC	**Favorable**

I. Summary:

SB 1262 makes confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Trade secrets used in designing and constructing flood loss models that are provided to the Florida Commission on Hurricane Loss Projection Methodology (methodology commission), the Office of Insurance Regulation (OIR), or the consumer advocate under s. 627.0628, F.S.
- The portion of a meeting by the methodology commission or a rate filing by an insurer in which trade secrets pertaining to flood models are discussed.

The bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill expands existing public records and public meetings exemptions, the bill provides a statement of public necessity as required by the State Constitution. A two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] 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.[11] The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12]

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[3] Chapter 119, F.S.

[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).

[5] Section 119.07(1)(a), F.S.

[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

[7] FLA. CONST., art. I, s. 24(c).

[8] The bill may, however, contain multiple exemptions that relate to one subject.

[9] FLA. CONST., art. I, s. 24(c).

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

[11] Section 119.15(3), F.S.

[12] Section 119.15(6)(b), F.S.

Florida Commission on Hurricane Loss Projection Methodology

In 1995, the Florida Legislature created the Florida Commission on Hurricane Loss Projection Methodology (methodology commission), under s. 627.0628, F.S., which describes the legislative intent "to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates for residential property insurance coverage." [13] The commission is administratively housed within the State Board of Administration, but independently exercises its powers and duties as specified in the statute.

A number of vendors produce highly complex computer models that purport to reflect an average annual expected loss from hurricanes and other perils. Models of this nature are driven by an array of internal assumptions, within a variety of scientific disciplines (e.g., meteorology, structural engineering, actuarial science, statistics, computer science). Although some basic assumptions may be common to more than one model, many of the detailed internal assumptions have been developed only after considerable research by each vendor, which closely guards that information as a trade secret. If all internal information of a model were published, that model could be replicated, and the vendor that produced the model would lose the entirety of its value.

Initially, s. 627.0628, F.S., did not contain an exemption from public records or public meetings. Accordingly, the methodology commission undertook a process to evaluate the participating computer models, which contained proprietary information, without the ability to exempt either records or meetings from full public disclosure. The methodology commission first established detailed standards that a model was required to meet in order to obtain approval. For the portion of the model that was nonproprietary, the methodology commission members questioned the vendor in open meetings; for the portion that was proprietary, the methodology commission hired a "professional team" of experts which went on-site to determine whether the model met the applicable standards, and reported its findings to the methodology commission in an open hearing.

In 2005, the Legislature enacted s. 627.0628(3)(f), which pertains to public records exemptions for the methodology commission.[14] The public records exemptions are:

- Section 627.0628(3)(f)1., F.S., which provides that trade secrets used in designing and constructing a hurricane loss model and submitted by a private company to the methodology commission, the OIR, or the consumer advocate are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.
- Section 627.0628(3)(f)2., F.S., which provides that a portion of a meeting of the methodology commission or of a rate proceeding at which trade secrets used in designing and constructing a hurricane loss model are discussed is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

[13] Chapter 95-276, s. 6, Laws of Fla.
[14] Chapter, 2005-264, s 3, Laws of Fla.

III. Effect of Proposed Changes:

This bill expands the existing public records exemption for hurricane loss models to include flood loss models.[15] Trade secrets used in designing and constructing flood loss models will be confidential and exempt from public records.

Current law also provides that portions of public meetings of the commission or a rate proceeding when trade secrets are discussed are exempt from public records. Exempt portions must be recorded and the recordings are exempt from public disclosure.[16]

By expanding the public records exemption for trade secrets to flood loss models, the public meetings exemption is also being expanded by operation of law.

The public records exemptions for the hurricane and flood loss models, as well as the related public meetings exemptions for trade secrets, will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill expands existing public records and public meetings exemptions, the bill also provides a statement of public necessity explaining the public necessity for both exemptions as required by the State Constitution.

The bill shall take effect upon becoming a law if SB 542 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24(c), Art. I of the Florida Constitution requires a newly created public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill expands existing public records and public meetings exemptions; therefore, it requires a two-thirds vote for final passage.

Section 24(c), Art. I of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill expands existing public records and public meetings exemptions; therefore, it contains a public necessity statement explaining the public necessity for both exemptions.

C. Trust Funds Restrictions:

None.

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[15] Section 627.0628(3)(f)1., F.S.
[16] Section 627.0682(3)(f)2.a., F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemptions will allow private vendors that produce models that project expected losses from flood to participate in the processes of the methodology commission without concern that its model will be replicated.

C. Government Sector Impact:

The exemptions will allow members of the methodology commission, the Office of Insurance Regulation, and the consumer advocate to have access to all information underlying the models that project flood losses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.0628 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 Brandes

22-00990-14 20141262__

A bill to be entitled

An act relating to public records and meetings; amending s. 627.0628, F.S.; providing an exemption from public records and public meetings requirements for trade secrets used to design an insurance flood loss model held in records or discussed in meetings of the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the appointed consumer advocate; providing for 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. Paragraph (f) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(f)1. A trade secret, as defined in s. 688.002, which ~~that~~ is used in designing and constructing a hurricane or flood loss model and which ~~that~~ is provided pursuant to this section, by a private company, to the commission, office, or consumer advocate appointed pursuant to s. 627.0613~~,~~ is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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22-00990-14 20141262__

2.a. That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret made confidential and exempt by this paragraph is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed meeting must be recorded, and no portion of the closed meeting may be off the record.

b. The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. This paragraph ~~subparagraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019 ~~2015~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a trade secret, as defined in s. 688.002, Florida Statutes, which is used in designing and constructing a flood loss model and which is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or a consumer advocate appointed pursuant to s. 627.0613, Florida Statutes, be made confidential and exempt from public records requirements and from public meetings requirements.

(1) Disclosing trade secrets would negatively impact the business interests of a private company that has invested substantial economic resources in developing such model, and competitor companies would gain an unfair competitive advantage if provided access to such information. Reliable projections of flood losses are necessary in order to ensure that rates for flood insurance meet the statutory requirement that rates be

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

59 neither excessive nor inadequate. This goal is served by
60 enabling the commission, the office, and the consumer advocate
61 to have access to all aspects of flood loss models and by
62 encouraging private companies to submit such models to the
63 commission, office, and consumer advocate for review without
64 concern that trade secrets will be disclosed through a public
65 records request.
66 (2) In addition, the Legislature finds that it is a public
67 necessity to protect trade secrets relating to such model which
68 are discussed during a meeting of the commission or during a
69 rate proceeding on an insurer's rate filing held by the office,
70 because the release of such information via a public meeting or
71 proceeding would allow competitors and other persons to attend
72 those meetings and discover the protected trade secrets and
73 would defeat the purpose of the public records exemption. The
74 Legislature also finds that it is a public necessity to exempt
75 from public records requirements the recordings generated during
76 those portions of a commission meeting or a rate proceeding at
77 which confidential and exempt trade secrets are discussed.
78 Release of such recordings would compromise the discussions that
79 take place during the closed meeting or proceeding and would
80 negate the public meetings exemption. Current law provides a
81 public records exemption for trade secrets. As such, release of
82 the recordings generated during those closed portions of a
83 meeting or proceeding on trade secrets would compromise the
84 current protections already afforded to trade secrets.
85 Section 3. This act shall take effect upon becoming a law
86 if SB 542 or similar legislation is adopted in the same
87 legislative session or an extension thereof and becomes a law.

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

The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 28, 2014

I respectfully request that **Senate Bill #1262**, relating to Public Records and Meetings/ Insurance Flood Loss Model, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 22

File signed original with committee office

S-020 (03/2004)

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 540

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Simmons and others

SUBJECT: Sharks

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hinton	Uchino	EP	**Fav/CS**
2.	Erickson	Cannon	CJ	**Favorable**
3.	Hinton	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 540 provides enhanced penalties for the possession of separated shark fins on Florida waters by a commercial harvester. Penalties range from a second degree misdemeanor for a first violation to a third degree felony for repeat violations, with associated license revocations, civil penalties, and jail terms.

II. Present Situation:

Shark finning is the practice of removing and retaining shark fins at sea while the remainder of the living shark is discarded and left to die in the ocean. A landed shark is a harvested shark that has been brought to shore.

Sharks are managed in Florida waters by the Fish and Wildlife Commission (FWC).[1] The practice of finning in state waters was prohibited in 1992.[2] Removing fins from sharks harvested in state and federal waters once a shark has been landed is allowed. Commercial and recreational fishermen fishing in state waters are limited to one shark per person, per day, and may not exceed two sharks per vessel, per day, when two or more persons are onboard.[3]

[1] See Rule 68B-44, F.A.C.
[2] See Rule 68B-44.004, F.A.C.
[3] Rule 68B-44.003, F.A.C.

Shark Finning in State and Federal Waters

Violations of shark finning rules are Level Two offenses.[4] Penalties are as follows:

- A person who commits a Level Two violation, but who has not been convicted of a Level Two or higher violation within the past three years, commits a second degree misdemeanor, punishable by up to 60 days in jail and up to a $500 fine.
- A person who commits a Level Two violation within three years after a previous conviction for a Level Two or higher violation commits a first degree misdemeanor, punishable by a minimum mandatory fine of $250, not to exceed $1,000, and up to one year in jail.
- A person who commits a Level Two violation within five years after two previous convictions for a Level Two or higher violation commits a first degree misdemeanor, punishable by a mandatory fine of $500, up to $1,000, up to one year in jail, and suspension of any recreational license or permit for one year.
- A person who commits a Level Two violation within 10 years after three previous convictions for a Level Two or higher violation commits a first degree misdemeanor, punishable by a mandatory fine of $750, up to $1,000, up to one year in jail, and suspension of any recreational license or permit for three years.[5]

Federal law prohibits the practice of finning in federal waters.[6] A shark must be landed with all of its fins attached,[7] and the total weight of any fins from landed sharks must be five percent or less of the total weight of the landed shark carcasses.[8] A person who violates these laws may be subject to a civil penalty of up to $100,000 for each violation, as determined by the U.S. Secretary of Commerce.[9]

State and Federal Regulations

Florida imposes gear restrictions that limit fishermen to harvesting sharks by hook and line only. The state prohibits the harvest, possession, landing, purchase, sale, or exchange of 25 shark species in state waters, and further prohibits the landing and sale of those species if harvested from state waters.[10]

Commercial shark fishermen operating in state and federal waters are required to hold a federal shark permit. The permits are not "open access." The permit must be transferred from someone who currently holds a permit and chooses to sell that permit and leave the fishery. No new permits are being issued.[11] There are currently a total of 219 permits issued for the Atlantic and Gulf of Mexico fisheries, and Florida residents hold 129 of them. New Jersey and North Carolina residents hold the next highest number with 22 and 18 permits, respectively.[12]

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[4] See s. 379.401(2)(a), F.S.
[5] *See* ss. 379.401(2), 775.082, and 775.083, F.S.
[6] 16 U.S.C. s. 1857(1)(P) (2014).
[7] 16 U.S.C. s. 1857(1)(P)(iv) (2014).
[8] 16 U.S.C. s. 1857(1) (2014).
[9] 16 U.S.C. s. 1858 (2014).
[10] FWC, *Shark Regulations*, http://myfwc.com/fishing/saltwater/recreational/sharks/ (last visited Mar. 19, 2014).
[11] 50 C.F.R. s. 635.4 (2013).
[12] FWC, *Senate Bill 540 Agency Analysis* (Feb. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation and the Senate Committee on Criminal Justice).

The National Oceanic and Atmospheric Administration National Marine Fisheries Service (NOAA Fisheries) manages commercial shark fishing with a series of quotas that apply throughout U.S. Atlantic and Gulf waters. Florida's commercial fishermen are subject to those quotas. Shark quotas are assigned by species groups and some quotas are linked to others. For example, if a quota for one species group is reached, all the species groups linked to that one will also close. Quotas are also adjusted from year to year to account for any quotas that were exceeded in the previous year. There are separate quotas for sharks harvested in Gulf and Atlantic waters.[13] Current quotas are available from the NOAA Highly Migratory Species Division.[14]

Shark Fishery Statistics

Given the limited commercial bag limits for sharks in state waters, Florida's shark fishery operates almost exclusively in federal waters.[15]

From 2010 to 2012, total shark landings in Florida declined from 998,015 to 851,919 pounds. The weight of fins sold rose slightly from 2010 to 2011 (from 28,662 pounds to 28,926 pounds), then fell to 18,422 pounds in 2012.[16]

Total shark landings in the Atlantic and the Gulf of Mexico have risen from 2010 to 2012 from 2,276,702 pounds in 2010 to 2,427,182 pounds in 2012. Meanwhile, the weight of fins sold separately from the meat following landings in the Atlantic Ocean or the Gulf of Mexico has dropped each year over that same time period from 65,970 pounds in 2010 to 56,063 pounds in 2012.[17]

The average price of shark meat paid to Florida fishermen from 2010 to 2012 was about $0.46 per pound. In contrast, from 2010 to 2012, the average price for shark fins ranged from $18.76 to $21.37 per pound.[18]

Sale of harvested sharks to Florida's wholesale dealers and fish houses over the last three years resulted in an estimated annual income to Florida's commercial shark fishermen ranging from $393,556 to $466,063, with additional estimated values of $345,563 to $618,279 generated by fishermen from the sale of shark fins during that same time period.[19]

From 2010 to 2012, 16 wholesale fish dealers sold shark fins in Florida, with seven dealers accounting for 91.8 percent of the fins that were sold. During the same time period, 97

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[13] *Id.* at 3.
[14] NOAA Fisheries, *Atlantic Highly Migratory Species: Sharks: Landings Updates* (Feb. 20, 2014), http://www.nmfs.noaa.gov/sfa/hms/hmsdocument_files/sharks.htm (Updated reports are available by clicking the "Landings Updates" tab near the top of the webpage) (last visited Mar. 19, 2014). NOAA Fisheries publishes reported shark landings on a monthly basis. The landings reports list updated total landings for the year and yearly quotas for various shark species in Atlantic and Gulf waters.
[15] FWC, *Senate Bill 540 Agency Analysis* (Feb. 2014) (on file with the Senate Committee on Environmental Preservation and Conservation and the Senate Committee on Criminal Justice).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*

commercial fishermen sold shark fins harvested from state and federal waters. Of those fishermen, 24 harvesters accounted for 90.2 percent of the fins.[20]

According to the NOAA Fisheries trade database and the United Nations Food and Agriculture Organization, the United States as a whole accounts for less than one percent of the world's shark fin imports and exports.[21]

III. Effect of Proposed Changes:

Section 1 amends s. 379.407, F.S., providing enhanced penalties for commercial fishermen who are in possession of separated shark fins on Florida waters. Possession of separated shark fins on Florida waters is classified as a major violation.

Commercial fishermen found to be in violation of this ban on possession of separated shark fins on Florida waters are subject to the following penalties:

- **First violation –** Second degree misdemeanor and the possibility of license suspension for up to 30 days.[22]
- **Second violation –** First degree misdemeanor and the possibility of license suspension for up to 90 days.[23]
- **Third violation –** First degree misdemeanor with a six-month mandatory minimum prison term.[24] The violator may be assessed a civil penalty of up to $2,500 and the possibility of license suspension for up to six months.
- **Third violation within one year of second violation –** Third degree felony with a one-year mandatory minimum prison term.[25] The violator is also assessed a civil penalty of $5,000 and all license privileges are permanently revoked.
- **Fourth or subsequent violation –** Third degree felony with a one-year mandatory minimum prison term.[26] The violator is assessed a civil penalty of $5,000 and all license privileges are permanently revoked.

Section 2 amends s. 379.401. F.S., making conforming changes.

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[20] *Id.*
[21] *Id.*
[22] Currently, this act would be a Level Two violation, punishable by up to 60 days in county jail. Under the bill this act could be punished by up to 90 days in county jail, the maximum penalty for a second degree misdemeanor. Section 775.082, F.S.
[23] Currently, this act would be a Level Two violation, punishable as a first degree misdemeanor but only if the offender had a prior Level Two or higher conviction that occurred within 3 years of the commission of the current Level Two violation. This bill dispenses with the 3-year time window.
[24] Currently, this act would be a Level Two violation, punishable as a first degree misdemeanor but only if the offender had two prior Level Two or higher convictions that occurred within 5 years of the commission of the current Level Two violation. This bill dispenses with the 5-year time window. Further, the bill provides for a 6-month mandatory minimum term, which is not available under current law.
[25] Current law does not provide for either a third degree felony or a 1-year mandatory minimum term. Section 921.0024(2), F.S., provides that any sentence to state prison must exceed 1 year. Therefore, if the court only imposes the 1-year mandatory minimum term, this term would be served in county jail. A third degree felony is punishable by to 5 years in state prison, a fine of up to $5,000, or prison and a fine. Sections 775.082 and 775.083, F.S. However, if the third degree felony is a non-forcible felony (excluding ch. 810, F.S.) and total sentence points are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that a nonstate prison sanction could present a danger to the public. *Id.*
[26] *Id.*

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A commercial fisherman convicted of possessing separated shark fins while on Florida waters will be subject to increased penalties.

C. Government Sector Impact:

Because the bill increases monetary penalties for possession of separated shark fins on Florida waters, and those funds are deposited into the Marine Resources Conservation Trust Fund, there could be a small increase in the amount of money deposited into the trust fund. The FWC Division of Law Enforcement has issued eight citations for shark finning and seven citations for failing to land a shark in whole condition, which may or may not have included finning, since January 2009, so the effect will likely be minimal.[27]

Mandatory minimum terms provided by the bill could have an indeterminate impact on county jails.

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation has not yet reviewed the bill. However, a preliminary estimate by the Legislature's Office of Economic and Demographic Research is that the bill will have an insignificant prison bed impact.

[27] *Supra* note 15, at 2.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Legislation prohibiting the possession, sale, and distribution of shark fins was passed by several states in recent years. Hawaii was the first state to pass such a ban in 2010. Washington, Oregon, Illinois, and California have implemented similar laws. New York's ban is scheduled to go into effect July 1, 2014. Maryland and Delaware also passed laws prohibiting the sale of shark fins (with the exception of spiny dogfish and smoothhound in Delaware), but allow fishermen to possess them for personal use. Other states have considered, but not passed, similar legislation.[28] California's shark fin ban has been challenged in court. The lawsuit contends the ban would have a negative effect on business interests, and that it is unconstitutional because it has a disproportionate effect on Chinese-Americans.[29]

VIII. Statutes Affected:

This bill substantially amends section 379.407 and conforms a cross reference in section 379.401 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 Environmental Preservation and Conservation on March 6, 2014:
The committee substitute removes provisions creating s. 379.2427, F.S., which made it illegal to possess, sell, offer for sale, trade, purchase, offer to purchase, ship for the purpose of sale , barter, exchange or otherwise distribute shark fins, with limited exceptions. The CS also deletes penalties associated with violations of those prohibited activities.

The CS amends s. 379.407, F.S., adding enhanced penalties for commercial fishermen who are convicted of possessing separated shark fins on Florida waters. The penalties range from a second degree misdemeanor for a first violation to a third degree felony for repeat violations, with associated license revocations, civil penalties, and jail terms. Lastly, the CS contains conforming changes.

B. Amendments:

None.

[28] *Id.*
[29] See *Chinatown Neighborhood Ass'n v. Brown*, 2013 WL 60910, (N.D.Cal. 2013). *See also Chinatown Neighborhood Ass'n v. Brown*, 539 Fed.Appx. 761, (2013) (denying injunctive relief).

By the Committee on Environmental Preservation and Conservation; and Senators Simmons, Soto, and Abruzzo

A bill to be entitled

An act relating to sharks; amending s. 379.407, F.S.; providing penalties for possession of separated shark fins on state waters; amending s. 379.401, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (5) through (8) of section 379.407, Florida Statutes, are renumbered as subsections (6) through (9), respectively, and a new subsection (5) is added to that section, to read:

379.407 Administration; rules, publications, records; penalties; injunctions.—

(5) PENALTIES FOR POSSESSION OF SEPARATED SHARK FINS ON THE WATER.—

(a) It shall be unlawful for a commercial harvester to possess separated shark fins while on the waters of this state. It is a major violation under this section for a commercial harvester to be in possession of shark fins on state waters that are not attached to a shark carcass.

(b) A commercial harvester who violates this subsection shall be punished as follows:

1. A first violation is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and such person is subject to a suspension of all license privileges

under this chapter for 30 days.

2. A second violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and such person is subject to a suspension of all license privileges under this chapter for 90 days.

3. A third violation is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, with a mandatory minimum term of imprisonment of 6 months, and such person may also be assessed a civil penalty of up to $2,500 and is subject to a suspension of all license privileges under this chapter for 6 months.

4. A third violation within 1 year after a second violation is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 1 year, and such person shall be assessed a civil penalty of $5,000, and all license privileges under this chapter shall be permanently revoked.

5. A fourth or subsequent violation is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 1 year, and such person shall be assessed a civil penalty of $5,000, and all license privileges under this chapter shall be permanently revoked.

Section 2. Paragraph (a) of subsection (2) of section 379.401, Florida Statutes, is amended to read:

379.401 Penalties and violations; civil penalties for noncriminal infractions; criminal penalties; suspension and forfeiture of licenses and permits.—

(2)(a) LEVEL TWO VIOLATIONS.—A person commits a Level Two

59 violation if he or she violates any of the following provisions:
60 1. Rules or orders of the commission relating to seasons or
61 time periods for the taking of wildlife, freshwater fish, or
62 saltwater fish.
63 2. Rules or orders of the commission establishing bag,
64 possession, or size limits or restricting methods of taking
65 wildlife, freshwater fish, or saltwater fish.
66 3. Rules or orders of the commission prohibiting access or
67 otherwise relating to access to wildlife management areas or
68 other areas managed by the commission.
69 4. Rules or orders of the commission relating to the
70 feeding of wildlife, freshwater fish, or saltwater fish.
71 5. Rules or orders of the commission relating to landing
72 requirements for freshwater fish or saltwater fish.
73 6. Rules or orders of the commission relating to restricted
74 hunting areas, critical wildlife areas, or bird sanctuaries.
75 7. Rules or orders of the commission relating to tagging
76 requirements for wildlife and fur-bearing animals.
77 8. Rules or orders of the commission relating to the use of
78 dogs for the taking of wildlife.
79 9. Rules or orders of the commission which are not
80 otherwise classified.
81 10. Rules or orders of the commission prohibiting the
82 unlawful use of finfish traps.
83 11. All prohibitions in this chapter which are not
84 otherwise classified.
85 12. Section 379.33, prohibiting the violation of or
86 noncompliance with commission rules.
87 13. Section 379.407(7) ~~Section 379.407(6)~~, prohibiting the

88 sale, purchase, harvest, or attempted harvest of any saltwater
89 product with intent to sell.
90 14. Section 379.2421, prohibiting the obstruction of
91 waterways with net gear.
92 15. Section 379.413, prohibiting the unlawful taking of
93 bonefish.
94 16. Section 379.365(2)(a) and (b), prohibiting the
95 possession or use of stone crab traps without trap tags and
96 theft of trap contents or gear.
97 17. Section 379.366(4)(b), prohibiting the theft of blue
98 crab trap contents or trap gear.
99 18. Section 379.3671(2)(c), prohibiting the possession or
100 use of spiny lobster traps without trap tags or certificates and
101 theft of trap contents or trap gear.
102 19. Section 379.357, prohibiting the possession of tarpon
103 without purchasing a tarpon tag.
104 20. Rules or orders of the commission prohibiting the
105 feeding or enticement of alligators or crocodiles.
106 21. Section 379.105, prohibiting the intentional harassment
107 of hunters, fishers, or trappers.
108 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Sharks

Bill Number: SB 540 *(if applicable)*

Name: Brittney Burch

Amendment Barcode: *(if applicable)*

Job Title: Legislative Assistant

Address: 2618 Centennial Place
Street

Tallahassee, FL 32308
City *State* *Zip*

Phone: (850) 222-0720

E-mail: bburch@lawfla.com

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

Representing: Diving Equipment & Marketing Association (DEMA)

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

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

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 26, 2014

I respectfully request that **Senate Bill 540**, relating to Sharks, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

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 1300

INTRODUCER: Governmental Oversight and Accountability Committee; Banking and Insurance Committee and Senator Simmons

SUBJECT: Public Records/Office of Insurance Regulation

DATE: April 1, 2014 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Johnson	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1300, which is linked to CS/SB 1308, a bill relating to insurer solvency, creates a public records exemption to incorporate the confidentiality elements for the Office of Insurance Regulation (OIR) to meet the National Association of Insurance Commissioners' accreditation standards. The bill provides that proprietary business information held by the OIR in accordance with its statutory duties relating to insurer solvency is confidential and exempt from public record requirements. Proprietary business information includes information contained in specified reports, such as an actuarial opinion summary, enterprise risk reports, and principle-based valuation reports. The bill specifies circumstances under which such confidential and exempt information may be disclosed.

The effective date of the bill is October 1, 2014. The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act.

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

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption is created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] It

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).
[10] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

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.[11] The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12]

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) reports to the Financial Services Commission (commission), which is composed of the Governor and Cabinet members. The OIR is responsible for activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Insurance Code or ch. 636, F.S.[13]

National Association of Insurance Commissioners

The OIR is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, regulatory, and organizational oversight standards and practices. Once accredited, a member state is subject to a full accreditation review every five years.

Public Records Exemptions and the Insurance Code

The Insurance Code currently provides a number of public records exemptions relating to insurance-related information, including trade secret documents,[14] risk-based capital information,[15] information related to orders of supervision,[16] and personal consumer and personal financial information.[17]

Section 624.319, F.S., provides that the OIR's examination and investigation reports and workpapers are confidential during the pendency of an examination or investigation. The exemption allows the OIR to share this information with other governmental entities (if disclosure is necessary for the receiving entity to perform its duties and responsibilities) and with the NAIC.

While there is no general statutory exemption for information claimed to be proprietary business information, the Legislature has created a number of exemptions from ch. 119, F.S., for proprietary business information held by certain agencies. Generally, this term is defined by the

[11] Section 119.15(3), F.S.
[12] Section 119.15(6)(b), F.S.
[13] *See* s. 20.121(3)(a)1., F.S.
[14] Section 624.4213, F.S. Even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets [as defined in s. 812.081(1)(c), F.S.]." *Sepro Corp. v. Florida Dep't of Environmental Protection*, 911 So.2d 792 (Fla. 1st DCA 2003), *review denied sub nom.*
[15] Section 624.40851, F.S.
[16] Section 624.82, F.S.
[17] Section 624.23, F.S.

statute creating the exemption and frequently includes trade secrets. Currently, the Insurance Code contains a specific exemption relating to "proprietary business information" held by the OIR, but it relates only to such information provided by a title insurance agency or insurer.[18]

Insurer Solvency

The NAIC periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not currently included in the Insurance Code that need to be implemented for a state regulator to maintain its accreditation. The linked bill, CS/SB 1308, implements the following NAIC models, which include confidentiality requirements:

NAIC Property and Casualty Actuarial Opinion Model Law

Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists, and supporting workpapers. Current law treats these documents as public records.[19] The NAIC model law provides that states must require insurers to provide actuarial opinion summaries and that the regulators must keep these summaries confidential.

Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company Model Regulation

In response to the recent financial crisis, a NAIC workgroup focused on group supervision issues in the context of large insurers and their affiliates in their respective holding companies. The workgroup noted the corresponding regulatory need to enhance insurance regulators' ability to obtain and evaluate financial information from affiliates, especially regarding "enterprise risk."[20] The NAIC model act, which is codified in CS/SB 1308, provides the OIR with access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. In adopting the model act, CS/SB 1308, also makes the following changes that are relevant to the public records exemption created by this bill:

- Requires persons seeking a controlling interest in an insurer or controlling company to file an annual enterprise risk report with the OIR.
- Provides that a controlling person of a domestic insurer may divest its controlling interest by providing notice to the OIR.
- Provides for the OIR's participation in a supervisory college, as the NAIC has also made establishment and participation in supervisory colleges an accreditation standard.

[18] Section 626.94195, F.S.
[19] Section 624.424, F.S.
[20] Enterprise risk is "any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedies promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state statutory requirement] or would cause the insurer to be in a hazardous financial condition." Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

Insurance Valuation and Reserves

The linked bill, CS/SB 1308, prescribes the adoption of the NAIC Valuation Manual as the authoritative source for determining reserves and implementing principle-based reserves for specified insurance products. Life insurance contracts, accident and health contracts, and deposit-type policies are subject to the valuation manual. Initially, principle based reserves would apply to term life insurance and universal life products with a secondary guarantee (also known as no-lapse guarantee). The bill requires the implementation of the Valuation Manual for policies issued on or after the operative date of the valuation manual. The Valuation Manual requires insurers to submit to the OIR various documents and reports, including, experience reporting, actuarial opinions, memorandums, and principle-based reports.

III. Effect of Proposed Changes:

This bill, which is linked to CS/SB 1308, creates a public records exemption to incorporate the necessary confidentiality elements for the OIR to meet the NAIC's accreditation standards.

The bill provides that proprietary business information held by the OIR in accordance with its statutory duties relating to insurer solvency is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill defines "proprietary business information" to mean information owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and includes, but is not limited to:
  - Trade secrets as defined in the Uniform Trade Secrets Act[21] that comply with the Insurance Code's trade secret document marking requirements.
  - Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
  - The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
  - Information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
  - Internal auditing controls and reports of internal auditors.

[21] Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The bill also provides that proprietary business information contained in the following items held by the OIR is confidential and exempt:

- The actuarial opinion summary required under s. 624.424(1)(b), F.S., and the documents, material, and other related information.
- A notice filed with the OIR by the person or affiliated person who seeks to divest controlling stock in an insurer.
- The insurers' annual registration statement, which is required by CS/SB 1308 and all documents, materials, and other related information.
- The enterprise risk report required by CS/SB 1308 and the documents, materials, and other information related to the enterprise risk report.
- Information provided to or obtained by the OIR pursuant to participation in a supervisory college, created by CS/SB 1308.

The bill provides that, on or after the operative date of the Valuation Manual, the following items are confidential and exempt:

- An actuarial examination conducted pursuant to s. 625.1212(5)(c), F.S., and related information;
- The annual certification submitted by the insurer pursuant to s. 625.1212(6)(b)2, F.S., and related information;
- The principle-based valuation report filed pursuant to s. 625.1212(6)(b)3, F.S., and related information; and
- Mortality, morbidity, policyholder behavior, or expense experience and other data submitted pursuant to s. 625.1212(7), F.S., which includes potentially company-identifiable or personally identifiable information.

The bill provides that information received from another governmental entity or the NAIC, which is confidential or exempt if held by that entity and is held by the OIR for the use in the OIR's performance of its official duties, is also confidential and exempt.

The bill authorizes the OIR to disclose the confidential and exempt proprietary business information in the following circumstances:

- If the insurer to which it pertains gives prior written consent;
- Pursuant to a court order;
- To the American Academy of Actuaries upon a request stating the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to the OIR for preserving the confidentiality of the information;
- To other states, federal and international agencies, NAIC, and state, federal, and international law enforcement authorities, including members of a supervisory college, if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or
- For the purpose of aggregating information on an industry wide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution. The bill will take effect October 1, 2014, if CS/SB 1308 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Section 24(c), Art. I of the Florida Constitution requires a newly created public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill creates a new public records exemption; therefore, it requires a two-thirds vote for final passage.

Section 24(c), Art. I of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill creates a new public records exemption; therefore, it contains a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The public records exemption created by the bill may have an indeterminate positive impact on the private sector by protecting insurers' proprietary business information.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 624.4212 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.)

CS/CS by Governmental Oversight and Accountability on March 26, 2014:
The CS/CS makes a technical change to limit the scope of records that are confidential and exempt.

CS by Banking and Insurance on March 11, 2014:
The CS expands the public records exemption to incorporate additional proprietary information contained in reports and documents, relating to the Standard Valuation Law provisions of the linked bill, CS/SB 1308.

B. Amendments:

None.

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

By the Committees on Governmental Oversight and Accountability; and Banking and Insurance; and Senator Simmons

585-03263-14 20141300c2

A bill to be entitled

An act relating to public records; creating s. 624.4212, F.S.; defining the term "proprietary business information"; creating an exemption from public records requirements for proprietary business information and information that is confidential when held by another entity in this state, the Federal Government, or another state or nation, and which is held by the Office of Insurance Regulation; providing exceptions; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 624.4212, Florida Statutes, is created to read:

624.4212 Confidentiality of proprietary business and other information.—

(1) As used in this section, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer, or a person or an affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and which:

(a) Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and that the information has not been

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585-03263-14 20141300c2

disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

(b) Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and

(c) Includes:

1. Trade secrets as defined in s. 688.002 which comply with s. 624.4213.

2. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

3. The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.

4. Information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.

5. Internal auditing controls and reports of internal auditors.

(2) Proprietary business information contained in the following items held by the office is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. The actuarial opinion summary required under ss.

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59 624.424(1)(b) and 625.121(3) and information related thereto.
60 2. A notice filed with the office by the person or
61 affiliated person who seeks to divest controlling stock in an
62 insurer pursuant to s. 628.461.
63 3. The filings required under s. 628.801 and information
64 related thereto.
65 4. The enterprise risk report required under ss. 628.461(3)
66 and 628.801 and information related thereto.
67 5. Information provided to or obtained by the office
68 pursuant to participation in a supervisory college established
69 under s. 628.805.
70 6. Beginning on the operative date of the valuation manual
71 as defined in s. 625.1212(2):
72 a. An actuarial examination conducted pursuant to s.
73 625.1212(5)(c), and information related thereto;
74 b. The annual certification submitted by the insurer
75 pursuant to s. 625.1212(6)(b)2., and information related
76 thereto;
77 c. The principle-based valuation report filed pursuant to
78 s. 625.1212(6)(b)3., and information related thereto; and
79 d. Mortality, morbidity, policyholder behavior, or expense
80 experience and other data submitted pursuant to s. 625.1212(7),
81 which includes potentially company-identifiable or personally
82 identifiable information.
83 (3) Information received from the NAIC or another
84 governmental entity in this or another state, the Federal
85 Government, or another nation which is confidential or exempt if
86 held by that entity and which is held by the office for use in
87 the office's performance of its duties relating to insurer

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88 valuation and solvency is confidential and exempt from s.
89 119.07(1) and s. 24(a), Art. I of the State Constitution.
90 (4) The office may disclose information made confidential
91 and exempt under this section:
92 (a) If the insurer to which it pertains gives prior written
93 consent;
94 (b) Pursuant to a court order;
95 (c) To the American Academy of Actuaries upon a request
96 stating that the information is for the purpose of professional
97 disciplinary proceedings and specifying procedures satisfactory
98 to the office for preserving the confidentiality of the
99 information;
100 (d) To other states, federal and international agencies,
101 the National Association of Insurance Commissioners and its
102 affiliates and subsidiaries, and state, federal, and
103 international law enforcement authorities, including members of
104 a supervisory college described in s. 628.805 if the recipient
105 agrees in writing to maintain the confidential and exempt status
106 of the document, material, or other information and has
107 certified in writing its legal authority to maintain such
108 confidentiality; or
109 (e) For the purpose of aggregating information on an
110 industrywide basis and disclosing the information to the public
111 only if the specific identities of the insurers, or persons or
112 affiliated persons, are not revealed.
113 (5) This section is subject to the Open Government Sunset
114 Review Act in accordance with s. 119.15 and is repealed on
115 October 2, 2019, unless reviewed and saved from repeal through
116 reenactment by the Legislature.

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117 Section 2. (1) The Legislature finds that it is a public
118 necessity that proprietary business information that is provided
119 to the Office of Insurance Regulation by an insurer or by an
120 acquiring party pursuant to the Florida Insurance Code or the
121 Holding Company System Regulatory Act of the National
122 Association of Insurance Commissioners in order for the office
123 to conduct its regulatory duties with respect to insurer
124 valuation and solvency, be made confidential and exempt from s.
125 119.07(1), Florida Statutes, and s. 24(a), Article I of the
126 State Constitution. The disclosure of such information could
127 injure an insurer in the marketplace by providing its
128 competitors with detailed insight into the reserve assumptions
129 and strategies, modeling methodologies, business plans, pricing
130 and marketing strategies, management systems and operational
131 protocols, and financial status of the insurer, thereby
132 diminishing the advantage that the insurer maintains over
133 competitors that do not possess such information. Without this
134 exemption, an insurer or an acquiring party might refrain from
135 providing accurate and unbiased data, thus impairing the
136 office's ability to accurately evaluate the propriety of
137 proposed acquisitions in the state and the financial condition
138 of insurers and their affiliates. Proprietary business
139 information derives actual or potential independent economic
140 value from not being generally known to, and not being readily
141 ascertainable by proper means by, other persons who can derive
142 economic value from its disclosure or use. The office, in
143 performing its duties and responsibilities, may need to obtain
144 proprietary business information from insurers and regulated
145 entities. Without an exemption from public records requirements

146 for proprietary business information provided to the office,
147 such information becomes a public record when received and must
148 be divulged upon request. Divulgence of proprietary business
149 information under the public records law would destroy the value
150 of that property to the proprietor, causing a financial loss not
151 only to the proprietor but also to the residents of this state
152 due to the loss of reliable financial data necessary for the
153 accurate evaluation of proposed acquisitions. Release of
154 proprietary business information would give business competitors
155 an unfair advantage and weaken the position in the marketplace
156 of the proprietor who owns or controls the business information.
157 (2) The Legislature also finds that it is a public
158 necessity that information received by the office from the
159 National Association of Insurance Commissioners, or from an
160 agency in this or another state or nation or the Federal
161 Government, which is otherwise exempt or confidential pursuant
162 to the laws of this or another state or nation or pursuant to
163 federal law or which is confidential or exempt if held by that
164 entity, for use by the office in the performance of duties
165 related to insurer valuation and solvency under the Florida
166 Insurance Code, be made confidential and exempt from s.
167 119.07(1), Florida Statutes, and s. 24(a), Article I of the
168 State Constitution. Divulgence of such information could impede
169 the exchange of information and communication among regulators
170 across multiple agencies and jurisdictions and jeopardize the
171 ability of regulators to effectively supervise insurers and
172 groups operating in multiple jurisdictions and engaged in
173 significant cross-border activities.
174 Section 3. This act shall take effect October 1, 2014, if

175 SB 1308 or similar legislation is adopted in the same
176 legislative session or an extension thereof and becomes a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic _____ Bill Number 1300 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☑ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Insurer Solvency

Bill Number: 1300 *(if applicable)*

Name: Monte Stevens

Amendment Barcode: _____ *(if applicable)*

Job Title: Deputy Chief of Staff

Address: Larson Bldg
Street

Tally, FL 32399
City *State* *Zip*

Phone: 413-5005

E-mail: monte.stevens@flair.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: OIR

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

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

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 26, 2014

I respectfully request that **Senate Bill 1300**, relating to Public Records / Office of Insurance Regulation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

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 1308

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Simmons

SUBJECT: Insurer Solvency

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Munroe	Cibula	JU	**Fav/CS**
3.	Johnson	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1308 revises provisions within the Insurance Code relating to solvency requirements and regulatory oversight of insurers by the Office of Insurance Regulation (OIR). The bill incorporates provisions of model acts of the National Association of Insurance Commissioners (NAIC) and additional recommendations of the OIR. Some of the NAIC provisions in the bill are in response to the 2008 financial crisis and the globalization of the insurance market and are intended to enhance the regulation of insurers as well as their affiliated entities and provide more solvency tools for evaluating risks within insurance groups. The bill:

- Authorizes the OIR to implement principle-based reserving for life insurers, which allows life insurers to calculate reserves that reflect current mortality rates, the life insurer's business model, and its particular risk profile.
- Requires persons that acquire controlling interests to disclose enterprise risk, and requires that ultimate controlling persons must file an annual enterprise risk report with the OIR which identifies material risk within the insurance company holding company system which could pose a risk or have a material adverse effect upon the insurer.
- Provides that a presumption of control may be rebutted by filing a disclaimer of control on a form prescribed by the OIR or by providing a copy of a Schedule 13G on file with the Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer.

- Incorporates a risk-based capital trend test for life and health as well as property and casualty insurers and requires health maintenance organizations and prepaid limited health service organizations to file risk-based capital reports.
- Requires insurers to file actuarial opinion summaries and supporting workpapers annually and creates and evidentiary privilege for memoranda supporting actuarial opinions on reserves, actuarial opinion summaries and related information and provides for confidentiality of enterprise risk reports, actuarial opinion summaries, and other information.
- Authorizes the OIR to impose sanctions for noncompliance with the reporting requirements of s. 628.461, F.S., and s. 628.801, F.S.
- Allows the OIR to participate in supervisory colleges with other regulators for the regulation of any domestic insurer that is part of an insurance holding company system having international operations.

