

SB 848 by **Richter**; (Similar to H 1083) Employment of Individuals with Disabilities

320944	A	S	GO, Hays	Delete L.44 - 45:	03/09 10:11 AM
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SB 620 by **Richter**; (Similar to H 7007) Emergency Management

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CS/SB 216 by **CA, Bradley**; (Similar to CS/H 0105) Publicly Funded Retirement Programs

CS/SB 248 by **CJ, Smith (CO-INTRODUCERS) Thompson**; (Compare to H 0581) Public Records/Audio or Video Recording Made by a Law Enforcement Officer

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SB 556 by **Montford**; State Symbols

SB 574 by **Montford**; Government Procurement

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SB 898 by **Altman**; (Similar to H 0563) Special Risk Class

SB 934 by **Brandes**; (Similar to H 0527) Public Works Projects

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SB 1054 by **Evers**; (Similar to H 0565) Retirement

SB 7012 by **BI**; OGSR/Credit History Information and Credit Scores/Office of Financial Regulation

SB 946 by **Bullard**; (Identical to H 0585) Legal Holidays and Special Observances

SPB 7042 by **GO**; Florida Retirement System

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Hays, Vice Chair

MEETING DATE: Tuesday, March 10, 2015

TIME: 1:30 —3:30 p.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bullard, Latvala, and Legg

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
		Presentation by Foster & Foster relating to "Cadillac Tax" imposed by federal Affordable Health Care Act	
1	SB 848 Richter (Similar H 1083)	Employment of Individuals with Disabilities; Citing this act as the "Employment First Act"; requiring specified state agencies and organizations to develop and implement an interagency cooperative agreement; requiring the interagency cooperative agreement to provide the roles, responsibilities, and objectives of state agencies and organizations, etc.	GO 03/10/2015 CM AP
2	SB 620 Richter (Similar H 7007)	Emergency Management; Exempting certain employees from specified travel expense provisions when traveling under the Emergency Management Assistance Compact under certain circumstances, etc.	MS 03/04/2015 Favorable GO 03/10/2015 FP
3	CS/SB 216 Community Affairs / Bradley (Similar CS/H 105, Compare H 1279, H 1309, S 242)	Publicly Funded Retirement Programs; Requiring that actuarial reports for certain retirement systems or plans include mortality tables; revising applicability of the Marvin B. Clayton Firefighters Pension Trust Fund Act; authorizing a municipal services taxing unit that enters into an interlocal agreement for fire protection services with another municipality to impose an excise tax on property insurance premiums, etc.	CA 02/03/2015 Fav/CS GO 03/04/2015 Not Considered GO 03/10/2015 AP

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Tuesday, March 10, 2015, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 248 Criminal Justice / Smith (Compare H 581, S 852)	Public Records/Audio or Video Recording Made by a Law Enforcement Officer; Providing an exemption from public record requirements for an audio or video recording made by a law enforcement officer in the course of the officer performing his or her official duties and responsibilities, if the recording is taken within certain locations, shows a minor inside a school or on school property, or shows a child younger than 14 years of age at any location; authorizing the law enforcement agency with custody over the recording to disclose the recording to another law enforcement agency in furtherance of that agency's official duties and responsibilities, etc.	CJ 02/16/2015 Fav/CS GO 03/10/2015 RC
5	SB 556 Montford	State Symbols; Designating tupelo honey as the official state honey, etc.	GO 03/10/2015 CM RC
6	SB 574 Montford	Government Procurement; Defining the term "reverse auction"; requiring the Department of Management Services to maintain a program for reverse auctions; authorizing the Department of Education to use reverse auctions and other online procurement programs in assisting district school boards with transportation services contracts; authorizing the Board of Governors to adopt regulations establishing procedures governing a state university's participation in reverse auctions and other online procurement programs, etc.	GO 03/10/2015 AED AP
7	SB 898 Altman (Similar H 563)	Special Risk Class; Revising criteria for membership in the special risk class to include members employed as 911 public safety telecommunicators; providing that such a telecommunicator is not eligible for a certain adjustment in his or her monthly retirement benefit; making technical changes; declaring the act fulfills an important state interest, etc.	GO 03/10/2015 CA AP

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Tuesday, March 10, 2015, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 934 Brandes (Similar H 527)	Public Works Projects; Prohibiting state and political subdivisions that contract for the construction, maintenance, repair, or improvement of public works from imposing certain conditions on certain contractors, subcontractors, or material suppliers or carriers; providing an exception; prohibiting state and political subdivisions from restricting qualified bidders from submitting bids, being awarded any bid or contract, or performing work on a public works project, etc. GO 03/10/2015 CA AP	
9	SB 1054 Evers (Similar H 565)	Retirement; Authorizing local agency employers to reassess designation of positions for inclusion in the Senior Management Service Class; providing for removal of certain positions, etc. GO 03/10/2015 CA AP	
10	SB 7012 Banking and Insurance	OGSR/Credit History Information and Credit Scores/Office of Financial Regulation; Amending provisions which provide a public records exemption for credit history information and credit scores held by the Office of Financial Regulation for purposes of licensing loan originators, mortgage brokers, and mortgage lenders; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 03/10/2015 RC	
11	SB 946 Bullard (Identical H 585)	Legal Holidays and Special Observances; Designating the second Monday in October of each year as "Sir Lancelot Jones Day"; authorizing the Governor to issue proclamations commemorating the occasion; encouraging public officials, schools, private organizations, and citizens to commemorate the occasion, etc. GO 03/10/2015 EP RC	

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Tuesday, March 10, 2015, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SPB 7042	Florida Retirement System; Authorizing renewed membership in the retirement system for retirees who are reemployed in a position eligible for the Elected Officers' Class under certain circumstances; providing for renewed membership in the retirement system for retirees of the Senior Management Service Optional Annuity Program who are employed on or after a specified date; requiring that certain retirees who are employed on or after a specified date be renewed members in the investment plan, etc.	

Other Related Meeting Documents

ACA Excise Tax Overview & Impact to the State Employees' Health Insurance Program

Senate Committee on Governmental
Oversight and Accountability

March 10, 2015



FOSTER & FOSTER
ACTUARIES AND CONSULTANTS

Overview: Affordable Care Act

- Section 9001 of the Affordable Care Act (ACA)
 - *Excise Tax on High Cost Employer-Sponsored Health Coverage: Imposes tax if an employee is covered under any applicable employer-sponsored coverage at any time during a taxable period, and if there is any “excess benefit” with respect to coverage*
- Applies to both public and private sector plans
- Actual regulations not yet written/released
- Commonly referred to as the “Cadillac Tax”

Overview: Tax Amount

- Beginning with taxable years after December 31, 2017, the tax is equal to 40% of the amount considered to be an “excess benefit” during the taxable period
- Excess benefit = difference between the cost of the health benefits and the applicable annual limitation threshold

Annual Limitation Threshold		
Calendar Year	Individual	Family
2018	\$10,200	\$27,500
2019+	Adjusted with CPI-U	

Overview: Tax Amount

- Adjustments allowed for the following:
 - Changes to Consumer Price Index for all urban consumers (CPI-U)
 - Health cost adjustments
 - Plan membership dominated by individuals in “high risk professions”
 - Demographic considerations
 - Only adjustment applicable for State of Florida (SOF) is adjustment to annual limits allowed for non-Medicare retirees

Overview: Cost of Health Benefits

- Benefits included:
 - Health coverage, including medical, behavioral health, and prescription drug (both fully insured and self-insured)
 - Pre-tax Health Reimbursement Account (HRA), Health Savings Account (HSA) and Medical Reimbursement Account (MRA) contributions
 - Executive physicals
 - Onsite clinic costs
 - Coverage for a specified disease or illness

Note: Future guidance is expected to provide that executive physical programs and HRAs are applicable coverage.

Overview: Cost of Health Benefits

- Benefits not included:
 - Excepted benefits provided under separate policy, certificate, or contract of insurance such as stand-alone dental and vision plans
 - Long term care insurance
 - Coverage for accident and/or disability income
 - Liability or supplemental liability insurance
 - Workers compensation
 - Automobile medical payment insurance
 - Credit-only insurance

Overview: Cost of Health Benefits

- Cost of coverage to be calculated in a manner similar to the cost of coverage under 26 U.S. Code § 4980B (COBRA)
 - Includes both employer and employee-paid costs (employee premiums)
 - Self-insured plans allowed to reasonably estimate cost on an actuarial basis
 - Does NOT explicitly allow use of COBRA premiums, but rather use of the same calculation methodology

Overview: Penalties

- If the actual excise tax is greater than what was reported to the Internal Revenue Service (IRS), the penalty is the difference from the actual amount owed and what was reported, plus interest from the date the tax was due.

Overview: Payment Responsibilities

- Entity responsible for paying the taxes:
 - Under an insured plan, the health insurance issuer is the payer
 - Under an HRA, HSA, or medical MRA, the employer is the payer
 - Any other applicable coverage, the entity that administers the plan of benefits is the payer
- In each case the **employer** must calculate the tax and notify the payer (and IRS)

SOF: Payment Responsibilities

State Plans		
Coverage Provider	Calculation of Tax	Payer of Tax
Aetna/Coventry	State of Florida	State of Florida
AvMed	State of Florida	State of Florida
Capital Health Plan	State of Florida	Capital Health Plan
Florida Blue PPO	State of Florida	State of Florida
Florida Health Care Plans	State of Florida	Florida Health Care Plans
UnitedHealthcare	State of Florida	State of Florida
HSA Contributions	State of Florida	State of Florida
Medical FSA	State of Florida	State of Florida
CVS Caremark	State of Florida	State of Florida

We have assumed that the fully insured HMOs will pass any payment amounts along to the State.

SOF: Projection Assumptions

- **Enrollments:** Provided in the January 2015 Revenue Estimating Conference (REC)
- **Cost Increases:** Trend rates developed using a range of assumptions based on recent plan experience and industry trends
- **Annual Limitation Threshold Increases:** Based on CPI-U projections: 3% for calendar year 2019 and 2% per year thereafter
- **HSA Contributions:** Based on current levels associated with High Deductible Health Plans (HDHP): \$500 for single and \$1,000 for family
- **Medical Reimbursement Account Contributions:** Based on current levels
- **Plan Designs:** Based on plans currently in place with no changes anticipated during projection period

SOF: Projected Excise Tax

- Projections will vary due to the following:
 - Final regulations still yet to be released
 - Actual cost increases can vary from assumptions
 - Actual enrollment can vary from assumptions
 - Future plan changes
- Most recent guidance (Notice 2015-16) invites comments on calculation methodology and applicability
 - Adjustments to Annual Limitation Threshold

SOF: Projected Excise Tax

- Based on current assumptions, the excise taxes for calendar years 2018-2023 are estimated to be \$170 million to \$557 million.

Calendar Year	Historically Based	REC Based
2018	\$9,100,000	\$14,600,000
2019	\$14,700,000	\$25,000,000
2020	\$21,800,000	\$42,500,000
2021	\$29,400,000	\$81,200,000
2022	\$39,200,000	\$150,600,000
2023	\$55,300,000	\$243,500,000
Total	\$169,500,000	\$557,400,000

Thank you.

Travis Smith, President – Health & Welfare

Foster & Foster

travis@foster-foster.com

239.433.5500

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 Governmental Oversight and Accountability

BILL: SB 848

INTRODUCER: Senator Richter

SUBJECT: Employment of Individuals with Disabilities

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Pre-meeting
2.			CM	
3.			AP	

I. Summary:

SB 848 creates the Employment First Act. The bill provides legislative intent and purpose regarding employment of individuals with disabilities. The bill requires the development and implementation of an interagency cooperative agreement among specified state agencies and organizations. The interagency cooperative agreement provides roles, responsibilities and objectives. The bill authorizes the parties to this interagency agreement to adopt rules.

II. Present Situation:

Section 110.112, F.S., declares that the policy of the state is to afford equal employment opportunities through programs of affirmative and positive action allowing for the full utilization of women and minorities.

Each executive agency is required to develop and implement an affirmative action plan;¹ establish annual goals in its affirmative action plan for ensuring full utilization of groups underrepresented in the agency's workforce as compared to relevant labor market;² and appoint an affirmative action-equal employment opportunity officer.³

¹ Section 110.112(2)(a), F.S.

² Section 110.112(2)(b), F.S.

³ Section 110.112(2)(c), F.S., provides that the duties of the affirmative action-equal employment opportunity officer include determining annual goals, monitoring agency compliance, and providing consultation to managers regarding progress, deficiencies, and appropriate corrective action.

The Department of Management Services is required to issue an annual workforce report⁴ and provide training to all supervisory personnel of executive agencies.⁵

III. Effect of Proposed Changes:

Section 1 provides a short title for this bill. This legislation is to be known as the “Employment First Act.” This section provides legislative intent and purpose which is to improve the employment outcomes for individuals with disabilities, to prioritize employment of individuals with disabilities, and to change the employment system to integrate individuals with disabilities into the workforce.

This section also requires an interagency cooperative agreement be developed among the following:

- Division of Vocational Rehabilitation of the Department of Education;
- Division of Blind Service of the Department of Education;
- Bureau of Exceptional Education and Student Services of the Department of Education;
- Agency for Person with Disabilities of the Department of Children and Families;
- Substance Abuse and Mental Health Program of the Department of Children and Families;
- Department of Economic Opportunity;
- Workforce Florida, Inc.;
- Florida Developmental Disabilities Council;
- Florida Association of Rehabilitation Facilities; and
- Other appropriate organizations.

Additionally, this interagency cooperative agreement shall outline the roles and responsibilities of the parties to the agreement.

The bill outlines the objectives of the interagency agreement that must include the following:

- Establishing commitment by state leadership to maximizing resources and coordination to improve employment outcomes for individuals with disabilities;
- Developing strategic goals and benchmarks to assist state agencies and organizations in the implementation of agreement;
- Identifying financing and contracting methods to help prioritize employment for individuals with disabilities by state agencies and organizations;
- Establish training methods to better integrate persons with disabilities into the workforce;
- Ensuring collaborative efforts between agencies;
- Promoting service innovations to better assist individuals with disabilities in the workplace; and
- Identifying accountability measures to ensure sustainability of agreement.

⁴ Section 110.112(2)(d), F.S., provides that the DMS annual workforce report shall include information relating to implementation, continuance, and updating the results of each executive agency’s affirmative action plan for the previous fiscal year.

⁵ Section 110.112(2)(e), F.S., provides that the training will be in the principals of equal employment opportunity and affirmative action, the development and implementation of affirmative action plans, and establishment of annual affirmative action goals.

The section authorizes the agencies and organizations that are party to the interagency cooperation agreement to adopt rules to implement the Employment First Act.

Section 2 provides an effective date of July 1, 2015.

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.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

Section 1, Paragraph (4)(c) of the bill refers to the “Agency for Persons with Disabilities of the Department of Children and Families”. The Agency for Persons with Disabilities is a separate agency that is housed within the Department of Children and Families for administrative purposes only.⁶ Accordingly, the phrase “of the Department of Children and Families” should be stricken on page 2, lines 44-45, of the bill.

VII. Related Issues:

It appears that the rulemaking authorization in the bill is deficient and not necessary. Section 120.536, F.S., provides that:

⁶ Section 20.197, F.S.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute.⁷

The bill sets forth general legislative intent and policy for the employment of individuals with disabilities.

VIII. Statutes Affected:

This bill creates the Employment First Act.

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.

⁷ Also, see definitions of "invalid exercise of delegated legislative authority" and "rule" contained in ss. 120.52(8) and (16), F.S.



320944

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Hays) recommended the following:

Senate Amendment

Delete lines 44 - 45

and insert:

(d) The Agency for Persons with Disabilities.

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799368

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 76 - 78.

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

And the title is amended as follows:

Delete lines 9 - 11

and insert:

state agencies and organizations;

By Senator Richter

23-00853-15

2015848__

A bill to be entitled

An act relating to the employment of individuals with disabilities; providing a short title; providing legislative intent; providing a purpose; requiring specified state agencies and organizations to develop and implement an interagency cooperative agreement; requiring the interagency cooperative agreement to provide the roles, responsibilities, and objectives of state agencies and organizations; authorizing the state agencies and organizations that are parties to the interagency cooperative agreement to adopt rules; providing an effective date.

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

Section 1. (1) SHORT TITLE.—This act may be cited as the "Employment First Act."

(2) LEGISLATIVE INTENT.—The Legislature finds that employment is the most direct and cost-effective means to assist an individual in achieving independence and fulfillment; however, individuals with disabilities are confronted by unique barriers to employment which inhibit their opportunities to compete fairly in the labor force. It is the intent of the Legislature to provide a framework for a long-term commitment to improving employment outcomes for individuals with disabilities in this state through the implementation of the Employment First Act.

(3) PURPOSE.—The purpose of the Employment First Act is to prioritize employment of individuals with disabilities and to

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

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change the employment system to better integrate individuals with disabilities into the workforce. The Employment First Act encourages a collaborative effort between state agencies and organizations to achieve better employment outcomes for individuals with disabilities.

(4) INTERAGENCY COOPERATIVE AGREEMENT.—The following state agencies and organizations shall develop an interagency cooperative agreement to implement the Employment First Act:

(a) The Division of Vocational Rehabilitation of the Department of Education.

(b) The Division of Blind Services of the Department of Education.

(c) The Bureau of Exceptional Education and Student Services of the Department of Education.

(d) The Agency for Persons with Disabilities of the Department of Children and Families.

(e) The Substance Abuse and Mental Health Program of the Department of Children and Families.

(f) The Department of Economic Opportunity.

(g) Workforce Florida, Inc.

(h) The Florida Developmental Disabilities Council.

(i) Florida Association of Rehabilitation Facilities.

(j) Other appropriate organizations.

(5) ROLES AND RESPONSIBILITIES.—The interagency cooperative agreement shall outline the roles and responsibilities of the state agencies and organizations identified in subsection (4). The objectives of the interagency cooperative agreement must include all of the following:

(a) Establishing a commitment by leadership of the state

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59 agencies and organizations to maximize the resources and
60 coordination to improve employment outcomes for individuals with
61 disabilities who seek publicly funded services.

62 (b) Developing strategic goals and benchmarks to assist the
63 state agencies and organizations in the implementation of this
64 agreement.

65 (c) Identifying financing and contracting methods that will
66 help to prioritize employment for individuals with disabilities
67 by state agencies and organizations.

68 (d) Establishing training methods to better integrate
69 individuals with disabilities into the workforce.

70 (e) Ensuring collaborative efforts between multiple
71 agencies to achieve the purposes of this act.

72 (f) Promoting service innovations to better assist
73 individuals with disabilities in the workplace.

74 (g) Identifying accountability measures to ensure the
75 sustainability of this agreement.

76 (6) RULEMAKING.—The state agencies and organizations that
77 are parties to the interagency cooperative agreement may adopt
78 rules to implement this act.

79 Section 2. This act shall take effect July 1, 2015.

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 Governmental Oversight and Accountability

BILL: SB 620

INTRODUCER: Senator Richter

SUBJECT: Emergency Management

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Favorable</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 620 provides that the per diem expense reimbursement provisions under s. 112.061, F.S., do not apply to state employees traveling on an Emergency Management Assistance Compact (EMAC) mission when such expenses are reimbursed pursuant to an amount agreed upon in an interstate mutual aid request for assistance.