II. Present Situation:

States primarily regulate insurance companies. The state of domicile serves as the primary regulator for insurers. Solvency regulation is designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. The OIR[1] is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. Solvency regulation includes the requirements for starting and operating an insurance company,[2] monitoring the financial condition of insurers through examinations and audits, and procedures for the administrative supervision,[3] rehabilitation,[4] or liquidation[5] of an insurance company if it is in unsound financial condition or insolvent.

NAIC Model Acts

The National Association of Insurance Commissioners (NAIC) is a voluntary association of insurance regulators from all 50 states. The NAIC coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. The NAIC accreditation is a certification that legal, financial, and organizational standards are being fulfilled by the OIR. The NAIC establishes accreditation effective dates for states to adopt in substantially similar form models and acts for purposes of NAIC accreditation review. As a member of the NAIC, the OIR is required to participate in the Financial Regulation Standards and Accreditation Program. The OIR has identified model provisions or updates that need to be incorporated in the current Insurance Code for accreditation purposes. Updates to the Insurance Code relating to the Property and Casualty Trend Test of the Risk-Based Capital Model Act and the Property and Casualty Actuarial Opinion Model Law are necessary since the accreditation effective dates for these provisions

[1] Section 20.121(3)(a), F.S.
[2] Sections 624.411 - 624.414, F.S.
[3] Administrative supervision allows the Department of Financial Services (DFS) to supervise the management of a consenting troubled insurance company in an attempt to cure the company's troubles rather than close it down.
[4] In rehabilitation, the DFS is authorized as receiver to conduct all business of the insurer in an attempt to place the insurance company back in sound financial condition.
[5] In liquidation, the DFS is authorized as receiver to gather the insurance company's assets, convert them to cash, distribute them to various claimants, and shut down the company.

were January 1, 2012, and January 1, 2010, respectively. In addition, two other NAIC model acts, Risk-Based Capital for Health Organizations and the Life Trend Test of the Risk Based Capital Model Act are necessary for accreditation effective January 1, 2015, and January 1, 2017, respectively. The accreditation effective date for amendments to the Insurance Holding Company System Regulatory Act is January 1, 2016.

Model Holding Company Act and Regulation

The NAIC has adopted amendments to its Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company Model Regulation with Reporting Forms and Instructions. In light of the recent financial crisis, the NAIC, insurance regulators, and other stakeholders reviewed the potential impact of non-insurance operations on insurance companies in the same group to determine the best methods to evaluate the risks and activities of entities within a holding company system. The revised model act adds the concept of "enterprise risk" and requires controlled insurers to file a new annual form (Form F) detailing specified matters relating to the holding company group. The NAIC model act defines "enterprise risk" as:

> [A]ny activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer of its insurance company as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital as set forth in [state requirement] or would cause the insurer to be in a hazardous financial condition.[6]

Amendments to the model act also address divestitures. Prior to the amendments to the model act, a person could divest control of an insurer without prior regulatory review as long as no single acquirer obtained control of 10 percent or more of the outstanding voting shares. Amendments to the model act generally require a person divesting control over an insurer to provide 30 days' prior notice to the regulator.

The revised model act also provides insurance regulators access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. The regulator may require any insurer registered as a controlled insurer to produce information not in the possession of the insurer if the insurer can obtain access to such. If the insurer fails to obtain the requested information, the insurer is required to provide an explanation of such failure. If the regulator determines that the explanation is without merit, the regulator may require the insurer to pay a penalty for each day's delay, or may suspend or revoke the insurer's certificate of authority.[7]

The amendments to the model acts also authorize a regulator to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system having international operations in order to determine compliance. Insurers must pay for expenses associated with the insurance regulator's participation in a supervisory college. State, federal, and international regulators may participate in the supervision of the insurer or its affiliates.[8]

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[6] Section 1F of the NAIC Insurance Holding Company System Regulatory Act.
[7] Section 6B of the NAIC Insurance Holding Company System Regulatory Act.
[8] Section 7 of the NAIC Insurance Holding Company System Regulatory Act.

According to the NAIC Center for Insurance Policy & Research, "a supervisory college is a meeting of insurance regulators or supervisors where the topic of discussion is regulatory oversight of one specific insurance group that is writing significant amounts of insurance in other jurisdictions."[9] Supervisory colleges facilitate oversight of internationally active insurance companies at the group level and promote regulatory information sharing, subject to applicable confidentiality agreements.[10]

Risk-Based Capital for Insurers and Health Organizations

Risk-based capital (RBC) is a capital adequacy standard that represents the amount of required capital that an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers various risks depending on the type of insurer (e.g., subsidiary insurance companies, fixed income, equity, credit, reserves, and net written premium). The RBC standard provides a safety net for insurers, is uniform among states, and provides state insurance regulators with authority for timely corrective action.[11] The NAIC's *Risk-Based Capital for Insurers Model Act* provides that states must require both life and health and property and casualty insurers to submit RBC filings with their regulators. Presently, this requirement is incorporated in the Insurance Code; however, it does not apply to health maintenance organizations (HMOs) and prepaid limited health service organizations.[12] Prepaid limited health service organizations provide limited health services (such as dental or vision care) through an exclusive panel of providers in return for a prepayment,[13] and HMOs generally provide a range of health coverage with contracted providers.[14] The NAIC Risk-Based Capital Health Organizations Model Act will be effective as an accreditation standard beginning January 1, 2015, and applies to health maintenance organizations and prepaid limited health service organization.

In March 2006, the NAIC adopted revisions to the Risk-Based Capital for Insurers Model Act. The revisions incorporate a new Property and Casualty Trend Test for property and casualty companies. The accreditation effective date for property and casualty trend test was January 1, 2012. A statutory provision relating to a life trend test was already included in the RBC for Insurers Model Act; but the changes equalize the trigger between life and health, property, and casualty companies that prompt the need for a trend test calculation. The model was amended to cite the Property and Casualty Trend Test as a means for the company action level to be triggered.

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[9] "Supervisory Colleges: A Regulatory Tool for Enhancing Supervisory Cooperation and Coordination," at http://www.naic.org/cipr_newsletter_archive/vol4_supervisory_colleges.htm (last visited on March 19, 2014).
[10] NAIC on Supervisory Colleges at http://www.naic.org/cipr_topics/topic_supervisory_college.htm. (last visited on March 19, 2014). Additionally, the linked/public records bill, CS/SB 1300, provides for confidential and exempt treatment of regulatory information, including within the context of a supervisory college that is shared between insurance regulators and law enforcement, pursuant to confidentiality agreements.
[11] NAIC on Risk-Based Capital at http://www.naic.org/cipr_topics/topic_risk_based_capital.htm (last visited on March 19, 2014).
[12] Section 624.4085, F.S.
[13] Section 636.003(7), F.S.
[14] Section 641.19(12), F.S.

Property and Casualty Actuarial Opinion Model Law

The NAIC Property and Casualty Actuarial Opinion Model Law specifies that states must require property and casualty insurers to submit a Statement of Actuarial Opinion, which is a public document. The model act also requires the submission of an Actuarial Opinion Summary, an Actuarial Report, and workpapers to support each actuarial opinion, which must be treated as a confidential and privileged document.

Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR an annual statement of its financial condition and a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialist. These insurers are also required to provide supporting work papers upon the OIR's request.[15] Currently, these materials are not exempt from ch. 119, F.S., relating to public records.

Valuation of Life Insurance and Principle-Based Reserves

For insurance purposes, reserves are liabilities that are reported on insurers' balance sheets for the ultimate payment of future losses and policyholder benefits. Reserves are often set using factors and rates determined by an insurer's actuary consistent with guidelines for insurance products established in state law consistent with NAIC models or laws. Reserve levels for insurers operating in the United States and offering certain life insurance and annuity products are set according to a state law, with rules-based formula that, some insurers claim, results in excessive reserves that detract from the insurer's ability to maximize the value of its capital.

Critics of the current formula-based approach to reserving for life insurance contend that it: (1) is static and too conservative; (2) fails to capture all the particularized risks inherent in increasingly complicated life insurance benefits and guaranties; and (3) does not reflect life insurers' business practices, such as the hedging of risk through derivatives use plans. However, reserves are subject to an annual analysis to verify the adequacy of reserves through different models, with additional reserves established if necessary. Many industry participants argue that redundant reserve requirements force reliance upon reinsurance captives in order to reduce excessive reserves and allow life insurers to use capital more effectively.

While the current formula-based approach to quantifying reserves uses standardized formulas, principle based reserves (PBR) relies upon an insurer's internal risk modeling and analysis techniques, including the use of insurer-specific claims experience with specific portfolios of business, to incorporate consideration of particularized risks and thereby to more closely tailor calculations to the actual attributes of insurer portfolios.

In response to concerns about reserves, the National Association of Insurance Commissioners (NAIC) revised the NAIC Standard Valuation Law (SVL) and the Standard Nonforfeiture Law to incorporate the NAIC Valuation Manual as the authoritative source for reserves and other requirements.[16] The revised SVL, as adopted by the NAIC, preserves state authority to require insurers to change any assumption or method, as necessary, and authorize the regulator to engage a qualified actuary at the expense of an insurer to review compliance with the valuation manual

[15] Section 624.424, F.S.
[16] The Valuation Manual was adopted by the NAIC on December 2, 2012.

requirements. The manual includes experience reporting, actuarial opinion and memorandum requirements, PBR reporting, and corporate governance requirements. Many of the requirements are dynamic in nature, and are responsive to fluctuations in the insurance marketplace and the economy. The requirements of the manual are applicable to life insurance contracts, accident and health contracts, and other specified contracts. Some products are not subject to PBR; however, some products, such as term life insurance policies and universal life insurance policies with a secondary guarantee[17] issued on or after the operative date of the manual become subject to PBR once the manual is operative. The PBR method will be effective only after the SVL law revisions are adopted by at least 42 states representing 75 percent of total U.S. premium and then, after a 3-year transition period. However, insurers can implement PBR anytime during the transition period.

Under current Florida law, life insurers are required to calculate reserves for life insurance policies based on a standardized formula prescribed by the NAIC Model Standard Valuation Law (SVL) and codified in s. 625.121, F.S. The SVL incorporates mortality tables. The NAIC Standard Nonforfeiture Law establishes minimum benefit values if policies are surrendered or lapsed and is codified in s. 627.476, F.S. For purposes of the implementation of PBR, the NAIC revised the Standard Nonforfeiture Law to reference the Standard Valuation Law and the Valuation Manual as the source for mortality and interest rates used in nonforfeiture calculations. However, such changes apply to policies issued on or after the operative date of the valuation manual. The PBR requirements do not apply to policies issued prior to the operative date of the valuation manual.

In 2013, seven states enacted PBR enabling legislation (Arizona, Indiana, Louisiana, Maine, New Hampshire, Rhode Island, and Tennessee). In 2013, Texas enacted the Standard Nonforfeiture Law revisions. Nine states have introduced PBR enabling legislation in 2014 (Hawaii, Illinois, Iowa, Mississippi, Nebraska, New Mexico, Ohio, Oklahoma, and Virginia). Five more states have drafted legislation for 2014 introduction (Connecticut, Florida, Georgia, Missouri, and West Virginia).[18]

III. Effect of Proposed Changes:

Examinations (Section 2)

Section 2 amends s. 624.319, F.S., relating to examinations, to provide that the production of documents during the course of an examination or investigation does not constitute waiver of the attorney-client or work-product privileges.

Captives (Section 5)

Section 5 requires insurers that reinsure through a captive insurance company to file with the OIR an annual report containing certain information specific to reinsurance assumed by each captive.

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[17] A universal life policy with a secondary guarantee is also known as a no-lapse guarantee. The policy will not lapse if certain conditions are met.

[18] American Council of Life Insurers PBR Implementation Status, February 3, 2014, (on file with Senate Banking and Insurance staff).

Risk-Based Capital for Insurers and Health Organizations (Sections 4, 15, 16, and 17)

Section 4 amends s. 624.4085, F.S., to revise the definition of the term, "life and health insurer," for purposes of risk-based capital (RBC) requirements to include HMOs and prepaid limited health service organizations that are authorized in Florida and one or more other states, jurisdictions, or countries effective January 1, 2015. The section also clarifies the RBC requirements for a life and health insurer that reports using the life and health annual statement instructions and changes a company action level event to total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level risk-based capital and 3.0.

Effective January 1, 2015, the section also defines the RBC requirements for a life and health, as well as property and casualty, insurer that reports using the health annual statement instructions and defines a company action level event as total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level RBC and 3.0 and triggers the trend test calculation. An insurer that fails the Trend Test is subject to filing a corrective action plan with the OIR.

Sections 15 through 17 provide that prepaid limited health service organizations authorized in Florida are subject to the RBC requirements and confidentially requirements pursuant to s. 624.4085, F.S., and s. 624.40851, F.S., respectively. The bill also provides that an HMO that is authorized in one or more other states, jurisdictions, or countries is subject to the risk-based capital requirements for insurers as well as the confidentiality protections of risk-based capital information provided in s. 624.4085, F.S., and s. 624.4615, F.S., respectively. Finally, an HMO that is a member of a holding company system is subject to the acquisition and enterprise risk reporting requirements of s. 628.461, F.S., but not to the acquisition requirements for specialty insurers in s. 628.4615, F.S. These provisions are effective January 1, 2015.

Model Insurance Holding Company Act and Regulation (Sections 1, 3, 10-14)

Section 1 provides definitions of affiliate, affiliated person, control, and NAIC. The definitions of the terms, "affiliated person" and "controlling person" currently defined in s. 628.461(12), F.S., are modified and transferred. The bill revises the definition of the term, "affiliated person," to include persons affiliated through 10 percent instead of 5 percent of ownership, control, or management. The bill revises the definition of the term, "controlling person," to require a 10 percent rather than a 25 percent ownership or interest.

Section 3 amends s. 624.402, F.S., to provide a technical, conforming amendment.

Section 10 amends s. 628.461, F.S., relating to acquisition of controlling stock, and specifies that the acquiring party's statement must include an agreement to file an "annual enterprise risk report," if control exists as described in Section 11 of the bill. Effective January 1, 2015, the bill provides that the person required to file the statement pursuant to s. 628.461(1), F.S., will provide the annual report specified in s. 628.801(2), F.S., if control exists. The bill provides that a person may rebut a presumption of control by filing a disclaimer of control on a form prescribed by the OFR, as required by the model act, or by providing a copy of a Schedule 13G

on file with the U.S. Securities and Exchange Commission. After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless the OIR disallows the disclaimer. Any controlling person of a domestic insurer that seeks to divest its controlling interest in the domestic insurer is required to file with the OIR a confidential notice of its proposed divestiture at least 30 days prior to the relinquishment of control.

Currently, s. 628.461, F.S., provides that a person or affiliated person must file a letter of notification and a statement for the OIR's approval before concluding a tender offer to acquire 5 percent or more of a domestic stock insurer or of a controlling company. The statement must contain certain criminal, employment, and regulatory history information. Alternatively, a party acquiring less than 10 percent of the outstanding voting securities of an insurer may file a disclaimer of affiliation of control on a form prescribed by the OIR, and such disclaimer must fully disclose all material relationships and affiliation with the insurer, as well as the reason for such disclaimer (this disclaimer is mandatory for acquisitions of more than 10 percent). In lieu of the disclaimer-of-control form, the person may file a copy of a Schedule 13G filed with the Securities and Exchange Commission.

During the pendency of the OIR's review of an acquisition filing, the insurer may not make a "material change" to its operation or management, unless the OIR has approved or has been notified, respectively. A "material change" consists of a disposal or obligation of 5 percent or more of the insurer's capital and surplus, or a change in management involving a person who has the authority to dispose or obligate 5 percent of the insurer's capital and surplus.

Section 11 amends s. 628.801, F.S., relating to the regulation of insurance holding companies, to amend and update the provisions of the NAIC Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company System Model Regulation by incorporating reference to the 2010 version. The section requires insurers to file an annual holding company registration statement, including disclosure of material transaction between affiliates. Currently, authorized insurers are required to register with the OIR and be subject to regulation with respect to the relationship with the holding company. Pursuant to its authority under ch. 624, F.S., the OIR may examine any insurer and its affiliates registered under this section to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party.

Effective January 1, 2015, the ultimate controlling person in an insurer's holding company must identify and report material risk within the system that could pose enterprise risk to the insurer in an annual enterprise risk report filed with the OIR. The enterprise risk report will contain detailed information including the holding company's business plan, material developments concerning risk management, and rating agency information. Effective January 1, 2015, if an insurer fails to file a registration statement, a summary of the registration statement, or enterprise risk filing report within the specified time, it is a violation of this section. The section also provides criteria under which an insurer may apply for waiver of the requirements contained in s. 628.801, F.S.

Information contained in the enterprise risk report filed with OIR is confidential and exempt as provided in s. 624.4212, F.S., and are not subject to subpoena or discovery directly from the OIR. The bill also adds a provision that prohibits the waiver of any applicable privilege or claim

of confidentiality in the enterprise risk report because of disclosures to the OIR. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

Section 12 amends s. 628.803, F.S., relating to sanctions against an insurance holding company, to provide that a violation of s. 628.461, F.S., (i.e., the filing requirements for acquisition of controlling stock) or s. 628.801, F.S., (i.e., filing requirements for insurance holding companies) may serve as an independent basis for the OIR to disapprove dividends and distributions and place the insurer under an order of supervision pursuant to part VI of ch. 624, F.S. This provision is effective January 1, 2015.

Currently, the Insurance Code states that noncompliant insurance holding companies (and their directors, officers, employees, and agents) can be subject to a number of sanctions that include:

- A penalty, not to exceed $10,000, for failing to file registration statements or certificate of exemption;
- Civil forfeitures, not to exceed $5,000 per violation, for knowingly engaging in transactions that have not been properly filed, approved, or in accordance with commission rule; or
- A cease and desist order for engaging in transactions or entering into contracts that violate commission rules, and rescission orders if in the best interests of the policyholders, creditors, or public.

Additionally, an officer, director, or employee of an insurance holding company who willfully and knowingly submits a false statement, false report, or false filing with the intent to deceive the OIR, is guilty of a felony of the third degree.

Sections 13 and 14 create ss. 628.804 and 628.805, F.S., which authorize the creation and participation by the OIR in a supervisory college with other state, federal, and international regulators charged with supervising an insurer or its affiliates, effective January 1, 2015. The bill provides the terms and conditions of participation. With respect to participation in a supervisory college, the OIR may clarify the membership and participation of other supervisors and clarify the role of other regulators, including the establishment of a groupwide supervisor.

The bill defines, the term, “groupwide supervisor,” as the chief insurance regulator for the jurisdiction who is determined by the OIR to have significant contacts with the international insurance group sufficient to conduct and coordinate groupwide supervision activities. The OIR is authorized to adopt rules to implement criteria for determining the appropriate groupwide supervisor. This language, which was requested by the OIR, is supplemental to the NAIC model provision. It is consistent with a law recently enacted in Pennsylvania. In accordance with s. 624.4212, F.S., regarding confidential information sharing, the OIR is authorized to enter into cooperative agreements with other regulators. Insurers are liable for the payment of reasonable expenses for the OIR’s participation in a supervisory college.

Property and Casualty Actuarial Opinion Model Law (Section 5)

The bill requires property and casualty insurers to file an annual Statement of Actuarial Opinion and Actuarial Opinion Summary in accordance with the NAIC annual statement instructions.

The section also updates the Financial Services Commission's (commission's) rulemaking authority under this section to specify that rules must be in substantial conformity with the 2006 Annual Financial Reporting Model Regulation adopted by the NAIC. Life and health insurers are exempt from the specified reporting requirements of this section since they are governed by ss. 625.121 and 625.1212, F.S.

Proprietary business information contained in the summary is confidential and exempt under s. 624.4212, F.S., which is created in a linked public records bill CS/SB 1300. This section also protects the summary and related information from subpoena or discovery directly from OIR. Parties seeking such information under a subpoena or other discovery tool must obtain it from the original custodian, not the OIR. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

Valuation of Life Insurance and Principle Based Reserves (Sections 6, 7, 8, and 9)

Standard Valuation Law for Life Insurers

Section 6 amends s. 625.121, F.S., relating to the Standard Valuation Law for life insurance, to provide that any memorandum or other material in support of the actuarial opinion that is currently confidential and exempt from s. 119.07(1), F.S., is not subject to subpoena or discovery directly from the OIR. Currently, authorized life insurance companies are required to submit an annual actuarial opinion of reserves, reflecting the valuation of reserve liabilities. This section also provides that neither the OIR nor any person who receives information while acting under the authority of the OIR or with whom such information is shared may testify in any private civil action concerning confidential information. These changes, in part, incorporate a provision of the NAIC Standard Valuation Law that provides that this information is not subject to subpoena or discovery, and should not be admissible in any civil action in either documentary or testimonial form. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

The bill requires the implementation of the valuation manual and PBR for policies issued on or after the operative date of the valuation manual. Section 625.121, F.S., applies to policies and contracts issued prior to the operative date of the valuation manual.

Section 7 creates s. 625.1212, F.S., which is applicable to the valuation of policies and contracts issued on or after the operative date of the valuation manual with some exceptions. This include life insurance contracts, accident and health contracts, and deposit-type policies.[19] The operative date of the valuation manual is defined to mean the later of January 1, 2017, or the January 1 immediately following the July 1 that the Commissioner of the OIR certifies to the Financial Services Commission that the following conditions occurred on or before July 1:

- The valuation manual is adopted by the NAIC by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater;

[19] According to the NAIC 2010 Standard Valuation Law, the term "deposit-type contract" means contracts that do not incorporate mortality or morbidity risks and as may be specified in the valuation manual.

- The Standard Valuation Law, as amended by the NAIC in 2009, or substantially similar legislation, is enacted by states representing greater than 75 percent of the direct premiums written as reported in the following annual statements submitted for 2008: life, accident and health annual statements; health annual statements; or fraternal annual statements; and
- The Standard Valuation Law, as amended by the NAIC in 2009, or substantially similar legislation, has been enacted by at least 42 of the 55 jurisdictions.

The bill requires the OIR to value insurer reserves annually. The OIR may accept a valuation made by another insurance state supervisory official. Insurers are required to submit an actuarial opinion of reserves and memorandum to support each actuarial opinion on an annual basis. The bill provides minimum standard of valuation with exceptions. The OIR may require an insurer to change any assumption or method. The OIR may exempt specific product forms or product lines of a domestic company that is licensed and doing business in Florida from the minimum standards of valuation and the principal-based valuation requirements if certain conditions are met. The Financial Services Commission is authorized to adopt rules to implement s. 625.1212, F.S. Such rules are not subject to s. 120.541(3), F.S., which requires legislative ratification of agency rules having a private sector impact of more than $1 million over 5 years.

Section 8 provides that documents and other information created, produced, or obtained pursuant to ss. 625.121 and 625.1212, F.S., are privileged, confidential, and exempt as provided in s. 624.4212, F.S. CS/SB 1300, which creates s. 624.4212, F.S., is linked to this bill. These documents and other information are not subject to subpoena or discovery directly from the OIR. The bill provides that the Department of Financial Services or the OIR may use confidential and exempt information in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office.

This section also provides that neither the OIR nor any person who receives information while acting under the authority of the OIR or with whom such information is shared may be permitted or required to testify in any private civil action concerning such confidential and exempt information. In part, these changes incorporate a provision of the NAIC Standard Valuation Law which provides that the information is not subject to subpoena or discovery, and is not admissible in any civil action in either documentary or testimonial form.

Standard Nonforfeiture Law for Life Insurers

Section 9 provides for the application of the valuation manual for policies issued on or after the operative date of the manual. The bill provides technical conforming changes. The bill also addresses a potential federal income tax issue relating to life insurance contracts by establishing a 4 percent minimum interest rate. Currently, the interest rate per annum for any policy issued in a calendar year is equal to 125 percent of the calendar year statutory valuation interest for such policy as defined in the Standard Valuation Law. The 4 percent floor created by the bill is the annual effective rate used to determine the net single premium for purposes of cash-value accumulation test under Section 7702(b) of the IRC.[20] This provision codifies an amendment to

[20] 26 U.S.C. s. 7702(a) provides that, for a contract to qualify as a life insurance contract for Federal income tax purposes, the contract must be a life insurance contract under the applicable law and must either (1) satisfy the cash value accumulation test of s. 7702(b), or (2) both meet the guideline premium requirements of § 7702(c) and fall within the cash value corridor of s. 7702(d).

Standard Nonforfeiture Law for Life Insurance, which was adopted by the NAIC.[21] According to the NAIC, the establishment of this floor addresses a concern that the interest rate could decline below 4 percent, resulting in traditional life insurance being noncompliant with the maximum cash value requirements of the IRC Section 7702, and not qualify as a life insurance contract for federal income tax purposes.

Effective Date (Section 18)

Section 18 provides that except as otherwise expressly provided in the bill, the act will take effect October 1, 2014, if CS/SB 1300 or similar legislation is adopted in the same legislative session or an extension thereof, and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurers may incur an indeterminate amount of administrative costs associated with complying with the additional reporting requirements and implementing principle based reserves (PBR), and the OIR's participation in the supervisory colleges. The PBR requirements apply to policies issued on or after the operative date of the valuation manual.

Advocates of principle based reserves state that the method will reduce redundant reserves that are required pursuant to the current formulaic approach, thereby leading to lower prices for life insurance products, increasing consumer choices of products, and freeing up capital for insurers. Insurers will have the option to phase in the PBR requirements over 3 years after the valuation manual is effective, which would be no earlier than January 1, 2017, as provided in the bill.

[21] The NAIC Executive Committee adopted this change at the 2013 Fall NAIC Meeting.

C. Government Sector Impact:

The bill provides greater solvency tools and regulatory authority for the OIR. The supervisory college will provide greater coordination of efforts in the examination of multistate insurers and will reduce regulatory redundancies and expenses among the state regulators.

The OIR states there is no anticipated impact for fiscal year 2014-2015.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.10, 624.319, 624.402, 624.4085, 624.424, 625.121, 627.476, 628.461, 628.801, 628.803, 636.045, 641.225, and 641.255.

This bill creates the following sections of the Florida Statutes: 625.1212, 625.1214, 628.804, and 628.805.

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 Judiciary on March 25, 2014:
The committee substitute revises the procedures for litigants using subpoena or other discovery tools to obtain proprietary business information contained in actuarial opinions or other reports filed by law with the OIR. The litigants seeking such documents must obtain them from the original custodian or any subsequent custodian, not the OIR.

The committee substitute clarifies the two ways that a person or acquiring party may rebut a presumption of control in an insurer, which are filing a disclaimer-of-control form prescribed by OIR or a copy of a Schedule 13G filed with the Securities and Exchange Commission.

CS by Banking and Insurance on March 11, 2014:
The CS clarifies the process for rebutting a presumption of control and clarifies the definition of the term, “operative date.” The CS also provides technical, conforming changes.

B. Amendments:

None.

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

By the Committees on Judiciary; and Banking and Insurance; and Senator Simmons

A bill to be entitled

An act relating to insurer solvency; amending s. 624.10, F.S.; providing additional definitions applicable to the Florida Insurance Code; amending s. 624.319, F.S.; clarifying that production of documents does not waive the attorney-client or work-product privileges; amending s. 624.402, F.S.; conforming a cross-reference; amending s. 624.4085, F.S.; revising a definition; providing additional calculations for determining whether an insurer has a company action level event; revising provisions relating to mandatory control level events; amending s. 624.424, F.S.; requiring an insurer's annual statement to include an actuarial opinion summary; providing criteria for such summary; providing an exception for life and health insurers; updating provisions; requiring insurers reinsuring through a captive insurance company to file a report containing certain information; amending s. 625.121, F.S.; revising the Standard Valuation Law; distinguishing the provisions from valuations done pursuant to the National Association of Insurance Commissioner's (NAIC) valuation manual and incorporating certain provisions included in the manual; exempting certain documents from civil proceedings; revising the methods for evaluating the valuation of industrial life insurance policies; revising provisions relating to calculating additional premium; updating provisions relating to reserve calculations for indeterminate premium plans; creating

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s. 625.1212, F.S.; providing for the valuation of policies and contracts after the adoption of the NAIC's valuation manual; providing applicability; defining terms; requiring the office to value insurer reserves; requiring actuarial opinions of the reserves and a supporting memorandum to the opinions; requiring the insurer to apply the standard prescribed in the valuation manual; providing exceptions; providing requirements for a principle-based valuation of reserves; requiring an insurer to submit certain data to the office; directing the Financial Services Commission to adopt rules; creating s. 625.1214, F.S.; providing for the use of confidential information; prohibiting the use of such information in private civil actions; amending s. 627.476, F.S.; revising the Standard Nonforfeiture Law; distinguishing provisions subject to the valuation manual and providing for the application of tables found in the manual; amending s. 628.461, F.S.; revising the amount of outstanding voting securities of a domestic stock insurer or a controlling company which a person is prohibited from acquiring unless certain requirements have been met; deleting a provision authorizing an insurer to file a disclaimer of affiliation and control in lieu of a letter notifying the Office of Insurance Regulation of the Financial Services Commission of the acquisition of the voting securities of a domestic stock company under certain circumstances; requiring the statement notifying the office to include additional

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59 information; conforming a provision to changes made by
60 the act; providing that control is presumed to exist
61 under certain conditions; specifying how control may
62 be rebutted and how a controlling interest may be
63 divested; deleting definitions; amending s. 628.801,
64 F.S.; requiring an insurer to annually file a
65 registration statement by a specified date; revising
66 the requirements and standards for the rules
67 establishing the information and statement form for
68 the registration; requiring an insurer to file an
69 annual enterprise risk report; authorizing the office
70 to conduct examinations to determine the financial
71 condition of registrants; providing that failure to
72 file a registration or report is a violation of the
73 section; providing additional grounds, requirements,
74 and conditions with respect to a waiver from the
75 registration requirements; amending s. 628.803, F.S.;
76 providing sanctions for persons who violate certain
77 provisions relating to the acquisition of controlling
78 stock; creating s. 628.804, F.S.; providing for the
79 groupwide supervision of international insurance
80 groups; defining terms; providing for the selection of
81 a groupwide supervisor; authorizing the commission to
82 adopt rules; creating s. 628.805, F.S.; authorizing
83 the office to participate in supervisory colleges;
84 authorizing the office to assess fees on insurers for
85 participation; amending ss. 636.045 and 641.225, F.S.;
86 applying certain statutes related to solvency to
87 prepaid limited health service organizations and

88 health maintenance organizations; amending s. 641.255,
89 F.S.; providing for applicability of specified
90 provisions to a health maintenance organization that
91 is a member of a holding company; providing effective
92 dates and a contingent effective date.
93
94 Be It Enacted by the Legislature of the State of Florida:
95
96 Section 1. Section 624.10, Florida Statutes, is amended to
97 read:
98 624.10 Other definitions ~~Transacting insurance~~. ~~-~~As used in
99 the Florida Insurance Code, the term:
100 (1) "Affiliate" means an entity that exercises control over
101 or is directly or indirectly controlled by the insurer through:
102 (a) Equity ownership of voting securities;
103 (b) Common managerial control; or
104 (c) Collusive participation by the management of the
105 insurer and affiliate in the management of the insurer or the
106 affiliate.
107 (2) "Affiliated person" of another person means:
108 (a) The spouse of the other person;
109 (b) The parents of the other person and their lineal
110 descendants, or the parents of the other person's spouse and
111 their lineal descendants;
112 (c) A person who directly or indirectly owns or controls,
113 or holds with the power to vote, 10 percent or more of the
114 outstanding voting securities of the other person;
115 (d) A person, 10 percent or more of whose outstanding
116 voting securities are directly or indirectly owned or

117 controlled, or held with power to vote, by the other person;
118 (e) A person or group of persons who directly or indirectly
119 control, are controlled by, or are under common control with the
120 other person;
121 (f) An officer, director, partner, copartner, or employee
122 of the other person;
123 (g) If the other person is an investment company, an
124 investment adviser of such company, or a member of an advisory
125 board of such company;
126 (h) If the other person is an unincorporated investment
127 company not having a board of directors, the depositor of such
128 company; or
129 (i) A person who has entered into a written or unwritten
130 agreement to act in concert with the other person in acquiring
131 or limiting the disposition of securities of a domestic stock
132 insurer or controlling company.
133 (3) "Control," including the terms "controlling,"
134 "controlled by," and "under common control with," means the
135 direct or indirect possession of the power to direct or cause
136 the direction of the management and policies of a person,
137 whether through the ownership of voting securities, by contract
138 other than a commercial contract for goods or nonmanagement
139 services, or otherwise. Control is presumed to exist if a
140 person, directly or indirectly, owns, controls, holds with the
141 power to vote, or holds proxies representing 10 percent or more
142 of the voting securities of another person.
143 (4) "NAIC" means the National Association of Insurance
144 Commissioners.
145 (5) "Transact" with respect to insurance includes any of

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146 the following, in addition to other applicable provisions of
147 this code:
148 (a) ~~(1)~~ Solicitation or inducement.
149 (b) ~~(2)~~ Preliminary negotiations.
150 (c) ~~(3)~~ Effectuation of a contract of insurance.
151 (d) ~~(4)~~ Transaction of matters subsequent to effectuation of
152 a contract of insurance and arising out of it.
153 Section 2. Subsection (2) of section 624.319, Florida
154 Statutes, is amended to read:
155 624.319 Examination and investigation reports.—
156 (2) The examination report ~~when~~ so filed is ~~shall be~~
157 admissible in evidence in any action or proceeding brought by
158 the department or office against the person examined, or against
159 its officers, employees, or agents. In all other proceedings,
160 the admissibility of the examination report is governed by the
161 evidence code. The department or office or its examiners may ~~at~~
162 ~~any time~~ testify and offer other proper evidence as to
163 information secured or matters discovered during the course of
164 an examination, regardless of whether ~~or not~~ a written report of
165 the examination has been ~~either~~ made, furnished, or filed in the
166 department or office. The production of documents during the
167 course of an examination or investigation does not constitute a
168 waiver of the attorney-client or work-product privileges.
169 Section 3. Paragraph (c) of subsection (8) of section
170 624.402, Florida Statutes, is amended to read:
171 624.402 Exceptions, certificate of authority required.—A
172 certificate of authority shall not be required of an insurer
173 with respect to:
174 (8)

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175 (c) Subject to the limitations provided in this subsection,
176 services, including those listed in the definition of the term
177 "transact" in s. 624.10, may be provided by the insurer or an
178 affiliated person as defined in s. 624.04 under common ownership
179 or control with the insurer.
180 Section 4. Paragraph (g) of subsection (1), paragraph (a)
181 of subsection (3), and paragraph (b) of subsection (6) of
182 section 624.4085, Florida Statutes, are amended to read:
183 624.4085 Risk-based capital requirements for insurers.—
184 (1) As used in this section, the term:
185 (g) "Life and health insurer" means an ~~any~~ insurer
186 authorized or eligible under the Florida Insurance Code to
187 underwrite life or health insurance. The term includes a
188 property and casualty insurer that writes accident and health
189 insurance only. Effective January 1, 2015, the term also
190 includes a health maintenance organization that is authorized in
191 this state and one or more other states, jurisdictions, or
192 countries and a prepaid limited health service organization that
193 is authorized in this state and one or more other states,
194 jurisdictions, or countries.
195 (3)(a) A company action level event includes:
196 1. The filing of a risk-based capital report by an insurer
197 which indicates that:
198 a. The insurer's total adjusted capital is greater than or
199 equal to its regulatory action level risk-based capital but less
200 than its company action level risk-based capital; ~~or~~
201 b. If a life and health insurer reports using the life and
202 health annual statement instructions, the insurer has total
203 adjusted capital that is greater than or equal to its company

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204 action level risk-based capital, but is less than the product of
205 its authorized control level risk-based capital and 3.0 ~~2.5~~, and
206 has a negative trend;
207 c. Effective January 1, 2015, if a life and health or
208 property and casualty insurer reports using the health annual
209 statement instructions, the insurer or organization has total
210 adjusted capital that is greater than or equal to its company
211 action level risk-based capital, but is less than the product of
212 its authorized control level risk-based capital and 3.0, and
213 triggers the trend test determined in accordance with the trend
214 test calculation included in the Risk-Based Capital Forecasting
215 and Instructions, Health, updated annually by the NAIC; or
216 d. If a property and casualty insurer reports using the
217 property and casualty annual statement instructions, the insurer
218 has total adjusted capital that is greater than or equal to its
219 company action level risk-based capital, but less than the
220 product of its authorized control level risk-based capital and
221 3.0, and triggers the trend test determined in accordance with
222 the trend test calculation included in the Risk-Based Capital
223 Forecasting and Instructions, Property/Casualty, updated
224 annually by the NAIC;
225 2. The notification by the office to the insurer of an
226 adjusted risk-based capital report that indicates an event in
227 subparagraph 1., unless the insurer challenges the adjusted
228 risk-based capital report under subsection (7); or
229 3. If, under subsection (7), an insurer challenges an
230 adjusted risk-based capital report that indicates an event in
231 subparagraph 1., the notification by the office to the insurer
232 that the office has, after a hearing, rejected the insurer's

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233 challenge.
234 (6)
235 (b) If a mandatory control level event occurs:
236 1. With respect to a life and health insurer, the office
237 shall, after due consideration of s. 624.408, and effective
238 January 1, 2015, ss. 636.045 and 641.225, take any action
239 necessary to place the insurer under regulatory control,
240 including any remedy available under chapter 631. A mandatory
241 control level event is sufficient ground for the department to
242 be appointed as receiver as provided in chapter 631. The office
243 may forego taking action for up to 90 days after the mandatory
244 control level event if the office finds there is a reasonable
245 expectation that the ~~mandatory control level~~ event may be
246 eliminated within the 90-day period.
247 2. With respect to a property and casualty insurer, the
248 office shall, after due consideration of s. 624.408, take any
249 action necessary to place the insurer under regulatory control,
250 including any remedy available under chapter 631, or, in the
251 case of an insurer that is not writing new business, may allow
252 the insurer to continue to operate under the supervision of the
253 office. In either case, the mandatory control level event is
254 sufficient ground for the department to be appointed as receiver
255 as provided in chapter 631. The office may forego taking action
256 for up to 90 days after the mandatory control level event if the
257 office finds there is a reasonable expectation that the
258 ~~mandatory control level~~ event may ~~will~~ be eliminated within the
259 90-day period.
260 Section 5. Subsection (1) and paragraph (e) of subsection
261 (8) of section 624.424, Florida Statutes, are amended, and

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262 subsection (11) is added to that section, to read:
263 624.424 Annual statement and other information.—
264 (1)(a) Each authorized insurer shall file with the office
265 full and true statements of its financial condition,
266 transactions, and affairs. An annual statement covering the
267 preceding calendar year shall be filed on or before March 1, and
268 quarterly statements covering the periods ending on March 31,
269 June 30, and September 30 shall be filed within 45 days after
270 each such date. The office may, for good cause, grant an
271 extension of time for filing ~~of~~ an annual or quarterly
272 statement. The statements must ~~shall~~ contain information
273 generally included in insurers' financial statements prepared in
274 accordance with generally accepted insurance accounting
275 principles and practices and in a form generally used ~~utilized~~
276 by insurers for financial statements, sworn to by at least two
277 executive officers of the insurer or, if a reciprocal insurer,
278 by ~~the~~ oath of the attorney in fact or its like officer if a
279 corporation. To facilitate uniformity in financial statements
280 and to facilitate office analysis, the commission may by rule
281 adopt the form and instructions for financial statements
282 approved by the NAIC in 2014 ~~National Association of Insurance~~
283 ~~Commissioners in 2002~~, and ~~may adopt~~ subsequent amendments
284 thereto if the methodology remains substantially consistent, and
285 may by rule require each insurer to submit to the office, or
286 such organization as the office may designate, all or part of
287 the information contained in the financial statement in a
288 computer-readable form compatible with the electronic data
289 processing system specified by the office.
290 (b) Each insurer's annual statement must contain:

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291 1. A statement of opinion on loss and loss adjustment
292 expense reserves made by a member of the American Academy of
293 Actuaries or by a qualified loss reserve specialist, pursuant to
294 ~~under~~ criteria established by rule of the commission. In
295 adopting the rule, the commission shall ~~must~~ consider any
296 criteria established by the NAIC ~~National Association of~~
297 ~~Insurance Commissioners~~. The office may require semiannual
298 updates of the annual statement of opinion for ~~as to~~ a
299 particular insurer if the office has reasonable cause to believe
300 that such reserves are understated to the extent of materially
301 misstating the financial position of the insurer. Workpapers in
302 support of the statement of opinion must be provided to the
303 office upon request. This paragraph does not apply to life
304 insurance, health insurance, or title insurance.
305 2. An actuarial opinion summary written by the insurer's
306 appointed actuary. The summary must be filed in accordance with
307 the appropriate NAIC property and casualty annual statement
308 instructions. Proprietary business information contained in the
309 summary is confidential and exempt under s. 624.4212, and the
310 summary and related information are not subject to subpoena or
311 discovery directly from the office. Neither the office nor any
312 person who received documents, materials, or other information
313 while acting under the authority of the office, or with whom
314 such information is shared pursuant to s. 624.4212, may testify
315 in a private civil action concerning such confidential
316 information. However, the department or office may use the
317 confidential and exempt information in the furtherance of any
318 regulatory or legal action brought against an insurer as a part
319 of the official duties of the department or office. No waiver of

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320 any other applicable claim of confidentiality or privilege may
321 occur as a result of a disclosure to the office under this
322 section or any other section of the insurance code. This
323 paragraph does not apply to life and health insurers subject to
324 s. 625.121(3) before the operative date of the valuation manual
325 as defined in s. 625.1212(2), and does not apply to life and
326 health insurers subject to s. 625.1212(4) on or after such
327 operative date.
328 (c) The commission may by rule require reports or filings
329 required under the insurance code to be submitted by electronic
330 means in a computer-readable form compatible with the electronic
331 data processing equipment specified by the commission.
332 (8)
333 (e) The commission shall adopt rules to administer
334 ~~implement~~ this subsection~~,~~ which ~~rules~~ must be in substantial
335 conformity with the 2006 Annual Financial Reporting Model
336 Regulation ~~1998 Model Rule requiring annual audited financial~~
337 ~~reports~~ adopted by the NAIC ~~National Association of Insurance~~
338 ~~Commissioners~~ or subsequent amendments, except where
339 inconsistent with the requirements of this subsection. Any
340 exception to, waiver of, or interpretation of accounting
341 requirements of the commission must be in writing and signed by
342 an authorized representative of the office. An ~~No~~ insurer may
343 not raise an ~~as a defense in any action, any~~ exception to,
344 waiver of, or interpretation of accounting requirements as a
345 defense in an action, unless previously issued in writing by an
346 authorized representative of the office.
347 (11) Each insurer doing business in this state which
348 reinsures through a captive insurance company as defined in s.