EMAC is an agreement between all 50 states to provide each other mutual assistance in managing an emergency or disaster declared by the governor of the affected state. EMAC directs all member states that receive aid from another member state pursuant to EMAC to reimburse the aiding member state for its expenses. Florida's current per diem limits may prevent a state employee from being fully reimbursed when certain EMAC missions take place in states where expenses exceed authorized reimbursement levels.

II. Present Situation:

Florida Division of Emergency Management

Florida's Division of Emergency Management (DEM) administers programs to rapidly apply all available aid to communities stricken by emergency.¹ The DEM is responsible for maintaining a comprehensive statewide program of emergency management to ensure that Florida is prepared to respond to emergencies, recover from them, and mitigate against their impacts. In doing so, DEM coordinates efforts with and among the federal government, other state agencies, local governments, school boards, and private agencies that have a role in emergency management.²

¹ Section 14.2016, F.S. The term "emergency" is defined in s. 252.34(3), F.S., as "any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property".

² Section 252.35(1), F.S.

DEM is administratively housed within the Executive Office of the Governor,³ and the Governor appoints DEM's Director, who is responsible for all matters under DEM's jurisdiction.

Emergency Management Assistance Compact

Although DEM's primary role is to assist Florida communities, DEM also coordinates Florida's emergency assistance to other states. Accordingly, DEM manages Florida's participation in the Emergency Management Assistance Compact (EMAC).⁴

EMAC is an agreement between all 50 states, the Commonwealth of Puerto Rico, the District of Columbia, and all other United States territorial possessions to provide each other mutual assistance in managing an emergency or disaster declared by the governor of the affected state.⁵ The emergency may arise from a natural or manmade disaster, technological hazard, civil emergency aspects of resource shortages, community disorders, insurgency, or enemy attack.⁶

The U.S. Congress passed a joint resolution that granted consent for the creation of EMAC in 1996.⁷ The Florida Legislature authorized Florida's participation in EMAC the same year.⁸

EMAC offers assistance through a responsive, straightforward system that allows states to send personnel, equipment, and commodities to help disaster relief efforts in other states.⁹ The DEM acts as the conduit to coordinate the exchange of resources through EMAC. Since 2010 the DEM has deployed the following 143 personnel assets to other states:¹⁰

Mission	Number Deployed	Location	Event
Deputy Operations Chief	1	Hawaii	Hurricanes Julio / Iselle (2014)
Hazard mitigation grant experts	2	Colorado	Flood (2013)
Public information specialist to assist with operations Joint Field Office	2	Alaska	Flood (2013)
State Volunteer Agency Liaison	1	Alaska	Flood (2013)
Law enforcement strike teams	28	New Jersey	Hurricane Sandy (2012)
Region IV Support Team to assist in staffing Emergency Operations Center	10	New York	Hurricane Sandy (2012)
Donations Management Coordinator	1	New Jersey	Hurricane Sandy (2012)
Personnel able to support NYC Emergency Operations Center	14	New York	Hurricane Sandy (2012)
Donations Coordinator	1	New York	Hurricane Sandy (2012)
Governor's Office of Volunteerism	1	New Jersey	Hurricane Sandy (2012)
Finance personnel to assist NYC Emergency Operations Center	1	New York	Hurricane Sandy (2012)

³ Section 14.2016, F.S.

⁴ See ss. 252.921-252.933, F.S.

⁵ Section 252.922, F.S.

⁶ Section 251.922(2), F.S.

⁷ Public Law 104-321 - Oct. 19, 1996.

⁸ Chapter 96-244, L.O.F.

⁹ Emergency Management Assistance Compact website. *What is EMAC?*

<http://www.emacweb.org/index.php/learnaboutemac/what-is-emac> (last visited February 18, 2015).

¹⁰ E-mail correspondence with the Florida Division of Emergency Management on Feb. 19, 2015. (On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee.)

Field operations (door to door)	2	New York	Hurricane Sandy (2012)
Request for assistance with mass care/feeding	2	Maryland	Hurricane Sandy (2012)
Need for mitigation officer	2	Vermont	Hurricane Irene (2011)
Emergency Support Function 6: Mass Care support	1	New Jersey	Hurricane Irene (2011)
Donations Manager	1	New York	Tropical Storm Lee (2011)
Emergency Operations Center support team	17	New York	Hurricane Irene (2011)
Mitigation personnel	3	Tennessee	Flood (2011)
Cadaver Dog Team	7	Alabama	Tornadoes (2011)
Communication teams	2	Alabama	Tornadoes (2011)
Volunteer donations coordinator	1	Missouri	Tornadoes (2011)
Volunteer donations coordinator	1	Alabama	Tornadoes (2011)
Public Information Officer	2	Alabama	Tornadoes (2011)
Individual Assistance Personnel	5	Mississippi	Severe weather (2011)
Air Craft Crew Chiefs for oil spill	15	Louisiana	Deep Water Horizon (2010)
National Guard	20	Louisiana	Deep Water Horizon (2010)

There are two main parties who participate in the EMAC process: the state who requests assistance (requesting state) and the state who deploys resources (assisting state). In order to execute an agreement, both parties must follow these steps:¹¹

1. Governor declares a state of emergency due to a natural or man-made disaster/emergency.
2. Affected state assesses resource needs and identifies shortfalls for which assistance will be requested.
3. State requests resources from EMAC member states through the state emergency management agencies.
4. State emergency management personnel and local resource providers work together to identify available resources and estimated mission costs.
5. The requesting and assisting states execute the EMAC Form REQ-A.¹²
6. Personnel deploying under EMAC are given a Mission Order Authorization Form which outlines the mission, helpful information, and guidance.
7. Resources are sent to the requesting state from the assisting state (i.e. mobilized and deployed).
8. When mission is completed, resources return to home state (i.e. demobilized and redeployed).
9. Deployed personnel provide receipts/records and work with home state to develop and review reimbursement package(s).
10. Reimbursement package sent to requesting state.
11. Requesting state reimburses assisting state.¹³

¹¹ EMAC Library, *Being Deployed Under EMAC? What You Need to Know*, EMACWeb.org, <http://www.emacweb.org/index.php/mutualaidresources/emac-library/44/254-emac-deployment-brochure/file> (last visited February 27, 2015).

¹² The REQ-A is the official form used by states to request, offer, and accept assistance through EMAC. It is also the basis for reimbursement.

¹³ If the assisting state seeks FEMA reimbursement under a Presidential Major Disaster Declaration, this will not change or alter EMAC reimbursement requirements and procedures.

Any assisting state that renders aid to a requesting state pursuant to EMAC must be reimbursed by the requesting state that receives such aid. Specifically, the requesting state is required to reimburse the assisting state for "any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the cost incurred in connection with such requests."¹⁴ However, an assisting state may assume in whole or in part the costs of the aid it provides and may donate or loan equipment or services as it wishes.¹⁵ In addition, any two or more member states are authorized to enter into supplementary agreements establishing a particular allocation of costs among such states.¹⁶

Items eligible for reimbursement by the requesting state are listed on the REQ-A form including the per diem rate for personnel deployed by the assisting state. Unless otherwise specified, per diem rates stated in a REQ-A represent the per diem rates of the location to which personnel are being deployed – that is, the rates of the requesting state. However, Florida does not allow travel reimbursement for EMAC missions to exceed the rates and limitations established in the Florida Statutes.

Per Diem and Travel Expenses

The Legislature has standardized travel reimbursement rates, procedures, and limitations, with certain exceptions and exemptions, applicable to all public officers, employees, and authorized persons whose travel is authorized and paid for by a public agency.¹⁷ All travel must be authorized by the head of the agency, or his or her designated representative, from whose funds the travel is paid. In addition, travel expenses should be limited to those necessarily incurred in pursuance of a public purpose.¹⁸ State law establishes the following three categories of travel:

- Class A – Continuous travel of 24 hours or more away from official headquarters¹⁹
- Class B – Continuous travel of less than 24 hours which involves overnight absence from official headquarters²⁰
- Class C – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight²¹

Currently, Florida allows \$80 per diem for Class A and B travel.²² If expenses exceed \$80, the state will pay a maximum of \$36 (\$6 for breakfast, \$11 for lunch, and \$19 for dinner) in addition to the actual expenses for lodging at a single-occupancy rate supported by paid bills.²³ Class C travel is not reimbursed on a per diem basis, but instead for each meal during which the travel occurred.²⁴ The General Service Administration (GSA) establishes reimbursement rates for travel, meals, and incidental expenses for those traveling under the authorization of the Federal

¹⁴ Section 252.929, F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 112.061(1), F.S.

¹⁸ Section 112.061(3), F.S.

¹⁹ Section 112.061(2)(k), F.S.

²⁰ Section 112.061(2)(l), F.S.

²¹ Section 112.061(2)(m), F.S.

²² Section 112.061(6), F.S.

²³ *Id.*

²⁴ Section 112.061(5)(b), F.S.

government.²⁵ At a minimum, the GSA provides \$41 a day for meals and \$5 for incidental expenses for each day of travel in addition to the actual expenses for lodging.²⁶

III. Effect of Proposed Changes:

The bill creates s. 252.9335, F.S., to exempt an employee of the state or of a political subdivision of the state traveling at the request of another state through the Emergency Management Assistance Compact (EMAC) from travel expense reimbursement provisions in s. 112.061, F.S. This will allow an EMAC traveler to be reimbursed for an amount that exceeds Florida's per diem expense limitations.

The bill also makes a technical change to s. 252.921, F.S., to identify the sections of Florida Statute that may be cited as the Emergency Management Assistance Compact.

This bill will 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will allow personnel from Florida traveling under the Emergency Management Assistance Compact (EMAC) to be reimbursed for per diem expenses that exceed Florida's per diem rates. The per diem rates for travel under EMAC are decided in the request agreement and vary based on the location of the EMAC mission and the cost of living at that location.

²⁵ U.S. General Services Administration, *Frequently Asked Questions, Per Diem*, <http://www.gsa.gov/portal/content/104208> (last visited February 27, 2015).

²⁶ Standard rates for the contiguous United States and Washington, D.C. (CONUS) is determined by the GSA for each fiscal year effective on October 1. However, some areas that fall within the boundaries of CONUS are more expensive for travel than others. Reimbursement rates for states and territories that are not part of the contiguous United States (OCNUS) are defined by the Department of Defense.

C. Government Sector Impact:

The bill may require a Florida agency that is sponsoring personnel traveling under the Emergency Management Assistance Compact to reimburse the individual at a per diem rate that is higher than the amount prescribed in statute. However, this expense is later reimbursed by the state requesting assistance from Florida.

VI. Technical Deficiencies:

It appears that the intent of SB 620 is to reimburse State of Florida personnel who are assisting other states through the EMAC for per diem expenses that exceed the rates contained in s. 112.061(6), F.S.; however, the bill, as drafted, may limit the state's authority to provide any reimbursement to employees.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 252.921 of the Florida Statutes.

This bill creates section 252.9335 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.



206320

LEGISLATIVE ACTION

Senate

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. .
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. .
. .

House

The Committee on Governmental Oversight and Accountability
(Hays) recommended the following:

Senate Amendment

Delete line 19
and insert:
expense reimbursement limits provided in s. 112.061(6) do not
apply to

By Senator Richter

23-00754-15

2015620__

1 A bill to be entitled
2 An act relating to emergency management; amending s.
3 252.921, F.S.; revising a short title provision;
4 creating s. 252.9335, F.S.; exempting certain
5 employees from specified travel expense provisions
6 when traveling under the Emergency Management
7 Assistance Compact under certain circumstances;
8 providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 252.921, Florida Statutes, is amended to
13 read:
14 252.921 Short title.—Sections 252.921-252.933 ~~This part~~ may
15 be cited as the "Emergency Management Assistance Compact."
16 Section 2. Section 252.9335, Florida Statutes, is created
17 to read:
18 252.9335 Expense reimbursement under compact.—Travel
19 expense reimbursement provisions of s. 112.061 do not apply to
20 an employee of the state or of a political subdivision of the
21 state traveling under the Emergency Management Assistance
22 Compact when such expenses are reimbursed based on the amount
23 agreed upon in an interstate mutual aid request for assistance.
24 Section 3. This act shall take effect upon becoming a law.

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 Governmental Oversight and Accountability

BILL: CS/SB 216

INTRODUCER: Community Affairs Committee and Senator Bradley

SUBJECT: Publicly Funded Retirement Programs

DATE: March 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 216 requires local government pension plans, in conducting the actuarial valuations of their pension plans, to use mortality table methodologies consistent with the methodologies used in the most recently published actuarial valuation report of the Florida Retirement System. In most instances, the mortality tables used will recognize longer lifetimes for annuitants and result in higher annual contributions being required to be paid into the pension funds in the near term.

Similarly, the bill revises the mortality tables to be used in the actuarial disclosures in financial statements submitted to the Department of Management Services. This modification does not impact the actuarial funding of the various pension plans but does provide some information that may be useful when comparing local pension plans and the Florida Retirement System.

To the extent the use of the updated mortality tables result in increases to the normal costs or unfunded liabilities of local government pension plans, this bill will result in higher contributions being paid into the local government pension plans in the near term.

In addition, the bill allows a municipality providing fire protection services to a Municipal Services Taxing Unit (MSTU) through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

This bill will have an indeterminate but negative impact on the General Revenue Fund because insurance premium taxes imposed pursuant to ch. 175, F.S., are credited against insurance premium taxes paid to the state.

II. Present Situation:

Florida Local Retirement Systems and Plans

The Division of Retirement of the Department of Management Services (DMS) reports¹ that as of September 30, 2014, there are 491 defined benefit plans sponsored by 249 local governments in Florida. The vast majority of the plans, 486, are local government defined benefit systems that provide benefits to 87,097 retirees, with 97,677 active employees, and total plan assets of \$30.5 billion.² The average annual pension in these local defined benefit plans is \$25,252, and the average annual required contribution rate as a percentage of payroll is 31.96 percent. The total unfunded actuarial accrued liability for all the defined benefit plans as of September 30, 2014, was \$10.5 billion.

Actuarial Reporting for Local Government Pension Plans

Public pension plans, including the municipal police and firefighter pension plans, are required to have regularly scheduled actuarial reports prepared and certified by an enrolled actuary, at least every three years. The actuarial reports must include at least the following information:

- Adequacy of employer and employee contributions;
- A plan to amortize any unfunded liability, and a description of actions taken to reduce the unfunded liability;
- A description and explanation of actuarial assumptions;
- A schedule illustrating the amortization of unfunded liabilities, if any;
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports;
- A disclosure of the present value of the plan's accrued vested, nonvested, and total benefits, as adopted by the Financial Accounting Standards Board, using the Florida Retirement System's assumed rate of return; and
- A statement by the enrolled actuary that the report is complete and accurate and that the techniques and assumptions used are reasonable and meet the requirements of state law.

The actuarial cost methods used to establish the annual normal costs of the plans must be those methods approved in the Employee Retirement Income Security Act of 1974.³

The actuarial reports must be submitted to the DMS. DMS is required to review each report to determine whether the actuarial valuation is complete, accurate, and based on reasonable assumptions.⁴

¹ Division of Management Services, *Florida Local Government Retirement Systems*, 2014 Annual Report, available online at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last visited on February 12, 2015).

² The other 6 plans are school board early retirement programs that provide benefits to 1,686 retirees, with active plan membership of 4,506, and total plan assets of \$64.8 million.

³ Section 112.63(1)(f), F.S.

⁴ Section 112.63(4)(a), F.S.

The board of trustees for a local government pension plan, with guidance from its professional advisors, is permitted to choose the mortality table to be used in the actuarial valuation report in the determination of actuarially required contributions for the plan. The table below shows the various mortality tables used by local government retirement plans and the frequency of use among the plans.

Mortality Table	Number of local government plans using this table
1983 Group Annuity Mortality (GAM 83)	20
1994 Group Annuity Mortality (GAM 94)	10
1994 Group Annuity Mortality with Scale AA (GAR 94)	7
Uninsured Population 1994 (UP 94)	4
Retirement Plans 2000 (RP 2000)	437
Internal Revenue Service Prescribed	8
Other	3
Total	489

Section 112.664, F.S., requires additional reporting requirements for all publicly-funded defined benefit retirement plans, other than FRS. The following information must be provided to DMS annually, within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends after June 30, 2014, and thereafter in each year in which an actuarial valuation of the plan is done:

- Annual financial statements in compliance with the requirements of the Government Accounting Standards Board’s Statement No. 67, Financial Reporting for Pension Plans and Statement No. 68 Accounting and Financial Reporting for Pensions using RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA.
- Annual financial statements similar to GASB, but which use an assumed rate of return and assumed discount rate 200 basis points less than a plan’s assumed rate of return.
- The number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits.
- The recommended contributions to the plan based on financial statements stated as an annual dollar value and a percentage of valuation payroll.

Plans that fail to submit timely the required information within 60 days after receipt of the plan’s actuarial report will be deemed to be in noncompliance. DMS may notify the Department of Revenue (DOR) and Department of Financial Services (DFS) of the noncompliance, and DOR and DFS must withhold funds payable to the plan sponsor, which are not pledged towards bond debt service. The bill gives plan sponsors administrative rights if these actions are taken.

Mortality Tables

Section 430 of the Internal Revenue Code (IRC) outlines minimum funding standards for single-employer defined benefit pension plans. Section 430(h)(3) of the IRC provides that the Secretary of the Treasury must by regulation prescribe mortality tables to be used in determining any

present value or making any computation under section 430 of the Code, implemented as the RP-2000 Mortality Tables.⁵

The FRS uses different mortality tables for its general employee and special risk classes for non-disability retirement. The 2014 FRS Valuation used the RP 2000 mortality table with Scale BB with varying mixes of white collar and blue collar; non-disability retirement retirements have a separate mortality basis for Special Risk Class members compared to all other membership classes. Disability retirements have a common mortality basis for all classes. The disability requirement for FRS members is total and permanent from all forms of employment as certified by two licensed physicians.

Required Minimum Funding Standards for Public Pensions

Under current law, total contributions to a public sector retirement plan must be sufficient to fund the normal cost of the retirement plan and to amortize the unfunded actuarial liability over a period not to exceed 40 years.⁶ If an unfunded liability arises from a plan amendment, changes in actuarial assumptions, changes in funding methods or actuarial gains or losses, the liability must be amortized within 30 plan years.⁷ The laws establishing the municipal police⁸ and firefighter⁹ pension plans have similar provisions.

Actuarial Soundness of Retirement Plans

The Florida Constitution requires benefit improvements under public pension plans in the State of Florida to be concurrently funded on a sound actuarial basis.¹⁰ The “Florida Protection of Public Employee Retirement Benefits Act,” (Act)¹¹ establishes the minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The Act states the legislative intent to “prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”¹²

Enrolled actuaries prepare and certify actuarial reports for each retirement plan subject to the Act, at regular intervals of at least three years.¹³ When determining the actuarially required contributions for a pension plan, the pension plan board of trustees, with guidance from its professional advisors, chooses the mortality table to be applied in the valuation report.¹⁴ In addition to the valuation report, s. 112.664, F.S., requires certain actuarial disclosures used to determine required funding. These additional actuarial disclosures mandate the use of the “RP-

⁵ RP-2000 Mortality Tables are available at http://www.pensionsoft.com/references_mort_other.html (last visited on March 20, 2013).

⁶ Section 112.64(2), F.S.

⁷ Section 112.64(4), F.S.