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349 628.901, but without regard to domiciliary status, shall, in
350 conjunction with the annual financial statement required under
351 paragraph (1)(a), file a report with the office containing
352 financial information specific to reinsurance assumed by each
353 captive.
354 (a) The report shall be filed as a separate schedule
355 designed to avoid duplication of disclosures required by the
356 NAIC's annual statement and instructions.
357 (b) Insurers must:
358 1. Identify the products ceded to the captive and whether
359 the products are subject to rule 69O-164.020, Florida
360 Administrative Code, the NAIC Valuation of Life Insurance
361 Policies Regulation (Model #830), or the NAIC Actuarial
362 Guideline XXXVIII (AG 38).
363 2. Disclose the assets of the captive in the format
364 prescribed in the NAIC annual statement schedules.
365 3. Include a stand-alone actuarial opinion or certification
366 identifying the differences between the assets the ceding
367 company would be required to hold and the assets held by the
368 captive.
369 Section 6. Subsection (2), paragraphs (a) and (b) of
370 subsection (3), subsection (5), paragraph (e) of subsection (6),
371 and subsections (10), (11), and (12) of section 625.121, Florida
372 Statutes, are amended to read:
373 625.121 Standard Valuation Law; life insurance.—
374 (2) ANNUAL VALUATION.—The office shall annually value, or
375 cause to be valued, the reserves ~~reserve liabilities,~~
376 ~~hereinafter called "reserves,"~~ for all outstanding life
377 insurance policies and annuity and pure endowment contracts of

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378 each ~~every~~ life insurer doing business in this state~~, and may~~
379 ~~certify the amount of any such reserves, specifying the~~
380 ~~mortality table or tables, rate or rates of interest, and~~
381 ~~methods, net-level premium method or others, used in the~~
382 ~~calculation of such reserves~~. In the case of an alien insurer,
383 such valuation is ~~shall be~~ limited to its insurance transactions
384 in the United States. In calculating ~~such~~ reserves, the office
385 may use group methods and approximate averages for fractions of
386 a year or otherwise, and~~. It~~ may accept ~~in its discretion~~ the
387 insurer's calculation of such reserves. In lieu of the valuation
388 of the reserves ~~herein~~ required of a ~~any~~ foreign or alien
389 insurer, the office ~~it~~ may accept any valuation made or caused
390 to be made by the insurance supervisory official of any state or
391 other jurisdiction if the ~~when such~~ valuation complies with the
392 minimum standard ~~herein~~ provided under this section ~~and if the~~
393 ~~official of such state or jurisdiction accepts as sufficient and~~
394 ~~valid for all legal purposes the certificate of valuation of the~~
395 ~~office when such certificate states the valuation to have been~~
396 ~~made in a specified manner according to which the aggregate~~
397 ~~reserves would be at least as large as if they had been computed~~
398 ~~in the manner prescribed by the law of that state or~~
399 ~~jurisdiction~~. If a ~~When any such~~ valuation is made by the
400 office, the office ~~it~~ may use its ~~the~~ actuary ~~of the office~~ or
401 employ an actuary for that ~~the~~ purpose; and the reasonable
402 compensation of the actuary, at a rate approved by the office,
403 plus ~~and~~ reimbursement of travel expenses pursuant to s. 624.320
404 ~~upon demand by the office~~, supported by an itemized statement of
405 such compensation and expenses, shall be paid by the insurer
406 upon demand of the office. If ~~When~~ a domestic insurer furnishes

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the office with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for that ~~the~~ purpose by the office, the valuation shall be verified by the actuary of the office without cost to the insurer. This section applies to the calculation of reserves for policies and contracts not subject to s. 625.1212.

(3) ACTUARIAL OPINION OF RESERVES.—

(a)~~1.~~ Each life insurer ~~insurance company~~ doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commission by rule are computed appropriately, are based on assumptions that ~~which~~ satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commission by rule shall define the specifics of this opinion and add any other items determined ~~to be~~ necessary to its scope.

1.~~2.~~ The opinion shall be submitted with the annual statement and must reflect ~~reflecting~~ the valuation of such reserve liabilities for each year ending on or before ~~after~~ December 31 of the year before the operative date of the valuation manual as defined in s. 625.1212(2), and in accordance with s. 625.1212(4) for each year thereafter~~, 1992~~.

2.~~3.~~ The opinion applies ~~shall apply~~ to all business in force, including individual and group health insurance plans, in the form and substance acceptable to the office as specified by rule of the commission.

3.~~4.~~ The commission may adopt rules providing the standards of the actuarial opinion consistent with standards adopted by

the Actuarial Standards Board on December 31, 2013 ~~2002~~, and subsequent revisions thereto if~~, provided that~~ the standards remain substantially consistent.

4.~~5.~~ ~~In the case of an opinion required to be submitted by a foreign or alien company,~~ The office may accept an ~~the~~ opinion filed by a foreign or alien insurer ~~that company~~ with the insurance supervisory official of another state if the office determines that the opinion reasonably meets the requirements applicable to an insurer ~~a company~~ domiciled in this state.

5.~~6.~~ As used in ~~For the purposes of~~ this subsection, the term "qualified actuary" means a member in good standing of the American Academy of Actuaries who also meets the requirements specified by rule of the commission.

6.~~7.~~ Disciplinary action by the office against the insurer ~~company~~ or the qualified actuary shall be in accordance with the insurance code and related rules adopted by the commission.

7.~~8.~~ A memorandum in the form and substance specified by rule shall be prepared to support each actuarial opinion.

8.~~9.~~ If the insurer ~~insurance company~~ fails to provide a supporting memorandum at the request of the office within a period specified by rule of the commission, or if the office determines that the supporting memorandum provided by the insurer ~~insurance company~~ fails to meet the standards prescribed by rule of the commission, the office may engage a qualified actuary at the expense of the insurer ~~company~~ to review the opinion and the basis for the opinion and prepare such supporting memorandum as ~~is~~ required by the office.

9.~~10.~~ Except as otherwise provided in this subparagraph ~~paragraph~~, any memorandum or other material in support of the

465 opinion is confidential and exempt from ~~the provisions of~~ s.
466 119.07(1) and is not subject to subpoena or discovery directly
467 from the office; however, the memorandum or other material may
468 be released by the office with the written consent of the
469 insurer ~~company~~, or to the American Academy of Actuaries upon
470 request stating that the memorandum or other material is
471 required for the purpose of professional disciplinary
472 proceedings and setting forth procedures satisfactory to the
473 office for preserving the confidentiality of the memorandum or
474 other material. If any portion of the confidential memorandum is
475 cited by the insurer ~~company~~ in its marketing, ~~or~~ is cited
476 before any governmental agency other than a state insurance
477 department, or is released by the insurer ~~company~~ to the news
478 media, no portion of the memorandum is confidential. Neither the
479 office nor any person who receives documents, materials, or
480 other information while acting under the authority of the office
481 or with whom such information is shared pursuant to this
482 paragraph may testify in a private civil action concerning the
483 confidential documents, materials, or information. However, the
484 department or office may use the confidential and exempt
485 information in the furtherance of any regulatory or legal action
486 brought against an insurer as a part of the official duties of
487 the department or office. A waiver of an applicable privilege or
488 claim of confidentiality in the documents, materials, or
489 information may not occur as a result of disclosure to the
490 office under this section or any other section of the insurance
491 code, or as a result of sharing as authorized under s. 624.4212.
492 (b) In addition to the opinion required by paragraph (a)
493 ~~subparagraph (a)1.~~, the office may, pursuant to commission rule,

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494 require an opinion of the same qualified actuary as to whether
495 the reserves and related actuarial items held in support of the
496 policies and contracts specified by the commission by rule, when
497 considered in light of the assets held by the insurer ~~company~~
498 with respect to the reserves and related actuarial items,
499 including, but not limited to, the investment earnings on the
500 assets and considerations anticipated to be received and
501 retained under the policies and contracts, make adequate
502 provision for the insurer's ~~company's~~ obligations under the
503 policies and contracts, including, but not limited to, the
504 benefits under, and expenses associated with, the policies and
505 contracts.
506 (5) MINIMUM STANDARD FOR VALUATION OF POLICIES AND
507 CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF THE STANDARD
508 NONFORFEITURE LAW.—Except as otherwise provided in paragraph (h)
509 and subsections (6), (13) ~~(11)~~, and (14), the minimum standard
510 for the valuation of all such policies and contracts issued on
511 or after the operative date of s. 627.476 ~~(Standard~~
512 ~~Nonforfeiture Law for Life Insurance)~~ shall be the
513 commissioners' reserve valuation method defined in subsections
514 (7), (11), and (14); 5 percent interest for group annuity and
515 pure endowment contracts and 3.5 percent interest for all other
516 such policies and contracts, or in the case of life insurance
517 policies and contracts, other than annuity and pure endowment
518 contracts, issued on or after July 1, 1973, 4 percent interest
519 for such policies issued prior to October 1, 1979, and 4.5
520 percent interest for such policies issued on or after October 1,
521 1979; and the following tables:
522 (a) For all ordinary policies of life insurance issued on

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523 the standard basis, excluding any disability and accidental
524 death benefits in such policies:
525 1. For policies issued before ~~prior to~~ the operative date
526 of s. 627.476(9), the ~~commissioners'~~ 1958 Commissioners Standard
527 Ordinary (CSO) Mortality Table; except that, for any category of
528 such policies issued on female risks, modified net premiums and
529 present values, referred to in subsection (7), may be calculated
530 according to an age up to ~~not more than~~ 6 years younger than the
531 actual age of the insured.
532 2. For policies issued on or after the operative date of s.
533 627.476(9), the ~~commissioners'~~ 1980 Commissioners Standard
534 Ordinary Mortality Table or, at the election of the insurer for
535 any one or more specified plans of life insurance, the
536 ~~commissioners'~~ 1980 Commissioners Standard Ordinary Mortality
537 Table with Ten-Year Select Mortality Factors.
538 3. For policies issued on or after July 1, 2004, ordinary
539 mortality tables, adopted after 1980 by the NAIC ~~National~~
540 ~~Association of Insurance Commissioners~~, adopted by rule by the
541 commission for use in determining the minimum standard of
542 valuation for such policies.
543 (b) For all industrial life insurance policies issued on
544 the standard basis, excluding any disability and accidental
545 death benefits in such policies:
546 1. For policies issued before ~~prior to~~ the first date ~~to~~
547 ~~which~~ the ~~commissioners'~~ 1961 Commissioners Standard Industrial
548 Mortality Table is applicable according to s. 627.476, the 1941
549 Standard Industrial Mortality Table; ~~and~~
550 2. For ~~such~~ policies issued on or after that date, the
551 ~~commissioners'~~ 1961 Commissioners Standard Industrial Mortality

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552 Table; and
553 3. For policies issued on or after October 1, 2014, a
554 Commissioners Standard Industrial Mortality Table adopted by the
555 NAIC after 1980 which is adopted by rule of the commission for
556 use in determining the minimum standard of valuation for such
557 policies.
558 (c) For individual annuity and pure endowment contracts,
559 excluding any disability and accidental death benefits in such
560 policies, the 1937 Standard Annuity Mortality Table or, at the
561 option of the insurer, the Annuity Mortality Table for 1949,
562 Ultimate, or any modification of ~~either of~~ these tables approved
563 by the office.
564 (d) For group annuity and pure endowment contracts,
565 excluding any disability and accidental death benefits in such
566 policies, the Group Annuity Mortality Table for 1951; any
567 modification of such table approved by the office; or, at the
568 option of the insurer, any of the tables or modifications of
569 tables specified for individual annuity and pure endowment
570 contracts.
571 (e) For total and permanent disability benefits in or
572 supplementary to ordinary policies or contracts:
573 1. For policies or contracts issued on or after January 1,
574 1966, the tables of period 2 disablement rates and the 1930 to
575 1950 termination rates of the 1952 disability study of the
576 Society of Actuaries, with due regard to the type of benefit;
577 2. For policies or contracts issued on or after January 1,
578 1961, and before ~~prior to~~ January 1, 1966, either of the tables
579 specified in subparagraph 1. ~~those tables~~ or, at the option of
580 the insurer, the class three disability table (1926);

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581 3. For policies issued before ~~prior to~~ January 1, 1961, the
582 class three disability table (1926); and
583 4. For policies or contracts issued on or after July 1,
584 2004, tables of disablement rates and termination rates adopted
585 after 1980 by the NAIC ~~National Association of Insurance~~
586 ~~Commissioners~~, adopted by rule by the commission for use in
587 determining the minimum standard of valuation for those policies
588 or contracts.
589
590 Any such table for active lives shall be combined with a
591 mortality table permitted for calculating the reserves for life
592 insurance policies.
593 (f) For accidental death benefits in or supplementary to
594 policies:
595 1. For policies issued on or after January 1, 1966, the
596 1959 Accidental Death Benefits Table;
597 2. For policies issued on or after January 1, 1961, and
598 before ~~prior to~~ January 1, 1966, the 1959 Accidental Death
599 Benefits ~~either that~~ Table or, at the option of the insurer, the
600 Intercompany Double Indemnity Mortality Table;
601 3. For policies issued before ~~prior to~~ January 1, 1961, the
602 Intercompany Double Indemnity Mortality Table; and
603 4. For policies issued on or after July 1, 2004, tables of
604 accidental death benefits adopted after 1980 by the NAIC
605 ~~National Association of Insurance Commissioners~~, adopted by rule
606 by the commission for use in determining the minimum standard of
607 valuation for those policies.
608
609 Either table shall be combined with a mortality table permitted

610 for calculating the reserves for life insurance policies.
611 (g) For group life insurance, life insurance issued on the
612 substandard basis, and other special benefits, such tables as
613 may be approved by the office as being sufficient with relation
614 to the benefits provided by such policies.
615 (h) Except as provided in subsection (6), the minimum
616 standard for the valuation of all individual annuity and pure
617 endowment contracts issued on or after the operative date of
618 this paragraph and for all annuities and pure endowments
619 purchased on or after such operative date under group annuity
620 and pure endowment contracts shall be the commissioners' reserve
621 valuation method defined in subsection (7) and the following
622 tables and interest rates:
623 1. For individual annuity and pure endowment contracts
624 issued before ~~prior to~~ October 1, 1979, excluding any disability
625 and accidental death benefits in such contracts, the 1971
626 Individual Annuity Mortality Table, or any modification of this
627 table approved by the office, and 6 percent interest for single-
628 premium immediate annuity contracts and 4 percent interest for
629 all other individual annuity and pure endowment contracts.
630 2. For individual single-premium immediate annuity
631 contracts issued on or after October 1, 1979, and before ~~prior~~
632 ~~to~~ October 1, 1986, excluding any disability and accidental
633 death benefits in such contracts, the 1971 Individual Annuity
634 Mortality Table, or any modification of this table approved by
635 the office, and 7.5 percent interest. For such contracts issued
636 on or after October 1, 1986, the 1983 Individual Annual
637 Mortality Table, or any modification of such table approved by
638 the office, and the applicable calendar year statutory valuation

639 interest rate as described in subsection (6).
640 3. For individual annuity and pure endowment contracts
641 issued on or after October 1, 1979, and before ~~prior to~~ October
642 1, 1986, other than single-premium immediate annuity contracts,
643 excluding any disability and accidental death benefits in such
644 contracts, the 1971 Individual Annuity Mortality Table, or any
645 modification of this table approved by the office, and 5.5
646 percent interest for single-premium deferred annuity and pure
647 endowment contracts and 4.5 percent interest for all other such
648 individual annuity and pure endowment contracts. For such
649 contracts issued on or after October 1, 1986, the 1983
650 Individual Annual Mortality Table, or any modification of such
651 table approved by the office, and the applicable calendar year
652 statutory valuation interest rate as described in subsection
653 (6).
654 4. For all annuities and pure endowments purchased before
655 ~~prior to~~ October 1, 1979, under group annuity and pure endowment
656 contracts, excluding any disability and accidental death
657 benefits purchased under such contracts, the 1971 Group Annuity
658 Mortality Table, or any modification of this table approved by
659 the office, and 6 percent interest.
660 5. For all annuities and pure endowments purchased on or
661 after October 1, 1979, and before ~~prior to~~ October 1, 1986,
662 under group annuity and pure endowment contracts, excluding ~~any~~
663 disability and accidental death benefits purchased under such
664 contracts, the 1971 Group Annuity Mortality Table, or any
665 modification of this table approved by the office, and 7.5
666 percent interest. For such contracts purchased on or after
667 October 1, 1986, the 1983 Group Annuity Mortality Table, or any

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668 modification of such table approved by the office, and the
669 applicable calendar year statutory valuation interest rate as
670 described in subsection (6).
671
672 After July 1, 1973, an ~~any~~ insurer may have filed with the
673 former Department of Insurance a written notice of its election
674 to comply with ~~the provisions of~~ this paragraph after a
675 specified date before January 1, 1979, which shall be the
676 operative date of this paragraph for such insurer. However, an
677 insurer may elect a different operative date for individual
678 annuity and pure endowment contracts from that elected for group
679 annuity and pure endowment contracts. If an insurer does not
680 make ~~makes no~~ such election, the operative date of this
681 paragraph for such insurer is ~~shall be~~ January 1, 1979.
682 (i) In lieu of the mortality tables specified in this
683 subsection, and subject to rules previously adopted by the
684 former Department of Insurance, the insurance company may, at
685 its option:
686 1. Substitute the applicable 1958 CSO or CET Smoker and
687 Nonsmoker Mortality Tables, in lieu of the 1980 CSO or CET
688 mortality table standard, for policies issued on or after the
689 operative date of s. 627.476(9) and before January 1, 1989.
690 2. Substitute the applicable 1980 CSO or CET Smoker and
691 Nonsmoker Mortality Tables in lieu of the 1980 CSO or CET
692 mortality table standard.~~,~~
693 3. Use the Annuity 2000 Mortality Table for determining the
694 minimum standard of valuation for individual annuity and pure
695 endowment contracts issued on or after January 1, 1998, and
696 before July 1, 1998.

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697 4. Use the 1994 GAR Table for determining the minimum
698 standard of valuation for annuities and pure endowments
699 purchased on or after January 1, 1998, and before July 1, 1998,
700 under group annuity and pure endowment contracts.
701 (j) The commission may adopt by rule the model regulation
702 for valuation of life insurance policies as approved by the NAIC
703 ~~National Association of Insurance Commissioners~~ in March 1999,
704 including tables of select mortality factors, and may make the
705 regulation effective for policies issued on or after January 1,
706 2000.
707 (k) For individual annuity and pure endowment contracts
708 issued on or after July 1, 2004, excluding ~~any~~ disability and
709 accidental death benefits purchased under those contracts,
710 individual annuity mortality tables adopted after 1980 by the
711 NAIC ~~National Association of Insurance Commissioners~~, adopted by
712 rule by the commission for use in determining the minimum
713 standard of valuation for those contracts.
714 (l) For all annuities and pure endowments purchased on or
715 after July 1, 2004, under group annuity and pure endowment
716 contracts, excluding ~~any~~ disability and accidental death
717 benefits purchased under those contracts, group annuity
718 mortality tables adopted after 1980 by the NAIC ~~National~~
719 ~~Association of Insurance Commissioners~~, adopted by rule by the
720 commission for use in determining the minimum standard of
721 valuation for those contracts.
722 (6) MINIMUM STANDARD OF VALUATION.—
723 (e) The interest rate index shall be the Moody's Corporate
724 Bond Yield Average-Monthly Average Corporates as published by
725 Moody's Investors Service, Inc., if the ~~as long as this~~ index is

726 calculated by using substantially the same methodology ~~as~~ used
727 by Moody's ~~it~~ on January 1, 1981. If Moody's corporate bond
728 yield average ceases to be calculated in substantially the same
729 ~~this~~ manner, the interest rate index shall be the index
730 specified in the valuation manual, as applicable, as provided
731 under s. 625.1212, or an index adopted by the NAIC and approved
732 by rule adopted ~~promulgated~~ by the commission. The methodology
733 used in determining the index approved by rule must ~~shall~~ be
734 substantially the same as the methodology employed on January 1,
735 1981, for determining Moody's Corporate Bond Yield Average-
736 Monthly Average Corporates as published by Moody's Investors
737 Service, Inc.
738 (10) LOWER VALUATIONS.—An insurer that ~~which at any time~~
739 ~~had~~ adopted a ~~any~~ standard of valuation producing greater
740 aggregate reserves than those calculated according to the
741 minimum standard ~~herein~~ provided under this section shall ~~may~~,
742 with the approval of the office, adopt a ~~any~~ lower standard of
743 valuation, but not lower than the minimum herein provided;
744 however, for the purposes of this subsection, the holding of
745 additional reserves previously determined by an appointed ~~a~~
746 ~~qualified~~ actuary, as defined in s. 625.1212(2), to be necessary
747 to render the opinion required by subsection (3) may ~~shall~~ not
748 be deemed to be the adoption of a higher standard of valuation.
749 (11) ADDITIONAL PREMIUM ~~DEFICIENCY RESERVE~~.—If in any
750 contract year the gross premium charged by a ~~any~~ life insurer on
751 a ~~any~~ policy or contract is less than the valuation net premium
752 for the policy or contract calculated by the method used in
753 calculating the reserve thereon but using the minimum valuation
754 standards of mortality and rate of interest, the minimum premium

755 reserve required for the policy or contract shall be the greater
756 of the reserve calculated according to the actual mortality
757 table, rate of interest, and method used for the policy or
758 contract, or the actual method used for the policy or contract
759 but using the minimum valuation standards of mortality and rate
760 of interest and replacing the valuation net premium by the
761 actual gross premium in each contract year for which the
762 valuation net premium exceeds the actual gross premium. The
763 minimum valuation standards of mortality and rate of interest
764 are those standards ~~there shall be maintained on such policy or~~
765 ~~contract a deficiency reserve in addition to the reserve~~ defined
766 by subsections (4), (5), and (6) ~~(7) and (12)~~. ~~For each such~~
767 ~~policy or contract, the deficiency reserve shall be the present~~
768 ~~value, according to the minimum valuation standards of mortality~~
769 ~~and rate of interest, of the differences between all such~~
770 ~~valuation net premiums and the corresponding premiums charged~~
771 ~~for such policy or contract during the remainder of the premium-~~
772 ~~paying period. For any category of policies, contracts, or~~
773 ~~benefits specified in subsections (5) and (6), issued on or~~
774 ~~after the operative date of s. 627.476 (the Standard~~
775 ~~Nonforfeiture Law for Life Insurance), the aggregate deficiency~~
776 ~~reserves may be reduced by the amount, if any, by which the~~
777 ~~aggregate reserves actually calculated in accordance with~~
778 ~~subsection (9) exceed the minimum aggregate reserves prescribed~~
779 ~~by subsection (8). The minimum valuation standards of mortality~~
780 ~~and rate of interest referred to in this subsection are those~~
781 ~~standards stated in subsections (5) and (6). However,~~ For any
782 life insurance policy that ~~which~~ is issued on or after January
783 1, 1985, for which the gross premium in the first policy year

784 exceeds that of the second year and for which no comparable
785 additional benefit is provided in the first year for such
786 excess, and which provides an endowment benefit, a cash
787 surrender value, or a combination thereof in an amount greater
788 than such excess premium, the foregoing provisions of this
789 subsection shall be applied as if the method actually used in
790 calculating the reserve for such policy were the method
791 described in subsection (7), the provisions of subparagraph
792 (7)(a)2. being ignored. The minimum premium reserve amount ~~of~~
793 ~~the deficiency reserve~~, if any, at each policy anniversary of
794 such a policy is ~~shall be~~ the excess, if any, of the amount
795 determined by the foregoing provisions of this subsection plus
796 the reserve calculated by the method described in subsection
797 (7), the provisions of subparagraph (7)(a)2. being ignored, over
798 the reserve actually calculated by the method described in
799 subsection (7), the provisions of subparagraph (7)(a)2. being
800 taken into account.
801 (12) RESERVE CALCULATION FOR INDETERMINATE PREMIUM PLANS
802 ~~ALTERNATE METHOD FOR DETERMINING RESERVES IN CERTAIN CASES.~~—In
803 the case of a ~~any~~ plan of life insurance which provides for
804 future premium determination, the amounts of which are to be
805 determined by the insurer based on then estimates of future
806 experience, or in the case of a ~~any~~ plan of life insurance or
807 annuity for which ~~is of such a nature that~~ the minimum reserves
808 cannot be determined by the methods described in subsections (7)
809 and (11) ~~subsection (7)~~, the reserves that ~~which~~ are held under
810 ~~any~~ such plan must ~~shall~~:
811 (a) Be appropriate in relation to the benefits and the
812 pattern of premiums for that plan; and

813 (b) Be computed by a method that ~~which~~ is consistent with
814 the principles of this section, as determined by rules adopted
815 ~~promulgated~~ by the commission.
816 Section 7. Section 625.1212, Florida Statutes, is created
817 to read:
818 625.1212 Valuation of policies and contracts issued on or
819 after the operative date of the valuation manual.—
820 (1) APPLICABILITY.—This section applies to life insurance
821 contracts, accident and health insurance contracts, and deposit-
822 type contracts issued on or after the operative date of the
823 valuation manual unless the manual requires or permits an
824 insurer to determine reserves according to the standards in
825 effect before the operative date of the manual and rules adopted
826 by the commission as provided under s. 625.121. Subsections (5)
827 and (6) do not apply to policies and contracts subject to s.
828 625.121.
829 (2) DEFINITIONS.—As used in this section, the term:
830 (a) "Accident and health insurance" means contracts that
831 incorporate morbidity risk and provide protection against
832 economic loss resulting from accident, sickness, or medical
833 conditions and as may be specified in the valuation manual.
834 (b) "Appointed actuary" means a qualified actuary who is
835 appointed in accordance with the valuation manual to prepare the
836 actuarial opinion required in subsection (4).
837 (c) "Deposit-type contract" means contracts that do not
838 incorporate mortality or morbidity risks and as may be specified
839 in the valuation manual.
840 (d) "Insurer" means a person engaged as an indemnitor,
841 surety, or contractor in the business of entering into contracts

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842 of insurance or reinsurance.
843 (e) "Life insurance" means policies or contracts that
844 incorporate mortality risk, including annuity and pure endowment
845 contracts, and as may be specified in the valuation manual.
846 (f) "Operative date of the valuation manual" means the
847 later of January 1, 2017, or the January 1 immediately following
848 the July 1 that the Commissioner of the Office of Insurance
849 Regulation certifies to the Financial Services Commission in
850 writing that the following conditions occurred on or before July
851 1:
852 1. The valuation manual is adopted by the NAIC by an
853 affirmative vote of at least 42 members of the NAIC or 75
854 percent of members voting, whichever is greater;
855 2. The Standard Valuation Law, as amended by the NAIC in
856 2009, or substantially similar legislation, is enacted in states
857 representing more than 75 percent of the direct premiums written
858 as reported in the 2008 annual statements for life, accident and
859 health, health, or fraternal society insurance; and
860 3. The Standard Valuation Law as amended by the NAIC in
861 2009, or substantially similar legislation, is enacted in at
862 least 42 of the following 55 jurisdictions: the 50 states of the
863 United States, the District of Columbia, American Samoa, the
864 American Virgin Islands, Guam, and Puerto Rico.
865 (g) "Policyholder behavior" means an action a policyholder,
866 contract holder, or other person who has the right to elect
867 options, such as a certificateholder, may take under a policy or
868 contract subject to this section including, but not limited to,
869 lapse, withdrawal, transfer, deposit, premium payment, loan,
870 annuitization, or benefit elections prescribed by the policy or

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871 contract but excluding events of mortality or morbidity that
872 result in benefits prescribed in their essential aspects by the
873 terms of the policy or contract.
874 (h) "Principle-based valuation" means a reserve valuation
875 that uses one or more methods or assumptions determined by the
876 insurer and must comply with subsection (6) as specified in the
877 valuation manual.
878 (i) "Qualified actuary" means an individual who is
879 qualified to sign the applicable statement of actuarial opinion
880 in accordance with the American Academy of Actuaries
881 qualification standards for actuaries signing such statements
882 and who meets the requirements specified in the valuation
883 manual.
884 (j) "Tail risk" means a risk that occurs when the frequency
885 of low probability events is higher than expected under a normal
886 probability distribution or when there are observed events of
887 very significant size or magnitude.
888 (k) "Valuation manual" means the manual of valuation
889 instructions adopted by the NAIC, or as subsequently amended.
890 (3) RESERVE VALUATION.—The office shall annually value, or
891 cause to be valued, insurer reserves for all outstanding life
892 insurance contracts, accident and health contracts, and deposit-
893 type contracts in this state. Insurers are subject to
894 subsections (5) and (6) when calculating the reserves. In lieu
895 of the reserve valuation for a foreign or alien insurer, the
896 office may accept a valuation made, or caused to be made, by the
897 insurance supervisory official of any state or other
898 jurisdiction if the valuation complies with the minimum standard
899 required in this section.

900 (4) ACTUARIAL OPINION OF RESERVES.—
901 (a) Each insurer that has outstanding life insurance
902 contracts, accident and health insurance contracts, or deposit-
903 type contracts in this state which are subject to regulation by
904 the office must annually submit the opinion of a qualified
905 actuary as to whether the reserves and related actuarial items
906 held in support of the policies and contracts are computed
907 appropriately, are based on assumptions that satisfy contractual
908 provisions, are consistent with prior reported amounts, and
909 comply with applicable state law. The specifics of the opinion,
910 including any items deemed necessary to its scope, must be as
911 prescribed by the valuation manual.
912 (b) Except as exempted in the valuation manual, each
913 insurer that has outstanding life insurance contracts, accident
914 and health insurance contracts, or deposit-type contracts in
915 this state shall also annually include an opinion by the same
916 appointed actuary as to whether the reserves and related
917 actuarial items held in support of the policies and contracts
918 specified in the valuation manual, when considered in light of
919 the assets held by the insurer with respect to the reserves and
920 related actuarial items, including, but not limited to, the
921 investment earnings on the assets and the considerations
922 anticipated to be received and retained under the policies and
923 contracts, make adequate provision for the insurer's obligations
924 under the policies and contracts, including, but not limited to,
925 the benefits under and expenses associated with the policies and
926 contracts.
927 (c) The insurer shall prepare a memorandum to support each
928 actuarial opinion in such form and substance as specified in the

929 valuation manual and acceptable to the office. If the insurer
930 fails to provide a supporting memorandum within the period
931 specified in the valuation manual, or if the office determines
932 that the supporting memorandum fails to meet the standards
933 required by the manual or is otherwise unacceptable to the
934 office, the office may engage a qualified actuary at the expense
935 of the insurer to review the opinion and the basis for the
936 opinion and to prepare the supporting memorandum.
937 (d) Each opinion subject to this subsection must be
938 submitted with the annual statement in such form and substance
939 as specified in the valuation manual and acceptable to the
940 office, must reflect the valuation of the reserve liabilities
941 for each year ending on or after the operative date of the
942 valuation manual, and must apply to all policies and contracts
943 subject to paragraph (b), plus other actuarial liabilities as
944 may be specified in the valuation manual. The opinion must be
945 based on standards adopted by the Actuarial Standards Board or
946 its successor, and on such additional standards as may be
947 prescribed in the valuation manual. For a foreign or alien
948 insurer, the office may accept an opinion filed by the insurer
949 with the insurance supervisory official of another state if the
950 office determines that the opinion reasonably meets the
951 requirements applicable to an insurer domiciled in this state.
952 (e) Disciplinary action by the office against the insurer
953 or the appointed actuary shall be in accordance with the laws of
954 this state and related rules adopted by the commission.
955 (5) MINIMUM STANDARD OF VALUATION.—
956 (a) In accordance with this subsection and subsection (6),
957 an insurer must apply the standard prescribed in the valuation

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958 manual as the minimum standard of valuation for contracts issued
959 on or after the operative date of the valuation manual, except:
960 1. For specific product forms or product lines exempted
961 pursuant to paragraph (f); or
962 2. That an insurer domiciled in a state that does not
963 require the insurer to apply the standards prescribed in the
964 valuation manual as the minimum standard of valuation, including
965 the principle-based valuation of reserves, may not apply such
966 standards in this state.
967 (b) If, in the opinion of the office, there is no specific
968 valuation requirement or a specific valuation requirement in the
969 valuation manual is not in compliance with this section, the
970 insurer shall comply with the minimum valuation standards
971 prescribed by the commission by rule.
972 (c) The office may engage a qualified actuary, at the
973 insurer's expense, to perform an actuarial examination of the
974 insurer and to render an opinion as to the appropriateness of
975 any reserve assumption or method, or computer model or modeling
976 software used by the insurer, or to review and provide an
977 opinion on the insurer's compliance with the requirements of
978 this section. In calculating and establishing reserves under
979 this section, the insurer may rely on the modeling software and
980 tools of a third-party vendor only if the vendor contractually
981 agrees to allow the insurer to provide the office with access to
982 the software or tools as necessary to replicate the results of
983 the software or tools for the purpose of evaluating and
984 validating reserve valuations. The office may rely upon the
985 opinion of a qualified actuary employed by or under contract
986 with the commissioner of another state, district, or territory

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987 of the United States with respect to this section.
988 (d) The office may require an insurer to change any
989 assumption or method that, in the opinion of the office, is
990 necessary to comply with the valuation manual or this section.
991 The insurer shall adjust the reserves as required by the office.
992 The office may take other disciplinary action pursuant to
993 applicable state law and rules.
994 (e) The commission may adopt subsequent amendments to the
995 valuation manual by rule if the methodology and standards remain
996 substantially consistent with the valuation manual then in
997 effect.
998 (f) A domestic insurer licensed and doing business only in
999 this state may exempt specific product forms or product lines
1000 from the requirements of this subsection and subsection (6) if
1001 the insurer computes reserves for the specific product forms or
1002 product lines using assumptions and methods used before the
1003 operative date of the valuation manual, and the amount of
1004 insurance subject to the stochastic or deterministic reserve
1005 requirement is immaterial. The requirements of s. 625.121 apply
1006 to specific product forms and product lines exempted under this
1007 paragraph.
1008 (g) An insurer that adopted a standard of valuation
1009 producing greater aggregate reserves than those calculated
1010 according to the minimum standard provided under this section
1011 may, with the approval of the office, adopt a lower standard of
1012 valuation, but such standard may not be lower than the minimum
1013 provided in this subsection. For purposes of this subsection,
1014 holding additional reserves previously determined by an
1015 appointed actuary to be necessary to render the opinion required

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1016 by subsection (3) may not be deemed to be the adoption of a
1017 higher standard of valuation.
1018 (6) REQUIREMENTS OF A PRINCIPLE-BASED VALUATION OF
1019 RESERVES.—
1020 (a) Insurers required to use a principle-based valuation of
1021 reserves for specified product forms and product lines and
1022 associated policies and contracts, pursuant to subparagraph
1023 (5)(a)2., must:
1024 1. Quantify the benefits and guarantees, and the funding
1025 associated with the policies or contracts and their risks at a
1026 level of conservatism that reflects conditions that:
1027 a. Include unfavorable events that have a reasonable
1028 probability of occurring during the lifetime of the policies or
1029 contracts; and
1030 b. Are appropriately adverse to quantifying the tail risk.
1031 2. Incorporate assumptions, risk analysis methods, and
1032 financial models and management techniques that are consistent
1033 with, but not necessarily identical to, those used within the
1034 insurer's overall risk assessment process while recognizing
1035 potential differences in financial reporting structures and any
1036 prescribed assumptions or methods.
1037 3. Incorporate assumptions that are derived in one of the
1038 following manners:
1039 a. The assumption is prescribed in the valuation manual.
1040 b. For assumptions that are not prescribed, the assumptions
1041 must:
1042 (I) Be established using the insurer's available
1043 experience, to the extent that it is relevant and statistically
1044 credible; or

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1045 (II) To the extent that insurer data is not available,
1046 relevant, or statistically credible, be established using other
1047 relevant, statistically credible experience.
1048 4. Provide margins for uncertainty including adverse
1049 deviation and estimation error, such that the greater the
1050 uncertainty the larger the margin and resulting reserve.
1051 (b) An insurer using a principle-based valuation for one or
1052 more policies or contracts subject to this section as specified
1053 in the valuation manual shall:
1054 1. Establish procedures for corporate governance and
1055 oversight of the actuarial valuation function consistent with
1056 those prescribed in the valuation manual.
1057 2. Submit an annual certification to the office and the
1058 insurer's board of directors of the effectiveness of internal
1059 controls on the principle-based valuation. The internal controls
1060 must be designed to assure that all material risks inherent in
1061 the liabilities and associated assets subject to the valuation
1062 are included in the valuation, and that valuations are made in
1063 accordance with the valuation manual. The certification must be
1064 based on controls in place as of the end of the preceding
1065 calendar year.
1066 3. Upon request, develop and file with the office a
1067 principle-based valuation report that complies with standards
1068 prescribed in the valuation manual.
1069 (c) A principle-based valuation may include a prescribed
1070 formulaic reserve component.
1071 (7) EXPERIENCE REPORTING.—An insurer subject to the
1072 requirements of paragraph (5)(d) shall submit mortality,
1073 morbidity, policyholder behavior, or expense experience and

1074 other data as prescribed in the valuation manual to the office.
1075 (8) RULE ADOPTION.—The commission may adopt rules as
1076 necessary to administer this section, including rules requiring
1077 the use of the NAIC 2009 Standard Valuation Law and the NAIC
1078 2012 Valuation Manual. The adoption of such rules is not subject
1079 to s. 120.541(3), and the rules do not take effect until the
1080 operative date of the valuation manual.
1081 Section 8. Section 625.1214, Florida Statutes, is created
1082 to read:
1083 625.1214 Use of confidential information.—
1084 (1) Documents, reports, materials, and other information
1085 created, produced, or obtained pursuant to ss. 625.121 and
1086 625.1212 are privileged, confidential, and exempt as provided in
1087 s. 624.4212, and are not subject to subpoena or discovery
1088 directly from the office. However, the department or office may
1089 use the confidential and exempt information in the furtherance
1090 of any regulatory or legal action brought against an insurer as
1091 a part of the official duties of the department or office. A
1092 waiver of any other applicable claim of confidentiality or
1093 privilege may not occur as a result of a disclosure to the
1094 office under this section, any other section of the insurance
1095 code, or as a result of sharing under s. 624.4212.
1096 (2) Neither the office nor any person who received
1097 confidential and exempt information while acting under the
1098 authority of the office or with whom such information is shared
1099 pursuant to s. 624.4212 may be permitted or required to testify
1100 in a private civil action concerning any confidential and exempt
1101 information subject to s. 624.4212. If any portion of the
1102 confidential memorandum is cited by the insurer in its

1103 marketing, is cited before a governmental agency other than a
1104 state insurance department, or is released by the insurer to the
1105 news media, no portion of the memorandum is confidential.
1106 (3) A privilege established under the law of any state or
1107 jurisdiction that is substantially similar to the privilege
1108 established under subsection (1) shall be available and enforced
1109 in any proceeding in and in any court of this state.
1110 Section 9. Paragraphs (h) and (i) of subsection (9) and
1111 subsection (14) of section 627.476, Florida Statutes, are
1112 amended to read:
1113 627.476 Standard Nonforfeiture Law for Life Insurance.—
1114 (9) CALCULATION OF ADJUSTED PREMIUMS AND PRESENT VALUES FOR
1115 POLICIES ISSUED AFTER OPERATIVE DATE OF THIS SUBSECTION.—
1116 (h) All adjusted premiums and present values referred to in
1117 this section shall, for all policies of ordinary insurance be
1118 calculated on the basis of the ~~Commissioners'~~ 1980 Standard
1119 Ordinary Mortality Table adopted by the NAIC or, at the election
1120 of the insurer for any one or more specified plans of life
1121 insurance, the ~~Commissioners'~~ 1980 Standard Ordinary Mortality
1122 Table with Ten-Year Select Mortality Factors adopted by the
1123 NAIC; ~~shall~~ for all policies of industrial insurance be
1124 calculated on the basis of the ~~Commissioners'~~ 1961 Standard
1125 Industrial Mortality Table adopted by the NAIC; and ~~shall~~ for
1126 all policies issued in a particular calendar year be calculated
1127 on the basis of a rate of interest not exceeding the
1128 nonforfeiture interest rate as defined in this subsection for
1129 policies issued in that calendar year. However:
1130 1. At the option of the insurer, calculations for all
1131 policies issued in a particular calendar year may be made on the

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1132 basis of a rate of interest not exceeding the nonforfeiture
1133 interest rate, as defined in this subsection, for policies
1134 issued in the immediately preceding calendar year.
1135 2. Under any paid-up nonforfeiture benefit, including any
1136 paid-up dividend additions, any cash surrender value available,
1137 whether ~~or not~~ required by subsection (2), shall be calculated
1138 on the basis of the mortality table and rate of interest used in
1139 determining the amount of such paid-up nonforfeiture benefit and
1140 paid-up dividend additions, if any.
1141 3. An insurer may calculate the amount of any guaranteed
1142 paid-up nonforfeiture benefit, including any paid-up additions
1143 under the policy, on the basis of an interest rate no lower than
1144 that specified in the policy for calculating cash surrender
1145 values.
1146 4. In calculating the present value of any paid-up term
1147 insurance with accompanying pure endowment, if any, offered as a
1148 nonforfeiture benefit, the rates of mortality assumed may be not
1149 more than those shown in the ~~Commissioners'~~ 1980 Extended Term
1150 Insurance Table adopted by the NAIC for policies of ordinary
1151 insurance and not more than the ~~Commissioners'~~ 1961 Industrial
1152 Extended Term Insurance Table adopted by the NAIC for policies
1153 of industrial insurance.
1154 5. In lieu of the mortality tables specified in this
1155 section, at the option of the insurance company and subject to
1156 rules adopted by the commission, the insurance company may
1157 substitute:
1158 a. The 1958 CSO or CET Smoker and Nonsmoker Mortality
1159 Tables, whichever is applicable, for policies issued on or after
1160 the operative date of this subsection and before January 1,

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1161 1989;
1162 b. The 1980 CSO or CET Smoker and Nonsmoker Mortality
1163 Tables, whichever is applicable, for policies issued on or after
1164 the operative date of this subsection;
1165 c. A mortality table that is a blend of the sex-distinct
1166 1980 CSO or CET mortality table standard, whichever is
1167 applicable, or a mortality table that is a blend of the sex-
1168 distinct 1980 CSO or CET smoker and nonsmoker mortality table
1169 standards, whichever is applicable, for policies that are
1170 subject to the United States Supreme Court decision in *Arizona*
1171 *Governing Committee v. Norris* to prevent unfair discrimination
1172 in employment situations.
1173 6. For policies issued:
1174 a. Before the operative date of the valuation manual,
1175 ordinary mortality tables, adopted after 1980 by the NAIC
1176 ~~National Association of Insurance Commissioners~~, adopted by rule
1177 by the commission for use in determining the minimum
1178 nonforfeiture standard may be substituted for the ~~Commissioners'~~
1179 1980 Standard Ordinary Mortality Table with or without Ten-Year
1180 Select Mortality Factors or ~~for~~ the ~~Commissioners'~~ 1980 Extended
1181 Term Insurance Table adopted by the NAIC.
1182 b. On or after the operative date of the valuation manual,
1183 the valuation manual shall provide the Standard Mortality Table
1184 for use in determining the minimum nonforfeiture standard that
1185 may be substituted for:
1186 (I) The 1980 Standard Ordinary Mortality Table with or
1187 without 10-Year Select Mortality Factors or the 1980 Extended
1188 Term Insurance Table adopted by the NAIC. If the commission
1189 approves by rule a Standard Ordinary Mortality Table adopted by

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1190 the NAIC for use in determining the minimum nonforfeiture
1191 standard for policies issued on or after the operative date of
1192 the valuation manual, the minimum nonforfeiture standard
1193 supersedes the minimum nonforfeiture standard provided by the
1194 valuation manual.
1195 (II) The 1961 Standard Industrial Mortality Table or 1961
1196 Industrial Extended Term Insurance Table adopted by the NAIC. If
1197 the commission approves by rule any Standard Industrial
1198 Mortality Table adopted by the NAIC for use in determining the
1199 minimum nonforfeiture standard for policies issued on or after
1200 the operative date of the valuation manual, the minimum
1201 nonforfeiture standard supersedes the minimum nonforfeiture
1202 standard provided by the valuation manual.
1203 7. For insurance issued on a substandard basis, the
1204 calculation of any such adjusted premiums and present values may
1205 be based on appropriate modifications of the aforementioned
1206 tables.
1207 (i) The nonforfeiture interest rate per year for a ~~any~~
1208 policy issued in a particular calendar year for policies issued:
1209 1. Before the operative date of the valuation manual, shall
1210 be equal to 125 percent of the calendar year statutory valuation
1211 interest rate for such policy as defined in the Standard
1212 Valuation Law, rounded to the nearest one-fourth of 1 percent;
1213 however, the nonforfeiture interest rate may not be less than 4
1214 percent.
1215 2. On or after the operative date of the valuation manual,
1216 shall be as provided by the valuation manual.
1217 (14) OPERATIVE DATE.—
1218 (a) After the effective date of this code, an ~~any~~ insurer

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1219 may file with the office a written notice or notices of its
1220 election to comply with ~~the provisions of~~ this section on and
1221 after a specified date or dates before January 1, 1966, as to
1222 either or both of its policies of ordinary and industrial
1223 insurance, in which case such specified date or dates shall be
1224 the operative date of this section with respect to such
1225 policies. The operative date of this section for policies of
1226 both ordinary and industrial insurance shall be the earlier of
1227 January 1, 1966, and any prior operative date or dates resulting
1228 from such previously filed written notices. With respect to
1229 policies of industrial insurance issued on and after the
1230 operative date of this section for such policies but before
1231 January 1, 1968, any insurer may file with the office written
1232 notice of its election to have the ~~Commissioners'~~ 1961 Standard
1233 Industrial Mortality Table and ~~the Commissioners'~~ 1961
1234 Industrial Extended Term Insurance Table adopted by the NAIC
1235 applicable with respect to subsection (8) for policies issued on
1236 and after the date specified in such election.
1237 (b) As used in subsection (9), the term "operative date of
1238 the valuation manual" has the same meaning as provided in s.
1239 625.1212(2).
1240 Section 10. Subsections (1), (3), (10), (12), and (13) of
1241 section 628.461, Florida Statutes, are amended to read:
1242 628.461 Acquisition of controlling stock.—
1243 (1) A person may not, individually or in conjunction with
1244 any affiliated person of such person, acquire directly or
1245 indirectly, conclude a tender offer or exchange offer for, enter
1246 into any agreement to exchange securities for, or otherwise
1247 finally acquire 10 ~~5~~ percent or more of the outstanding voting

1248 securities of a domestic stock insurer or of a controlling
1249 company, unless:
1250 (a) The person or affiliated person has filed with the
1251 office and sent to the insurer and controlling company a letter
1252 of notification regarding the transaction or proposed
1253 transaction within ~~no later than~~ 5 days after any form of tender
1254 offer or exchange offer is proposed, or within ~~no later than~~ 5
1255 days after the acquisition of the securities if no tender offer
1256 or exchange offer is involved. The notification must be provided
1257 on forms prescribed by the commission containing information
1258 determined necessary to understand the transaction and identify
1259 all purchasers and owners involved;
1260 (b) The person or affiliated person has filed with the
1261 office the ~~a~~ statement as specified in subsection (3). The
1262 statement must be completed and filed within 30 days after:
1263 1. Any definitive acquisition agreement is entered;
1264 2. Any form of tender offer or exchange offer is proposed;
1265 or
1266 3. The acquisition of the securities, if no definitive
1267 acquisition agreement, tender offer, or exchange offer is
1268 involved; and
1269 (c) The office has approved the tender or exchange offer,
1270 or acquisition if no tender offer or exchange offer is involved,
1271 and approval is in effect.
1272
1273 ~~In lieu of a filing as required under this subsection, a party~~
1274 ~~acquiring less than 10 percent of the outstanding voting~~
1275 ~~securities of an insurer may file a disclaimer of affiliation~~
1276 ~~and control. The disclaimer shall fully disclose all material~~

1277 ~~relationships and basis for affiliation between the person and~~
1278 ~~the insurer as well as the basis for disclaiming the affiliation~~
1279 ~~and control. After a disclaimer has been filed, the insurer~~
1280 ~~shall be relieved of any duty to register or report under this~~
1281 ~~section which may arise out of the insurer's relationship with~~
1282 ~~the person unless and until the office disallows the disclaimer.~~
1283 ~~The office shall disallow a disclaimer only after furnishing all~~
1284 ~~parties in interest with notice and opportunity to be heard and~~
1285 ~~after making specific findings of fact to support the~~
1286 ~~disallowance.~~ A filing ~~as~~ required under this subsection must be
1287 made for ~~as to~~ any acquisition that equals or exceeds 10 percent
1288 of the outstanding voting securities.
1289 (3) The statement to be filed with the office under
1290 subsection (1) and furnished to the insurer and controlling
1291 company must ~~shall~~ contain all the following information and any
1292 additional information that ~~as~~ the office deems necessary to
1293 determine the character, experience, ability, and other
1294 qualifications of the person or affiliated person of such person
1295 for the protection of the policyholders and shareholders of the
1296 insurer and the public:
1297 (a) The identity of, and the background information
1298 specified in subsection (4) on, each natural person by whom, or
1299 on whose behalf, the acquisition is to be made; and, if the
1300 acquisition is to be made by, or on behalf of, a corporation,
1301 association, or trust, as to the corporation, association, or
1302 trust and as to any person who controls, ~~either~~ directly or
1303 indirectly, the corporation, association, or trust, the identity
1304 of, and the background information specified in subsection (4)
1305 on, each director, officer, trustee, or other natural person

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1306 performing duties similar to those of a director, officer, or
1307 trustee for the corporation, association, or trust.~~;~~
1308 (b) The source and amount of the funds or other
1309 consideration used, or to be used, in making the acquisition.~~;~~
1310 (c) Any plans or proposals that ~~which~~ such persons may have
1311 made to liquidate such insurer, to sell any of its assets or
1312 merge or consolidate it with any person, or to make any other
1313 major change in its business or corporate structure or
1314 management; and any plans or proposals that ~~which~~ such persons
1315 may have made to liquidate any controlling company of such
1316 insurer, to sell any of its assets or merge or consolidate it
1317 with any person, or to make any other major change in its
1318 business or corporate structure or management.~~;~~
1319 (d) The number of shares or other securities that ~~which~~ the
1320 person or affiliated person of such person proposes to acquire,
1321 the terms of the proposed acquisition, and the manner in which
1322 the securities are to be acquired.~~; and~~
1323 (e) Information as to any contract, arrangement, or
1324 understanding with any party with respect to any of the
1325 securities of the insurer or controlling company, including, but
1326 not limited to, information relating to the transfer of any of
1327 the securities, option arrangements, puts or calls, or the
1328 giving or withholding of proxies, which information names the
1329 party with whom the contract, arrangement, or understanding has
1330 been entered into and gives the details thereof.
1331 (f) Effective January 1, 2015, an agreement by the person
1332 required to file the statement that the person will provide the
1333 annual report specified in s. 628.801(2) if control exists.
1334 (g) Effective January 1, 2015, an acknowledgement by the

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1335 person required to file the statement that the person and all
1336 subsidiaries within the person's control in the insurance
1337 holding company system will provide, as necessary, information
1338 to the office upon request to evaluate enterprise risk to the
1339 insurer.
1340 (10) Upon notification to the office by the domestic stock
1341 insurer or a controlling company that any person or any
1342 affiliated person of such person has acquired 10 ~~5~~ percent or
1343 more of the outstanding voting securities of the domestic stock
1344 insurer or controlling company without complying with the
1345 provisions of this section, the office shall order that the
1346 person and any affiliated person of such person cease
1347 acquisition of any further securities of the domestic stock
1348 insurer or controlling company; however, the person or any
1349 affiliated person of such person may request a proceeding, which
1350 proceeding shall be convened within 7 days after the rendering
1351 of the order for the sole purpose of determining whether the
1352 person, individually or in connection with any affiliated person
1353 of such person, has acquired 10 ~~5~~ percent or more of the
1354 outstanding voting securities of a domestic stock insurer or
1355 controlling company. Upon the failure of the person or
1356 affiliated person to request a hearing within 7 days, or upon a
1357 determination at a hearing convened pursuant to this subsection
1358 that the person or affiliated person has acquired voting
1359 securities of a domestic stock insurer or controlling company in
1360 violation of this section, the office may order the person and
1361 affiliated person to divest themselves of any voting securities
1362 so acquired.
1363 (12)(a) A person may rebut a presumption of control by

1364 filing a disclaimer of control with the office on a form
1365 prescribed by the office. The disclaimer must fully disclose all
1366 material relationships and bases for affiliation between the
1367 person and the insurer as well as the basis for disclaiming the
1368 affiliation. In lieu of such form, a person or acquiring party
1369 may file with the office a copy of a Schedule 13G filed with the
1370 Securities and Exchange Commission pursuant to rules 13d-1(b) or
1371 13d-1(c) under the Securities Exchange Act of 1934, as amended.
1372 After a disclaimer has been filed, the insurer is relieved of
1373 any duty to register or report under this section which may
1374 arise out of the insurer's relationship with the person unless
1375 the office disallows the disclaimer.
1376 (b) A controlling person of a domestic insurer who seeks to
1377 divest the person's controlling interest in the domestic insurer
1378 in any manner shall file with the office, with a copy provided
1379 to the insurer, confidential notice, not subject to public
1380 inspection as provided under s. 624.4212, of the person's
1381 proposed divestiture at least 30 days before the cessation of
1382 control. The office shall determine those instances in which the
1383 party seeking to divest or to acquire a controlling interest in
1384 an insurer must file for and obtain approval of the transaction.
1385 The information remains confidential until the conclusion of the
1386 transaction unless the office, in its discretion, determines
1387 that confidential treatment interferes with enforcement of this
1388 section. If the statement referred to in subsection (1) is
1389 otherwise filed, this paragraph does not apply ~~For the purpose~~
1390 ~~of this section, the term "affiliated person" of another person~~
1391 ~~means:~~
1392 ~~1. The spouse of such other person;~~

1393 ~~2. The parents of such other person and their lineal~~
1394 ~~descendants and the parents of such other person's spouse and~~
1395 ~~their lineal descendants;~~
1396 ~~3. Any person who directly or indirectly owns or controls,~~
1397 ~~or holds with power to vote, 5 percent or more of the~~
1398 ~~outstanding voting securities of such other person;~~
1399 ~~4. Any person 5 percent or more of the outstanding voting~~
1400 ~~securities of which are directly or indirectly owned or~~
1401 ~~controlled, or held with power to vote, by such other person;~~
1402 ~~5. Any person or group of persons who directly or~~
1403 ~~indirectly control, are controlled by, or are under common~~
1404 ~~control with such other person;~~
1405 ~~6. Any officer, director, partner, copartner, or employee~~
1406 ~~of such other person;~~
1407 ~~7. If such other person is an investment company, any~~
1408 ~~investment adviser of such company or any member of an advisory~~
1409 ~~board of such company;~~
1410 ~~8. If such other person is an unincorporated investment~~
1411 ~~company not having a board of directors, the depositor of such~~
1412 ~~company; or~~
1413 ~~9. Any person who has entered into an agreement, written or~~
1414 ~~unwritten, to act in concert with such other person in acquiring~~
1415 ~~or limiting the disposition of securities of a domestic stock~~
1416 ~~insurer or controlling company~~.
1417 ~~(b) For the purposes of this section, the term "controlling~~
1418 ~~company" means any corporation, trust, or association owning,~~
1419 ~~directly or indirectly, 25 percent or more of the voting~~
1420 ~~securities of one or more domestic stock insurance companies.~~
1421 (13) The commission may adopt~~, amend, or repeal~~ rules that

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1422 are necessary to administer ~~implement the provisions of~~ this
1423 section~~, pursuant to chapter 120~~.
1424 Section 11. Section 628.801, Florida Statutes, is amended
1425 to read:
1426 628.801 Insurance holding companies; registration;
1427 regulation.—
1428 (1) An ~~Every~~ insurer that is authorized to do business in
1429 this state and that is a member of an insurance holding company
1430 shall, on or before April 1 of each year, register with the
1431 office and file a registration statement and be subject to
1432 regulation with respect to its relationship to the holding
1433 company as provided by law or rule ~~or statute~~. The commission
1434 shall adopt rules establishing the information and statement
1435 form required for registration and the manner in which
1436 registered insurers and their affiliates are regulated. The
1437 rules apply to domestic insurers, foreign insurers, and
1438 commercially domiciled insurers, except for ~~a~~ foreign insurers
1439 ~~insurer~~ domiciled in states that are currently accredited by the
1440 NAIC ~~National Association of Insurance Commissioners by December~~
1441 ~~31, 1995~~. Except to the extent of any conflict with this code,
1442 the rules must include all requirements and standards of ss. 4
1443 and 5 of the Insurance Holding Company System Regulatory Act and
1444 the Insurance Holding Company System Model Regulation of the
1445 NAIC ~~National Association of Insurance Commissioners~~, as adopted
1446 in December 2010. The commission may adopt subsequent amendments
1447 thereto if the methodology remains substantially consistent. The
1448 rules ~~Regulatory Act and the Model Regulation existed on~~
1449 ~~November 30, 2001, and~~ may include a prohibition on oral
1450 contracts between affiliated entities. Material transactions

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1451 between an insurer and its affiliates shall be filed with the
1452 office as provided by rule ~~Upon request, the office may waive~~
1453 ~~filing requirements under this section for a domestic insurer~~
1454 ~~that is the subsidiary of an insurer that is in full compliance~~
1455 ~~with the insurance holding company registration laws of its~~
1456 ~~state of domicile, which state is accredited by the National~~
1457 ~~Association of Insurance Commissioners~~.
1458 (2) Effective January 1, 2015, the ultimate controlling
1459 person of every insurer subject to registration shall also file
1460 an annual enterprise risk report on or before April 1. As used
1461 in this subsection, the term "ultimate controlling person" means
1462 a person who is not controlled by any other person. The report,
1463 to the best of the ultimate controlling person's knowledge and
1464 belief, must identify the material risks within the insurance
1465 holding company system that could pose enterprise risk to the
1466 insurer. The report shall be filed with the lead state office of
1467 the insurance holding company system as determined by the
1468 procedures within the Financial Analysis Handbook adopted by the
1469 NAIC and is confidential and exempt from public disclosure as
1470 provided in s. 624.4212.
1471 (a) An insurer may satisfy this requirement by providing
1472 the office with the most recently filed parent corporation
1473 reports that have been filed with the Securities and Exchange
1474 Commission which provide the appropriate enterprise risk
1475 information.
1476 (b) The term "enterprise risk" means an activity,
1477 circumstance, event, or series of events involving one or more
1478 affiliates of an insurer which, if not remedied promptly, are
1479 likely to have a materially adverse effect upon the financial

1480 condition or liquidity of the insurer or its insurance holding
1481 company system as a whole, including anything that would cause
1482 the insurer's risk-based capital to fall into company action
1483 level as set forth in s. 624.4085 or would cause the insurer to
1484 be in a hazardous financial condition.
1485 (3) Effective January 1, 2015, pursuant to chapter 624
1486 relating to the examination of insurers, the office may examine
1487 any insurer registered under this section and its affiliates to
1488 ascertain the financial condition of the insurer, including the
1489 enterprise risk to the insurer by the ultimate controlling
1490 party, or by any entity or combination of entities within the
1491 insurance holding company system, or by the insurance holding
1492 company system on a consolidated basis.
1493 (4) The filings and related documents filed pursuant to
1494 this section are confidential and exempt as provided in s.
1495 624.4212 and are not subject to subpoena or discovery directly
1496 from the office. A waiver of any applicable privilege or claim
1497 of confidentiality in the filings and related documents may not
1498 occur as a result of any disclosure to the office under this
1499 section or any other section of the insurance code as authorized
1500 under s. 624.4212. Neither the office nor any person who
1501 received the filings and related documents while acting under
1502 the authority of the office or with whom such information is
1503 shared pursuant to s. 624.4212 is permitted or required to
1504 testify in any private civil action concerning any confidential
1505 documents, materials, or information subject to s. 624.4212.
1506 However, the department or office may use the confidential and
1507 exempt information in the furtherance of any regulatory or legal
1508 action brought against an insurer as a part of the official

1509 duties of the department or office.
1510 (5) Effective January 1, 2015, the failure to file a
1511 registration statement, or a summary of the registration
1512 statement, or the enterprise risk filing report required by this
1513 section within the time specified for filing is a violation of
1514 this section.
1515 (6) Upon request, the office may waive the filing
1516 requirements of this section:
1517 (a) If the insurer is a domestic insurer that is the
1518 subsidiary of an insurer that is in full compliance with the
1519 insurance holding company registration laws of its state of
1520 domicile, which state is accredited by the NAIC; or
1521 (b) If the insurer is a domestic insurer that writes only
1522 in this state and has annual direct written and assumed premium
1523 of less than $300 million, excluding premiums reinsured with the
1524 Federal Crop Insurance Corporation and Federal Flood Program,
1525 and demonstrates that compliance with this section would not
1526 provide substantial regulatory or consumer benefit. In
1527 evaluating a waiver request made under this paragraph, the
1528 office may consider various factors including, but not limited
1529 to, the type of business entity, the volume of business written,
1530 the ownership or organizational structure of the entity, or
1531 whether the company is in run-off.
1532
1533 A waiver granted pursuant to this subsection is valid for 2
1534 years unless sooner withdrawn due to a change in the
1535 circumstances under which the waiver was granted.
1536 Section 12. Effective January 1, 2015, present subsection
1537 (4) of section 628.803, Florida Statutes, is renumbered as

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1538 subsection (5), and a new subsection (4) is added to that
1539 section, to read:
1540 628.803 Sanctions.—
1541 (4) If the office determines that any person violated s.
1542 628.461 or s. 628.801, the violation may serve as an independent
1543 basis for disapproving dividends or distributions and for
1544 placing the insurer under an order of supervision in accordance
1545 with part VI of chapter 624.
1546 Section 13. Effective January 1, 2015, section 628.804,
1547 Florida Statutes, is created to read:
1548 628.804 Groupwide supervision for international insurance
1549 groups.—
1550 (1) As used in this section:
1551 (a) "Groupwide supervisor" means the chief insurance
1552 regulatory official for the jurisdiction who is determined by
1553 the office to have significant contacts with the international
1554 insurance group sufficient to conduct and coordinate groupwide
1555 supervision activities.
1556 (b) "International insurance group" means an insurance
1557 group operating internationally which includes an insurer.
1558 (2) The office may act as the groupwide supervisor for an
1559 international insurance group in which the ultimate controlling
1560 person of the group is domiciled in this state.
1561 (3)(a) If the ultimate controlling person is domiciled
1562 outside this state, the office, in cooperation with other
1563 groupwide supervisors, may:
1564 1. Determine that the office is the appropriate groupwide
1565 supervisor for an international insurance group with substantial
1566 operations concentrated in this state or in insurance operations

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1567 conducted by subsidiary insurance companies domiciled in this
1568 state; or
1569 2. Acknowledge that another chief insurance regulatory
1570 official is the appropriate groupwide supervisor for the
1571 international insurance group.
1572 (b) Before issuing a determination, the office must notify
1573 the insurer and the ultimate controlling person within the
1574 international insurance group and provide the international
1575 insurance group with at least 30 days to submit information
1576 pertinent to the pending determination.
1577 (4) The commission may adopt rules to administer this
1578 section, including rules establishing the criteria for making a
1579 determination under paragraph (3)(a), such as the extent of
1580 insurance operations in this state and nation; the location of
1581 the executive offices, assets and liabilities, and business
1582 operations of the international insurance group; the domicile of
1583 the ultimate controlling person of the international insurance
1584 group; and the similarity of the regulatory systems of other
1585 jurisdictions acting or seeking to act as lead groupwide
1586 supervisor.
1587 Section 14. Effective January 1, 2015, section 628.805,
1588 Florida Statutes, is created to read:
1589 628.805 Supervisory colleges.—In order to assess the
1590 business strategy, financial position, legal and regulatory
1591 position, risk exposure, risk management, and governance
1592 processes, and as part of the examination of individual insurers
1593 in accordance with ss. 624.316 and 628.801, the office may
1594 participate in a supervisory college with other regulators
1595 charged with supervision of the insurer or its affiliates,

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1596 including other state, federal, and international regulatory
1597 agencies. In accordance with s. 624.4212 regarding confidential
1598 information sharing, the office may enter into agreements that
1599 provide the basis for cooperation between the office and the
1600 other regulatory agencies and the activities of the supervisory
1601 college. This section does not delegate to the supervisory
1602 college the office's authority to regulate or supervise the
1603 insurer or its affiliates under its jurisdiction.
1604 (1) With respect to participation in a supervisory college,
1605 the office may:
1606 (a) Initiate the establishment of a supervisory college.
1607 (b) Clarify the membership and participation of other
1608 supervisors in the supervisory college.
1609 (c) Clarify the functions of the supervisory college and
1610 the role of other regulators, including the establishment of a
1611 groupwide supervisor.
1612 (d) Coordinate the ongoing activities of the supervisory
1613 college, including planning meetings, supervisory activities,
1614 and processes for information sharing.
1615 (e) Establish a crisis management plan.
1616 (2) With respect to an insurer registered under s. 628.801,
1617 and in accordance with this section, the office may participate
1618 in a supervisory college for any domestic insurer that is part
1619 of an insurance holding company system that has international
1620 operations in order to determine the insurer's compliance with
1621 this chapter.
1622 (3) Each registered insurer subject to this section is
1623 liable for and shall pay reasonable expenses for the office's
1624 participation in a supervisory college, including reasonable

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1625 travel expenses. A supervisory college may be convened as a
1626 temporary or permanent forum for communication and cooperation
1627 between the regulators charged with the supervision of the
1628 insurer or its affiliates, and the office may impose a regular
1629 assessment on the insurer for the payment of these expenses.
1630 Section 15. Effective January 1, 2015, subsection (3) is
1631 added to section 636.045, Florida Statutes, to read:
1632 636.045 Minimum surplus requirements.—
1633 (3) A prepaid limited health service organization that is
1634 authorized in this state and one or more other states,
1635 jurisdictions, or countries is subject to ss. 624.4085 and
1636 624.40851.
1637 Section 16. Effective January 1, 2015, subsection (7) is
1638 added to section 641.225, Florida Statutes, to read:
1639 641.225 Surplus requirements.—
1640 (7) A health maintenance organization that is authorized in
1641 this state and one or more other states, jurisdictions, or
1642 countries is subject to ss. 624.4085 and 624.40851.
1643 Section 17. Effective January 1, 2015, subsection (3) is
1644 added to section 641.255, Florida Statutes, to read:
1645 641.255 Acquisition, merger, or consolidation.—
1646 (3) A health maintenance organization that is a member of a
1647 holding company system is subject to s. 628.461 but not s.
1648 628.4615.
1649 Section 18. Except as otherwise expressly provided in this
1650 act, this act shall take effect October 1, 2014, if SB 1300 or
1651 similar legislation is adopted in the same legislative session
1652 or an extension thereof and becomes a law.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Insurer Solvency

Bill Number: 1308 *(if applicable)*

Name: Monte Stevens

Amendment Barcode: *(if applicable)*

Job Title: Deputy Chief of Staff

Address: Larson BLDG
Street

TALLY FL 32399
City *State* *Zip*

Phone: 413-5005

E-mail: monte.stevens@fl.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: OIR

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.2.14
Meeting Date

Topic: Growth solvency

Bill Number: 1308 *(if applicable)*

Name: Gerald Weber

Amendment Barcode: *(if applicable)*

Job Title: lobbyist

Address: 101 E. Collge Ave
Street

Tallahassee FL
City *State* *Zip*

Phone: 222-9075

E-mail:

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

Representing: AIF

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic _____ Bill Number 1308 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 26, 2014

I respectfully request that **Senate Bill 1308**, relating to Insurer Solvency, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator David Simmons
Florida Senate, District 10

File signed original with committee office

S-020 (03/2004)

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 566

INTRODUCER: Senator Lee

SUBJECT: Florida Bright Futures Scholarship Program

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	**Favorable**
2.	Graf	Phelps	RC	**Pre-meeting**

I. Summary:

SB 566 modifies student community service requirements affecting student eligibility for the Florida Bright Futures Scholarship Program awards, including clarifying that community service work means volunteer service work, expanding the permissible activities that students can participate in to meet the volunteer service work requirement, and placing parameters on such activities.

Specifically, the bill:

- Expands service work areas beyond social areas of interest to include civic issue or a professional area of interest.
- Requires students to develop a plan for personal involvement in addressing the issue or learning about the issue in addition to reflecting on such experience through papers or presentations.
- Provides accountability requirements for students' service work.
- Prohibits students from receiving compensation or academic credit for the volunteer service work.

Additionally, the bill specifies that volunteer service work may include, but is not limited to, the following additional activities:

- Internship with a business or government entity,
- Work for a nonprofit community service organization, or
- Activity on behalf of a candidate for public office.

The volunteer service hours must be documented in writing and signed by the student, the student's parent or guardian, and a representative of the organization where the student volunteered.

The bill takes effect on July 1, 2014.

II. Present Situation:

The Florida Bright Futures Scholarship Program (Program) is a primarily lottery-funded scholarship program to reward Florida high school graduates merit recognition for high academic achievement by providing the graduates, scholarships to pursue postsecondary education at eligible public and private postsecondary institutions in Florida within three years after graduating from high school.[1] The Department of Education (DOE) administers the Program in accordance with rules and procedures adopted by the State Board of Education.[2]

The Bright Futures Scholarship Program consists of three types of awards:[3]

- Florida Academic Scholarship (FAS),
- Florida Medallion Scholarship (FMS), and
- Florida Gold Seal Vocational Scholarship (FGSV).

To be eligible to receive Program award, students must meet the general eligibility criteria[4] and specific academic and community service work requirements.[5] The community service work must be approved by the district school board, the administrators of a nonpublic school, or the DOE for home education program students.[6]

To fulfill the community service work requirement for FAS, students graduating in the 2011-2012 academic year and each year thereafter, must perform at least 100 hours of community service work, identify a social problem of interest, develop a plan for personal involvement in addressing the problem, and reflect on such experience through papers or presentations.[7] The community service work requirement for the FMS and FGSV is the same as the requirement for FAS except for the number of community service work hours that FMS and FGSV students must volunteer. FMS students must perform a minimum of 75 hours of community service work[8] and FGSV students must perform at least 30 hours of community service work[9].

III. Effect of Proposed Changes:

SB 566 modifies student community service requirements affecting student eligibility for the Florida Academic Scholarship (FAS), Florida Medallion Scholarship (FMS), and Florida Gold Seal Vocational Scholarship (FGSV) awards, including clarifying that community service work means volunteer service work, expanding the permissible activities that students can participate in to meet the volunteer service work requirement, and placing parameters on such activities.

Specifically, the bill:

- Expands service work areas beyond social areas of interest to include civic issue or a professional area of interest.

---

[1] Section 1009.53(1), F.S.
[2] Section 1009.53(3), F.S.
[3] Section 1009.53(2), F.S.
[4] Section 1009.531, F.S.
[5] Sections 1009.534(1), 1009.535(1), and 1009.536(1)(e), F.S.
[6] Sections 1009.534(1), 1009.535(1), and 1009.536(1)(e), F.S.
[7] Sections 1009.534(1), F.S.
[8] Section 1009.535(1), F.S.
[9] Section 1009.536(1)(e), F.S.

- Requires students to develop a plan for personal involvement in addressing the issue or learning about the issue in addition to reflecting on such experience through papers or presentations.
- Provides accountability requirements for students' service work.
- Prohibits students from receiving compensation or academic credit for the volunteer service work.

Additionally, the bill specifies that volunteer service work may include, but is not limited to, the following additional activities:

- Internship with a business or government entity,
- Work for a nonprofit community service organization, or
- Activity on behalf of a candidate for public office.

The volunteer service hours must be documented in writing and signed by the student, the student's parent or guardian, and a representative of the organization where the student volunteered.

The bill takes effect on July 1, 2014

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1009.534, 1009.535, and 1009.536.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Lee

24-00229D-14 2014566__

A bill to be entitled

An act relating to the Florida Bright Futures Scholarship Program; amending ss. 1009.534, 1009.535, and 1009.536, F.S.; requiring a student, as a prerequisite for the Florida Academic Scholars award, the Florida Medallion Scholars award, or the Florida Gold Seal Vocational Scholars award, to identify a social or civic issue or a professional area of interest and develop a plan for his or her personal involvement in addressing the issue or learning about the area; prohibiting the student from receiving remuneration or academic credit for the volunteer service work performed; providing examples of volunteer service work; requiring that the hours of volunteer service work performed be documented in writing and the document be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the volunteer service work; deleting obsolete provisions; providing an effective date.

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

Section 1. Subsection (1) of section 1009.534, Florida Statutes, is amended to read:

1009.534 Florida Academic Scholars award.—

(1) A student is eligible for a Florida Academic Scholars award if he or she ~~the student~~ meets the general eligibility requirements for the Florida Bright Futures Scholarship Program

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

24-00229D-14 2014566__

and ~~the student~~:

(a) Has achieved a 3.5 weighted grade point average as calculated pursuant to s. 1009.531, or its equivalent, in high school courses that are designated by the State Board of Education as college-preparatory academic courses~~,~~ and has attained at least the score required under ~~pursuant to~~ s. 1009.531(6)(a) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(b) Has attended a home education program according to s. 1002.41 during grades 11 and 12, ~~or~~ has completed the International Baccalaureate curriculum but failed to earn the International Baccalaureate Diploma, or has completed the Advanced International Certificate of Education curriculum but failed to earn the Advanced International Certificate of Education Diploma, and has attained at least the score required under ~~pursuant to~~ s. 1009.531(6)(a) on the combined verbal and quantitative parts of the Scholastic Aptitude Test, the Scholastic Assessment Test, or the recentered Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program;

(c) Has been awarded an International Baccalaureate Diploma from the International Baccalaureate Office or an Advanced International Certificate of Education Diploma from the University of Cambridge International Examinations Office;

(d) Has been recognized by the merit or achievement programs of the National Merit Scholarship Corporation as a

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

59 scholar or finalist; or
60 (e) Has been recognized by the National Hispanic
61 Recognition Program as a scholar recipient.
62
63 The ~~A~~ student must complete a program of volunteer ~~community~~
64 service work, as approved by the district school board, the
65 administrators of a nonpublic school, or the Department of
66 Education for home education program students, which must ~~shall~~
67 include a minimum of 75 hours of service work for high school
68 students graduating in the 2010-2011 academic year and 100 hours
69 of service work for high school students graduating in the 2011-
70 2012 academic year and thereafter. The student ~~, and~~ must
71 identify a social or civic issue or a professional area ~~problem~~
72 that interests him or her, develop a plan for his or her
73 personal involvement in addressing the issue or learning about
74 the area ~~problem~~, and, through papers or other presentations,
75 evaluate and reflect upon his or her experience. The student may
76 not receive remuneration or academic credit for the volunteer
77 service work performed. Such work may include, but is not
78 limited to, a business or government internship, work for a
79 nonprofit community service organization, or activity on behalf
80 of a candidate for public office. The hours of service work must
81 be documented in writing, and the document must be signed by the
82 student, the student's parent or guardian, and a representative
83 of the organization for which the student performed the service
84 work.
85 Section 2. Subsection (1) of section 1009.535, Florida
86 Statutes, is amended to read:
87 1009.535 Florida Medallion Scholars award.—

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

88 (1) A student is eligible for a Florida Medallion Scholars
89 award if he or she ~~the student~~ meets the general eligibility
90 requirements for the Florida Bright Futures Scholarship Program
91 and ~~the student~~:
92 (a) Has achieved a weighted grade point average of 3.0 as
93 calculated pursuant to s. 1009.531, or the equivalent, in high
94 school courses that are designated by the State Board of
95 Education as college-preparatory academic courses~~;~~ and has
96 attained at least the score required under ~~pursuant to~~ s.
97 1009.531(6)(b) on the combined verbal and quantitative parts of
98 the Scholastic Aptitude Test, the Scholastic Assessment Test, or
99 the recentered Scholastic Assessment Test of the College
100 Entrance Examination, or an equivalent score on the ACT
101 Assessment Program;
102 (b) Has completed the International Baccalaureate
103 curriculum but failed to earn the International Baccalaureate
104 Diploma or has completed the Advanced International Certificate
105 of Education curriculum but failed to earn the Advanced
106 International Certificate of Education Diploma, and has attained
107 at least the score required under ~~pursuant to~~ s. 1009.531(6)(b)
108 on the combined verbal and quantitative parts of the Scholastic
109 Aptitude Test, the Scholastic Assessment Test, or the recentered
110 Scholastic Assessment Test of the College Entrance Examination,
111 or an equivalent score on the ACT Assessment Program;
112 (c) Has attended a home education program according to s.
113 1002.41 during grades 11 and 12 and has attained at least the
114 score required under ~~pursuant to~~ s. 1009.531(6)(b) on the
115 combined verbal and quantitative parts of the Scholastic
116 Aptitude Test, the Scholastic Assessment Test, or the recentered

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

Scholastic Assessment Test of the College Entrance Examination, or an equivalent score on the ACT Assessment Program, if the student's parent cannot document a college-preparatory curriculum as described in paragraph (a);

(d) Has been recognized by the merit or achievement program of the National Merit Scholarship Corporation as a scholar or finalist but has not completed the ~~a~~ program of volunteer ~~community~~ service work required under ~~as provided in~~ s. 1009.534; or

(e) Has been recognized by the National Hispanic Recognition Program as a scholar, but has not completed the ~~a~~ program of volunteer ~~community~~ service work required under ~~as provided in~~ s. 1009.534.

The ~~A high school~~ student graduating in the 2011-2012 academic year and thereafter must complete at least 75 hours ~~a program~~ of volunteer ~~community~~ service work approved by the district school board, the administrators of a nonpublic school, or the Department of Education for home education program students. The student~~, which shall include a minimum of 75 hours of service work, and~~ must identify a social or civic issue or professional area ~~problem~~ that interests him or her, develop a plan for his or her personal involvement in addressing the issue or learning about the area ~~problem~~, and, through papers or other presentations, evaluate and reflect upon his or her experience. The student may not receive remuneration or academic credit for the volunteer service work performed. Such work may include, but is not limited to, a business or government internship, work for a nonprofit community service organization, or activity on

behalf of a candidate for public office. The hours of service work must be documented in writing, and the document must be signed by the student, the student's parent or guardian, and a representative of the organization for which the student performed the service work.