⁸ Section 185.07, F.S.

⁹ Section 175.091, F.S.

¹⁰ FLA. CONST. art. X, s. 14 (1976).

¹¹ Part VII of Ch. 112, F.S., implements Article X, Section 14, of the Florida Constitution.

¹² Section 112.61, F.S.

¹³ Section 112.63, F.S.

¹⁴ Dep’t of Management Services, *2015 Legislative Bill Analysis: SB 242*, at 2 (Jan. 20, 2015).

2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA.”¹⁵

The “Marvin B. Clayton Firefighters and Police Officers’ Pension Trust Fund” Acts

The Marvin B. Clayton Firefighters’ and Police Officers’ Pension Trust Fund Acts¹⁶ declare a legitimate state purpose of providing a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters’ and police officers’ pension trust funds.¹⁷

In 1939, the Legislature enacted ch. 175, F.S., thereby encouraging cities to establish firefighter retirement plans by providing cities with the incentive of access to premium tax revenues. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.

Participation in the trust fund is limited to incorporated municipalities and to special fire control districts. Single consolidated governments of a county and one or more municipalities are also allowed to participate in the trust fund. Currently, unincorporated areas of a county may not participate unless a special fire control district includes the unincorporated areas.

Administration of Retirement Plans

The Division of Retirement (division) in the Department of Management Services (DMS) administers benefits to firefighters under two types of plans, a chapter plan or a local plan. A chapter plan is a plan that adopts the provisions of either ch. 175 or 185, F.S., by reference. A local plan is a plan that is created by a special act of the Legislature, or by a local ordinance or resolution that meets the minimum statutory requirements. The division is responsible for overseeing and monitoring these plans, but day-to-day operational control rests with local boards of trustees subject to the regulatory authority of the division.¹⁸ If the division were to deem that a firefighter or police pension plan created pursuant to ch. 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

Funding Sources

Four sources provide funding for these pension plans: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”); employee contributions; other revenue sources; and mandatory payments by the city of the normal cost of the plan.¹⁹ To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175 and 185, F.S.

¹⁵ Section 112.664(1)(a), F.S.

¹⁶ See ch. 175 and 185, F.S.

¹⁷ See ss. 175.021(1) and 185.01(1), F.S.

¹⁸ The division is responsible for administrative oversight of funds, including monitoring for actuarial soundness.

¹⁹ Sections 175.091(1)(a) and 185.07(1), F.S.

An excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district funds the Firefighters' Pension Trust Fund of each municipality or special fire control district.²⁰ The insurers pay the tax to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.²¹ For fiscal year 2014-15, premium tax collections are estimated to be \$804 million, and distributions to the Firefighters' Pension Trust Fund are predicted to be \$179.5 million.²²

A municipality that has entered into a one year or longer interlocal agreement to provide fire services to another incorporated municipality may receive its premium taxes.²³ The municipality providing fire services must notify the division of the interlocal agreement. The division may then distribute any premium taxes reported for the other incorporated municipality to the municipality providing the fire services.²⁴

Counties Furnishing Municipal Services

General law implements the constitutional provision authorizing a county furnishing municipal services to levy additional taxes within the limits fixed for municipal purposes via the establishment of MSTUs.²⁵ The creation of a MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties are authorized to levy up to ten mills.²⁶

The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area, or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 112.63, F.S., to require the actuarial valuations of local government pension plans to use mortality table methodology consistent with the most recently published actuarial valuation report of the FRS. The RP-2000 mortality table with Scale BB was used for the 2014 Actuarial Valuation of the Florida Retirement System.

While the FRS uses RP-2000 mortality table with Scale BB, additional adjustments are made based on gender, membership class, and varying mixes of white collar and blue collar work. For example, different mortality bases are used for non-disability retirements in the Special Risk

²⁰ Section 175.101(1), F.S.

²¹ See s. 175.121, F.S.

²² Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014), at 110.

²³ Although, the criteria in s. 175.041(3)(c), F.S., must be met.

²⁴ See Chapter 2005-205, Laws of Fla. (HB 1159).

²⁵ Section 125.01(1)(q), F.S.

²⁶ Section 200.071(3), F.S.

²⁷ Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014).

Class compared to the mortality bases used for non-disability retirements in other membership classes. At first glance, one would assume that the mortality assumptions used for FRS Special Risk Class would be an acceptable assumption to use for the police and firefighter pension plans. However, the FRS Special Risk Class has a broader membership than those local pension plans.²⁸ This broader membership base may result in a different mix of white collar and blue collar jobs.

Section 2 amends s. 112.664, F.S., to revise the information included in a defined benefit retirement system or plan's annual report to DMS to include financial statements that use mortality table methodology consistent with the most recently published actuarial valuation report of the FRS. In general, this change will require local plans to use Scale BB rather than Scale AA with the RP-2000 mortality table.

Sections 3, 4, 5, 6, 7 and 8 amend ss. 175.041, 175.101, 175.111, 175.122, 175.351, and 175.411, F.S., respectively, to allow a municipality providing fire protection services to a MSTU through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

Section 8 provides the bill will take effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest, and one of the following relevant exceptions must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

Since this bill requires all public sector pension plans to use the same mortality methodologies, it appears the bill applies to all persons similarly situated (state, municipalities and special districts sponsoring pension plans). The bill does not contain a finding that the bill fulfills an important state interest. Thus, the bill may not be binding upon cities and counties that sponsor retirement plans in terms of the use of the mortality methodologies.

B. Public Records/Open Meetings Issues:

None.

²⁸ Section 121.0515, F.S., defines membership in the FRS Special Risk Class also to include correctional officers, certain emergency medical technicians and paramedics, certain nurses and other health professionals, certain forensic laboratory technicians, and certain employees of a medical examiner's office.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Provisions of this bill will have an indeterminate but negative impact on the General Revenue Fund, because taxes imposed pursuant to ch. 175, F.S., are credited against insurance premium taxes paid to the state.²⁹ The provisions of this bill have not been reviewed by the Revenue Estimating Conference.

Municipalities providing fire services to MSTUs will receive an indeterminate amount of additional revenue to fund firefighter pension plans.

The pension plan board of trustees, and its professional advisors, will be required to use the FRS mortality tables in their actuarial valuations, which may result in different contribution requirements from prior plans' valuation reports.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether the information required under s. 112.644 (1)(a), F.S., to be reported by each public sector plan will differ from the information contained in the plan's actuarial valuation under the provisions of this legislation. Under current law, the actuarial valuation could use any mortality table the plan sponsor deemed appropriate and the information reported pursuant to s. 112.644, F.S., requires the use of RP-2000 with Scale AA. Under the bill, the mortality tables used in the valuation and the information reported pursuant to s. 112.644, F.S., will be the same – those that are consistent with the mortality table methodologies used by the FRS.

²⁹ Section 175.141, F.S., allows for the Firefighters' Pension credit, by which a payor of the insurance premium tax is authorized a credit on their state excise or license tax, but must pay the balance of state excise or license tax to the Dep't of Revenue. For the order in which credits and deductions against the insurance premium tax are to be taken, see s. 624.509(7), F.S. See also, The Florida Senate Committee on Finance and Tax, *An Overview of Florida's Insurance Premium Tax*, Report No. 2007-122, at 10 (Oct. 2006).

³⁰ Dep't of Management Services, *2015 Legislative Bill Analysis: SB 242*, at 5 (Jan. 20, 2015).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 175.041, 175.101, 175.111, 175.122, 175.351, 175.411, 112.63, and 112.664.

IX. Additional Information:

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

CS by Community Affairs on February 3, 2015:

Requires local government pension plan actuarial valuations, and the additional actuarial disclosures required under s. 112.664, F.S., to use a mortality table methodology for funding purposes that is consistent with the most recent actuarial report issued by the FRS.

- B. **Amendments:**

None.

By the Committee on Community Affairs; and Senator Bradley

578-01469-15

2015216c1

1 A bill to be entitled
 2 An act relating to publicly funded retirement
 3 programs; amending s. 112.63, F.S.; requiring that
 4 actuarial reports for certain retirement systems or
 5 plans include mortality tables; amending s. 112.664,
 6 F.S.; revising information to be included in the
 7 annual report of a defined benefit system or plan to
 8 the Department of Management Services; amending s.
 9 175.041, F.S.; revising applicability of the Marvin B.
 10 Clayton Firefighters Pension Trust Fund Act; providing
 11 that any municipality that provides fire protection
 12 services to a municipal service taxing unit under an
 13 interlocal agreement is eligible to receive property
 14 insurance premium taxes; amending s. 175.101, F.S.;
 15 authorizing a municipal service taxing unit that
 16 enters into an interlocal agreement for fire
 17 protection services with another municipality to
 18 impose an excise tax on property insurance premiums;
 19 amending s. 175.111, F.S.; requiring municipal service
 20 taxing units to provide the Division of Retirement of
 21 the Department of Management Services with a certified
 22 copy of the ordinance assessing and imposing certain
 23 taxes; amending ss. 175.122 and 175.351, F.S.;
 24 revising provisions relating to the limitation of
 25 disbursement to conform to changes made by the act;
 26 amending s. 175.411, F.S.; authorizing a municipal
 27 service taxing unit, under certain conditions, to
 28 revoke its participation and cease to receive property
 29 insurance premium taxes; providing an effective date.