Section 3. Subsection (1) of section 1009.536, Florida Statutes, is amended to read:

1009.536 Florida Gold Seal Vocational Scholars award.—The Florida Gold Seal Vocational Scholars award is created within the Florida Bright Futures Scholarship Program to recognize and reward academic achievement and career preparation by high school students who wish to continue their education.

(1) A student is eligible for a Florida Gold Seal Vocational Scholars award if he or she ~~the student~~ meets the general eligibility requirements for the Florida Bright Futures Scholarship Program and ~~the student~~:

(a) Completes the secondary school portion of a sequential program of studies that requires at least three secondary school career credits. On-the-job training may not be substituted for any of the three required career credits.

(b) Demonstrates readiness for postsecondary education by earning a passing score on the Florida College Entry Level Placement Test or its equivalent as identified by the Department of Education.

(c) Earns a minimum cumulative weighted grade point average of 3.0, as calculated pursuant to s. 1009.531, on all subjects required for a standard high school diploma, excluding elective courses.

(d) Earns a minimum unweighted grade point average of 3.5

175 on a 4.0 scale for secondary career courses that compose
176 ~~comprising~~ the career program.
177 (e) Beginning with high school students graduating in the
178 2011-2012 academic year and thereafter, completes at least 30
179 hours ~~a program~~ of volunteer ~~community~~ service work approved by
180 the district school board, the administrators of a nonpublic
181 school, or the Department of Education for home education
182 program students. The student must identify~~, which shall include~~
183 ~~a minimum of 30 hours of service work, and identifies~~ a social
184 or civic issue or a professional area ~~problem~~ that interests him
185 or her, develop ~~develops~~ a plan for his or her personal
186 involvement in addressing the issue or learning about the area
187 ~~problem~~, and, through papers or other presentations, evaluate
188 ~~evaluates~~ and reflect ~~reflects~~ upon his or her experience. The
189 student may not receive remuneration or academic credit for the
190 volunteer service work performed. Such work may include, but is
191 not limited to, a business or government internship, work for a
192 nonprofit community service organization, or activity on behalf
193 of a candidate for public office. The hours of service work must
194 be documented in writing, and the document must be signed by the
195 student, the student's parent or guardian, and a representative
196 of the organization for which the student performed the service
197 work.
198 Section 4. This act shall take effect July 1, 2014.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: FL Bright Futures Service Hours

Bill Number: 566 (if applicable)

Name: Adam Giery (Gear-e')

Amendment Barcode: (if applicable)

Job Title: Dir of Policy

Address: 136 South Bronough St
Street

Tallahassee
City State Zip

Phone:

E-mail:

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

Representing: FL Chamber

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Bright futures

Bill Number: 566 *(if applicable)*

Name: Richard Gentry

Amendment Barcode: _____ *(if applicable)*

Job Title: _____

Address: 2305 BRAEBURN CIR.
Street

TLH FL 32309
City *State* *Zip*

Phone: 251-1837

E-mail: _____

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

Representing: Palm Beach Economic Council

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Ethics and Elections
Gaming
Rules
Transportation

SENATOR TOM LEE
Deputy Majority Leader
24th District

March 25, 2014

The Honorable John Thrasher
Senate Committee on Rules, Chair
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Thrasher,

I respectfully request that SB 566 related to the *Florida Bright Futures Scholarship Program*, be placed on the Senate Rules committee agenda at your earliest convenience.

Thank you for your consideration,

Sincerely,

Tom Lee
Senator, District 24

Cc: John B. Phelps, Staff Director

REPLY TO:
☐ 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
☐ 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 650

INTRODUCER: Governmental Oversight and Accountability Committee and Judiciary Committee

SUBJECT: OGSR/Inventories of an Estate or Elective Estate

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Munroe	Cibula		**JU SPB 7018 as introduced**
1.	McVaney	McVaney	GO	**Fav/CS**
2.	Munroe	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 650 removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result, the documents will remain confidential and exempt from disclosure requirements under the public records laws when filed with the clerk of court.

II. Present Situation:

The Florida Probate Code makes the following records filed in probate proceedings confidential and exempt from disclosure requirements under the public records laws:

- Estate inventories;
- Any inventory of an elective estate; and
- Any accounting of an estate.[1]

These exemptions will be repealed on October 2, 2014, unless they are reenacted by the Legislature.[2] In 2009, when the exemptions were enacted, the Legislature found that the exemptions were necessary because the "public disclosure of estate inventories and accountings . . . would produce undue harm to the heirs of the decedent or beneficiaries of the decedent's estate."[3]

[1] Section 733.604(1)(b), F.S.
[2] Chapter 2009-230, Laws of Fla.
[3] *Id.*

Personal Representative of an Estate

Subject to certain limitations, any person who is able to manage his or her own affairs and is a resident of Florida at the time of the death of the person whose estate is to be administered is qualified to act as personal representative in Florida.[4] A person who is not qualified to act as a personal representative is a person who has been convicted of a felony, is mentally or physically unable to perform the duties, or is under 18 years of age.[5] A person who does not live in Florida may qualify as a personal representative if certain requirements are met.[6]

Estate Inventories

Within 60 days after issuance of letters of administration of an estate, a personal representative must file an inventory of the property of the estate.[7] The inventory of property must be verified, and an estimated fair market value of the items at the date of death of the decedent must be included.[8] The inventory may be disclosed only to the personal representative, the personal representative's attorney, other interested persons, or by court order upon a showing of good cause.[9] The personal representative must file a verified amended or supplementary inventory if he or she learns that property was left out of the original inventory or learns that the estimated value or description was erroneous or misleading.[10]

Elective Share of a Surviving Spouse

Unless waived, a surviving spouse may elect to take the elective share of a decedent's estate instead of assets provided to a surviving spouse through the decedent's will. The elective share generally includes 30 percent of the fair market value of all assets subject to the administration of the estate except for real property not located in Florida.[11]

---

[4] Section 733.302, F.S.
[5] Section 733.303(1), F.S.
[6] See s. 733.304, F.S.
[7] Fla. Prob. R. 5.340; *see s.* 733.604, F.S. In general, a personal representative of an estate is appointed upon the filing of letters of administration with the court. *See* 31 AM. JUR. 2D *Executors and Administrators* s. 237. As a prerequisite to the issuance of letters of administration in a probate proceeding, the following pleadings and papers must be filed with the court: petition for administration, will (if any), proof of will (if applicable), order appointing personal representative, oath of the representative, any required bond, and designation of and acceptance by a resident agent, are filed. *See* Henry P. Trawick, Jr., REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, 2010, s. 5:6 *Issuance of letters of administration* (2009-10 ed.).
[8] Section 733.604(2), F.S.
[9] *Id.*
[10] Section 733.604(2), F.S.
[11] Section 732.2065, F.S.; *see* Henry P. Trawick, Jr., Trawick, REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, s. 5:6 *Elective Share* (2009-10 ed.).

Estate Accountings

The Florida Probate Rules specify requirements for the contents and accounting standards for a fiduciary accounting that must be verified and filed in a probate proceeding.[12] The content includes:

- All cash and property transactions since the date of the last accounting or, if none, from the commencement of administration, and
- A schedule of assets at the end of the accounting period.

Public Records Requirements

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[13] The records of the legislative, executive, and judicial branches are specifically included.[14]

Only the Legislature may create an exemption to public records requirements.[15] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[16] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[17] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[18]

Open Government Sunset Review Act

The Open Government Sunset Review Act[19] provides for the systematic review of an exemption from the Public Records Act in the 5th year after its enactment. The act states that an exemption may be maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.[20]

An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.[21] An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

[12] Fla. Prob. R. 5.346.
[13] FLA. CONST. art. I, s. 24(a).
[14] *Id.*
[15] FLA. CONST. art. I, s. 24(c).
[16] FLA. CONST. art. I, s. 24(c).
[17] The bill, however, may contain multiple exemptions that relate to one subject.
[18] FLA. CONST. art. I, s. 24(c).
[19] Section 119.15, F.S.
[20] Section 119.15(6)(b), F.S.
[21] *Id.*

- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[22]

The act also requires the Legislature in reviewing an exemption to consider several questions that go to the scope, public purpose, and necessity of the exemption.[23]

Exemptions Under Review

During the interim before the 2014 Session, the staff of the Judiciary Committee reviewed the exemptions for estate inventories, inventories of elective estates, and estate accountings. The review was conducted by a series of questions to and responses from the Real Property, Probate, and Trust Law Section of The Florida Bar.

The questions that committee staff submitted to the section included:
- What specific records are affected by the exemptions?
- Who do the exemptions uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemptions?
- Can the information contained in the confidential records be readily obtained by alternative means?
- What is the continued necessity for the exemptions?
- Were any particular incidents the impetus for the creation of the exemptions? If yes, what type of information was disclosed, and how did the disclosure cause harm to another person? If no particular incidents were the impetus, please explain how the disclosure of the information could be used to harm another.
- Has anything changed since the exemptions were adopted which diminishes the need for their continued existence?
- Can an exemption be narrowed to disclose more information without affecting the identifiable purpose or goal of the exemption?
- Is there any reason to believe that the general public has a need to access the information protected by an exemption?

As a result of the review, committee staff found that a public purpose will be served by saving the exemptions from repeal.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result,

[22] *Id.*
[23] Section 119.15(6)(a), F.S.

the documents will remain confidential and exempt from disclosure requirements under the public records laws when filed with the clerk of court.

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore, it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The continued existence of the public records exemptions reenacted by the bill may protect heirs or beneficiaries of a decedent's estate from being targeted for fraud or theft.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 733.604, 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 March 13, 2014:
The CS clarifies that the financial accountings filed with the clerk of court in a probate proceeding are confidential and exempt from disclosure requirements under public records laws.

B. Amendments:

None.

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

By the Committees on Governmental Oversight and Accountability; and Judiciary

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 733.604, F.S., which provides exemptions from public records requirements for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed with the clerk of court in an estate proceeding; saving the exemptions from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Subsection (1) of section 733.604, Florida Statutes, is amended to read:

733.604 Inventories and accountings; public records exemptions.—

(1)(a) Unless an inventory has been previously filed, a personal representative shall file a verified inventory of property of the estate, listing it with reasonable detail and including for each listed item its estimated fair market value at the date of the decedent's death.

(b)1. Any inventory of an estate, whether initial, amended, or supplementary, filed with the clerk of the court in conjunction with the administration of an estate is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any inventory of an elective estate, whether initial, amended, or supplementary, filed with the clerk of the court in

conjunction with an election made in accordance with part II of chapter 732 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Any accounting, whether interim, final, amended, or supplementary, filed with the clerk of court in an estate proceeding is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. Any inventory or accounting made confidential and exempt by subparagraph 1., subparagraph 2., or subparagraph 3. shall be disclosed by the custodian for inspection or copying:

a. To the personal representative;

b. To the personal representative's attorney;

c. To an interested person as defined in s. 731.201; or

d. By court order upon a showing of good cause.

5. These exemptions apply to any inventory or accounting filed before, on, or after July 1, 2009.

~~6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect July 1, 2014.

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 602

INTRODUCER: Judiciary Committee; Ethics and Elections Committee; and Senator Latvala

SUBJECT: Residency of Candidates and Public Officers

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	**Fav/CS**
2.	Davis	Cibula	JU	**Fav/CS**
3.	Carlton	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 602 clarifies what the term "residence" means when used in "residence" requirements for candidates and public officers in the Florida Constitution and Florida Statutes. The bill provides a non-exhaustive list of factors that a court may consider in determining where a candidate or officer resides. The analysis for determining a person's "residence" applies to those subject to a residence requirement upon qualifying as a candidate, regardless of whether the person is seeking partisan office, and for the residence requirements that apply only when a person takes office.

The bill specifically provides that, pursuant to s. 2, Article III of the State Constitution, it does not apply to members of the Legislature.

II. Present Situation:

The Florida Constitution and Florida Statutes contain various provisions requiring that certain public officers "reside" in a prescribed geographic area. Some of the residence requirements apply at the time that a person qualifies as a candidate for that office, while others apply only once a person takes office. For example, the Florida Constitution specifies that, unless otherwise provided in county charter, the counties must be divided into districts and that "One commissioner residing in each district shall be elected as provided by law."[1]

[1] FLA. CONST. Article VIII, s. 1(e).

Currently, there is no definition of the term "residence" in the Florida Constitution or Florida Statutes that pertains to a candidate for office or a person once elected to office. However, over the past 100 years, the courts have consistently opined that, for purposes of residence requirements, a person's residence is his or her domicile.[2] "Domicile" is a legal term of art. The courts have explained domicile as follows:

> One can have only one domicile.[3] Legal residence, or domicile, means a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.[4] Legal residence consists of the concurrence of both fact and intention. In terms of establishing residence, the bona fides of the intention is a highly significant factor.[5] Historically, the place where a married person's family resides is generally deemed to be his legal residence. However, this presumption can be overcome by other circumstances.[6] Absence from one's current domicile or legal residence without the intent to abandon it does not result in the obtainment of a new domicile at wherever one might be presently located, even where the absence may be for an extended period of time.[7] Establishment of residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject.[8]

Some of the factors that have been considered by the courts are:

- selling the home where one was previously domiciled;[9]
- transferring one's bank accounts to where one maintains a residence;[10]
- maintaining a residence with one's family;[11]
- where one conducts business affairs;[12]
- where one leases an apartment;[13]
- where one plans the construction of a new home;[14]
- where one registers as a voter;[15]
- where one maintains a homestead exemption;[16]

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[2] "The rule is well settled that the terms 'residence,' 'residing,' or equivalent terms, when used in statutes, or actions, or suits relating to taxation, right of suffrage, divorce, limitations of actions, and the like, are used in the sense of 'legal residence'; that is to say, the place of domicile or permanent abode, as distinguished from temporary residence." *Herron v. Passailaigue*, 110 So. 539, 543 (Fla. 1926).
[3] *Minick v. Minick*, 111. Fla. 469, (Fla. 1933).
[4] *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).
[5] *Id*.
[6] *Smith v. Croom*, 7 Fla. 81 (Fla. 1857).
[7] *See e.g. Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955); *Wade v. Wade*, 113 So. 374 (Fla. 1927); and *Dennis v. State*, 17 Fla. 389 (1879).
[8] *Wade v. Wade, 113 So. 374, 376 (Fla. 1927).*
[9] *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955).
[10] *Id*.
[11] *See id.*; *see also Smith v. Croom*, 7 Fla. 81 (1857).
[12] *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955).
[13] *See Frank v. Frank*, 75 So. 2d 282 (Fla. 1954).
[14] *See Biederman v. Cheatham*, 161 So. 2d 538 (Fla. 2d DCA 1964).
[15] *See* Op. Atty. Gen. 063-31 (March 20, 1963).
[16] *Weiler v. Weiler*, 861 So. 2d 472, 477 (Fla. 5th DCA 2003).

- where one has identified the residence on his or her driver's license or other government documents;[17]
- where one receives mail and correspondence;
- where one customarily resides;[18]
- whether the structure has the normal features of a home;[19] and
- statements made indicating intention to move to the district.[20]

In essence, any evidence that would indicate that one has adopted a particular location as one's home and the "chief seat of [one's] affairs and interests" would be instrumental in proving permanent residency when combined with one's intent to make that location one's permanent residence.[21] Although some authorities suggest that factors such as where one possesses and exercises political rights might be given less weight,[22] the better course indicates that all the evidence should be weighed in the totality of the circumstances.[23]

Failure to maintain the legal residence required results in a vacancy in office.[24] The Legislature has codified Article X, s. 3, Fla. Const., and provided a mechanism to address such vacancies.[25] Specifically, if an officer fails to maintain the residence required of him or her by law, the Governor is required to file an Executive Order with the Secretary of State setting forth the facts which give rise to the vacancy.[26] The office shall be considered vacant as of the date specified in the Executive Order or, in the absence of such a date, as of the date the order is filed with the Secretary of State. The office would then be filled as provided by law.[27]

III. Effect of Proposed Changes:

CS/CS/SB 602 creates two new statutes codifying the criteria used by courts to determine whether a candidate or state officer is complying with residency requirements. Newly created s. 99.0125, F.S., applies to all candidate residence requirements regardless of whether the office sought is partisan.[28] Newly created s. 111.015, F.S., applies to residence requirements once a person assumes office. Both new sections establish statutory guidance for determining whether a candidate or officer is a resident of the geographic area. Specifically, the bill states that a person

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[17] *See id.*
[18] *See id.*
[19] *See Perez v. Marti*, 770 So. 2d 284 (Fla. 3d DCA 2000).
[20] *See Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981) and *Butterworth v. Espey*, 565 So. 2d 398 (Fla. 2d DCA 1990).
[21] *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).
[22] *Smith v. Croom*, 7 Fla. 81, 159 (1857).
[23] *See Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).
[24] Article X, s. 3, Fla. Const., provides, "Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, ***or failure to maintain the residence required when elected or appointed***, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term."(Emphasis supplied.)
[25] Section 114.01, F.S.
[26] Section 114.01(2), F.S.
[27] Section 114.04, F.S.
[28] Historically, courts have been reluctant to insert themselves into the political realm of whether a member can occupy a seat. Article III, s. 2, Fla. Const., provides that "Each house of the Legislature is the sole judge of the qualifications, election, and returns of its members..." As such, complaints concerning residence of a member of the Legislature should be sent to each house pursuant to its rules. Those complaints would be governed by Florida's Constitution, the Joint Rules of the Florida Legislature, and the rules of the respective house.

may have only one domicile and that the address of a person's domicile must be used to determine whether the residence requirement is satisfied. The building claimed as the domicile must be zoned for residential use and must comply with all requirements necessary to obtain a certificate of occupancy or certificate of completion pursuant to applicable building codes. The bill provides a non-exhaustive list of factors that may be considered in determining whether a residence requirement is satisfied. Those factors are:

- A formal declaration of domicile in the public records of the county;
- A statement, whether oral or written, indicating the intention to establish a place as his or her domicile;
- Whether he or she transferred the title to his or her previous residence;
- The address at which he or she claims a homestead exemption;
- An address at which he or she has purchased, rented, or leased property;
- The address where he or she plans to build a new home;
- The amount of time that he or she spends at property he or she owns, leases, or rents;
- Proof of payment for, and usage activity of, utilities at property owned by the candidate or public officer;
- The address at which he or she receives mail and correspondence;
- The address provided to register his or her dependent children for school;
- The address of his or her spouse or immediate family members;
- The physical address of his or her employment;
- Previous permanent residency in a state other than Florida or in another country, and the date his or her residency was terminated;
- The address on his or her voter information card or other official correspondence from the supervisor of elections providing proof of voter registration;
- The address on his or her valid Florida driver license issued under s. 322.18, F.S., valid Florida identification card issued under s. 322.051, F.S., or any other license required by law;
- The address on the title to, or a certificate of registration of, his or her motor vehicle;
- The address listed on filed federal income tax returns;
- The location where his or her bank statements and checking accounts are registered;
- A request made to a federal, state, or local government agency to update or change his or her address; and
- Whether he or she has relinquished a license or permit held in another jurisdiction.

Additionally, the bill provides that active duty military members do not automatically establish or abandon domicile in the state of Florida solely by virtue of where he or she is stationed. However, the bill does not impair the right of active duty military members to establish a new domicile.

Finally, the bill clarifies that it does not apply to members of the Legislature in accordance with s. 2, Article III of the State Constitution. That provision states that "Each house shall be the sole judge of the qualifications, elections, and returns of its members…"[29] On March 4, 2014, the opening day of the legislative session, the Senate and House of Representatives adopted Joint Rule Seven, Qualifications of Members, which establishes residency requirements for the members of the Legislature.

[29] FLA. CONST. Article III, s. 2.

The bill takes effect January 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The issue might be raised that this legislation imposes additional residency requirements on candidates which are not required by the State Constitution. The Florida Supreme Court held in *State v. Grassi*[30] that the Legislature is prohibited from imposing any additional qualifications on a candidate beyond what is required in the State Constitution. In response, it could be asserted that this bill only codifies existing case law and that the bill does not actually place any residency requirements on a candidate; it provides factors that may be considered in determining whether a candidate or public officer satisfies a residency requirement.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

[30] *State v. Grassi*, 532 So. 2d 1055 (Fla. 1988).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 99.0125, and 111.015.

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 Judiciary Committee on March 25, 2014:
The CS/CS contains a new provision in section 3 which provides that "In accordance with s. 2, Article III of the State Constitution, this act does not apply to members of the Legislature."

CS by Ethics and Elections on March 3, 2014:
The committee substitute clarifies that active duty military members do not automatically establish or abandon domicile in the state of Florida ***solely*** by virtue of where he or she is stationed.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 134 and 135
insert:
Section 3. Section 14.01, Florida Statutes, is amended to read:
14.01 Governor; residence; office; authority to protect life, liberty, and property.—
(a) The Governor shall reside at the head of government, and the Governor's office shall be in the capitol. The Governor may have such other offices within the state as he or she may

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12 deem necessary. The Governor may employ as many persons as he or
13 she, in his or her discretion, may deem necessary to procure and
14 secure protection to life, liberty, and property of the
15 inhabitants of the state, also to protect the property of the
16 state.
17 (b) Notwithstanding s. 111.015, this section does not
18 require the Governor to establish a new domicile at the head of
19 government.
20 Section 4. Subsection (1) of section 16.01, Florida
21 Statutes, is amended to read:
22 16.01 Residence, office, and duties of Attorney General.—
23 The Attorney General:
24 (1) Shall reside at the seat of government and shall keep
25 his or her office in the capitol. Notwithstanding s. 111.015,
26 this subsection does not require the Attorney General to
27 establish a new domicile at the seat of government.
28 Section 5. Section 17.02, Florida Statutes, is amended to
29 read:
30 17.02 Place of residence and office.—The Chief Financial
31 Officer shall reside at the seat of government of this state and
32 shall keep his or her ~~hold~~ office in a room in the Capitol.
33 Notwithstanding s. 111.015, this section does not require the
34 Chief Financial Officer to establish a new domicile at the seat
35 of government.
36 Section 6. Section 19.23, Florida Statutes, is amended to
37 read:
38 19.23 Residence and office.—The Commissioner of Agriculture
39 shall reside at the seat of government in this state, and shall
40 keep his or her office in a room in the capitol. Notwithstanding

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41 s. 111.015, this section does not require the Commissioner of
42 Agriculture to establish a new domicile at the seat of
43 government.
44 Section 7. Section 114.03, Florida Statutes, is amended to
45 read:
46 114.03 Certain executive officers not to absent themselves
47 from the state.—
48 (1) The Attorney General, Chief Financial Officer, and
49 Commissioner of Agriculture shall reside at the capital, and no
50 member of the Cabinet shall absent himself or herself from the
51 state for a period of 60 consecutive days or more without the
52 consent of the Governor and a majority of the Cabinet. If a
53 Cabinet officer should refuse or fail to comply with and observe
54 the requirements of this section, his or her office may be
55 deemed vacant pursuant to paragraph (f) or paragraph (g) of s.
56 114.01(1), as appropriate.
57 (2) Notwithstanding s. 111.015, this section does not
58 require the Attorney General, the Chief Financial Officer, or
59 the Commissioner of Agriculture to establish a new domicile at
60 the capital.
61
62 ========== T I T L E A M E N D M E N T ==========
63 And the title is amended as follows:
64 Delete lines 8 - 9
65 and insert:
66 exceptions for active duty military members; amending
67 ss. 14.01, 16.01, 17.02, 19.23, and 114.03, F.S.;
68 specifying the applicability of residency requirements
69 on the Governor and Cabinet officers; specifying that

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70 the act does not apply to members of the Legislature;
71 providing an effective date.

By the Committees on Judiciary; and Ethics and Elections; and Senator Latvala

A bill to be entitled

An act relating to the residency of candidates and public officers; creating ss. 99.0125 and 111.015, F.S.; requiring a candidate or public officer required to reside in a specific geographic area to have only one domicile at a time; providing factors that may be considered when determining residency; providing exceptions for active duty military members; providing for applicability; providing an effective date.

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

Section 1. Section 99.0125, Florida Statutes, is created to read:

99.0125 Residency; candidates.—

(1) The address at which a candidate maintains his or her domicile must be used to satisfy any candidate residency requirement. A candidate may have only one domicile at a time. The building claimed as a domicile must be zoned for residential use and must comply with all requirements necessary to obtain a certificate of occupancy or certificate of completion pursuant to applicable building codes.

(2) Factors that may be considered in determining whether a candidate meets a residency requirement include, but are not limited to:

(a) A formal declaration of domicile in the public records of the county.

(b) A statement, whether oral or written, indicating the intention to establish a place as his or her domicile.

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

(c) Whether he or she transferred the title to his or her previous residence.

(d) The address at which he or she claims a homestead exemption.

(e) An address at which he or she has purchased, rented, or leased property.

(f) The address where he or she plans to build a new home.

(g) The amount of time that he or she spends at property he or she owns, leases, or rents.

(h) Proof of payment for, and usage activity of, utilities at property owned by the candidate.

(i) The address at which he or she receives mail and correspondence.

(j) The address provided to register his or her dependent children for school.

(k) The address of his or her spouse or immediate family members.

(l) The physical address of his or her employment.

(m) Previous permanent residency in a state other than Florida or in another country, and the date his or her residency was terminated.

(n) The address on his or her voter information card or other official correspondence from the supervisor of elections providing proof of voter registration.

(o) The address on his or her valid Florida driver license issued under s. 322.18, valid Florida identification card issued under s. 322.051, or any other license required by law.

(p) The address on the title to, or a certificate of registration of, his or her motor vehicle.

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

59 (q) The address listed on filed federal income tax returns.
60 (r) The location where his or her bank statements and
61 checking accounts are registered.
62 (s) A request made to a federal, state, or local government
63 agency to update or change his or her address.
64 (t) Whether he or she has relinquished a license or permit
65 held in another jurisdiction.
66 (3) An active duty military member may not be deemed to
67 have acquired a domicile in this state solely by reason of being
68 stationed on duty in this state; nor shall an active duty
69 military member be deemed to have abandoned domicile in this
70 state solely because he or she is stationed in another
71 municipality, state, or country. However, this subsection does
72 not prohibit an active duty military member from establishing a
73 new domicile where he or she is stationed.
74 Section 2. Section 111.015, Florida Statutes, is created to
75 read:
76 111.015 Residency; public officers.—
77 (1) The address at which a public officer maintains his or
78 her domicile must be used to satisfy any residency requirement.
79 A public officer may have only one domicile at a time. The
80 building claimed as a domicile must be zoned for residential use
81 and must comply with all requirements necessary to obtain a
82 certificate of occupancy or certificate of completion pursuant
83 to applicable building codes.
84 (2) Factors that may be considered in determining whether a
85 public officer meets a residency requirement include, but are
86 not limited to:
87 (a) A formal declaration of domicile in the public records

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

88 of the county.
89 (b) A statement, whether oral or written, indicating the
90 intention to establish a place as his or her domicile.
91 (c) Whether he or she transferred the title to his or her
92 previous residence.
93 (d) The address at which he or she claims a homestead
94 exemption.
95 (e) An address at which he or she has purchased, rented, or
96 leased property.
97 (f) The address where he or she plans to build a new home.
98 (g) The amount of time that he or she spends at property he
99 or she owns, leases, or rents.
100 (h) Proof of payment for, and usage activity of, utilities
101 at property owned by the public officer.
102 (i) The address at which he or she receives mail and
103 correspondence.
104 (j) The address provided to register his or her dependent
105 children for school.
106 (k) The address of his or her spouse or immediate family
107 members.
108 (l) The physical address of his or her employment.
109 (m) Previous permanent residency in a state other than
110 Florida or in another country, and the date his or her residency
111 was terminated.
112 (n) The address on his or her voter information card or
113 other official correspondence from the supervisor of elections
114 providing proof of voter registration.
115 (o) The address on his or her valid Florida driver license
116 issued under s. 322.18, valid Florida identification card issued

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

117 under s. 322.051, or any other license required by law.
118 (p) The address on the title to, or a certificate of
119 registration of, his or her motor vehicle.
120 (q) The address listed on filed federal income tax returns.
121 (r) The location where his or her bank statements and
122 checking accounts are registered.
123 (s) A request made to a federal, state, or local government
124 agency to update or change his or her address.
125 (t) Whether he or she has relinquished a license or permit
126 held in another jurisdiction.
127 (3) An active duty military member may not be deemed to
128 have acquired a domicile in this state solely by reason of being
129 stationed on duty in this state; nor shall an active duty
130 military member be deemed to have abandoned domicile in this
131 state solely because he or she is stationed in another
132 municipality, state, or country. However, this subsection does
133 not prohibit an active duty military member from establishing a
134 new domicile where he or she is stationed.
135 Section 3. In accordance with s. 2, Art. III of the State
136 Constitution, this act does not apply to members of the
137 Legislature.
138 Section 4. This act shall take effect January 1, 2015.

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)

4/2/2014
Meeting Date

Topic _____ Bill Number 602 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Budget - Subcommittee on General Government Appropriations
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA
20th District

March 26, 2014

The Honorable John Thrasher, Chair
Senate Rules Committee
402 Senate
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

I respectfully request that Senate Bill 602/Residency of Candidate and Public Officers placed on the agenda of the Senate Rules Committee at your earliest convenience. The bill was favorably referred from the Senate Judiciary Committee on March 25, 2014.

This bill will implement more stringent residency requirements for those who hold public office in Florida. The bill will help prevent public officers from living outside of the district they are required to reside in while holding office, and curb the increasing problem of elected officials in Florida claiming to live in one district while actually residing somewhere else.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

Cc: John Phelps, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: *www.flsenate.gov*

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 808

INTRODUCER: Governmental Oversight and Accountability Committee; Regulated Industries Committee and Senator Galvano

SUBJECT: Public Records/Florida State Boxing Commission

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Oxamendi	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 808 creates a public-records exemption for a promoter's proprietary confidential business information held by the Florida State Boxing Commission. CS/CS/SB 808 is the public records companion bill to CS/CS/SB 810, which substantially amends ch. 458, F.S. This bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement, as required by the Florida Constitution.

CS/CS/SB 808 requires a two-thirds vote of the membership of each house of the Legislature for passage under s. 24(c), Art. I, Florida State Constitution.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.

In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law,[1] which predates the constitutional provisions, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency[2] records are available for public inspection. The term "public records" is defined in s. 119.011(12), F.S., to include:

> 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 the official business by any agency.

This definition of "public records" has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[3]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other

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[1]Chapter 119, F.S.

[2]The term "agency" is defined in s. 119.011(2), F.S., 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."

[3] *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

than to the persons or entities designated in the statute.[4] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[5]

Only the Legislature is authorized to create exemptions to open government requirements.[6] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[7] A bill enacting an exemption[8] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[9]

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] 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.[11]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12] An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[13]

The Act also requires specified questions to be considered during the review process.[14]

---

[4] Attorney General Opinion 85-62.
[5] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[6] FLA. CONTS. Art I, s. 24(c).
[7] FLA. CONTS. Art I, s. 24(c).
[8] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[9] FLA. CONTS. Art I, s. 24(c).
[10] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records pursuant to s. 119.15(4)(b), F.S. The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
[11] Section 119.15(3), F.S.
[12] Section 119.15(6)(b), F.S.
[13] *Id*.
[14] 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?

If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[15] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (Commission) within the Department of Business and Professional Regulation (Department).

Section 548.006(3), F.S., provides the Commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match pursuant to ch. 548, F.S., and the rules adopted by the Commission.

The Commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.[16] Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.[17] This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Reporting and Tax Requirement

Within seventy-two hours after a match, the promoter[18] of that match must file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires. Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;

- 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?

[15] FLA. CONST., art. I, s. 24(c). An existing exemption may be treated as a new exemption if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

[16] Section 548.006(3), F.S.

[17] Section 548.002(2), F.S.

[18] Section 548.002(20), F.S., defines the term "promoter" to mean: any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.

According to the Department, the current definition of "gross receipts" has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the Commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the Commission may require.[19]

Concessionaire must also file with the Commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the Commission may require.[20]

Any written report that must be filed with the Commission must be postmarked within 72 hours after the conclusion of the match with an additional five days allowed for mailing. According to the Department, the report is required to enable the Commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.[21]

These written reports must be accompanied with a tax payment in the amount of five percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed $40,000 for any single event.

A concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the Commission. The security is required before licensure, license renewal, or before a match.[22]

CS/SB 810 (2014) Proposed Legislation Expanding the Role of the Boxing Commission

CS/SB 810 substantially amends ch. 548, F.S. in the following manner:
- Provides, modifies, and eliminates definitions relating to the Commission.
- Amends and clarifies the duties of the Commission's executive director.
- Eliminates the requirement that the Commission record all of its scheduled proceedings.
- Clarifies the Commission's jurisdiction.
- Eliminates the requirement that concessionaires, foreign co-promoters, and booking agents be licensed, and eliminates references to responsibilities related to concessionaries.

[19] Section 548.06(1), F.S.
[20] Section 548.06(3), F.S.
[21] Section 548.06(5), F.S.
[22] Section 548.015, F.S.

- Provides that the failure or refusal to provide a urine sample, or the positive result of a urine test, constitutes an immediate serious danger to the health, safety, and welfare of the public and participants and results in the immediate suspension of the participant's license.
- Requires the Commission to hold purse forfeiture hearings pursuant to the Administrative Procedure Act.
- Redefines how the Commission is to determine "gross receipts."
- Permits the promoter to apply to the Commission for authorization to issue more than five percent of seats in the house as complimentary tickets and not be included in gross receipts for post-event taxation purposes.
- Requires that the promoter keep a copy of certain records for a period of one year.
- Provides that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit and that the Commission has the right to audit a promoter's books and records, upon reasonable notice.
- Directs the Commission to adopt rules to establish a procedure for auditing a promoter's records and for resolving any inconsistencies revealed in the audit.
- Directs the Commission to establish rules for imposing late fees in the event of taxes owed;
- Provides an emergency license suspension procedure.
- Provides that all hearings be held in accordance with the Administrative Procedure Act.

III. Effect of Proposed Changes:

This bill provides that the proprietary confidential business information provided in the written report after a match or obtained by the Commission in an audit of the promoter's books and records, is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill defines "proprietary confidential business information" as information controlled by the promoter, which a promoter intends to be private in that the disclosure of the information would cause harm to the promoter or its business operations. If a promoter discloses information pursuant to a statutory provision or an order of a court or administrative body, the disclosed information is still considered proprietary confidential business information. In addition, a private agreement providing that information will not be released to the public will give it proprietary confidential business information status.

The bill provides that proprietary confidential business information includes any of the following information:

(a) The number of ticket sales for a match.
(b) The amount of gross receipts after a match.
(c) Trade secrets as defined by s. 688.002, F.S.
(d) Business plans.
(e) Internal auditing controls and reports of internal auditors
(f) External auditors' reports.

The bill provides that information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

This bill provides that these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 expresses the required Statement of Public Necessity for the public records exemption. The public necessity statement provides that the disclosure of proprietary confidential business information that could injure a promoter in the marketplace by giving the promoter's competitors insight into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The bill also provides that the Legislature's finding that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

Section 3 provides that this act shall take effect on the same date that CS/SB 810 or similar legislation takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created or expanded public-records or public-meetings exemption. Since SB 808 creates a new public-records exemption, it will require a two-thirds vote of each house of the Legislature for passage.

Statement of Public Necessity

Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Section 2 of this bill provides a statement of public necessity for the new public record exemptions proposed therein.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The definition of "proprietary confidential business information" includes information that is "intended to be and is treated by the promoter providing such information as private in that the disclosure of the information would cause harm to the promoter or its business operations." This is a vague, subjective standard and it unclear how a records custodian will be able to discern a promoter's intent or when disclosure would harm a promoter's business. This bill also does not provide the records custodian any notice of when a promoter has ceased to treat a record as private, and is therefore no longer confidential and exempt.

This bill does not define the term "business plans."

This bill may be overly broad in that it states that information "that concerns" several categories of records are proprietary confidential business information.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 548.062 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 Governmental Oversight and Accountability on March 26, 2014:
The CS/CS provides that "trade secrets" are defined pursuant to s. 688.002, F.S., and includes external auditing reports in as a category of proprietary business records.

The CS/CS eliminates security systems and information related to competitive interests as two categories of proprietary confidential business information.

CS by Regulated Industries Committee on March 13, 2014:
The committee substitute (CS) amends s. 548.062(1), F.S., to include proprietary confidential business information obtained by the Commission in an audit of the promoter's books and records.

The CS amends s. 548.062(1), F.S., to provide that the term "proprietary confidential business information" only includes the information delineated in paragraphs (a) through (g) of that subsection.

The CS also amends the Statement of Public Necessity in section 2 of the bill to also include proprietary confidential business information obtained by the Commission in an audit of the promoter's books and records.

The CS amends the contingent effective date to link the bill to SB 810.

B. Amendments:

None.

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

By the Committees on Governmental Oversight and Accountability; and Regulated Industries; and Senator Galvano

585-03261A-14 2014808c2

A bill to be entitled

An act relating to public records; creating s. 548.062, F.S.; providing an exemption from public records requirements for the information in the reports required to be submitted to the Florida State Boxing Commission by a promoter or obtained by the commission through audit of a promoter's records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 548.062, Florida Statutes, is created to read:

548.062 Public records exemption.—

(1) As used in this section, the term "proprietary confidential business information" means information that is owned or controlled by the promoter; that is intended by the promoter to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public; and that concerns any of the following:

(a) The number of ticket sales for a match.

(b) The amount of gross receipts after a match.

(c) Trade secrets as defined in s. 688.002.

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

585-03261A-14 2014808c2

(d) Business plans.

(e) Internal auditing controls and reports of internal auditors.

(f) Reports of external auditors.

(2) Proprietary confidential business information provided in the written report required to be filed with the commission after a match or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

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

Section 2. The Legislature finds that it is a public necessity that proprietary confidential business information be protected from disclosure. The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information. For these reasons, the Legislature declares that any proprietary confidential business information provided in the written report

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

59 that is required to be filed with the commission after a match
60 or obtained by the commission through an audit of the promoter's
61 books and records pursuant to s. 548.06, Florida Statutes, is
62 confidential and exempt from s. 119.07(1), Florida Statutes, and
63 s. 24(a), Article I of the State Constitution.
64 Section 3. This act shall take effect on the same date that
65 SB 810 or similar legislation takes effect, if such legislation
66 is adopted in the same legislative session or an extension
67 thereof and becomes law.

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)

4/2/2014
Meeting Date

Topic: Public Records/Florida State Boxing Commission

Bill Number: 808 *(if applicable)*

Name: Jeff Johnston

Amendment Barcode: _____ *(if applicable)*

Job Title: Lobbyist

Address: 21748 State Road 54 Ste. 102
Street

Lutz, FL 33574
City, State, Zip

Phone: (813) 527-0172

E-mail: jeff@corcoranfirm.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: UFC

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4 / 2 /2014
Meeting Date

Topic _____ Bill Number 808 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

Phone 727-897-9291

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☑ Against ☑ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SR 894

INTRODUCER: Education Committee and Senator Sobel

SUBJECT: Israeli Universities and Institutions of Higher Learning

DATE: April 1, 2014 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Letarte	Klebacha	ED	**Fav/CS**
2.	Letarte	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SR 894 "encourages and welcomes bipartisan support in recognition of Israel's right to academic freedom and collaboration with institutions around the world."[1]

II. Present Situation:

Resolutions

A resolution is a "bill that is not subject to action by the Governor, is not subject to the constitutional one-subject limitation or to the constitutional title requirements, and, except for certain uses of joint resolutions and concurrent resolutions, does not have the effect of law. When adopted by both houses, it is signed by the legislative officers and presented to the Secretary of State." [2]

A Senate resolution (SR), such as this current resolution, or House resolution (HR) is "[a] one-house document used for matters not involving the other house. It is often ceremonial or congratulatory in nature."[3]

[1] CS/SR 894, lines 31-34 (2014 Reg. Session).
[2] The Florida Senate, *Glossary*, https://www.flsenate.gov/Reference/Glossary#R (last visited Mar. 5, 2014).
[3] *Id.*

Boycott of Israeli Academic Institutions by the American Studies Association

On December 4, 2013, the American Studies Association (ASA)[4] resolved to boycott Israeli academic institutions.[5] The ASA resolution states the following reasons, among others, for its boycott:[6]

- Dedication to "the right of students and scholars to pursue education and research without undue state interference, repression, and military violence, and in keeping with the spirit of [ASA's] previous statements"; and
- Support of "the right of students and scholars to intellectual freedom and to political dissent as citizens and scholars."

Viewpoints vary in favor of, and in opposition to, the boycott.[7]

III. Effect of Proposed Changes:

CS/SR 894 "encourages and welcomes bipartisan support in recognition of Israel's right to academic freedom and collaboration with institutions around the world."[8]

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[4] The ASA, which was chartered in 1951 and has approximately 5,000 members and 2,200 library and institutional subscribers, is an "association devoted to the interdisciplinary study of American culture and history." American Studies Association, *What the ASA Does*, http://www.theasa.net/about/page/what_the_asa_does/ (last visited Mar. 5, 2014).

[5] American Studies Association, *About: Resolutions and Actions: Council Resolution on Boycott of Israeli Academic Institutions*, http://www.theasa.net/american_studies_association_resolution_on_academic_boycott_of_israel (last visited Mar. 5, 2014). The Native American and Indigenous Studies Association and the Association of Asian American Studies have also called for the boycott. The Daily Northwestern, *Northwestern Students, Professors Debate Israeli Academic Boycott at Panel Discussion*, http://dailynorthwestern.com/2014/02/03/campus/northwestern-students-professors-discuss-israeli-academic-boycott-at-panel-discussion/ (last visited Mar. 5, 2014).

[6] *Id.*

[7] *See* The Anti-Defamation League, *University Officials and Academic Institutions Respond to ASA Boycott*, http://www.adl.org/israel-international/israel-middle-east/content/backgroundersarticles/american-university-officials-institutions-respond-to-asa-boycott.html (last visited Mar. 5, 2014); The Daily Northwestern, *supra* note 5; The New York Times, *Backlash against Israel Boycott Throws Academic Association on Defensive*, http://www.nytimes.com/2014/01/06/us/backlash-against-israel-boycott-throws-academic-association-on-defensive.html (last visited Mar. 5, 2014).

[8] CS/SR 894, lines 31-34 (2014 Reg. Session).

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:

The Senate resolution does not amend, create, or repeal any provisions 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 Education March 25, 2014:
The committee substitute:

- Maintains the original intent of the resolution but provides technical revisions to clarify provisions of the bill.

B. Amendments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: ISRAEL EDUCATION

Bill Number: SB894 *(if applicable)*

Name: LINDA GELLER-SCHWARTZ

Amendment Barcode: _____ *(if applicable)*

Job Title: VP (ADVOCACY) National Council of Jewish Women (Palm Beach)

Address: 6861 Calle del Paz S
Street

Boca Raton, FL 33433
City *State* *Zip*

Phone: 561 362-8069

E-mail: lindagellerschwartz@gmail.com

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

Representing: National Council of Jewish Women

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

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

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

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

S-001 (10/20/11)

LINDA GELLER-SCHWARTZ

I am speaking in support of this Resolution — SR89Y
I strongly oppose the totally unjustifiable & discriminatory attempt to boycott Israeli Universities.

I have 3 major reasons:

① The Boycott & divest movement against academic institutions strikes at the heart of the vital principal of academic freedom. As a former University Professor, I am appalled at the BDS action

② It unjustifiably singles out the State of Israel. Israel is a democracy. Its Universities — like its political system — encompass an energetic debate of the whole spectrum of views. The Universities are open to all people, regardless of gender, race or nationality. They do not deserve to be singled out

③ Finally Israeli Universities have made an enormous contribution to the whole world by their research in science, technology & the arts

To STIFLE this vitality & this democracy thru an academic boycott — will hurt all of us.

I ask you to support this Resolution

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Israel university Boycott opposition

Bill Number: SB 894 *(if applicable)*

Name: Amy Datz

Amendment Barcode: *(if applicable)*

Job Title: Self

Address: 1130 Crestview Ave.
Street

Tallahassee, FL 32303
City *State* *Zip*

Phone: 850 322-7599

E-mail: amaliedatz@mac.com

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

Representing: NCJW

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

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

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

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

S-001 (10/20/11)

Date: 4-2-14
To: Senator Sobel for the record
From: Amy Datz, (850) 322-1599, amaliedatz@mac.com
Subject: SB 0894 Israeli Universities
opposition of Boycott

There are 6 universities that have terminated their membership with the American Studies Association (ASA) there fore expressing their academic boycott ~~Academic~~ of Israeli universities.

Where as 250 universities in every State have rejected the ASA boycott of Israel. Those universities in Florida are ones Some of the Senators on this Committee may be alummni of. They are.
1. FAU 2. FIU 3. FSU 4. UF 5 University of Miami
6 USF.

Please Support SB.894 & vote to oppose the boycott of Israeli universities. Jews are a fraction of 1% of the world population but hold 20% of the Nobel Prizes. The relationship between American & Israeli university is good for Florida the US. And the world on many Levels & in many areas of Study.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Israeli Academic Boycott

Bill Number: SB 894 *(if applicable)*

Name: Karen Warner

Amendment Barcode: *(if applicable)*

Job Title: VP Advocacy for NCJW Greater Miami Section

Address: 180 NE 69th St., 1601
Street

Miami, FL 33138
City, State, Zip

Phone: 954 275 0586

E-mail: kwarner18@aol.com

Speaking: [✓] For [ ] Against [ ] Information

Representing: National Council of Jewish Women

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Israel Education

Bill Number: SR 894 *(if applicable)*

Name: Jill Swartz

Amendment Barcode: _____ *(if applicable)*

Job Title: State Policy Advocate Chair

Address: 6081 N Bay Rd
Street

Miami Bch FL 33140
City *State* *Zip*

Phone: 305 915 1654

E-mail: jillyswartz@gmail.com

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

Representing: National Council Jewish Women

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Israel Education

Bill Number: SR894 *(if applicable)*

Name: Andrea Davidson

Amendment Barcode: _____ *(if applicable)*

Job Title: State Policy Advocate - NCJW

Address: 7132 Francesco Bend Drive
Street

Delray Beach, FL 33446
City *State* *Zip*

Phone: 561-865-9628

E-mail: ADAVIDSON91@gmail.com

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

Representing: National Council of Jewish Women

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic _____ Bill Number 894 *(if applicable)*

Name BRIAN PITTS Amendment Barcode _____ *(if applicable)*

Job Title Trustee

Address 1119 Newton Ave S
Street

St Petersburg FL 33705
City *State* *Zip*

Phone 727/897-9291

E-mail justice2jesus@yahoo.com

Speaking: [✓] For [ ] Against [ ] Information

Representing _____

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 2, 2014
Meeting Date

Topic: Resolution 894

Bill Number: 894 *(if applicable)*

Name: Ciara Taylor

Amendment Barcode: _____ *(if applicable)*

Job Title: Political Director

Address: _____
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 850.284.5463

E-mail: Ciara@dreamdefenders.org

Speaking: [ ] For [✓] Against [ ] Information

Representing: Dream Defenders

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/2014
Meeting Date

Topic: SR 894

Bill Number: SR 894 *(if applicable)*

Name: Nathaniel Wallace

Amendment Barcode: _____ *(if applicable)*

Job Title: Student

Address: 600 w college ave
Street

tallahassee — fl — 32306
City — *State* — *Zip*

Phone: 904 303 8659

E-mail: ngwallace1986@gmail.com

Speaking: ☐ For ☑ Against ☐ Information

Representing: Students at FSU

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-2-14
Meeting Date

Topic: Israeli Universities

Bill Number: 894 *(if applicable)*

Name: Jason Unger

Amendment Barcode: *(if applicable)*

Job Title:

Address: 301 S. Branough St.
Street

TLH, FL 32301
City *State* *Zip*

Phone: 577-2090

E-mail: junger@gray-robinson.com

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

Representing: SELF

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Israel Academic Boycott Opposition

Bill Number: SB 894 (if applicable)

Name: Helene Askinazi

Amendment Barcode: (if applicable)

Job Title: Immediate Past President - NCJW Palm Beach Section

Address: 6626 Via Rienzo
Street

Lake Worth, FL 33467
City State Zip

Phone: 561-641-5319

E-mail: haskinazi@aol.com

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

Representing: National Council of Jewish Women Palm Beach

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ELEANOR SOBEL
33rd District

COMMITTEES:
Children, Families, and Elder Affairs, *Chair*
Ethics and Elections, *Vice Chair*
Health Policy, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health and Human Services
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Regulated Industries
Rules

SELECT COMMITTEE:
Select Committee on Patient Protection and Affordable Care Act, *Vice Chair*

March 27, 2014

Senator John Thrasher, Chair
Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chair Thrasher:

This letter is to request that SR 894 relating to Israeli Universities and Institutions of Higher Learning be placed on the agenda of the next scheduled meeting of the committee.

The proposed legislation would express opposition to the academic boycott of Israeli universities and institutions of higher learning, and support academic and political freedom and collaboration with Israeli universities. It is antithetical to the cause of academic freedom to single out Israel, a democracy with a history of diversity and tolerance in its institutions. The best way to ensure academic freedom is by supporting policies that encourage inclusion.

Thank you for your consideration of this request.

Respectfully,

Eleanor Sobel
State Senator, 33rd District

CC: Tamra Lyon, Committee Administrative Assistant for Rules Committee

REPLY TO:
☐ The "Old" Library, First Floor, 2600 Hollywood Blvd., Hollywood, Florida 33020 (954) 924-3693 FAX: (954) 924-3695
☐ 410 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 990

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Ring

SUBJECT: Public Officers and Employees

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	**Fav/CS**
2.	Carlton	Roberts	EE	**Favorable**
3.	McKay	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 990 deletes a limited exception to a general prohibition in the Code of Ethics for public officers and employees. As a result, (1) special tax districts created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, and (2) drainage and water control districts, will be subject to the same conflicting employment or contractual relationship prohibition that applies to all other agencies. That prohibition provides that a public officer or employee may not hold any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.

This bill takes effect July 1, 2014.

II. Present Situation:

Code of Ethics: Conflicting Employment or Contractual Relationship

Section 112.313, F.S., specifies standards of conduct for public officers[1], employees of agencies[2], and local government attorneys. Pursuant to s. 112.313(7), F.S., a public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.[3]

There is an exception to the above prohibitions in s. 112.313(7)(a)1., which provides that when the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by s. 112.313, F.S.

Special Districts

"Special tax district" is not defined in ch. 112, F.S., or ch. 189, F.S., which provides the general provisions for special districts. Section 189.403(1), F.S., defines a "special district" as a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers.

According to the Special District Information Program at the Florida Department of Economic Opportunity (DEO), there are currently 1,637 special districts.[4] Not all of these are special *tax* districts, but the DEO data does not break out districts with taxation authority as a subset of all the special districts. The table below summarizes the top five specialized functions out of the 74 specialized functions of the 1,637 special districts:

---

[1] Pursuant to s. 112.313(1), F.S., the term "public officer" includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.
[2] Pursuant to s. 112.312(2), F.S., "agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.
[3] See also the Florida Commission on Ethics' GUIDE to the SUNSHINE AMENDMENT and CODE of ETHICS for Public Officers and Employees, p.4, located at http://www.ethics.state.fl.us/publications/2014%20Guide.pdf.
[4] Information available at http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm

Special District Function	Number
Community development	575
Community redevelopment	213
Housing authorities	93
Drainage and water control	86
Fire control and rescue	65

III. Effect of Proposed Changes:

The bill deletes s. 112.313(7)(a)1., F.S., which provides a limited exemption from the conflicting employment or contractual relationship prohibition in s.112.313(7)(a), F.S. As a result, the 1) special tax districts created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, and 2) drainage and water control districts, will be subject to the same conflicting employment or contractual relationship prohibition that applies to all other agencies. That prohibition provides that a public officer or employee may not hold any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will create a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate, depending on whether the existing limited exemption is enabling employment or contractual relationships that will be prohibited by the repeal of that exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Some enabling statutes for districts currently covered by the exemption may contain similar, if not identical, language. As a result, repeal of s. 112.313(7)(a)1, F.S., would not affect those types of districts unless the corresponding language in the enabling legislation is also repealed.

VII. Related Issues:

The bill does not apply retroactively, which would transform existing employment or contractual relationships, which were not unethical when initiated, into a violation of the ethics code. In a criminal law context, such an ex post facto law might be unconstitutional. The legislature may wish to clarify whether the bill only applies to employment or contractual relationships entered into after the effective date of the bill.

VIII. Statutes Affected:

This bill substantially amends s. 112.313 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.)

CS by Governmental Oversight and Accountability on March 13, 2013:
The CS reverts some grammatical changes made in the original filed bill back to existing statutory language.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability; and Senator Ring

A bill to be entitled

An act relating to public officers and employees; amending s. 112.313, F.S.; removing an exception from prohibited employment or a prohibited contractual relationship for an officer or employee of certain special tax districts or an agency organized pursuant to ch. 298, F.S.; providing an effective date.

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

Section 1. Subsection (7) of section 112.313, Florida Statutes, is amended to read:

112.313 Standards of conduct for public officers, employees of agencies, and local government attorneys.—

(7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(a) A ~~No~~ public officer or employee of an agency may not ~~shall~~ have or hold any employment or contractual relationship with any business entity or any agency ~~which is~~ subject to the regulation of, or ~~is~~ doing business with, an agency of which he or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor may ~~shall~~ an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

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

~~1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.~~

~~2.~~ However, if ~~When~~ the agency ~~referred to~~ is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power that ~~which~~ the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, ~~then~~ employment or a contractual relationship with such business entity by a public officer or employee of a legislative body is ~~shall~~ not ~~be~~ prohibited by this subsection or ~~be~~ deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

Section 2. This act shall take effect July 1, 2014.

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)

4/2/2014
Meeting Date

Topic _____

Bill Number 990 *(if applicable)*

Name Brian Pitts

Amendment Barcode _____ *(if applicable)*

Job Title Trustee

Address 1119 Newton Ave S
Street

St Petersburg FL 33705
City *State* *Zip*

Phone 727/897-9291

E-mail justice2jesus@yahoo.com

Speaking: [✓] For [ ] Against [ ] Information

Representing _____

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

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1678

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Agency Personnel Information

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Kim	McVaney	GO	**GO SPB 7080 as introduced**
1.	Stearns	Yeatman	CA	**Favorable**
2.	Kim	Phelps	RC	**Pre-meeting**

I. Summary:

SB 1678 reenacts the existing public records exemption for former and current agency employees' Social Security numbers under s. 119.071(4)(a), F.S. This bill provides that an agency may disclose an employee's Social Security number if required by law, a court order, if another agency needs the Social Security number in order to perform its duties, or if an employee consents to the release of his or her Social Security number. This bill eliminates the sunset date of the exemption, thus continuing the current public records exemption.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2] The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.[3]

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act[4]

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] FLA. CONST., art. I, s. 24(b).
[4] Chapter 119, F.S.

guarantees every person's right to inspect and copy any state or local government public record[5] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[6] The Sunshine Law[7] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.[8]

Only the Legislature may create an exemption to public records or open meetings requirements.[9] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[10] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[11] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[12]

Open Government Sunset Review Act

The Open Government Sunset Review Act, s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings

[5] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

[6] Section 119.07(1)(a), F.S.

[7] Section 286.011, F.S.

[8] Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

[9] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

[10] FLA. CONST., art. I, s. 24(c).

[11] The bill may, however, contain multiple exemptions that relate to one subject.

[12] FLA. CONST., art. I, s. 24(c).

exemptions.[13] 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.[14]

Section 119.15, F.S., provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[15] An exemption serves an identifiable purpose if it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.[16]

In addition to finding the exemption serves one of the above purposes, the Legislature must find that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption.

The Act also requires specified questions to be considered during the review process.[17]

When reenacting an exemption that will otherwise be repealed, a public necessity statement and a two-thirds vote are required for passage if the exemption is expanded.[18] A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception[19] to the exemption is created.[20]

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

[14] Section 119.15(3), F.S.

[15] Section 119.15(6)(b), F.S.

[16] *Id*.

[17] 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?

[18] An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

[19] An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

[20] *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

Exemption Under Review: Agency Personnel Social Security Numbers

Section 119.071(4)(a), F.S., provides that the Social Security numbers of all current and former agency employees are confidential and exempt from public disclosure under s. 119.071(1), F.S., and s. 24, Art. 1 of the Florida Constitution. Section 119.071(4)(a), F.S., currently does not contain any means for agencies to disclose employee Social Security numbers.[21] This exemption will stand repealed on October 2, 2014, unless saved from repeal by the Legislature.

Review Findings and Recommendations

On August 16, 2013, the Senate Governmental Oversight and Accountability Committee and the House Government Oversight Subcommittee surveyed state agencies regarding the need to keep agency personnel Social Security numbers exempt from public disclosure under s. 119.071(4)(a), F.S. Twenty-five agencies responded, and all of the agencies stated that s. 119.071(4)(a), F.S., should not be repealed. Several agencies cited the potential for identity theft and criminal activity as the rationale for keeping employees' Social Security numbers exempt from public disclosure. Agencies reported that they currently release Social Security numbers to government entities in order to perform background checks, to process payroll information, or if their employees are the subject of criminal investigations. None of the agencies reported that this exemption had been the subject of litigation.

III. Effect of Proposed Changes:

Section 1 provides agencies the ability to keep employee Social Security numbers confidential and exempt from public disclosure while permitting employing agencies to release Social Security numbers when necessary.

The bill clarifies the law by incorporating provisions for release within s. 119.071(4)(a), F.S. Agencies will be permitted to release employee Social Security numbers under the following conditions: as required by state or federal law or court order; to another agency or governmental entity when it is necessary for the receiving agency or entity to perform its duties; and when an employee gives his or her written consent.

The bill removes the October 2, 2014, repeal date of this public records exemption.

Section 2 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[21] Agencies can use s. 119.071(5), F.S., when disclosure is required.

B. Public Records/Open Meetings Issues:

This bill does not expand or create a public records exemption and therefore it is not subject to the Open Government Sunset Review Act, s. 119.15, F.S. This bill requires a simple majority vote for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability

585-02567-14 20141678__

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 an exemption from public records requirements for social security numbers of current and former agency employees held by an employing agency; saving the exemption from repeal under the Open Government Sunset Review Act; authorizing an employing agency to disclose the social security number of a current or former agency employee under certain circumstances; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

(a)1. The social security numbers of all current and former agency employees which ~~numbers~~ are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The social security numbers of current and former agency employees may be disclosed by the employing agency:

a. If disclosure of the social security number is expressly required by federal or state law or a court order.

b. To another agency or governmental entity if disclosure of the social security number is necessary for the receiving

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

585-02567-14 20141678__

agency or entity to perform its duties and responsibilities.

c. If the current or former agency employee expressly consents in writing to the disclosure of his or her social security number ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature~~.

Section 2. This act shall take effect October 1, 2014.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1278

INTRODUCER: Governmental Oversight and Accountability Committee; Banking and Insurance Committee and Senator Richter

SUBJECT: Public Records/Office of Financial Regulation

DATE: April 1, 2014 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	**Fav/CS**
2.	Kim	McVaney	GO	**Fav/CS**
3.	Johnson	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1278 creates a public records exemption for informal enforcement actions of the Office of Financial Regulation (OFR) and trade secrets held by the OFR in accordance with its statutory duties with respect to the Financial Institutions Codes. In addition, the bill defines:

- Examination report,
- Informal enforcement action,
- Working papers, and
- Personal financial information.

The OFR regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (codes), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. Currently, s. 655.057, F.S., exempts certain records held by the OFR relating to the supervision and regulation of financial institutions chartered in Florida.

The bill provides for repeal of the exemption for informal enforcement actions and trade secrets on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. Because this bill creates a new public records exemption, the bill provides a statement of public necessity as required by the State Constitution.

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 public record or public meeting exemption.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.[1] The records of the legislative, executive, and judicial branches are specifically included.[2]

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act[3] guarantees every person's right to inspect and copy any state or local government public record[4] at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[5]

Only the Legislature may create an exemption to public records requirements.[6] Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.[7] Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions[8] and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.[9]

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Chapter 119, F.S.
[4] Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).
[5] Section 119.07(1)(a), F.S.
[6] FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (s*ee WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).
[7] FLA. CONST., art. I, s. 24(c).
[8] The bill may, however, contain multiple exemptions that relate to one subject.
[9] FLA. CONST., art. I, s. 24(c).

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.[10] 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.[11] OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.[12]

Regulation of State-Chartered Financial Institutions

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes ("codes"), chapters 655 to 667, F.S. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

Current Public Records Exemptions under the Codes

Currently, s. 655.057, F.S., of the codes contains the following public records exemptions:

- All records and information relating to an "active" investigation or examination are confidential and exempt.
- After an investigation or examination is no longer active, information remains confidential and exempt to the extent that disclosure would:
  - Jeopardize the integrity of another active investigation;
  - Impair the safety and soundness of the financial institution;
  - Reveal personal financial information;
  - Reveal the identity of a confidential source;
  - Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
  - Reveal investigative techniques or procedures.
- Reports of examination, operations, or condition, *including working papers*, or portions thereof, that are prepared by or for the use of the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions.
  - Current law provides exceptions for persons to whom these reports and working papers may be released.
- Examination, operation, or condition reports of a failed financial institution, which shall be released within one year after the appointment of a liquidator, receiver, or conservator. However, any portion which discloses the identities of depositors, bondholders, members, borrowers, or stockholders (other than directors, officers, or controlling stockholders) remains confidential and exempt.
- Lists required to be maintained and submitted to the OFR by Florida-chartered credit unions and mutual associations of their members' names and residences. These list of members are confidential and exempt.

[10] Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).
[11] Section 119.15(3), F.S.
[12] Section 119.15(6)(b), F.S.

- Lists required to be maintained and submitted to the OFR by Florida-chartered banks, trust companies, and stock associations of their shareholders' names, addresses, and number of shares held by each shareholder. Any portion of these lists which reveal the shareholders' identities is confidential and exempt.

In addition, s. 655.059, F.S., provides that the books and records of a financial institution are "confidential" and are available to specified persons, including the OFR.[13] However, this is not a public records exemption from s. 119.07(1), F.S., because private organizations (such as financial institutions) are generally not subject to the ch. 119, F.S., unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.[14] This statute merely prohibits financial institutions from disclosing its books and records to anyone other than the persons enumerated in s. 655.059(1)(a), F.S.

III. Effect of Proposed Changes:

Informal Enforcement Actions

The bill creates a limited public records exemption for "informal enforcement actions" by the OFR. An informal enforcement action is defined to mean "a board resolution, document of resolution, or an agreement in writing between the office and a financial institution" that the office imposes on an institution after considering the administrative enforcement guidelines in s. 655.031, F.S., and determining that a formal enforcement action is not an appropriate enforcement remedy. However, the bill limits the exemption by providing that after an investigation relating to an informal enforcement action is completed or ceases to be active, an informal enforcement action is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, only to the extent that disclosure would result in certain events (i.e., impair the safety and soundness of the financial institution; reveal investigative techniques or procedures, etc.).

The public necessity statement provides that public disclosure of informal enforcement actions could erode public confidence in financial institutions in this state and may lead to a reduced level of protection of the interests of the depositors and creditors of financial institutions. In addition, the public necessity statement provides that this exemption will, among other things, provide competitive equality to Florida-chartered institutions, because financial institutions that are federally chartered or chartered by other states are protected by those federal or state laws with regard to informal enforcement actions.

Trade Secrets

The bill creates a public records exemption for trade secrets, as defined in s. 688.002, F.S., that comply with s. 655.0591, F.S., and that are held by the OFR in accordance with its statutory duties with respect to the codes.

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[13] In addition, s. 655.012(1)(b), F.S., grants the OFR access to all books and records of all persons over whom the OFR exercises general supervision as is necessary for the performance of the duties and functions of the OFR, as prescribed by the codes.

[14] Florida Attorney General Opinion 07-27.

The public necessity statement provides that disclosure of these trade secrets could result in a competitive disadvantage and economic loss to a financial institution.

Definitions

In addition to creating a definition of "informal enforcement action" for the new exemption, the bill defines the examination report, working papers, and personal financial information to clarify the existing exemptions in s. 655.057, F.S.

Statement of Public Necessity

Section 2 of the bill is the statement of public necessity supporting the new exemptions for informal enforcement actions and trade secrets. The bill provides legislative findings that informal enforcement actions and trade secrets must be kept confidential and exempt; and identified public purposes for exempting informal enforcement actions and trade secrets.

The bill will take effect on the same date that SB 1012 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires a two-thirds vote of each house of the Legislature and a public necessity statement. The bill contains a public necessity statement for informal enforcement actions and trade secrets. This bill requires a two-thirds vote for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's protection of trade secrets and informal enforcement actions may benefit Florida-chartered financial institutions, since disclosure of such information could result in a competitive disadvantage in the marketplace and reputational risk.

C. Government Sector Impact:

The bill likely could create a minimal fiscal impact on the OFR, because OFR staff responsible for complying with public record requests could require training related to implementation of the public record exemption. In addition, the OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 655.057 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 Governmental Oversight and Accountability on March 26, 2014:
The CS/CS amends the bill so that the public records exemptions currently in s. 655.057, F.S., were not made subject to a new Open Government Sunset Review (pursuant to s. 119.15, F.S.).[15] Technical changes in s. 655.057, F.S., were also made.

The CS/CS makes the new exemptions for informal enforcement actions and trade secrets subject to the s. 119.15, F.S., the Open Government Sunset Review Act.

CS by Banking and Insurance on March 11, 2014:
The CS provides a reference to linked bill, SB 1012.

B. Amendments:

None.

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

[15] Section 655.057, F.S. was subject to an Open Government Sunset Review pursuant to s. 119.14, F.S., however, s. 119.14, F.S. was repealed on October 1, 1995.

By the Committees on Governmental Oversight and Accountability; and Banking and Insurance; and Senator Richter

585-03262-14 20141278c2

A bill to be entitled

An act relating to public records; amending s. 655.057, F.S.; providing an exemption from public records requirements for certain informal enforcement actions by the Office of Financial Regulation, to which penalties apply for willful disclosure of such confidential information; providing an exemption from public records requirements for certain trade secrets held by the office, to which penalties apply for willful disclosure of such confidential information; defining terms; providing for future legislative review and repeal of the section; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 655.057, Florida Statutes, is amended to read:

655.057 Records; limited restrictions upon public access.—

(1) Except as otherwise provided in this section and except for such portions thereof which are otherwise public record, all records and information relating to an investigation by the office are confidential and exempt from ~~the provisions of~~ s. 119.07(1) until such investigation is completed or ceases to be active. For purposes of this subsection, an investigation is considered "active" while such investigation is being conducted by the office with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal

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proceedings. An investigation does not cease to be active if the office is proceeding with reasonable dispatch, and there is a good faith belief that action may be initiated by the office or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, portions of the ~~such~~ records relating to the investigation are ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) to the extent that disclosure would:

(a) Jeopardize the integrity of another active investigation;

(b) Impair the safety and soundness of the financial institution;

(c) Reveal personal financial information;

(d) Reveal the identity of a confidential source;

(e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or

(f) Reveal investigative techniques or procedures.

(2) Except as otherwise provided in this section and except for such portions thereof which are public record, reports of examinations, operations, or condition, including working papers, or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions in this state are confidential and exempt from ~~the provisions of~~ s. 119.07(1). However, such reports or papers or portions thereof may be released to:

(a) The financial institution under examination;

(b) Any holding company of which the financial institution

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59 is a subsidiary;
60 (c) Proposed purchasers if necessary to protect the
61 continued financial viability of the financial institution, upon
62 prior approval by the board of directors of such institution;
63 (d) Persons proposing in good faith to acquire a
64 controlling interest in or to merge with the financial
65 institution, upon prior approval by the board of directors of
66 such financial institution;
67 (e) Any officer, director, committee member, employee,
68 attorney, auditor, or independent auditor officially connected
69 with the financial institution, holding company, proposed
70 purchaser, or person seeking to acquire a controlling interest
71 in or merge with the financial institution; or
72 (f) A fidelity insurance company, upon approval of the
73 financial institution's board of directors. However, a fidelity
74 insurance company may receive only that portion of an
75 examination report relating to a claim or investigation being
76 conducted by such fidelity insurance company.
77 (g) Examination, operation, or condition reports of a
78 financial institution shall be released by the office within 1
79 year after the appointment of a liquidator, receiver, or
80 conservator to the ~~such~~ financial institution. However, any
81 portion of such reports which discloses the identities of
82 depositors, bondholders, members, borrowers, or stockholders,
83 other than directors, officers, or controlling stockholders of
84 the institution, shall remain confidential and exempt from ~~the~~
85 ~~provisions of~~ s. 119.07(1).
86
87 Any confidential information or records obtained from the office

88 pursuant to this paragraph shall be maintained as confidential
89 and exempt from ~~the provisions of~~ s. 119.07(1).
90 (3) Except as otherwise provided in this section and except
91 for those portions that are otherwise public record, after an
92 investigation relating to an informal enforcement action is
93 completed or ceases to be active, informal enforcement actions
94 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
95 I of the State Constitution to the extent that disclosure would:
96 (a) Jeopardize the integrity of another active
97 investigation.
98 (b) Impair the safety and soundness of the financial
99 institution.
100 (c) Reveal personal financial information.
101 (d) Reveal the identity of a confidential source.
102 (e) Defame or cause unwarranted damage to the good name or
103 reputation of an individual or jeopardize the safety of an
104 individual.
105 (f) Reveal investigative techniques or procedures.
106 (4) Except as otherwise provided in this section and except
107 for those portions that are otherwise public record, trade
108 secrets as defined in s. 688.002 which comply with s. 655.0591
109 and which are held by the office in accordance with its
110 statutory duties with respect to the financial institutions
111 codes are confidential and exempt from s. 119.07(1) and s.
112 24(a), Art. I of the State Constitution.
113 (5) ~~(3) The provisions of~~ This section does ~~do~~ not prevent
114 or restrict:
115 (a) Publishing reports required to be submitted to the
116 office pursuant to s. 655.045(2)(a) or required by applicable

117 federal statutes or regulations to be published.
118 (b) Furnishing records or information to any other state,
119 federal, or foreign agency responsible for the regulation or
120 supervision of financial institutions, including Federal Home
121 Loan Banks.
122 (c) Disclosing or publishing summaries of the condition of
123 financial institutions and general economic and similar
124 statistics and data, provided that the identity of a particular
125 financial institution is not disclosed.
126 (d) Reporting any suspected criminal activity, with
127 supporting documents and information, to appropriate law
128 enforcement and prosecutorial agencies.
129 (e) Furnishing information upon request to the Chief
130 Financial Officer or the Division of Treasury of the Department
131 of Financial Services regarding the financial condition of any
132 financial institution that is, or has applied to be, designated
133 as a qualified public depository pursuant to chapter 280.
134
135 Any confidential information or records obtained from the office
136 pursuant to this subsection shall be maintained as confidential
137 and exempt from ~~the provisions of~~ s. 119.07(1).
138 (6)(a) ~~(4)(a)~~ Orders of courts or of administrative law
139 judges for the production of confidential records or information
140 shall provide for inspection in camera by the court or the
141 administrative law judge and, after the court or administrative
142 law judge has made a determination that the documents requested
143 are relevant or would likely lead to the discovery of admissible
144 evidence, such ~~said~~ documents shall be subject to further orders
145 by the court or the administrative law judge to protect the

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146 confidentiality thereof. An ~~Any~~ order directing the release of
147 information is ~~shall be~~ immediately reviewable, and a petition
148 by the office for review of such order shall automatically stays
149 ~~stay~~ further proceedings in the trial court or the
150 administrative hearing until the disposition of such petition by
151 the reviewing court. If any other party files such a petition
152 for review, it operates ~~will operate~~ as a stay of such
153 proceedings only upon order of the reviewing court.
154 (b) Confidential records and information furnished pursuant
155 to a legislative subpoena shall be kept confidential by the
156 legislative body or committee that ~~which~~ received the records or
157 information, except in a case involving investigation of charges
158 against a public official subject to impeachment or removal.~~,~~
159 ~~and then~~ Disclosure of such information shall be only to the
160 extent determined necessary by the legislative body or committee
161 ~~to be necessary~~.
162 (7) ~~(5)~~ Every credit union and mutual association shall
163 maintain, in the principal office where its business is
164 transacted, full and correct records of the names and residences
165 of all the members of the credit union or mutual association.
166 Such records are ~~shall be~~ subject to the inspection of all the
167 members of the credit union or mutual association, and the
168 officers authorized to assess taxes under state authority,
169 during business hours of each business day. A current list of
170 members shall be made available to the office's examiners for
171 their inspection and, upon the request of the office, shall be
172 submitted to the office. Except as otherwise provided in this
173 subsection, the list of the members of the credit union or
174 mutual association is confidential and exempt from ~~the~~

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175 ~~provisions of~~ s. 119.07(1).
176 (8) ~~(6)~~ Every bank, trust company, and stock association
177 shall maintain, in the principal office where its business is
178 transacted, full and complete records of the names and
179 residences of all the shareholders of the bank, trust company,
180 or stock association and the number of shares held by each. Such
181 records are ~~shall be~~ subject to the inspection of all the
182 shareholders of the bank, trust company, or stock association,
183 and the officers authorized to assess taxes under state
184 authority, during business hours of each banking day. A current
185 list of shareholders shall be made available to the office's
186 examiners for their inspection and, upon the request of the
187 office, shall be submitted to the office. Except as otherwise
188 provided in this subsection, any portion of this list which
189 reveals the identities of the shareholders is confidential and
190 exempt from ~~the provisions of~~ s. 119.07(1).
191 (9) ~~(7)~~ Materials supplied to the office or to employees of
192 any financial institution by other state or federal governmental
193 agencies~~, federal or state, shall~~ remain the property of the
194 submitting agency or the corporation, and any document request
195 must be made to the appropriate agency. Any confidential
196 documents supplied to the office or to employees of any
197 financial institution by other state or federal governmental
198 agencies are~~, federal or state, shall be~~ confidential and exempt
199 from ~~the provisions of~~ s. 119.07(1). Such information shall be
200 made public only with the consent of such agency or the
201 corporation.
202 (10) ~~(8)~~ Examination reports, investigatory records,
203 applications, and related information compiled by the office, or

204 photographic copies thereof, shall be retained by the office for
205 ~~a period of~~ at least 10 years.
206 (11) ~~(9)~~ A copy of any document on file with the office
207 which is certified by the office as being a true copy may be
208 introduced in evidence as if it were the original. The
209 commission shall establish a schedule of fees for preparing true
210 copies of documents.
211 (12) For purposes of this section, the term:
212 (a) "Examination report" means records submitted to or
213 prepared by the office as part of the office's duties performed
214 pursuant to s. 655.012 or s. 655.045(1).
215 (b) "Informal enforcement action" means a board resolution,
216 a document of resolution, or an agreement in writing between the
217 office and a financial institution which:
218 1. The office imposes on an institution when the office
219 considers the administrative enforcement guidelines in s.
220 655.031 and determines that a formal enforcement action is not
221 an appropriate administrative remedy;
222 2. Sets forth a program of corrective action to address one
223 or more safety and soundness deficiencies and violations of law
224 or rule at the institution; and
225 3. Is not subject to enforcement by imposition of an
226 administrative fine pursuant to s. 655.041.
227 (c) "Personal financial information" means:
228 1. Information relating to the existence, nature, source,
229 or amount of a person's personal income, expenses, or debt.
230 2. Information relating to a person's financial
231 transactions of any kind.
232 3. Information relating to the existence, identification,

233 nature, or value of a person's assets, liabilities, or net
234 worth.
235 (d) "Working papers" means the records of the procedures
236 followed, the tests performed, the information obtained, and the
237 conclusions reached in an examination or investigation performed
238 under s. 655.032 or s. 655.045. Working papers include planning
239 documentation, work programs, analyses, memoranda, letters of
240 confirmation and representation, abstracts of the books and
241 records of a financial institution as defined in s. 655.005(1),
242 and schedules or commentaries prepared or obtained in the course
243 of such examination or investigation.
244 (13) ~~(10)~~ A ~~Any~~ person who willfully discloses information
245 made confidential by this section commits ~~is guilty of~~ a felony
246 of the third degree, punishable as provided in s. 775.082, s.
247 775.083, or s. 775.084.
248 (14) Subsections (3) and (4) are subject to the Open
249 Government Sunset Review Act in accordance with s. 119.15 and
250 are repealed on October 2, 2019, unless reviewed and saved from
251 repeal through reenactment by the Legislature.
252 Section 2. (1) The Legislature finds that it is a public
253 necessity that informal enforcement actions and trade secrets,
254 as defined in s. 688.002, Florida Statutes, be kept confidential
255 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
256 Article I of the State Constitution.
257 (2) Public disclosure of an informal enforcement action
258 could further impair the safety and soundness of a financial
259 institution that is subject to the action. Furthermore, the
260 public disclosure of this information could erode public
261 confidence in financial institutions and the financial

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262 institution system in this state and may lead to a reduced level
263 of protection of the interests of the depositors and creditors
264 of financial institutions. Maintaining informal enforcement
265 actions as confidential and exempt from s. 119.07(1), Florida
266 Statutes, and s. 24(a), Article I of the State Constitution will
267 provide to the financial institutions that are chartered by this
268 state the same protections as those already available to
269 financial institutions chartered under federal law and by other
270 states, maintain public confidence in financial institutions
271 subject to the financial institutions codes, protect the safety
272 and soundness of the financial institution system in this state,
273 protect the interests of the depositors and creditors of
274 financial institutions, promote the opportunity for state-
275 chartered financial institutions to be and remain competitive
276 with financial institutions chartered by other states or the
277 United States, and otherwise provide for and promote the
278 purposes of the financial institutions codes as set forth in s.
279 655.001, Florida Statutes.
280 (3) A trade secret derives independent economic value,
281 actual or potential, from not being generally known to, and not
282 readily ascertainable by, other persons who can obtain economic
283 value from the disclosure or use of the trade secret. Without an
284 exemption for a trade secret held by the office, that trade
285 secret becomes a public record when received and must be
286 divulged upon request. Divulging a trade secret under the public
287 records law would give business competitors an unfair advantage
288 and destroy the value of that property, causing a financial loss
289 to the person or entity submitting the trade secret and
290 weakening the position of that person or entity in the

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291 marketplace.
292 Section 3. This act shall take effect on the same date that
293 SB 1012 or similar legislation takes effect, if such legislation
294 is adopted in the same legislative session or an extension
295 thereof and becomes a law.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR GARRETT RICHTER
President Pro Tempore
23rd District

March 26, 2014

The Honorable John Thrasher, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Thrasher:

CS/CS for Senate Bill 1278, Public Records/OFR, has been referred to the Committee on Rules. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

Garrett Richter

cc: John Phelps, Staff Director

REPLY TO:
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☐ 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1396

INTRODUCER: Education Committee and Senator Montford

SUBJECT: Public Records/Public-private Partnerships/State Universities

DATE: April 1, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	**Fav/CS**
2.	Kim	McVaney	GO	**Favorable**
3.	Hand	Phelps	RC	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1396 makes confidential and exempt from disclosure, pursuant to Florida's public records law, certain unsolicited proposals, proprietary confidential business information, and board meetings at which these proposals and information will be discussed, relating to a public-private partnership filed with a state university board of trustees, and provides a statement of public necessity.

The public records and public meeting exemptions are subject to the Open Government Sunset Review Act and shall be repealed on October 2, 2019, unless action is taken by the Legislature to reenact the exemption. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill is tied to the passage of CS/SB 900 and takes effect on the same date as CS/SB 900 or similar legislation becomes law.

II. Present Situation:

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

> [e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.[1]

Under Florida law, "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records."[2]

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.[3] Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.[4]

Florida Open Meetings Requirements

The Constitution of the State of Florida provides that:

> [a]ll meetings of any collegial public body … at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public … except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.[5]

Under Florida law, "[a]ll meetings of any board … at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting."[6]

However, the Legislature is authorized to exempt meetings from such laws that otherwise require accessibility.[7] Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.[8]

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[1] Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term "public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(12), F.S.
[2] Section 119.07(1)(a), F.S.
[3] Art. I, s. 24(c), Fla. Const.
[4] *Id.*
[5] Art. I, s. 24(b), Fla. Const.
[6] Section 286.011(2), F.S.
[7] Art. I, s. 24(c), Fla. Const.
[8] *Id.*

Open Government Sunset Review Act

The Open Government Sunset Review Act[9] provides that an exemption must serve an "identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves."[10] The exemption must meet one of the following identifiable public purposes:[11]

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

A new public records or open meeting exemption shall be repealed on October 2nd of the fifth year after enactment, unless the Legislature reenacts the exemption.[12]

Senate Bill 900 (2014)

CS/SB 1396 is the public records exemption bill for CS/SB 900. CS/SB 900 creates a public-private partnership process for state universities. CS/SB 900 authorizes state university boards of trustees (board) to enter into public-private partnerships (P3s) for specified qualifying projects if the board determines the project is in the public's best interest.