Page 1 of 15

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

578-01469-15

2015216c1

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Subsection (1) of section 112.63, Florida
 34 Statutes, is amended to read:
 35 112.63 Actuarial reports and statements of actuarial
 36 impact; review.—
 37 (1) Each retirement system or plan subject to the
 38 provisions of this act shall have regularly scheduled actuarial
 39 reports prepared and certified by an enrolled actuary. The
 40 actuarial report shall consist of, but need ~~shall~~ not be limited
 41 to, ~~the following~~:
 42 (a) Adequacy of employer and employee contribution rates in
 43 meeting levels of employee benefits provided in the system and
 44 changes, if any, needed in such rates to achieve or preserve a
 45 level of funding deemed adequate to enable payment through the
 46 indefinite future of the benefit amounts prescribed by the
 47 system, which shall include a valuation of present assets, based
 48 on statement value, and prospective assets and liabilities of
 49 the system and the extent of unfunded accrued liabilities, if
 50 any.
 51 (b) A plan to amortize any unfunded liability pursuant to
 52 s. 112.64 and a description of actions taken to reduce the
 53 unfunded liability.
 54 (c) A description and explanation of actuarial assumptions.
 55 (d) A schedule illustrating the amortization of unfunded
 56 liabilities, if any.
 57 (e) A comparative review illustrating the actual salary
 58 increases granted and the rate of investment return realized

Page 2 of 15

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

578-01469-15 2015216c1

59 over the 3-year period preceding the actuarial report with the
60 assumptions used in both the preceding and current actuarial
61 reports.

62 (f) Mortality tables that use mortality methodology
63 consistent with the most recently published actuarial valuation
64 report of the Florida Retirement System.

65 ~~(g)(f)~~ A statement by the enrolled actuary that the report
66 is complete and accurate and that in his or her opinion the
67 techniques and assumptions used are reasonable and meet the
68 requirements and intent of this act.

69
70 The actuarial cost methods utilized for establishing the amount
71 of the annual actuarial normal cost to support the promised
72 benefits shall only be those methods approved in the Employee
73 Retirement Income Security Act of 1974 and as permitted under
74 regulations prescribed by the Secretary of the Treasury.

75 Section 2. Subsection (1) of section 112.664, Florida
76 Statutes, is amended to read:

77 112.664 Reporting standards for defined benefit retirement
78 plans or systems.—

79 (1) In addition to the other reporting requirements of this
80 part, within 60 days after receipt of the certified actuarial
81 report submitted after the close of the plan year that ends on
82 or after June 30, 2014, and thereafter in each year required
83 under s. 112.63(2), each defined benefit retirement system or
84 plan, excluding the Florida Retirement System, shall prepare and
85 electronically report the following information to the
86 Department of Management Services in a format prescribed by the
87 department:

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88 (a) Annual financial statements that comply are in
89 ~~compliance~~ with the requirements of the Governmental Accounting
90 ~~Standards Government Accounting and Standard Board's Statement~~
91 No. 67, titled "Financial Reporting for Pension Plans," and
92 Statement No. 68, titled "Accounting and Financial Reporting for
93 Pensions," using mortality tables that use mortality methodology
94 consistent with the most recently published actuarial valuation
95 report of the Florida Retirement System ~~RP-2000 Combined Healthy~~
96 ~~Participant Mortality Tables, by gender, with generational~~
97 ~~projection by Scale AA.~~

98 (b) Annual financial statements similar to those required
99 under paragraph (a), but which use an assumed rate of return on
100 investments and an assumed discount rate that are equal to 200
101 basis points less than the plan's assumed rate of return.

102 (c) Information indicating the number of months or years
103 for which the current market value of assets are adequate to
104 sustain the payment of expected retirement benefits as
105 determined in the plan's latest valuation and under the
106 financial statements prepared pursuant to paragraphs (a) and
107 (b).

108 (d) Information indicating the recommended contributions to
109 the plan based on the plan's latest valuation, and the
110 contributions necessary to fund the plan based on financial
111 statements prepared pursuant to paragraphs (a) and (b), stated
112 as an annual dollar value and a percentage of valuation payroll.

113 Section 3. Subsection (3) of section 175.041, Florida
114 Statutes, is amended to read:

115 175.041 Firefighters' Pension Trust Fund created;
116 applicability of provisions.—For any municipality, special fire

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117 control district, chapter plan, local law municipality, local
 118 law special fire control district, or local law plan under this
 119 chapter:

120 (3) ~~The provisions of This chapter applies shall apply~~ only
 121 to municipalities organized and established pursuant to the laws
 122 of the state and to special fire control districts. This chapter
 123 ~~does, and said provisions shall~~ not apply to the unincorporated
 124 areas of any county or counties except with respect to municipal
 125 service taxing units established in unincorporated areas for the
 126 purpose of receiving fire protection service from a municipality
 127 and special fire control districts that include unincorporated
 128 areas. This chapter also does not, nor shall the provisions
 129 hereof apply to any governmental entity whose firefighters are
 130 eligible to participate in the Florida Retirement System.

131 (a) Special fire control districts that include, or consist
 132 exclusively of, unincorporated areas of one or more counties may
 133 levy and impose the tax and participate in the retirement
 134 programs enabled by this chapter.

135 (b) With respect to the distribution of premium taxes, a
 136 single consolidated government consisting of a former county and
 137 one or more municipalities, consolidated pursuant to s. 3 or s.
 138 6(e), Art. VIII of the State Constitution, is also eligible to
 139 participate under this chapter. The consolidated government
 140 shall notify the division when it has entered into an interlocal
 141 agreement to provide fire services to a municipality within its
 142 boundaries. The municipality may enact an ordinance levying the
 143 tax as provided in s. 175.101. Upon being provided copies of the
 144 interlocal agreement and the municipal ordinance levying the
 145 tax, the division may distribute any premium taxes reported for

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146 the municipality to the consolidated government as long as the
 147 interlocal agreement is in effect.

148 (c) Any municipality that has entered into an interlocal
 149 agreement to provide fire protection services to any other
 150 incorporated municipality or a municipal service taxing unit in
 151 an unincorporated area, in its entirety, for a period of 12
 152 months or more may be eligible to receive the premium taxes
 153 reported for such other municipality or municipal service taxing
 154 unit. In order to be eligible for such premium taxes, the
 155 municipality providing the fire services must notify the
 156 division that it has entered into an interlocal agreement with
 157 another municipality or a county on behalf of a municipal
 158 service taxing unit. The municipality receiving the fire
 159 services, or a county on behalf of the municipal service taxing
 160 unit receiving the fire services, may enact an ordinance levying
 161 the tax as provided in s. 175.101. Upon being provided copies of
 162 the interlocal agreement and the ~~municipal~~ ordinance levying the
 163 tax, the division may distribute any premium taxes reported for
 164 the municipality or municipal service taxing unit receiving the
 165 fire services to the participating municipality providing the
 166 fire services as long as the interlocal agreement is in effect.

167 Section 4. Subsections (1) and (3) of section 175.101,
 168 Florida Statutes, are amended to read:

169 175.101 State excise tax on property insurance premiums
 170 authorized; procedure.—For any municipality, special fire
 171 control district, chapter plan, local law municipality, local
 172 law special fire control district, or local law plan under this
 173 chapter:

174 (1) Each municipality, municipal service taxing unit, or

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175 special fire control district in this state described and
 176 classified in s. 175.041, having a lawfully established
 177 firefighters' pension trust fund or municipal fund or special
 178 fire control district fund, by whatever name known, providing
 179 pension benefits to firefighters as provided under this chapter,
 180 or receiving fire protection services from a municipality
 181 participating under this chapter, may assess and impose on every
 182 insurance company, corporation, or other insurer now engaged in
 183 or carrying on, or who shall hereinafter engage in or carry on,
 184 the business of property insurance as shown by the records of
 185 the Office of Insurance Regulation of the Financial Services
 186 Commission, an excise tax in addition to any lawful license or
 187 excise tax now levied by each of the municipalities, municipal
 188 service taxing units, or special fire control districts,
 189 respectively, amounting to 1.85 percent of the gross amount of
 190 receipts of premiums from policyholders on all premiums
 191 collected on property insurance policies covering property
 192 within the corporate limits of such municipalities or within the
 193 legally defined boundaries of municipal service taxing units or
 194 special fire control districts, respectively. Whenever the
 195 boundaries of a special fire control district that has lawfully
 196 established a firefighters' pension trust fund encompass a
 197 portion of the corporate territory of a municipality that has
 198 also lawfully established a firefighters' pension trust fund, or
 199 a municipal service taxing unit receiving fire protection
 200 services from a municipality participating under this chapter,
 201 that portion of the tax receipts attributable to insurance
 202 policies covering property situated both within the municipality
 203 or municipal service taxing unit, and the special fire control

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204 district shall be given to the fire service provider. For the
 205 purpose of this section, the boundaries of a special fire
 206 control district include an area that has been annexed until the
 207 completion of the 4-year period provided for in s. 171.093(4),
 208 or other agreed-upon extension, or if a special fire control
 209 district is providing services under an interlocal agreement
 210 executed in accordance with s. 171.093(3). The agent shall
 211 identify the fire service provider on the property owner's
 212 application for insurance. Remaining revenues collected pursuant
 213 to this chapter shall be distributed to the municipality or
 214 special fire control district according to the location of the
 215 insured property.

216 (3) This excise tax shall be payable annually on March 1 of
 217 each year after the passage of an ordinance, in the case of a
 218 municipality or municipal service taxing unit, or resolution, in
 219 the case of a special fire control district, assessing and
 220 imposing the tax authorized by this section. Installments of
 221 taxes shall be paid according to the provision of s.
 222 624.5092(2) (a), (b), and (c).
 223

224 This section also applies to any municipality consisting of a
 225 single consolidated government which is made up of a former
 226 county and one or more municipalities, consolidated pursuant to
 227 the authority in s. 3 or s. 6(e), Art. VIII of the State
 228 Constitution, and to property insurance policies covering
 229 property within the boundaries of the consolidated government,
 230 regardless of whether the properties are located within one or
 231 more separately incorporated areas within the consolidated
 232 government, provided the properties are being provided fire

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 233 protection services by the consolidated government. This section
 234 also applies to any municipality, as provided in s.
 235 175.041(3)(c), which has entered into an interlocal agreement to
 236 receive fire protection services from another municipality
 237 participating under this chapter. The excise tax may be levied
 238 on all premiums collected on property insurance policies
 239 covering property located within the corporate limits of the
 240 municipality receiving the fire protection services, but will be
 241 available for distribution to the municipality providing the
 242 fire protection services.