The board may receive unsolicited proposals or may solicit proposals for qualifying projects and may, thereafter, enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities.[13]

If the board receives an unsolicited proposal and intends to enter into a P3 agreement for the project, the board must publish a notice in a newspaper of general circulation at least once a week for two weeks stating that the board has received a proposal and will accept other proposals. The board may not accept any proposals after 120 days after the initial publication.

After the notification period has expired, the board must rank the proposals received in order of preference. If negotiations with the first ranked firm are unsuccessful, the board may begin

[9] Section 119.15, F.S.
[10] Section 119.15(6)(b), F.S.
[11] *Id.*
[12] Sections 119.15(3), 286.0111, F.S.,
[13] Section 1007.07(a), F.S., authorizes university boards of trustees to acquire real and personal property as well as engage in contracts.

negotiations with the second ranked firm. The board may reject all proposals at any point in the process.

Public Record and Public Meeting Exemptions

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt[14] from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.[15] If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.[16]

Current law does not provide a public meeting exemption for meetings during which an unsolicited proposal is discussed. However, public meetings in which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation are exempt from pubic meeting requirements.[17] A complete recording of the closed meeting must be made; no portion of the exempt meeting may be held off the record.[18]

The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.[19] If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from public record requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.[20] A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, and replies.[21]

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[14] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).
[15] Section 119.071(1)(b), F.S.
[16] *Id.*
[17] Section 286.0113(2)(b), F.S.
[18] Section 286.0113(2)(c), F.S.
[19] *Id.*
[20] *Id.*
[21] *Id.*

III. Effect of Proposed Changes:

Unsolicited Proposals

CS/SB 1396 provides that unsolicited proposals received by the board are confidential and exempt[22] from disclosure until the board ranks the unsolicited proposals and provides notice of its intended decision.

CS/SB 1396 also provides that unsolicited proposals are confidential and exempt until 90 days after the board rejects all unsolicited proposals, or 90 days after the board decides not to enter into an agreement. Proprietary confidential business records continue to be confidential and exempt from public disclosure even after the rest of the unsolicited proposal is made public.

Proprietary Confidential Business Information

CS/SB 1396 defines "proprietary confidential business information" as information provided by a private entity to a state university board that:

- Has been designated by a private entity as information that is owned or controlled by the private entity;
- Is intended to be and is treated by the private entity as private and the disclosure of which would harm the business operations of the private entity;
- Has not otherwise been intentionally disclosed by the private entity; and
- Is information concerning:
  - Trade secrets as defined in s. 688.002, F.S.;
  - Financial statements or financing terms;
  - Patent-pending or copyrighted designs;
  - Leasing or real property acquisition plans; or
  - Marketing studies.

Board Meetings

This bill provides that portions of a board meeting at which unsolicited proposals are discussed are exempt from Florida's open meetings laws.[23] The exempt portion of the meeting must be recorded and transcribed, including the times of commencement and termination of the meeting, all discussions and proceedings, the names of all persons present at any time, and the names of all persons speaking. The exempt portion of the meeting may not be off the record. Transcripts containing confidential business records are confidential and exempt.

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

[23] Section 286.011, F.S., and Art. I, s. 24(b), Fla. Const.

Statement of Public Necessity

The bill provides a statement of public necessity for the exemption,[24] which states that:

- If unsolicited proposals are publicly available before the board makes a decision, competitors could determine the creative financing used to fund the projects.
- If proprietary confidential business information is not made confidential and exempt, it may discourage a private entity from providing an unsolicited proposal to a board in order to avoid having proprietary confidential business information made public.
- Board review of unsolicited proposals or proprietary confidential business information needs to be made confidential and exempt in order to maintain the confidential and exempt status of this information.
- Unsolicited proposals may contain proprietary business information and trade secrets, such as patent-pending designs and financing terms.
- The harm that may result from the release of such information outweighs any public benefit that may be derived from disclosure of the information.

The public records and open meetings exemption provisions are subject to the Open Government Sunset Review Act and shall be repealed on October 2, 2019, unless action is taken by the Legislature to reenact the exemption.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions 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 meeting exemption. The bill creates new public record and new public meetings exemptions and, therefore, includes a public necessity statement for both.

[24] The bill does not exempt solicited proposals from disclosure pursuant to a public records request. The same public purpose for exempting a solicited proposal may also exist for solicited proposals. *Compare*, Section 119.071(1)(b), F.S. (which creates a public records exemption for all sealed bids, proposals or replies in response to a competitive solicitation pursuant to s. 287.057, F.S.).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

This bill does not state that confidential business records continue to be confidential and exempt after a board has ranked the unsolicited proposals it has received and provided notice of its intended decision.

This bill makes proprietary confidential business information and transcripts of the board discussion confidential and exempt from public disclosure, but does not provide any conditions for those records to be released or reviewed.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1013.505(14) of the Florida Statutes, which will be created should CS/SB 900, or a substantially similar bill, become law.

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 Education on March 11, 2014:
The committee substitute differs from SB 1396 in the following ways:

- Creates and defines the term "proprietary confidential business information"; to provide that trade-secret, proprietary, and financial-type information contained within the initial proposal is confidential and exempt from Florida's public records law; makes the entire initial proposal confidential and exempt for a specified period of time; reduces the time period that an unsolicited proposal is confidential and exempt,

when all proposals are rejected, from 12 months to 90 days; and includes provisions authorizing the state university board hold confidential and exempt "shade" meetings to discuss unsolicited proposals and proprietary confidential business information.

- Updates the public necessity statement to address the new provisions.

B. Amendments:

None.

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

173944

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Rules (Montford) recommended the following:

Senate Amendment

Delete lines 23 - 28
and insert:
Section 1. Subsection (15) is added to section 1013.505, Florida Statutes, as created by SB 900, 2014 Regular Session, to read:
1013.505 Public-private partnerships; state universities.—
(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

By the Committee on Education; and Senator Montford

A bill to be entitled

An act relating to public records and meetings; amending s. 1013.505, F.S., relating to public-private projects for the upgrade of state university facilities and infrastructure; defining the term "proprietary confidential business information"; creating an exemption from public records requirements for unsolicited proposals held by a state university board of trustees for a specified period; providing that proprietary confidential business information remains confidential and exempt from public records requirements; creating an exemption from public meetings requirements for portions of meetings of a state university board of trustees at which confidential and exempt information is discussed; providing for future review and repeal of the exemptions under the Open Government Sunset Review Act; providing statements of public necessity; providing a contingent effective date.

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

Section 1. Subsection (14) is added to section 1013.505, Florida Statutes, as created by SB 900, 2014 Regular Session, to read:

1013.505 Public-private partnerships; state universities and private entities.—

(14) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

(a) As used in this subsection, the term "proprietary

confidential business information" means information that has been designated by a private entity when provided to a state university board of trustees as information that is owned or controlled by the private entity, is intended to be and is treated by the private entity as private and the disclosure of which would harm the business operations of the private entity, has not otherwise been intentionally disclosed by the private entity, and is information concerning:

1. Trade secrets as defined in s. 688.002;
2. Financial statements or financing terms;
3. Patent-pending or copyrighted designs;
4. Leasing or real property acquisition plans; or
5. Marketing studies.

(b)1. If a board receives an unsolicited proposal under this section, the proposal is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time that the board receives and ranks the proposals as described in subsection (5) and provides notice of its intended decision.

2. An unsolicited proposal is not confidential and exempt for more than 90 days after the date the board rejects all proposals received for the project described in the unsolicited proposal or, if the board does not intend to enter into an agreement for the project, the date the unsolicited proposal is received. However, even if the board rejects all proposals or decides not to enter into an agreement for the project described in the unsolicited proposal, any proprietary confidential business information contained in the unsolicited proposal shall remain confidential and exempt from s. 119.07(1) and s. 24(a),

59 Art. I of the State Constitution.
60 (c)1. A portion of a meeting of a state university board of
61 trustees at which information that is confidential and exempt
62 under paragraph (b) is discussed, is exempt from s. 286.011 and
63 s. 24(b), Art. I of the State Constitution.
64 2. An exempt portion of a meeting shall be recorded and
65 transcribed. The board shall record the times of commencement
66 and termination of the meeting, all discussions and proceedings,
67 the names of all persons present at any time, and the names of
68 all persons speaking. An exempt portion of a meeting may not be
69 off the record.
70 3. A portion of the transcript of a meeting which reveals
71 proprietary confidential business information is confidential
72 and exempt from s. 119.07(1) and s. 24(a), Art. II of the State
73 Constitution.
74 (d) This subsection is subject to the Open Government
75 Sunset Review Act in accordance with s. 119.15 and shall stand
76 repealed on October 2, 2019, unless reviewed and saved from
77 repeal through reenactment by the Legislature.
78 Section 2. (1) The Legislature finds that it is a public
79 necessity that an unsolicited proposal held by a state
80 university board of trustees pursuant to s. 1013.505, Florida
81 Statutes, be confidential and exempt from public records
82 requirements until the board provides notification of its
83 decision or its intent to make a decision after ranking
84 proposals under s. 1013.505(5)(c), Florida Statutes. The
85 protection of information contained in unsolicited proposals
86 serves a public need by encouraging private investment in state
87 university facilities and further promotes timely and cost-

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

88 effective acquisition, design, construction, improvement,
89 renovation, expansion, equipping, maintenance, operation,
90 implementation, or installation of projects that will be
91 principally used by a state university in serving the
92 university's core mission that may not be satisfied by existing
93 procurement methods. These unsolicited proposals may contain
94 proprietary confidential business information, and, if such
95 information is made publicly available before a state university
96 board of trustees makes a decision regarding a proposal,
97 competitors could determine the creative financing used to fund
98 these projects. If such information is not protected, it may
99 discourage a private entity from providing an unsolicited
100 proposal to a board in order to avoid having proprietary
101 confidential business information and other business information
102 made public. This exemption is narrowly drawn in that an
103 unsolicited proposal is not confidential and exempt for more
104 than 90 days after the date the board rejects all proposals
105 received for the project described in the unsolicited proposal
106 or, if the board does not intend to enter into an agreement for
107 the project, the date the unsolicited proposal is received. An
108 unsolicited proposal may remain confidential and exempt from
109 public records requirements beyond that period only if it
110 contains proprietary confidential business information.
111 (2) The Legislature further finds that it is a public
112 necessity that a portion of a meeting of a state university
113 board of trustees at which information made confidential and
114 exempt from public records requirements under this act is
115 discussed be exempt from public meetings requirements in order
116 to maintain the confidential and exempt status of this

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

117 information. Public oversight is preserved by requiring a
118 transcript of any portion of such closed meetings of the board.
119 Section 3. This act shall take effect on the same date that
120 SB 900 or similar legislation takes effect, if such legislation
121 is adopted in the same legislative session or an extension
122 thereof and becomes law.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/CS/SB 1524
INTRODUCER:	Rules Committee, Commerce and Tourism Committee, and Senator Thrasher
SUBJECT:	Security of Confidential Personal Information
DATE:	April 3, 2014 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	**Fav/CS**
2.	Siples	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1524 creates the "Florida Information Protection Act of 2014." The bill requires notice be given to affected customers and the Department of Legal Affairs (DLA) when a breach of security of personal information occurs. The bill requires such notice to be given within 30 days of the discovery of the breach or belief that a breach occurred, unless delayed at the request of law enforcement for investigative purposes or for other good cause shown. The bill provides enforcement authority to the DLA under the Florida Deceptive and Unfair Trade Practices Act to civilly prosecute violations. A violator of the bill's provisions may also be subject to civil penalties, similar to current law, if breach notification is not provided timely. State governmental entities are required to provide notification of security breaches to the DLA, but are not liable for civil penalties for failure to timely report the security breaches. The bill provides exceptions for those entities that comply with breach notifications as required by the appropriate federal regulator.

The bill requires the DLA to submit an annual report to the Legislature, by February 1 of each year, detailing any reported breaches of security by governmental entities or their third-party agents for the preceding year, along with any recommendations for security improvement. The report must also identify any governmental entity that has violated the breach notification provisions.

The bill requires customer records, both physical and electronic, to be disposed in a manner that protects personal information from being disclosed. This provision does not apply to governmental entities.

The bill repeals s. 817.5681, F.S., which contains the current law requirements for breach notification.

II. Present Situation:

Data breaches may be caused by computer hacking, malware, physical loss of portable devices, or inadvertent exposure of confidential data on websites or in e-mail.[1] There have been a number of high profile data breaches in the last few years.[2] In 2013, nationwide, there were more than 600 data breaches compromising more than 91 million consumer records.[3] Most states, including Florida, have laws that require disclosure to consumers when a breach of security occurs.[4]

Current Florida Law on Data Breaches

Current law provides that any person[5] doing business in this state who also maintains computerized data in a system that includes personal information must adhere to certain procedures if there is a breach of the system.[6]

A notification of the breach[7] must be provided to any resident of this state whose unencrypted personal information[8] was, or is reasonably believed to have been, acquired by an unauthorized

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[1] Gina Stevens, Cong. Research Serv., *Data Security Breach Notification Laws*, R42475 (Apr. 10, 2012), *available at* https://www.fas.org/sgp/crs/misc/R42475.pdf (last visited Mar. 10, 2014).
[2] Target suffered a data breach that affected more than 40 million customers. *See* http://www.washingtonpost.com/business/economy/target-data-breach-what-you-should-know/2013/12/19/e00e3326-68e2-11e3-ae56-22de072140a2_story.html (last visited Mar. 10, 2014); Adobe Acrobat's breach affected 2.9 million customers. *See* http://www.usatoday.com/story/cybertruth/2013/10/03/adobe-loses-29-mil-customer-records-source-code/2919229/ (last visited Mar. 10, 2014); Neiman-Marcus recently had a data breach and indicated that it may ultimately affect more than 100 million customers. *See* http://www.nytimes.com/2014/01/24/business/neiman-marcus-breach-affected-1-1-million-cards.html?_r=0 (last visited Mar. 10, 2014).
[3] Identity Theft Resource Center, Data Breach Category Summary (Feb. 20, 2014), *available at* http://www.idtheftcenter.org/ITRC-Surveys-Studies/2013-data-breaches.html (last visited Mar. 7, 2014). This includes data breaches in several industries, including financial, business, educational, government, and health care sectors.
[4] National Conference of State Legislatures, "State Security Breach Notification Laws," (Jan. 21, 2014), *available at* http://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx (last visited Mar. 7, 2014). Alabama, Kentucky, New Mexico, and South Dakota do not have their own data breach notification laws.
[5] "Person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. *See* s. 1.01(3), F.S. The law also applies to a governmental agency or subdivision.
[6] *See generally* s. 817.5681, F.S...
[7] Section 817.5681(4), F.S., defines "breach" as an unlawful and unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information.
[8] Section 817.5681(5), F.S., defines "personal information" as an individual's first name, first initial and last name, or any middle name and last name, in combination with one or more of the following, when not encrypted: social security number, driver's license number or Florida Identification Card number, and account number, credit card number, or debit card number, in combination with any required security code or password that would permit access to an individual's financial account. This does not include publicly available information that is lawfully made available from government records or widely distributed media.

person.[9] The notification must be made without unreasonable delay but no later than 45 days following the determination of the breach. Notification of the breach may be delayed upon request of a law enforcement agency if such agency determines that notification will impede the investigation.[10] Notification is not required if, after an appropriate investigation or consultation with relevant governmental law enforcement agencies, it is determined that the breach has not and will not likely result in harm to the individuals whose personal information has been compromised.[11]

A person is deemed to be in compliance with this law if the person's provides notification pursuant to the person's own breach notification procedures that are consistent with this law or if the person provides notification in accordance with the rules, regulations, procedures, or guidelines established by the person's primary or functional federal regulator.

A person who fails to provide timely notification, as required by statute, is liable for an administrative fine of up to $500,000, as follows:[12]

- $1,000 per day, each day the breach goes undisclosed for up 30 days, and thereafter $50,000 for each 30-day period or portion thereof for up to 180 days.
- If notification is not made within 180 days, a person who failed to make a required disclosure of a breach is subject to an administrative fine of up to $500,000.

A person, who maintains computerized personal information on behalf of another entity, must notify that business within 10 days of discovery of a data breach. The two parties may come to an agreement on who will provide notice to the affected individuals. However, if no agreement is reached, then the entity having the direct relationship with the affected individuals will be responsible for complying with the notification procedures required by law. If a person fails to notify a business entity of a breach within 10 days, that person will be subject to administrative sanctions similar to those discussed above.[13]

Notice may be written, or it may be provided electronically if the notice that is provided is consistent with applicable federal law, including the consumer's affirmative consent to electronic records.[14] Substitute notice maybe given if a person demonstrates that the cost of providing notice would exceed $250,000, more than 500,000 individuals require notification of the breach, or there is a lack of sufficient contact information. Substitute notice must include an email or

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[9] Section 817.5681(7), F.S., defines "unauthorized person" as any person who does not have permission from, or a password issued by, the person who stores the computerized data to acquire such data, but does not include any individual to whom the personal information pertains.

[10] Section 817.5681(3), F.S. The notification time period required under law begins when the law enforcement agency notifies the person maintaining the database that notification will not compromise the investigation.

[11] Section 817.5681(10), F.S. The determination must be documented in writing and maintained for 5 years.

[12] Sections 817.5681(1)(b)-(d), F.S. The administrative sanctions apply per breach and not per individual affected by the breach. These provisions do not apply to a governmental entity, unless it has entered into a contract with a contractor or third-party administrator to provide governmental services. In that case, the provisions would apply to the contractor or third-party administrator.

[13] Section 817.5681(2), F.S. Administrative sanctions include $1,000 for each day the breach goes unreported for up to 30 days and; thereafter, $50,000 for each 30-day period or portion thereof for up to 180 days; and after 180 days, an administrative fine of up to $500,000.

[14] Section 817.5681(6), F.S. 15 U.S.C. s. 7001, provides the guidelines for electronic records and signatures in commerce, including consumer disclosures, consumer consent guidelines, and retention of records.

email notice, conspicuous posting on the business owner's web page, and notification to major statewide media.

Finally, current law provides that in the event that more than 1,000 individuals require notification at a single time, the person must also notify all consumer reporting agencies that compile and maintains files on consumers on a nationwide basis of the timing, distribution, and content of the notices.[15]

Federal Law

There is no single federal law that governs notification of a data or security breach.[16] There are regulations that govern federal governmental agencies, such as the Federal Information Security Management Act of 2002,[17] which provides security requirements for all applicable federal government agencies. Additionally, federal agencies must comply with a memorandum that directed the agencies to develop a breach notification policy and provided the necessary elements of such policies.[18]

With regard to the private sector, industry-specific regulations have been implemented.[19] For example, the Health Insurance Portability and Accountability Act of 1996 (HIPAA)[20] requires certain covered entities[21] to comply with privacy and security standards to protect individually identifiable health information.[22] The Health Information Technology for Economic and Clinical Health Act[23] extended the privacy and security standards of HIPAA to the business associates of HIPAA-covered entities.[24] It also directed the Department of Health and Human Services to issue regulations to covered entities that provide for notification in cases of breaches of unsecured protected health information, and the Federal Trade Commission was directed to issue regulations to certain web-based businesses to notify customers when the security of their health information is breached.

Under the Gramm-Leach-Bliley Act,[25] financial institutions are required to secure and protect consumers' nonpublic personal information. The act required banking agencies to develop guidelines for the security, integrity, and confidentiality of customer information. One of the guidelines recommends that financial institutions implement a risk-based response system,

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[15] Section 817.5681(12), F.S.
[16] Stevens, *supra* note 1, at 7.
[17] 44 U.S.C. s. 3541, et seq.
[18] Memorandum from Clay Johnson III, Deputy Director for Management, Office of Management and Budget, Executive Office of the White House, to the Heads of Executive Departments and Agencies, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information," M-07-16 (May 22, 2007), *available at* http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf (last visited Mar. 17, 2014).
[19] Stevens, *supra* note 1, at 7.
[20] Pub. Law 104-191 (Aug. 21, 1996).
[21] Covered entities include health plans, health care clearinghouses, and health care providers who transmit financial and administrative transactions electronically.
[22] Stevens, *supra* note 1, at 11-13.
[23] Pub. Law No. 111-5 s. 13400 (Feb. 17, 2009).
[24] Stevens, *supra* note 1, at 13-17.
[25] Pub. Law No. 106-102 (Nov. 12, 1999).

including breach notification procedures. The guidelines prohibit delaying or forgoing customer notification because of embarrassment or inconvenience.[26]

The Data Security Act of 2014 was introduced in the U.S. Senate in January 2014. The bill provides breach notification procedures, enforcement, and preemption of state laws with regard to the security of consumer information.[27]

III. Effect of Proposed Changes:

Section 1 provides that the bill may be cited as the "Florida Information Protection Act of 2014."

Section 2 repeals s. 817.5681, F.S., which outlines the current procedures for notification when a breach of security involving personal information occurs. The substance of this section has been moved to the newly created s. 501.171, F.S.

Section 3 creates s. 501.171, F.S., to provide the procedure for protection and security of sensitive personal information[28] in the possession of covered entities.[29] Covered entities, governmental entities, and third-party agents are required to take reasonable measures to protect and secure electronic data containing personal information. When the security of a data system is breached, a covered entity must provide notice to the DLA and effected individuals unless otherwise provided in the bill. If a covered entity fails to provide the required notices, it may face civil penalties.

Notice to the Department of Legal Affairs

The bill provides that entities subject to the provisions of the bill must provide written notice of any breach of security that affects 500 or more Floridians to the DLA within 30 days after the determination of the breach or reason to believe a breach had occurred. The notice may be delayed an additional 15 days for good cause, if such delay is requested, in writing, within 30

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[26] Stevens, *supra* note 1, at 17-20.

[27] S. 1927 (113th Congress). This bill was referred to the Committee on Banking, Housing, and Urban Affairs Subcommittee on National Security and International Trade and Finance, and a hearing was held by that committee on Feb. 3, 2014. *See also* Alina Selyukh, "U.S. Retailers at Senate Hearing: Hackers Have Upper Hand," Reuters, (Feb. 4, 2014), *available at* http://www.reuters.com/article/2014/02/04/us-usa-hacking-congress-idUSBREA121I620140204 (last visited Mar. 10, 2014).

[28] The bill expands the definition of "personal information." "Personal information" means an individual's first name or first initial and last name in combination with one of the following: a social security number; driver license or identification card number, passport number, military identification number, or other number issued by a governmental entity used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password needed to permit access to the financial account; an individual's medical history, mental or physical condition, or medical treatment or diagnosis; or an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer. A user name or e-mail address, in combination with a password or security question and answer is also considered "personal information." Information that is publicly available from a federal, state, or local governmental entity or information that is encrypted, secured, or modified by a method or technology that removes personally identifiable information is not considered "personal information."

[29] A "covered entity" is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. For the provisions of this bill detailing the requirements for notification when there is a breach of security, disposal of customer records, and enforcement, this term also includes governmental entities.

days of the determination of the breach or reason to believe a breach occurred. Notice to the DLA is not required in current law. The notice must include:

- A synopsis of the events surrounding the breach at the time the notice is provided;
- The number of individuals in this state who were or potentially have been affected by the breach;
- Any services related to the breach being offered or scheduled to be offered by the covered entity to individuals, without charge, and instructions as to how to use such services;
- A copy of the notice sent to individuals affected or potentially affected by the breach or an explanation of other actions being taken, such as a delay in notification at the request of law enforcement, a determination that the breach was unlikely to cause harm, or notice provided in compliance with federal law; and
- The name, address, telephone number, and e-mail address of the employee of the covered entity from whom additional information may be obtained about the breach.

Upon request of the DLA, a covered entity must also provide:

- A police report, incident report, or computer forensics report;
- A copy of the polices in place regarding breaches; and
- Any steps taken by the covered entity to rectify the breach.

A covered entity may provide any other information regarding the breach to the DLA at any time to supplement the information required under this bill.

For breaches of security occurring within the judicial branch, the Executive Office of the Governor, the Department of Financial Services, and the Department of Agriculture and Consumer Services, the notice of the breach of security may be posted to an agency-managed website in lieu of the written notice to the DLA.

Notice to Individuals

A covered entity must provide notice to each individual in Florida whose personal information was, or is reasonably believed to have been, accessed as a result of a breach. Notice must be provided as quickly as possible, taking into account the time needed to determine the scope of the breach of security, to identify affected individuals, and to restore reasonable integrity of the data system that was breached. However, notice must be provided within 30 days of determination of the breach or reason to believe a breach occurred unless:

- Notice is delayed upon the written request of a federal, state, or local law enforcement agency for a specified period, if the agency determines that notice to individuals would interfere with a criminal investigation;[30] or
- Notice is waived after an appropriate investigation and consultation with relevant federal, state, or local law enforcement agencies, if the covered entity reasonably determines that the breach has not and will not likely result in identity theft or any other financial harm. Such a determination must be documented in writing and maintained for at least 5 years and must be provided to the DLA within 30 days of such a determination.

[30] A law enforcement agency may submit a subsequent written notice to revoke the delay of notice as of a specified date or to extend the period of delay requested in the original request to a specified date.

The bill shortens the amount of time a covered entity has to notify affected individuals of the breach from 45 days to 30 days.

The notice to affected individuals must be made by either written notice sent to the individual's mailing address or by e-mail sent to the individual's e-mail address. The notice must include:

- The date, estimated date, or estimated date range of the breach of security;
- A description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security; and
- Information that the individual can use to contact the covered entity about the breach of security and the individual's personal information maintained by the covered entity.

Similar to current law, this notice may be substituted in lieu of direct notice to the individual if the cost of providing notice will exceed $250,000, the number of affected individuals exceeds 500,000, or the covered entity does not have an e-mail address or mailing address for the affected individuals. The substitute notice must include a conspicuous notice on the Internet website of the covered entity, if the entity maintains a website, and notice in print and broadcast media, including major media in urban and rural areas where the affected individuals reside.

If a covered entity is in compliance with the rules, regulations, procedures, or guidelines of its primary or functional federal regulator that require the entity to provide notification to individuals following a breach of security, the covered entity is deemed to have complied with the notice requirements of this bill. However, notification of the breach must still be timely provided to the DLA.

The bill provides that in the event that more than 1,000 individuals require notification at a single time, the person must also notify all consumer reporting agencies that compile and maintains files on consumers on a nationwide basis of the timing, distribution, and content of the notices. This requirement is similar to current law.

Notice by Third-Party Agents[31] and Agents

If the data system is maintained by a third-party agent, the third party agent must notify the covered entity within 10 days in the event of a breach of security or upon reasonable belief that a breach occurred.[32] The covered entity is responsible for providing notice to affected individuals in the same manner as required if the breach had been to its own system. The third-party agent must provide the covered entity with all information needed to comply with the bill's provisions.

An agent may provide the notice required by the bill to individuals and the DLA on behalf of the covered entity. However, if the agent fails to provide proper notice, the covered entity will be deemed to have violated the provisions of this bill.

[31] A "third-party agent" is an entity that has been contracted to maintain, store, or process personal information on behalf of a covered entity or governmental entity.
[32] Current law requires notification to the covered entity within 10 days.

Annual Report

The DLA is required to submit a report, by February 1 of each year, to the President of the Senate and the Speaker of the House of Representatives describing the nature of any reported breaches of security by governmental entities or their third-party agents in the preceding calendar year, along with any recommendations for security improvements. The report must identify any governmental entity that has violated the provisions of this bill.

Disposal of Records

Each covered entity or third-party agent must take all responsible measures to dispose or arrange for the disposal of customer records[33] containing personal information within its custody and control when such records are no longer to be retained. This requirement applies to both electronic and physical customer records.

Enforcement

A violation of the provisions of the bill will be treated as unfair or deceptive trade practice in any action brought by the DLA.[34] A covered entity or third-party agent that fails to comply with the breach notification provisions of this bill may also be liable for a civil penalty, not to exceed $500,000, as follows:

- $1,000 per day, each day the breach goes undisclosed for up 30 days, and thereafter $50,000 for each 30-day period or portion thereof for up to 180 days.
- If notification is not made within 180 days, a covered entity who failed to make a required disclosure of a breach is subject to civil penalties not to exceed $500,000.

The civil penalties apply per breach and not per affected individual. The civil penalties are the same as the administrative fines that are in current law. The penalties collected will be deposited into the General Revenue Fund.

This bill does not create a private cause of action.

Sections 4 and 5 amend ss. 282.0041 and 282.318, F.S., to update cross references.

Section 6 provides that the act shall take effect on July 1, 2014.

[33] "Customer records" means any material, regardless of the physical form, on which personal information is recorded or preserved by any means, including, but not limited to, written or spoken words, graphically depicted, printed, or electromagnetically transmitted that are provided by an individual in this state to a covered entity for the purpose of purchasing or leasing a product or obtaining a service.

[34] Section 501.207, F.S., provides that the DLA may bring an action to obtain declaratory judgment that an act or practice violates the Florida Deceptive and Unfair Trade Practices Act (FDUTPA), an action to enjoin a person who has violated or is likely to violate FDUTPA, or an action on behalf of consumers or governmental entities for actual damages caused by a violation of FDUTPA.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact on the private sector is expected be minimal. The provisions related to notification of a security breach to affected individuals is similar to the notification required by current law. However, the time frame for the notification has been reduced from 45 days in current law to 30 days in the bill. The notification to the DLA is a new requirement, but the cost is expected to be minimal.[35]

The bill contains civil penalties for noncompliance with its provisions. The civil penalty amounts remain at the same level as current law. It is unknown how often businesses may be subject to the civil penalties for noncompliance.

The bill mandates that businesses properly dispose of customer records containing personal information. The fiscal impact of this requirement is unknown. However, many businesses may already be required to properly dispose of customer records under other laws, such as the HIPAA and the Gramm-Leach-Bliley Act.

C. Government Sector Impact:

The bill may have an unknown positive impact on state revenues to the extent the DLA enforces civil penalties against violations of the act.

The bill requires the DLA to enforce the bill's provisions, collect reports of breaches of security information from covered entities, and produce an annual report to the

[35] Department of Legal Affairs, *Senate Bill 1524 Analysis*, (Mar. 17, 2014) (on file with the Senate Commerce and Tourism Committee).

Legislature. However, the DLA indicates that any costs and expenditures can be absorbed into its current appropriations.[36]

The Department of Agriculture and Consumer Services does not to expect the bill to have an impact on its agency.[37]

The Department of Highway Safety and Motor Vehicles indicates that there will be an indeterminate fiscal impact in the event of a security breach for the mailing and media notification costs. Additionally, approximately 40 hours of programming will be needed to implement changes made by this bill. The cost is estimated to be $1,600.[38]

The bill may have an indeterminate fiscal impact on the State Courts System. However, any increase in judicial workload will likely by absorbed within existing resources. There may be a slight increase in revenues to the State Courts System's trust fund from civil filing fees for enforcement actions by the DLA.[39]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the bill does not specifically provide that the covered entity must be conducting business in this state, the Florida Long-Arm statute[40] may provide courts with the authority to assert personal jurisdiction over a nonresident covered entity. The statute enumerates a number of actions that a person or his or her representative may take that would submit that person to the jurisdiction of Florida courts. Those actions include, among other things, operating, conducting, engaging in, or carrying on a business venture in this state or having an office or agency in this state; committing a tortious act within this state; or breaching a contract in this state by failing to perform acts required by the contract to be performed in this state. A person may also become subject to the jurisdiction of a Florida court if the person is engaged in substantial and not isolated activity within Florida.

The bill does not define "agent." Agency is a fiduciary relationship in which one party authorizes another party to act on his or her behalf, subject to his or her control and consent.[41] Agency may also be defined as a contract by which one party confides the other the management of some

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[36] *Id*.
[37] Department of Agriculture and Consumer Services, *Senate Bill 1524 Analysis*, (Mar. 11, 2014) (on file with the Senate Commerce and Tourism Committee).
[38] Department of Highway Safety and Motor Vehicles, *2014 Agency Bill Analysis, Senate Bill 1524*, (Mar. 4, 2014) (on file with the Senate Commerce and Tourism Committee). The cost estimate is based on 40 hours of programming at a rate of $40 per hour.
[39] Office of the State Courts Administrator, *2014 Judicial Impact Statement, Senate Bill 1524*, (Mar. 20, 2014) (on file with the Senate Commerce and Tourism Committee).
[40] Section 48.193, F.S.
[41] 2 FLA. JUR. 2D Agency and Employment s. 1 *Generally* (2014).

business to be transacted in the former's name. Under Florida law, to establish an agency relationship, it must be shown that:

- The principal acknowledges that the agent will act for him;
- The agent accepts the undertaking; and
- The principal controls the agent's actions.

VIII. Statutes Affected:

This bill repeals section 817.5681 of the Florida Statutes.

This bill creates section 501.171 of the Florida Statutes.

This bill amends the following sections of the Florida Statutes: 282.0041 and 282.318.

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 April 2, 2014:

- Limits the notification to the DLA to breaches of security affecting 500 or more individuals in this state.
- Allows a covered entity to request, in writing, an additional 15 days to provide notice to the affected individuals, if good cause for the delay is provided and the request is made within 30 days of the determination of the breach of security or reason to believe a breach occurred.
- Clarifies that the synopsis of the events surrounding the breach provided to the DLA, as a part of the required notice, is of such events at the time notice is provided.
- Clarifies that in its notice to the DLA, the covered entity may also describe any services it plans to offer to individuals affected by the breach.
- Provides that a covered entity may provide additional information about the breach to the DLA at any time.
- Clarifies that a covered entity that provides notice pursuant to federal rules, regulations, procedures, or guidelines of its federal regulator must *timely* provide a copy of such notice to the DLA to be deemed compliant with notice provisions.
- Provides that an agent may provide the required notice to the DLA and affected individuals on behalf of the covered entity. However, the covered entity will be deemed to be in violation of the bill's provisions if the agent fails to provide proper notice.

CS by Commerce and Tourism on March 24, 2014:

- Provides that good faith access of personal information by an employee of a covered entity does not constitute a breach of security if the information is not used for purposes unrelated to business or subjected to further unauthorized use.
- Deletes the catch-all provision from the definition of "personal information" provision that states that any other information from or about an individual that could be used to personally identify that person.

- Provides that certain items, such as the police report, policies regarding breaches, and steps to be taken to rectify the breach are to be provided to the DLA upon request.
- Clarifies that the requirement for the notice to the DLA to include services being offered by the covered entity, without charge, are only those services specifically related to the breach.
- Clarifies that the covered entity must provide an explanation to the DLA if notice is not provided as required pursuant to a delay in notice at the request of law enforcement, a finding that the breach is not likely to cause harm, or notice being provided pursuant to federal law.
- Provides that the notification of the breach may be delayed by local law enforcement as well as state and federal law enforcement agencies, if it would interfere with a criminal investigation. The CS provides that the written delay request must specify a time period. However, the law enforcement agency may submit an additional request to extend the delay in notification to a specified date. It may also revoke the request as of a specified date.
- Provides that a local law enforcement agency may investigate and consult with a specified entity to determine if a breach will not likely result in financial harm to affected individuals.
- Clarifies that compliance with notice of breach procedures pursuant to the federal rules, regulations, procedures, or guidelines of the covered entity's primary or functional regulator will be deemed as being compliant with the provisions of the CS.
- Provides that third-party agents must provide notice to the covered entity within 10 days of the determination of the breach.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
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The Committee on Rules (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Florida Information Protection Act of 2014."

Section 2. Section 817.5681, Florida Statutes, is repealed.

Section 3. Section 501.171, Florida Statutes, is created to read:

501.171 Security of confidential personal information.—

(1) DEFINITIONS.—As used in this section, the term:

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12 (a) “Breach of security” or “breach” means unauthorized
13 access of data in electronic form containing personal
14 information. Good faith access of personal information by an
15 employee or agent of the covered entity does not constitute a
16 breach of security, provided that the information is not used
17 for a purpose unrelated to the business or subject to further
18 unauthorized use.
19 (b) “Covered entity” means a sole proprietorship,
20 partnership, corporation, trust, estate, cooperative,
21 association, or other commercial entity that acquires,
22 maintains, stores, or uses personal information. For purposes of
23 the notice requirements in subsections (3)-(6), the term
24 includes a governmental entity.
25 (c) “Customer records” means any material, regardless of
26 the physical form, on which personal information is recorded or
27 preserved by any means, including, but not limited to, written
28 or spoken words, graphically depicted, printed, or
29 electromagnetically transmitted that are provided by an
30 individual in this state to a covered entity for the purpose of
31 purchasing or leasing a product or obtaining a service.
32 (d) “Data in electronic form” means any data stored
33 electronically or digitally on any computer system or other
34 database and includes recordable tapes and other mass storage
35 devices.
36 (e) “Department” means the Department of Legal Affairs.
37 (f) “Governmental entity” means any department, division,
38 bureau, commission, regional planning agency, board, district,
39 authority, agency, or other instrumentality of this state that
40 acquires, maintains, stores, or uses data in electronic form

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41 containing personal information.
42 (g)1. "Personal information" means either of the following:
43 a. An individual's first name or first initial and last
44 name in combination with any one or more of the following data
45 elements for that individual:
46 (I) A social security number.
47 (II) A driver license or identification card number,
48 passport number, military identification number, or other
49 similar number issued on a government document used to verify
50 identity.
51 (III) A financial account number or credit or debit card
52 number, in combination with any required security code, access
53 code, or password that is necessary to permit access to an
54 individual's financial account.
55 (IV) Any information regarding an individual's medical
56 history, mental or physical condition, or medical treatment or
57 diagnosis by a health care professional; or
58 (V) An individual's health insurance policy number or
59 subscriber identification number and any unique identifier used
60 by a health insurer to identify the individual.
61 b. A user name or e-mail address, in combination with a
62 password or security question and answer that would permit
63 access to an online account.
64 2. The term does not include information about an
65 individual that has been made publicly available by a federal,
66 state, or local governmental entity. The term also does not
67 include information that is encrypted, secured, or modified by
68 any other method or technology that removes elements that
69 personally identify an individual or that otherwise renders the

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70 information unusable.
71 (h) "Third-party agent" means an entity that has been
72 contracted to maintain, store, or process personal information
73 on behalf of a covered entity or governmental entity.
74 (2) REQUIREMENTS FOR DATA SECURITY.—Each covered entity,
75 governmental entity, or third-party agent shall take reasonable
76 measures to protect and secure data in electronic form
77 containing personal information.
78 (3) NOTICE TO DEPARTMENT OF SECURITY BREACH.—
79 (a) A covered entity shall provide notice to the department
80 of any breach of security affecting 500 or more individuals in
81 this state. Such notice must be provided to the department as
82 expeditiously as practicable, but no later than 30 days after
83 the determination of the breach or reason to believe a breach
84 occurred. A covered entity may receive 15 additional days to
85 provide notice if good cause for delay is provided in writing to
86 the department within 30 days after determination of the breach
87 or reason to believe a breach occurred.
88 (b) The written notice to the department must include:
89 1. A synopsis of the events surrounding the breach at the
90 time notice is provided.
91 2. The number of individuals in this state who were or
92 potentially have been affected by the breach.
93 3. Any services related to the breach being offered or
94 scheduled to be offered, without charge, by the covered entity
95 to individuals, and instructions as to how to use such services.
96 4. A copy of the notice required under subsection (4) or an
97 explanation of the other actions taken pursuant to subsection
98 (4).

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99 5. The name, address, telephone number, and e-mail address
100 of the employee or agent of the covered entity from whom
101 additional information may be obtained about the breach.
102 (c) The covered entity must provide the following
103 information to the department upon its request:
104 1. A police report, incident report, or computer forensics
105 report.
106 2. A copy of the policies in place regarding breaches.
107 3. Steps that have been taken to rectify the breach.
108 (d) A covered entity may provide the department with
109 supplemental information regarding a breach at any time.
110 (e) For a covered entity that is the judicial branch, the
111 Executive Office of the Governor, the Department of Financial
112 Services, or the Department of Agriculture and Consumer
113 Services, in lieu of providing the written notice to the
114 department, the covered entity may post the information
115 described in subparagraphs (b)1.-4. on an agency-managed
116 website.
117 (4) NOTICE TO INDIVIDUALS OF SECURITY BREACH.—
118 (a) A covered entity shall give notice to each individual
119 in this state whose personal information was, or the covered
120 entity reasonably believes to have been, accessed as a result of
121 the breach. Notice to individuals shall be made as expeditiously
122 as practicable and without unreasonable delay, taking into
123 account the time necessary to allow the covered entity to
124 determine the scope of the breach of security, to identify
125 individuals affected by the breach, and to restore the
126 reasonable integrity of the data system that was breached, but
127 no later than 30 days after the determination of a breach or

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128 reason to believe a breach occurred unless subject to a delay
129 authorized under paragraph (b) or waiver under paragraph (c).
130 (b) If a federal, state, or local law enforcement agency
131 determines that notice to individuals required under this
132 subsection would interfere with a criminal investigation, the
133 notice shall be delayed upon the written request of the law
134 enforcement agency for a specified period that the law
135 enforcement agency determines is reasonably necessary. A law
136 enforcement agency may, by a subsequent written request, revoke
137 such delay as of a specified date or extend the period set forth
138 in the original request made under this paragraph to a specified
139 date if further delay is necessary.
140 (c) Notwithstanding paragraph (a), notice to the affected
141 individuals is not required if, after an appropriate
142 investigation and consultation with relevant federal, state, or
143 local law enforcement agencies, the covered entity reasonably
144 determines that the breach has not and will not likely result in
145 identity theft or any other financial harm to the individuals
146 whose personal information has been accessed. Such a
147 determination must be documented in writing and maintained for
148 at least 5 years. The covered entity shall provide the written
149 determination to the department within 30 days after the
150 determination.
151 (d) The notice to an affected individual shall be by one of
152 the following methods:
153 1. Written notice sent to the mailing address of the
154 individual in the records of the covered entity; or
155 2. E-mail notice sent to the e-mail address of the
156 individual in the records of the covered entity.

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157 (e) The notice to an individual with respect to a breach of
158 security shall include, at a minimum:
159 1. The date, estimated date, or estimated date range of the
160 breach of security.
161 2. A description of the personal information that was
162 accessed or reasonably believed to have been accessed as a part
163 of the breach of security.
164 3. Information that the individual can use to contact the
165 covered entity to inquire about the breach of security and the
166 personal information that the covered entity maintained about
167 the individual.
168 (f) A covered entity required to provide notice to an
169 individual may provide substitute notice in lieu of direct
170 notice if such direct notice is not feasible because the cost of
171 providing notice would exceed $250,000, because the affected
172 individuals exceed 500,000 persons, or because the covered
173 entity does not have an e-mail address or mailing address for
174 the affected individuals. Such substitute notice shall include
175 the following:
176 1. A conspicuous notice on the Internet website of the
177 covered entity if the covered entity maintains a website; and
178 2. Notice in print and to broadcast media, including major
179 media in urban and rural areas where the affected individuals
180 reside.
181 (g) Notice provided pursuant to rules, regulations,
182 procedures, or guidelines established by the covered entity's
183 primary or functional federal regulator is deemed to be in
184 compliance with the notice requirement in this subsection if the
185 covered entity notifies affected individuals in accordance with

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186 the rules, regulations, procedures, or guidelines established by
187 the primary or functional federal regulator in the event of a
188 breach of security. Under this paragraph, a covered entity that
189 timely provides a copy of such notice to the department is
190 deemed to be in compliance with the notice requirement in
191 subsection (3).
192 (5) NOTICE TO CREDIT REPORTING AGENCIES.—If a covered
193 entity discovers circumstances requiring notice pursuant to this
194 section of more than 1,000 individuals at a single time, the
195 covered entity shall also notify, without unreasonable delay,
196 all consumer reporting agencies that compile and maintain files
197 on consumers on a nationwide basis, as defined in the Fair
198 Credit Reporting Act, 15 U.S.C. s. 1681a(p), of the timing,
199 distribution, and content of the notices.
200 (6) NOTICE BY THIRD-PARTY AGENTS; DUTIES OF THIRD-PARTY
201 AGENTS; NOTICE BY AGENTS.—
202 (a) In the event of a breach of security of a system
203 maintained by a third-party agent, such third-party agent shall
204 notify the covered entity of the breach of security as
205 expeditiously as practicable, but no later than 10 days
206 following the determination of the breach of security or reason
207 to believe the breach occurred. Upon receiving notice from a
208 third-party agent, a covered entity shall provide notices
209 required under subsections (3) and (4). A third-party agent
210 shall provide a covered entity with all information that the
211 covered entity needs to comply with its notice requirements.
212 (b) An agent may provide notice as required under
213 subsections (3) and (4) on behalf of the covered entity;
214 however, an agent's failure to provide proper notice shall be

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215 deemed a violation of this section against the covered entity.
216 (7) ANNUAL REPORT.—By February 1 of each year, the
217 department shall submit a report to the President of the Senate
218 and the Speaker of the House of Representatives describing the
219 nature of any reported breaches of security by governmental
220 entities or third-party agents of governmental entities in the
221 preceding calendar year along with recommendations for security
222 improvements. The report shall identify any governmental entity
223 that has violated any of the applicable requirements in
224 subsections (2)-(6) in the preceding calendar year.
225 (8) REQUIREMENTS FOR DISPOSAL OF CUSTOMER RECORDS.—Each
226 covered entity or third-party agent shall take all reasonable
227 measures to dispose, or arrange for the disposal, of customer
228 records containing personal information within its custody or
229 control when the records are no longer to be retained. Such
230 disposal shall involve shredding, erasing, or otherwise
231 modifying the personal information in the records to make it
232 unreadable or undecipherable through any means.
233 (9) ENFORCEMENT.—
234 (a) A violation of this section shall be treated as an
235 unfair or deceptive trade practice in any action brought by the
236 department under s. 501.207 against a covered entity or third-
237 party agent.
238 (b) In addition to the remedies provided for in paragraph
239 (a), a covered entity that violates subsection (3) or subsection
240 (4) shall be liable for a civil penalty not to exceed $500,000,
241 as follows:
242 1. In the amount of $1,000 for each day up to the first 30
243 days following any violation of subsection (3) or subsection (4)

676834

244 and, thereafter, $50,000 for each subsequent 30-day period or
245 portion thereof for up to 180 days.
246 2. If the violation continues for more than 180 days, in an
247 amount not to exceed $500,000.
248
249 The civil penalties for failure to notify provided in this
250 paragraph apply per breach and not per individual affected by
251 the breach.
252 (c) All penalties collected pursuant to this subsection
253 shall be deposited into the General Revenue Fund.
254 (10) NO PRIVATE CAUSE OF ACTION.—This section does not
255 establish a private cause of action.
256 Section 4. Subsection (5) of section 282.0041, Florida
257 Statutes, is amended to read:
258 282.0041 Definitions.—As used in this chapter, the term:
259 (5) "Breach" has the same meaning as the term "breach of
260 security" as defined in s. 501.171 ~~in s. 817.5681(4)~~.
261 Section 5. Paragraph (i) of subsection (4) of section
262 282.318, Florida Statutes, is amended to read:
263 282.318 Enterprise security of data and information
264 technology.—
265 (4) To assist the Agency for Enterprise Information
266 Technology in carrying out its responsibilities, each agency
267 head shall, at a minimum:
268 (i) Develop a process for detecting, reporting, and
269 responding to suspected or confirmed security incidents,
270 including suspected or confirmed breaches consistent with the
271 security rules and guidelines established by the Agency for
272 Enterprise Information Technology.

676834

273 1. Suspected or confirmed information security incidents
274 and breaches must be immediately reported to the Agency for
275 Enterprise Information Technology.
276 2. For incidents involving breaches, agencies shall provide
277 notice in accordance with s. 501.171 ~~s. 817.5681~~ and to the
278 Agency for Enterprise Information Technology in accordance with
279 this subsection.
280 Section 6. This act shall take effect July 1, 2014.
281
282 ========== T I T L E A M E N D M E N T ==========
283 And the title is amended as follows:
284 Delete everything before the enacting clause
285 and insert:
286 A bill to be entitled
287 An act relating to security of confidential personal
288 information; providing a short title; repealing s.
289 817.5681, F.S., relating to a breach of security
290 concerning confidential personal information in third-
291 party possession; creating s. 501.171, F.S.; providing
292 definitions; requiring specified entities to take
293 reasonable measures to protect and secure data
294 containing personal information in electronic form;
295 requiring specified entities to notify the Department
296 of Legal Affairs of data security breaches; requiring
297 notice to individuals of data security breaches under
298 certain circumstances; providing exceptions to notice
299 requirements under certain circumstances; specifying
300 contents and methods of notice; requiring notice to
301 credit reporting agencies under certain circumstances;

676834

302 requiring the department to report annually to the
303 Legislature; specifying report requirements; providing
304 requirements for disposal of customer records;
305 providing for enforcement actions by the department;
306 providing civil penalties; specifying that no private
307 cause of action is created; amending ss. 282.0041 and
308 282.318, F.S.; conforming cross-references to changes
309 made by the act; providing an effective date.

687424

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Thrasher) recommended the following:

1 **Senate Amendment to Amendment (676834)**
2
3 Delete line 85
4 and insert:
5 provide notice as required in subsection (4) if good cause for
6 delay is provided in writing to

By the Committee on Commerce and Tourism; and Senator Thrasher

A bill to be entitled

An act relating to security of confidential personal information; providing a short title; repealing s. 817.5681, F.S., relating to a breach of security concerning confidential personal information in third-party possession; creating s. 501.171, F.S.; providing definitions; requiring specified entities to take reasonable measures to protect and secure data containing personal information in electronic form; requiring specified entities to notify the Department of Legal Affairs of data security breaches; requiring notice to individuals of data security breaches under certain circumstances; providing exceptions to notice requirements under certain circumstances; specifying contents and methods of notice; requiring notice to credit reporting agencies under certain circumstances; requiring the department to report annually to the Legislature; specifying report requirements; providing requirements for disposal of customer records; providing for enforcement actions by the department; providing civil penalties; specifying that no private cause of action is created; amending ss. 282.0041 and 282.318, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. This act may be cited as the "Florida Information Protection Act of 2014."

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

Section 2. Section 817.5681, Florida Statutes, is repealed.

Section 3. Section 501.171, Florida Statutes, is created to read:

501.171 Security of confidential personal information.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Breach of security" or "breach" means unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of a covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.

(b) "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. For purposes of the notice requirements in subsections (3)-(6), the term includes a governmental entity.

(c) "Customer records" means any material, regardless of the physical form, on which personal information is recorded or preserved by any means, including, but not limited to, written or spoken words, graphically depicted, printed, or electromagnetically transmitted that are provided by an individual in this state to a covered entity for the purpose of purchasing or leasing a product or obtaining a service.

(d) "Data in electronic form" means any data stored electronically or digitally on any computer system or other database and includes recordable tapes and other mass storage devices.

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59 (e) "Department" means the Department of Legal Affairs.
60 (f) "Governmental entity" means any department, division,
61 bureau, commission, regional planning agency, board, district,
62 authority, agency, or other instrumentality of this state that
63 acquires, maintains, stores, or uses data in electronic form
64 containing personal information.
65 (g)1. "Personal information" means either of the following:
66 a. An individual's first name or first initial and last
67 name in combination with any one or more of the following data
68 elements for that individual:
69 (I) A social security number.
70 (II) A driver license or identification card number,
71 passport number, military identification number, or other
72 similar number issued on a government document used to verify
73 identity.
74 (III) A financial account number or credit or debit card
75 number, in combination with any required security code, access
76 code, or password that is necessary to permit access to an
77 individual's financial account.
78 (IV) Any information regarding an individual's medical
79 history, mental or physical condition, or medical treatment or
80 diagnosis by a health care professional; or
81 (V) An individual's health insurance policy number or
82 subscriber identification number and any unique identifier used
83 by a health insurer to identify the individual.
84 b. A user name or e-mail address, in combination with a
85 password or security question and answer that would permit
86 access to an online account.
87 2. The term does not include information about an

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88 individual that has been made publicly available by a federal,
89 state, or local governmental entity or information that is
90 encrypted, secured, or modified by any other method or
91 technology that removes elements that personally identify an
92 individual or that otherwise renders the information unusable.
93 (h) "Third-party agent" means an entity that has been
94 contracted to maintain, store, or process personal information
95 on behalf of a covered entity or governmental entity.
96 (2) REQUIREMENTS FOR DATA SECURITY.—Each covered entity,
97 governmental entity, or third-party agent shall take reasonable
98 measures to protect and secure data in electronic form
99 containing personal information.
100 (3) NOTICE TO DEPARTMENT OF SECURITY BREACH.—
101 (a) A covered entity shall give notice to the department of
102 any breach of security, as expeditiously as practicable, but no
103 later than 30 days after the determination of the breach or
104 reason to believe a breach had occurred.
105 (b) The written notice to the department must include:
106 1. A synopsis of the events surrounding the breach.
107 2. The number of individuals in this state who were or
108 potentially have been affected by the breach.
109 3. Any services related to the breach being offered,
110 without charge, by the covered entity to individuals, and
111 instructions as to how to use such services.
112 4. A copy of the notice required under subsection (4) or an
113 explanation of the other actions taken pursuant to subsection
114 (4).
115 5. The name, address, telephone number, and e-mail address
116 of the employee of the covered entity from whom additional

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117 information may be obtained about the breach, and the steps
118 taken to rectify the breach and prevent similar breaches.
119 (c) The covered entity must provide the following
120 information to the department upon its request:
121 1. A police report, incident report, or computer forensics
122 report.
123 2. A copy of the policies in place regarding breaches.
124 3. Any steps that have been taken to rectify the breach.
125 (d) For a covered entity that is the judicial branch, the
126 Executive Office of the Governor, the Department of Financial
127 Services, or the Department of Agriculture and Consumer
128 Services, in lieu of providing the written notice to the
129 department, the covered entity may post the information
130 described in subparagraphs (b)1.-4. on an agency-managed
131 website.
132 (4) NOTICE TO INDIVIDUALS OF SECURITY BREACH.—
133 (a) A covered entity shall give notice to each individual
134 in this state whose personal information was, or the covered
135 entity reasonably believes to have been, accessed as a result of
136 the breach. Notice to individuals shall be made as expeditiously
137 as practicable and without unreasonable delay, taking into
138 account the time necessary to allow the covered entity to
139 determine the scope of the breach of security, to identify
140 individuals affected by the breach, and to restore the
141 reasonable integrity of the data system that was breached, but
142 no later than 30 days after the determination of a breach unless
143 subject to a delay authorized under paragraph (b) or waiver
144 under paragraph (c).
145 (b) If a federal, state, or local law enforcement agency

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146 determines that notice to individuals required under this
147 subsection would interfere with a criminal investigation, the
148 notice shall be delayed upon the written request of the law
149 enforcement agency for a specified period that the law
150 enforcement agency determines is reasonably necessary. A law
151 enforcement agency may, by a subsequent written request, revoke
152 such delay as of a specified date or extend the period set forth
153 in the original request made under this paragraph to a specified
154 date if further delay is necessary.
155 (c) Notwithstanding paragraph (a), notice to the affected
156 individuals is not required if, after an appropriate
157 investigation and consultation with relevant federal, state, and
158 local law enforcement agencies, the covered entity reasonably
159 determines that the breach has not and will not likely result in
160 identity theft or any other financial harm to the individuals
161 whose personal information has been accessed. Such a
162 determination must be documented in writing and maintained for
163 at least 5 years. The covered entity shall provide the written
164 determination to the department within 30 days after the
165 determination.
166 (d) The notice to an affected individual shall be by one of
167 the following methods:
168 1. Written notice sent to the mailing address of the
169 individual in the records of the covered entity; or
170 2. E-mail notice sent to the e-mail address of the
171 individual in the records of the covered entity.
172 (e) The notice to an individual with respect to a breach of
173 security shall include, at a minimum:
174 1. The date, estimated date, or estimated date range of the

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175 breach of security.
176 2. A description of the personal information that was
177 accessed or reasonably believed to have been accessed as a part
178 of the breach of security.
179 3. Information that the individual can use to contact the
180 covered entity to inquire about the breach of security and the
181 personal information that the covered entity maintained about
182 the individual.
183 (f) A covered entity required to provide notice to an
184 individual may provide substitute notice in lieu of direct
185 notice if such direct notice is not feasible because the cost of
186 providing notice would exceed $250,000, because the affected
187 individuals exceed 500,000 persons, or because the covered
188 entity does not have an e-mail address or mailing address for
189 the affected individuals. Such substitute notice shall include
190 the following:
191 1. A conspicuous notice on the Internet website of the
192 covered entity if the covered entity maintains a website; and
193 2. Notice in print and to broadcast media, including major
194 media in urban and rural areas where the affected individuals
195 reside.
196 (g) Notice provided pursuant to rules, regulations,
197 procedures, or guidelines established by the covered entity's
198 primary or functional federal regulator is deemed to be in
199 compliance with the notice requirement in this subsection if the
200 covered entity notifies individuals in accordance with any
201 rules, regulations, procedures, or guidelines established by the
202 primary or functional federal regulator in the event of a breach
203 of security. Under this paragraph, the covered entity must

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204 provide notice to the department under subsection (3).
205 (5) NOTICE TO CREDIT REPORTING AGENCIES.—If a covered
206 entity discovers circumstances requiring notice pursuant to this
207 section of more than 1,000 individuals at a single time, the
208 covered entity shall also notify, without unreasonable delay,
209 all consumer reporting agencies that compile and maintain files
210 on consumers on a nationwide basis, as defined in the Fair
211 Credit Reporting Act, 15 U.S.C. s. 1681a(p), of the timing,
212 distribution, and content of the notices.
213 (6) NOTICE BY THIRD-PARTY AGENTS; DUTIES OF THIRD-PARTY
214 AGENTS.—In the event of a breach of security of a system
215 maintained by a third-party agent, such third-party agent shall
216 notify the covered entity of the breach of security as
217 expeditiously as practicable, but no later than 10 days
218 following the determination of the breach of security. Upon
219 receiving notice from a third-party agent, a covered entity
220 shall provide notices required under subsections (3) and (4). A
221 third-party agent shall provide a covered entity with all
222 information that the covered entity needs to comply with its
223 notice requirements.
224 (7) ANNUAL REPORT.—By February 1 of each year, the
225 department shall submit a report to the President of the Senate
226 and the Speaker of the House of Representatives describing the
227 nature of any reported breaches of security by governmental
228 entities or third-party agents of governmental entities in the
229 preceding calendar year along with recommendations for security
230 improvements. The report shall identify any governmental entity
231 that has violated any of the applicable requirements in
232 subsections (2)-(6) in the preceding calendar year.

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

233 (8) REQUIREMENTS FOR DISPOSAL OF CUSTOMER RECORDS.—Each
234 covered entity or third-party agent shall take all reasonable
235 measures to dispose, or arrange for the disposal, of customer
236 records containing personal information within its custody or
237 control when the records are no longer to be retained. Such
238 disposal shall involve shredding, erasing, or otherwise
239 modifying the personal information in the records to make it
240 unreadable or undecipherable through any means.
241 (9) ENFORCEMENT.—
242 (a) A violation of this section shall be treated as an
243 unfair or deceptive trade practice in any action brought by the
244 department under s. 501.207 against a covered entity or third-
245 party agent.
246 (b) In addition to the remedies provided for in paragraph
247 (a), a covered entity that violates subsection (3) or subsection
248 (4) shall be liable for a civil penalty not to exceed $500,000,
249 as follows:
250 1. In the amount of $1,000 for each day up to the first 30
251 days following any violation of subsection (3) or subsection (4)
252 and, thereafter, $50,000 for each subsequent 30-day period or
253 portion thereof for up to 180 days.
254 2. If the violation continues for more than 180 days, in an
255 amount not to exceed $500,000.
256
257 The civil penalties for failure to notify provided in this
258 paragraph apply per breach and not per individual affected by
259 the breach.
260 (c) All penalties collected pursuant to this subsection
261 shall be deposited into the General Revenue Fund.

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262 (10) NO PRIVATE CAUSE OF ACTION.—This section does not
263 establish a private cause of action.
264 Section 4. Subsection (5) of section 282.0041, Florida
265 Statutes, is amended to read:
266 282.0041 Definitions.—As used in this chapter, the term:
267 (5) "Breach" has the same meaning as the term "breach of
268 security" as defined in s. 501.171 ~~in s. 817.5681(4)~~.
269 Section 5. Paragraph (i) of subsection (4) of section
270 282.318, Florida Statutes, is amended to read:
271 282.318 Enterprise security of data and information
272 technology.—
273 (4) To assist the Agency for Enterprise Information
274 Technology in carrying out its responsibilities, each agency
275 head shall, at a minimum:
276 (i) Develop a process for detecting, reporting, and
277 responding to suspected or confirmed security incidents,
278 including suspected or confirmed breaches consistent with the
279 security rules and guidelines established by the Agency for
280 Enterprise Information Technology.
281 1. Suspected or confirmed information security incidents
282 and breaches must be immediately reported to the Agency for
283 Enterprise Information Technology.
284 2. For incidents involving breaches, agencies shall provide
285 notice in accordance with s. 501.171 ~~s. 817.5681~~ and to the
286 Agency for Enterprise Information Technology in accordance with
287 this subsection.
288 Section 6. This act shall take effect July 1, 2014.

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)

4/2/14
Meeting Date

Topic: Security of Financial Information

Bill Number: 1524 (if applicable)

Name: Jared Ross

Amendment Barcode: 676854 (if applicable)

Job Title: SVP Governmental Affairs

Address: 3692 Coolidge Ct.
Street

Tallahassee, FL 32311
City, State, Zip

Phone: (850) 322-6956

E-mail: jared.ross@fscu.com

Speaking: ☐ For ☐ Against ☒ Information

Representing: Florida Credit Union 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Breach Bill

Bill Number: 1524 (if applicable)

Name: Anthony DiMarco

Amendment Barcode: _____ (if applicable)

Job Title: EVP of Government Affairs

Address: 1001 Thomasville Rd
Street

Tallahassee, FL 32303
City, State, Zip

Phone: 224-2265

E-mail: adimarco@floridabankers.com

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

Representing: Florida Bankers Assoc.

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Data Security

Bill Number: 1524 *(if applicable)*

Name: Tammy Perdue

Amendment Barcode: _____ *(if applicable)*

Job Title: General Counsel

Address: 516 N Adams St
Street

Tallahassee
City *State* *Zip*

Phone: 850.224.7173

E-mail: tperdue@aif.com

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

Representing: Associated Industries of Florida

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/2/14
Meeting Date

Topic: Data Breach

Bill Number: 1524 *(if applicable)*

Name: Samantha Padgett

Amendment Barcode: _____ *(if applicable)*

Job Title: General Counsel

Address: 227 S. Adams St.
Street

Tallahassee, FL 32301
City *State* *Zip*

Phone: 222-4082

E-mail: samantha@frf.org

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

Representing: Florida Retail Federation

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

4/2/2014
Date

1524
Bill Number

Name Brian Pitts

Phone 727/897-9291

Address 1119 Newton Ave S.
Street

E-mail justice2jesus@yahoo.com

St Petersburg FL 3375
City *State* *Zip*

Job Title Trustee

Speaking: [✓] For [ ] Against [ ] Information

Appearing at request of Chair [ ]

Subject

Representing Justice-2-Jesus

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

Pursuant to s. 11.061, *Florida Statutes*, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from ____ ___.m. to ____ ___.m.

S-001 (08/2005)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ANDY GARDINER
13th District

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Finance and Tax
Environmental Preservation and Conservation
Ethics and Elections
Gaming
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

April 2, 2014

The Honorable John Thrasher, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Thrasher,

I am writing to respectfully request that I be excused early from the Committee on Rules meeting scheduled for Wednesday, April 2. I have a previously scheduled commitment.

If you have any questions regarding this request, please do not hesitate to call my office. Thank you for your time and consideration of this matter.

Sincerely,

Senator Andy Gardiner

AG:gh

Cc: John Phelps, Staff Director
Tamara Lyon, Administrative Assistant

REPLY TO:
☐ 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
☐ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5013

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOE NEGRON
32nd District

COMMITTEES:
Appropriations, *Chair*
Banking and Insurance
Rules

SELECT COMMITTEE:
Select Committee on Indian River Lagoon and Lake Okeechobee Basin, *Chair*
Select Committee on Patient Protection and Affordable Care Act, *Chair*

JOINT COMMITTEE:
Joint Legislative Budget Commission, *Alternating Chair*

April 2, 2014

Chairman John Thrasher
Senate Rules Committee
404 Senate Office Building
Tallahassee, FL 32399

HAND DELIVERED

Re: Excused Absence Request

Dear Chairman Thrasher:

This letter shall serve as my formal request for an excused absence to leave early from the Senate Rules Committee Meeting on Wednesday, April 2, 2014. This absence is necessary to attend to pending issues regarding the General Appropriations Act being heard on Thursday, April 3, 2014.

Thank you for your consideration of this request.

Sincerely yours,

Joe Negron
State Senator
District 32

JN/hd
c: John B. Phelps, Staff Director

REPLY TO:
☐ 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
☐ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: *www.flsenate.gov*

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110 **Case:** **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 4/2/2014 4:01:59 PM
Ends: 4/2/2014 6:00:53 PM Length: 01:58:55

4:02:03 PM	Senator Thrasher calls the meeting to order
4:02:25 PM	roll call
4:02:52 PM	quorum present
4:02:55 PM	Senator Montford moves that CS/SB 1396 and CS/SB 990 be temporarily postponed
4:03:08 PM	without objection, bills are temporarily postponed
4:03:13 PM	Senator Thrasher speaks regarding agenda
4:03:54 PM	Senator Galvano is recognized to the take the chair
4:03:57 PM	Senator Galvano takes the chair
4:04:01 PM	CS/SB 1524
4:04:02 PM	Senator Thrasher explains the bill
4:04:44 PM	Amendment 676834
4:04:51 PM	Senator Thrasher explains the amendment
4:05:49 PM	Amendment 687424
4:06:04 PM	Senator Thrasher explains the amendment to the amendment
4:06:14 PM	Amendment to the amendment adopted
4:06:20 PM	back to amendment
4:06:35 PM	Amendment adopted
4:06:39 PM	Back on the bill
4:06:52 PM	Attorney General Pam Bondi speaks
4:07:48 PM	Jared Ross, SVP Governmental Affairs, Florida Credit Union Association speaks
4:08:03 PM	Anthony Demarco, EVP of Governmental Affairs, Florida Bankers Association speaks
4:08:29 PM	Tammy Perdue, General Counsel, Associated Industries of Florida speaks
4:09:20 PM	Samantha Padgett, General Counsel, Florida Retail Federation speaks
4:09:43 PM	Brian Pitts, Justice-2-Jesus, waives in support
4:10:08 PM	Senator Thrasher closes on the bill
4:10:22 PM	Motion for CS
4:10:27 PM	roll call
4:10:35 PM	CS/SB 1524 reported favorably
4:10:40 PM	Senator Thrasher takes the chair
4:11:52 PM	CS/SB 72
4:11:58 PM	Senator Flores explains the bill
4:12:33 PM	Brian Pitts speaks
4:13:28 PM	Senator Gardiner in debate
4:13:44 PM	Senator Sobel in debate
4:14:12 PM	Senator Lee in debate
4:15:16 PM	Senator Flores closes on the bill
4:17:07 PM	roll call
4:17:14 PM	CS/SB 72 reported favorably
4:17:45 PM	CS/SB 244
4:17:58 PM	Oneca Lowery explains the bill
4:18:48 PM	Amendment 305644
4:19:01 PM	Senator Diaz de la Portilla explains the amendment
4:20:36 PM	Senator Diaz de la Portilla waives close
4:20:41 PM	Amendment adopted
4:20:47 PM	Amendment 102654
4:20:58 PM	Senator Diaz de la Portilla explains amendment
4:22:40 PM	Senator Ring with a question
4:22:50 PM	Senator Diaz de la Portilla responds
4:23:08 PM	Jeff Sharkey, CAG, President - American Dream Baseball waives in support
4:23:26 PM	Senator Diaz de la Portilla waives close
4:23:30 PM	Amendment adopted
4:23:35 PM	Back on the bill

4:23:45 PM	Oneca Lowery waives close
4:23:54 PM	Motion for CS
4:23:58 PM	roll call
4:24:04 PM	CS/SB 244 reported favorably
4:24:51 PM	CS/SB 1344
4:24:54 PM	Jennifer Suarez explains the bill
4:26:01 PM	Amendment 789392
4:26:17 PM	Jennifer Suarez explains the amendment
4:26:38 PM	James McFaddin, Maximus, Inc. waives in support
4:26:51 PM	Amendment adopted
4:26:58 PM	Amendment 435710
4:27:04 PM	Senator Smith explains the amendment
4:27:35 PM	Amendment adopted
4:27:41 PM	Amendment 652420 withdrawn
4:28:03 PM	Amendment 615690
4:28:09 PM	Jennifer Suarez explains the amendment
4:28:21 PM	Amendment adopted
4:28:23 PM	Senator Lee makes remarks
4:29:06 PM	Senator Thrasher makes remarks
4:29:32 PM	back on the bill
4:29:38 PM	Meredith Snowden, Property Casualty Insurance Association of America waives in support
4:30:01 PM	Jennifer Suarez waives close on the bill
4:30:10 PM	Motion for CS
4:30:15 PM	roll call
4:30:20 PM	CS/SB 1344 reported favorably
4:30:47 PM	CS/CS/SB 278
4:30:50 PM	Senator Grimsley explains the bill
4:31:12 PM	Senator Richter with a question
4:31:25 PM	Senator Grimsley responds
4:31:50 PM	Amendment 468864
4:31:58 PM	Senator Latvala explains the amendment
4:32:30 PM	Amendment 182652
4:32:42 PM	Senator Latvala explains amendment to the amendment
4:32:54 PM	Amendment to the amendment adopted
4:33:03 PM	back on main amendment
4:33:09 PM	Amendment adopted
4:33:13 PM	Amendment 490438
4:33:47 PM	Senator Grimsley explains the amendment
4:34:32 PM	Senator Richter with a question
4:34:42 PM	Senator Grimsley responds
4:35:11 PM	Amendment adopted
4:35:15 PM	back on the bill as amended
4:35:23 PM	Tammy Perdue, General Counsel, Associated Industries of Florida waives in support
4:35:30 PM	Michael Jackson, Executive VP and CEO, Florida Pharmacy Association waives in support
4:35:44 PM	Sally West, Director, Government Affairs, Walgreens speaks
4:36:15 PM	Larry Gonzalez, General Counsel, Florida Society of Health-System Pharmacists speaks
4:37:23 PM	Melissa Joiner Ramba, Director of Government Affairs, Florida Retail Federation speaks
4:38:20 PM	Brian Pitts speaks
4:39:13 PM	Senator Sobel in debate
4:39:50 PM	Senator Grimsley closes on the bill
4:40:24 PM	Motion for CS
4:40:29 PM	roll call
4:40:36 PM	CS/CS/SB 278 reported favorably
4:41:05 PM	CS/SB 1254
4:41:16 PM	Senator Grimsley explains the bill
4:42:00 PM	Amendment 438848
4:42:06 PM	Senator Galvano explains the amendment
4:42:35 PM	Senator Lee with a question
4:42:49 PM	Senator Galvano responds
4:42:59 PM	James McFaddin, Tenet Healthcare and St. Mary's Medical Center, waives in support
4:43:10 PM	Senator Galvano waives close
4:43:16 PM	Amendment adopted

4:43:24 PM Amendment 633456
4:43:31 PM Senator Galvano explains the amendment
4:44:01 PM Christopher Lipson, Director of Government Affairs, Home Care Association of Florida waives in support
4:44:31 PM Kyle Simon, Associate Director, BAYADA Home Health Care waives in support
4:44:40 PM Amendment adopted
4:44:50 PM Amendment 938180
4:45:16 PM Amendment withdrawn
4:45:27 PM back on the bill
4:45:34 PM Senator Grimsley waives close
4:45:41 PM Motion for CS
4:45:46 PM roll call
4:45:53 PM CS/SB 1254 reported favorably
4:46:27 PM CS/SB 280
4:46:31 PM Jesus Tundidor explains the bill
4:47:11 PM Amendment 889430
4:47:18 PM Jesus Tundidor explains the amendment
4:47:59 PM Amendment adopted
4:48:07 PM back on the bill
4:48:12 PM Lisa Goodner, State Courts Administrator, waives in support
4:48:19 PM Judge Steve Leifman, Associate Administrative Judge, Criminal Division for Supreme Court Task Force on Substance Abuse and Mental Health Issues in the Courts, waives in support
4:48:25 PM Brian Pitts speaks
4:49:28 PM Jesus Tundidor waives close
4:49:34 PM Motion for CS
4:49:40 PM roll call
4:49:45 PM CS/SB 280 reported favorably
4:50:10 PM SB 290
4:50:13 PM Senator Hukill explains the bill
4:50:43 PM Senator Richter with a question
4:50:51 PM Senator Hukill responds
4:51:13 PM Patricia Stevenson-Gingrich with Florida State Poets Association waives in support
4:51:30 PM Lena Juarez, with Florida Humanities Council, waives in support
4:51:45 PM Senator Hukill waives close
4:51:52 PM roll call
4:52:04 PM SB 290 reported favorably
4:52:28 PM CS/SB 998
4:52:31 PM Senator Hukill explains the bill
4:53:11 PM Martha Edenfield with The Real Property, Probate & Trust Section of The Florida Bar waives in support
4:53:22 PM Brian Pitts speaks
4:54:13 PM Senator Hukill waives close
4:54:22 PM roll call
4:54:28 PM CS/SB 998 reported favorably
4:55:17 PM CS/SB 298
4:55:23 PM Senator Soto explains the bill
4:56:17 PM Sergeant Don Heaton on behalf of Volusia County Sheriff Ben Johnson waives in support
4:56:28 PM Brian Pitts speaks
4:57:37 PM Senator Soto waives close
4:57:43 PM roll call
4:57:49 PM CS/SB 298 reported favorably
4:58:16 PM SB 374
4:58:20 PM Senator Detert explains the bill
4:59:24 PM David Ramba, Ramba Law Group, for the town of Longboat Key waives in support
4:59:37 PM Senator Detert waives close
4:59:42 PM roll call
4:59:46 PM SB 374 reported favorably
5:00:13 PM CS/SB 546
5:00:18 PM Senator Simpson explains the bill
5:01:05 PM Senator Margolis asks a question
5:01:27 PM Senator Simpson responds
5:02:02 PM Senator Margolis with a follow-up
5:02:14 PM Senator Simpson responds
5:02:48 PM Carol Jean Jordan, Indian River Tax Collector's Office, waives in support

5:02:59 PM Grace Lovett, Director of Legislative Affairs, Fla. Department of Agriculture and Consumer Services waives in support
5:03:08 PM Tim Qualls, Executive Director for Florida Tax Collector's Association, waives in support
5:03:17 PM Brian Pitts speaks
5:04:16 PM Senator Simpson waives close
5:04:23 PM roll call
5:04:29 PM CS/SB 546 reported favorably
5:04:51 PM CS/SB 926
5:04:55 PM Senator Simpson explains the bill
5:06:01 PM Amendment 182618
5:06:23 PM Senator Bradley explains the amendment
5:13:48 PM Amendment 974662 to the amendment
5:14:20 PM Senator Latvala explains the amendment
5:15:26 PM Senator Negron with a question
5:15:34 PM Senator Latvala responds
5:16:22 PM Senator Simpson makes a remark
5:16:39 PM Senator Bradley speaks on the amendment
5:17:28 PM Senator Margolis with a question
5:17:37 PM Senator Latvala responds
5:18:10 PM Senator Simmons in debate
5:20:33 PM Senator Smith in debate
5:21:04 PM Senator Latvala closes on amendment
5:21:21 PM Amendment adopted
5:21:31 PM Back on main amendment
5:21:47 PM Senator Smith with a question
5:22:28 PM Senator Bradley responds
5:23:10 PM Senator Simpson speaks
5:24:16 PM Senator Montford with a question
5:25:07 PM Senator Bradley responds
5:26:51 PM Senator Simmons with a question
5:29:06 PM Senator Bradley responds
5:30:01 PM Senator Ring with a question
5:30:49 PM Senator Simpson responds
5:31:52 PM Senator Ring asks a question
5:32:03 PM Senator Smith asks a question
5:32:35 PM Senator Bradley responds
5:34:00 PM Vicky Stanley, Transportation, waives in opposition
5:34:10 PM Ana Ciereszko, Educator, waives in opposition
5:34:20 PM Shawn Beal, Electronic Technician, waives in opposition
5:34:25 PM Ephraim Riggins waives in opposition
5:34:26 PM Ken Williams waives in opposition
5:34:32 PM Walter Crosson waives in opposition
5:34:33 PM Gerard Sommers waives in opposition
5:34:39 PM Amy Datz waives in opposition
5:34:48 PM Ashley Molozaiy waives in opposition
5:34:49 PM David Bryant waives in opposition
5:34:52 PM Scott Bevan waives in opposition
5:34:56 PM Melanie Andrade waives in opposition
5:35:06 PM Rich Templin, Legislative & Political Director speaks
5:38:51 PM Senator Smith moves for time certain at 5:45
5:39:10 PM Carol Bowen, Associated Builders and Contractors Florida East Coast Chapter, speaks
5:40:03 PM Carolyn Johnson, Policy Director, Florida Chamber of Commerce speaks
5:40:33 PM Karen Woodall waives in opposition
5:40:41 PM Samantha Padgett, General Counsel, Florida Retail Federation speaks
5:41:54 PM Arthur Rosenberg, Attorney, Florida Legal Services speaks
5:43:17 PM Rosa Bauza waives in opposition
5:44:17 PM Matthew Van Nunn, Legislative Director, SEIU waives in opposition
5:44:29 PM Faviola Vargus waives in support
5:44:34 PM Paul Jess, Florida Justice Association, speaks
5:45:14 PM Andy Mario Martinez waives
5:45:15 PM Grey Torrico, Regional Organizer, Florida Immigrant Coalition waives
5:45:22 PM Francesca Menes, Policy and Advocacy Coordinator waives

5:45:25 PM	Nestor Prime, Collier County Neighborhood Stories Project waives
5:45:29 PM	Kari Hebrank, Florida Home Builders waives in support
5:45:32 PM	Barbara Devane waives in opposition
5:45:51 PM	Gail Marie Perry, Chair, Communications Workers of America speaks
5:46:35 PM	roll call
5:46:56 PM	Amendment adopted
5:47:16 PM	back on main bill
5:47:24 PM	Motion for CS
5:47:36 PM	roll call
5:47:44 PM	CS/SB 926 reported favorably
5:48:28 PM	CS/SB 826 by Senator Joyner
5:48:30 PM	Senator Richter explains the bill
5:49:09 PM	Kenneth Pratt, Senior VP of Governmental Affairs, Florida Bankers Association waives in support
5:49:15 PM	Brian Pitts waives in opposition
5:49:21 PM	Senator Richter waives close
5:49:26 PM	roll call
5:49:36 PM	CS/SB 826 reported favorably
5:50:05 PM	CS/SR 894
5:50:10 PM	Senator Sobel explains the resolution
5:51:37 PM	Linda Geller-Schwartz, VP National Council of Jewish Women, speaks
5:53:10 PM	Amy Datz, National Council of Jewish Women speaks
5:54:29 PM	Senator Simmons makes a motion to move the bill
5:54:35 PM	roll call
5:54:54 PM	CS/SR 894 adopted
5:55:10 PM	SB 1108
5:55:13 PM	Senator Simpson explains the bill
5:55:25 PM	Senator Simpson waives close
5:55:30 PM	roll call
5:55:37 PM	SB 1108 reported favorably
5:56:00 PM	CS/SB 828
5:56:04 PM	Senator Bradley explains the bill
5:56:22 PM	Olin Shinholser, Circuit Judge waives in support
5:56:26 PM	Senator Simmons makes motion to move the bill
5:56:27 PM	without objection motion is adopted
5:56:43 PM	roll call
5:57:01 PM	CS/SB 828 reported favorably
5:57:13 PM	CS/SB 1002
5:57:42 PM	Jessica Crawford explains the bill
5:57:43 PM	Frank Meiners, Florida Collectors Association, waives in support
5:57:48 PM	Jessica Crawford waives close
5:57:54 PM	roll call
5:57:57 PM	CS/SB 1002 reported favorably
5:58:23 PM	SB 1262
5:58:27 PM	Senator Brandes explains the bill
5:58:38 PM	Senator Brandes waives close
5:58:53 PM	roll call
5:59:06 PM	SB 1262 reported favorably
5:59:18 PM	CS/SB 540
5:59:24 PM	Senator Simmons explains the bill
5:59:31 PM	roll call
5:59:37 PM	540 reported favorably
5:59:56 PM	CS/CS/SB 1300
5:59:58 PM	Senator Simmons explains the bill
6:00:16 PM	roll call
6:00:27 PM	CS/CS/SB 1300 reported favorably
6:00:42 PM	Remaining bills will be retained on the agenda for next committee meeting
6:00:46 PM	Senator Smith moves we rise