243 Section 5. Section 175.111, Florida Statutes, is amended to
 244 read:

245 175.111 Certified copy of ordinance or resolution filed;
 246 insurance companies' annual report of premiums; duplicate files;
 247 book of accounts.—For any municipality, municipal service taxing
 248 unit, special fire control district, chapter plan, local law
 249 municipality, local law special fire control district, or local
 250 law plan under this chapter, whenever any municipality, or any
 251 county on behalf of a municipal service taxing unit, passes an
 252 ordinance or whenever any special fire control district passes a
 253 resolution establishing a chapter plan or local law plan
 254 assessing and imposing the taxes authorized in s. 175.101, a
 255 certified copy of such ordinance or resolution shall be
 256 deposited with the division. Thereafter every insurance company,
 257 association, corporation, or other insurer carrying on the
 258 business of property insurance on real or personal property, on
 259 or before the succeeding March 1 after date of the passage of
 260 the ordinance or resolution, shall report fully in writing and
 261 under oath to the division and the Department of Revenue a just

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 262 and true account of all premiums by such insurer received for
 263 property insurance policies covering or insuring any real or
 264 personal property located within the corporate limits of each
 265 such municipality, municipal service taxing unit, or special
 266 fire control district during the period of time elapsing between
 267 the date of the passage of the ordinance or resolution and the
 268 end of the calendar year. The report shall include the code
 269 designation as prescribed by the division for each piece of
 270 insured property, real or personal, located within the corporate
 271 limits of each municipality and within the legally defined
 272 boundaries of each special fire control district and municipal
 273 service taxing unit. The aforesaid insurer shall annually
 274 thereafter, on March 1, file with the Department of Revenue a
 275 similar report covering the preceding year's premium receipts,
 276 and every such insurer at the same time of making such reports
 277 shall pay to the Department of Revenue the amount of the tax
 278 hereinbefore mentioned. Every insurer engaged in carrying on
 279 such insurance business in the state shall keep accurate books
 280 of accounts of all such business done by it within the corporate
 281 limits of each such municipality and within the legally defined
 282 boundaries of each such special fire control district and
 283 municipal service taxing unit, and in such manner as to be able
 284 to comply with the provisions of this chapter. Based on the
 285 insurers' reports of premium receipts, the division shall
 286 prepare a consolidated premium report and shall furnish to any
 287 municipality, municipal service taxing unit, or special fire
 288 control district requesting the same a copy of the relevant
 289 section of that report.

290 Section 6. Section 175.122, Florida Statutes, is amended to

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291 read:

292 175.122 Limitation of disbursement.—For any municipality,
 293 municipal service taxing unit, special fire control district,
 294 chapter plan, local law municipality, local law special fire
 295 control district, or local law plan under this chapter, any
 296 municipality, municipal service taxing unit, or special fire
 297 control district participating in the firefighters' pension
 298 trust fund pursuant to the provisions of this chapter, whether
 299 under a chapter plan or local law plan, shall be limited to
 300 receiving any moneys from such fund in excess of that produced
 301 by one-half of the excise tax, as provided for in s. 175.101;
 302 however, any such municipality, municipal service taxing unit,
 303 or special fire control district receiving less than 6 percent
 304 of its fire department payroll from such fund shall be entitled
 305 to receive from such fund the amount determined under s.
 306 175.121, in excess of one-half of the excise tax, not to exceed
 307 6 percent of its fire department payroll. Payroll amounts of
 308 members included in the Florida Retirement System shall not be
 309 included.

310 Section 7. Section 175.351, Florida Statutes, is amended to
 311 read:

312 175.351 Municipalities, municipal service taxing units, and
 313 special fire control districts having their own pension plans
 314 for firefighters.—For any municipality, municipal service taxing
 315 unit, special fire control district, local law municipality,
 316 local law special fire control district, or local law plan under
 317 this chapter, in order for municipalities, municipal service
 318 taxing units, and special fire control districts with their own
 319 pension plans for firefighters, or for firefighters and police

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320 officers if included, to participate in the distribution of the
 321 tax fund established pursuant to s. 175.101, local law plans
 322 must meet the minimum benefits and minimum standards set forth
 323 in this chapter.

324 (1) If a municipality has a pension plan for firefighters,
 325 or a pension plan for firefighters and police officers if
 326 included, which in the opinion of the division meets the minimum
 327 benefits and minimum standards set forth in this chapter, the
 328 board of trustees of the pension plan, as approved by a majority
 329 of firefighters of the municipality, may:

330 (a) Place the income from the premium tax in s. 175.101 in
 331 such pension plan for the sole and exclusive use of its
 332 firefighters, or for firefighters and police officers if
 333 included, where it shall become an integral part of that pension
 334 plan and shall be used to pay extra benefits to the firefighters
 335 included in that pension plan; or

336 (b) Place the income from the premium tax in s. 175.101 in
 337 a separate supplemental plan to pay extra benefits to
 338 firefighters, or to firefighters and police officers if
 339 included, participating in such separate supplemental plan.

340 (2) The premium tax provided by this chapter shall in all
 341 cases be used in its entirety to provide extra benefits to
 342 firefighters, or to firefighters and police officers if
 343 included. However, local law plans in effect on October 1, 1998,
 344 must comply with the minimum benefit provisions of this chapter
 345 only to the extent that additional premium tax revenues become
 346 available to incrementally fund the cost of such compliance as
 347 provided in s. 175.162(2)(a). If a plan is in compliance with
 348 such minimum benefit provisions, as subsequent additional

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349 premium tax revenues become available, they must be used to
 350 provide extra benefits. Local law plans created by special act
 351 before May 27, 1939, are deemed to comply with this chapter. For
 352 the purpose of this chapter, the term:

353 (a) "Additional premium tax revenues" means revenues
 354 received by a municipality or special fire control district
 355 pursuant to s. 175.121 which exceed that amount received for
 356 calendar year 1997.

357 (b) "Extra benefits" means benefits in addition to or
 358 greater than those provided to general employees of the
 359 municipality and in addition to those in existence for
 360 firefighters on March 12, 1999.

361 (3) A retirement plan or amendment to a retirement plan may
 362 not be proposed for adoption unless the proposed plan or
 363 amendment contains an actuarial estimate of the costs involved.
 364 Such proposed plan or proposed plan change may not be adopted
 365 without the approval of the municipality, special fire control
 366 district, or, where permitted, the Legislature. Copies of the
 367 proposed plan or proposed plan change and the actuarial impact
 368 statement of the proposed plan or proposed plan change shall be
 369 furnished to the division before the last public hearing
 370 thereon. Such statement must also indicate whether the proposed
 371 plan or proposed plan change is in compliance with s. 14, Art. X
 372 of the State Constitution and those provisions of part VII of
 373 chapter 112 which are not expressly provided in this chapter.
 374 Notwithstanding any other provision, only those local law plans
 375 created by special act of legislation before May 27, 1939, are
 376 deemed to meet the minimum benefits and minimum standards only
 377 in this chapter.

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378 (4) Notwithstanding any other provision, with respect to
 379 any supplemental plan municipality:

380 (a) A local law plan and a supplemental plan may continue
 381 to use their definition of compensation or salary in existence
 382 on March 12, 1999.

383 (b) Section 175.061(1)(b) does not apply, and a local law
 384 plan and a supplemental plan shall continue to be administered
 385 by a board or boards of trustees numbered, constituted, and
 386 selected as the board or boards were numbered, constituted, and
 387 selected on December 1, 2000.

388 (c) The election set forth in paragraph (1)(b) is deemed to
 389 have been made.

390 (5) The retirement plan setting forth the benefits and the
 391 trust agreement, if any, covering the duties and
 392 responsibilities of the trustees and the regulations of the
 393 investment of funds must be in writing, and copies made
 394 available to the participants and to the general public.

395 Section 8. Section 175.411, Florida Statutes, is amended to
 396 read:

397 175.411 Optional participation.—A municipality, municipal
 398 service taxing unit, or special fire control district may revoke
 399 its participation under this chapter by rescinding the
 400 legislative act, ordinance, or resolution which assesses and
 401 imposes the taxes authorized in s. 175.101, and by furnishing a
 402 certified copy of such legislative act, ordinance, or resolution
 403 to the division. Thereafter, the municipality, municipal service
 404 taxing unit, or special fire control district shall be
 405 prohibited from participating under this chapter, and shall not
 406 be eligible for future premium tax moneys. Premium tax moneys

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407 previously received shall continue to be used for the sole and
408 exclusive benefit of firefighters, or firefighters and police
409 officers where included, and no amendment, legislative act,
410 ordinance, or resolution shall be adopted which shall have the
411 effect of reducing the then-vested accrued benefits of the
412 firefighters, retirees, or their beneficiaries. The
413 municipality, municipal service taxing unit, or special fire
414 control district shall continue to furnish an annual report to
415 the division as provided in s. 175.261. If the municipality,
416 municipal service taxing unit, or special fire control district
417 subsequently terminates the defined benefit plan, they shall do
418 so in compliance with the provisions of s. 175.361.

419 Section 9. This act shall take effect July 1, 2015.

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 Governmental Oversight and Accountability

BILL: CS/SB 248

INTRODUCER: Criminal Justice Committee and Senator Smith and others

SUBJECT: Public Records/Recordings by Law Enforcement Officers

DATE: March 9, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 248 creates a public records exemption for an audio or video recording made by a law enforcement officer in the course of the officer performing his or her official duties and responsibilities, if the recording:

- Is taken within the interior of a private residence;
- Is taken on the property of a facility that offers health care, mental health care, or social services;
- Is taken at the scene of a medical emergency;
- Is taken at a place where a person recorded or depicted in the recording has a reasonable expectation of privacy;
- Shows a child younger than 18 years of age inside a school or on school property; or
- Shows a child younger than 14 years of age at any location.

If the audio or video recording or a portion of such recording is exempt or confidential and exempt pursuant to another exemption in s. 119.071, F.S., that exemption applies and determines under which circumstances, if any, the recording or a portion of the recording may be disclosed to the public.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity for the exemption.

The bill authorizes the law enforcement agency having custody over the recording to disclose the recording to another law enforcement agency in furtherance of that agency's official duties and responsibilities and specifies persons who may inspect the recording.

Applicable to the new exemption, a law enforcement agency must have a retention policy of not longer than 90 days for the audio or video recordings unless the recording is part of an active criminal investigation or criminal intelligence operation or a court orders its retention for a longer period. A law enforcement agency must disclose its records retention policy for recordings under the new exemption.

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

II. Present Situation:

Body-Worn Cameras and Public Records

Body-Worn Cameras (BWCs) or "body cameras" are currently being used or considered for use by many law enforcement agencies. "BWCs are mobile audio and video capture devices that allow officers to record what they see and hear. Devices can be attached to various body areas, including the head, by helmet, glasses or other means, or to the body by pocket, badge, or other means of attachment (such as in-car on the dash). They have the capability to record officer interactions that previously could only be captured by in-car interrogation room camera systems."¹

The Florida Police Chiefs Association staff is aware of 13 Florida police departments that currently use BWCs² and nine Florida police departments that have implemented pilot programs to test the use of BWCs.³ The media have reported that the Flagler County Sheriff's Office is using BWC⁴ and the Pasco County Sheriff has indicated an intent to purchase BWCs.⁵ Other Florida sheriffs' offices may be considering whether to use BWCs.

On December 1, 2014, the White House announced that President Barack Obama was proposing "a three-year \$263 million investment package that will increase use of body-worn cameras, expand training for law enforcement agencies (LEAs), add more resources for police department reform, and multiply the number of cities where DOJ facilitates community and local LEA

¹ Sensor, Surveillance, and Biometric Technologies Center of Excellence. September 2012. *A Primer on Body-Worn Cameras for Law Enforcement*. National Institute of Justice. The quoted text is from page 5 of the report, which is available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf>.

² Police departments: Eustis; City of Miami; Cocoa; Daytona Beach; Daytona Beach Shores; Florida State University (motorcycle officers); Gulfport; Palm Bay (SWAT Officers); Pensacola; West Melbourne; Windermere; Miami Beach; and Rockledge.

³ Police departments: Clearwater; Ft. Myers; Marianna; Orlando (University of South Florida study); Plant City; Sarasota; St. Petersburg; Tampa; and West Palm Beach.

⁴ Metz, Claire. "Flagler County deputies fitted with new body cameras. WESH.com (Orlando). August 28, 2014. The news broadcast video is available at <http://www.wesh.com/flagler-county-deputies-fitted-with-new-body-cameras/27779830>.

⁵ Behrman, Elizabeth. "Local law enforcement split on body cameras." *The Tampa Tribune*. December 14, 2014. The article is available at <http://tbo.com/news/crime/-20141226/>.

engagement. As part of this initiative, a new Body Worn Camera Partnership Program would provide a 50 percent match to States/localities who purchase body worn cameras and requisite storage. Overall, the proposed \$75 million investment over three years could help purchase 50,000 body worn cameras.”⁶

In a recently released report on BWCs it was noted:

State public disclosure laws, often known as freedom of information laws, govern when footage from body-worn cameras is subject to public release. However, most of these laws were written long before law enforcement agencies began deploying body-worn cameras, so the laws do not necessarily account for all of the considerations that must be made when police departments undertake a body-worn camera program.

Although broad disclosure policies can promote police agency transparency and accountability, some videos—especially recordings of victims or from inside people’s homes—will raise privacy concerns if they are released to the public or the news media. When determining how to approach public disclosure issues, law enforcement agencies must balance the legitimate interest of openness with protecting privacy rights.

In most state public disclosure laws, exceptions are outlined that may exempt body-worn camera footage from public release. For example, even the broadest disclosure laws typically contain an exception for video that contains evidence or is part of an ongoing investigation. Some state disclosure laws, such as those in North Carolina, also exempt personnel records from public release. Body-worn camera videos used to monitor officer performance may fall under this type of exception.⁷

Depending upon the content recorded by a BWC, the recording or particular information in the recording may be subject to a public records exemption in current Florida law. If not subject to an exemption, the recording would be a public record. Some of the current public records exemptions that may be relevant to a BWC recording include:

- Active criminal intelligence information and active criminal investigative information (exempt);⁸
- Information revealing surveillance techniques or procedures or personnel (exempt);⁹
- Information revealing the substance of a confession of a person arrested (exempt);¹⁰
- Information revealing the identity of a confidential informant or a confidential source (exempt);¹¹

⁶ “FACT SHEET: Strengthening Community Policing,” Office of the Press Secretary, The White House. December 1, 2014. The document is available at <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing>.

⁷ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services. The quoted text is from page 17 (footnote omitted) of the report, which is available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

⁸ Section 119.071(2)(a), F.S.

⁹ Section 119.071(2)(d), F.S.

¹⁰ Section 119.071(2)(e), F.S.

¹¹ Section 119.071(2)(f), F.S.

- Criminal intelligence information or criminal investigative information that reveals the identity of the victim of the crime of child abuse or any sexual offense or a videotape or image of any part of the body of the victim of a statutorily-specified sexual offense (confidential and exempt);¹²
- Any information in a videotaped statement of a minor who is alleged to be or who is a victim of a statutorily-specified sexual offense, which reveals that minor's identity, home, school, etc. (confidential and exempt);¹³ or
- Information revealing undercover personnel of any criminal justice agency (exempt).¹⁴

The bill uses the language “audio or video recording by a law enforcement officer” in the new exemption. This bill analysis focuses on BWCs because it appears that BWCs are the most recent recording devices being used by law enforcement agencies and some of the BWC recordings would be covered by the new exemption. However, an audio or video recording made by another recording device, such as an in-car cameras, hand-held video camera or cellphone, will also be covered by the new exemption.

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.¹⁵ The records of the legislative, executive, and judicial branches are specifically included.¹⁶

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹⁷ guarantees every person's right to inspect and copy any state or local government public record¹⁸ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁹

Only the Legislature may create an exemption to public records requirements.²⁰ This exemption must be created by general law and must specifically state the public necessity justifying the exemption.²¹ There is a difference between records the Legislature designates exempt from

¹² Section 119.071(2)(h), F.S.

¹³ Section 119.071(2)(j)2.a, F.S.

¹⁴ Section 119.071(4)(c), F.S.

¹⁵ FLA. CONST., art. I, s. 24(a).

¹⁶ *Id.*

¹⁷ Chapter 119, F.S.

¹⁸ 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 *Locke v. Hawkes*, 595 So.2d 32 (Fla.1992).

¹⁹ Section 119.07(1)(a), F.S.

²⁰ FLA. CONST., art. I, s. 24(c).

²¹ FLA. CONST., art. I, s. 24(c).

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.²² 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.²³ 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 provisions²⁴ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.²⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁶ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁷

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.²⁸ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁰ or
- It protects trade or business secrets.³¹

In addition, the Legislature must find that the purpose of the exemption overrides the Florida’s public policy strongly favoring open government.

²² *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)). Attorney General Opinion 85-62, (August 1, 1985).

²³ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004). *Wait v. Florida Power and Light Co.* 372 So.2d 420 (1979).

²⁴ However, the bill may contain multiple exemptions that relate to one subject.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²⁷ Section 119.15(3), F.S.

²⁸ Section 119.15(6)(b), F.S.

²⁹ Section 119.15(6)(b)1., F.S.

³⁰ Section 119.15(6)(b)2., F.S.

³¹ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.³² In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³³ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁴

III. Effect of Proposed Changes:

The bill provides that an audio or video recording made by a law enforcement officer in the course of the officer performing his or her official duties and responsibilities is exempt from public records requirements if the recording:

- Is taken within the interior of a private residence;
- Is taken on the property of a facility that offers health care, mental health care, or social services;
- Is taken at the scene of a medical emergency;
- Is taken at a place where a person recorded or depicted in the recording has a reasonable expectation of privacy;
- Shows a child younger than 18 years of age inside a school, as defined in s. 1003.01, F.S., or on school property, as defined in s. 810.095, F.S.; or
- Shows a child younger than 14 years of age at any location.

As a practical issue, it is not clear how a law enforcement agency's records custodian will be able to make a determination of when some of these exemptions apply. The exemption provided for a recording taken in a place where a person has a "reasonable expectation of privacy" may be an amorphous standard for a records custodian. In addition, it is not clear from the bill how a records custodian will know the ages of the children in a recording, and thus when a recording is exempt from public disclosure.

The bill provides that if an audio or video recording or a portion of such recording is exempt or confidential and exempt pursuant to another exemption in s. 119.071, F.S., then the other exemption applies. The purpose of this provision is to allow another exemption existing in law to take precedence over the one in this bill. This provision is problematic since public records and

³² 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?

³³ FLA. CONST., art. I, s. 24(c).

³⁴ Section 119.15(7), F.S.

open meetings exemptions are codified throughout the Florida Statutes, not just in section 119.071, F.S.³⁵

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

The bill also provides a statement of public necessity for the exemption. The specific findings relevant to the public necessity for the exemption are as follows:

The Legislature finds that information recorded by these devices in these circumstances is significantly more likely to include highly sensitive personal information regarding the persons recorded than in other circumstances. The Legislature finds that public disclosure of these recordings could have an undesirable, chilling effect: persons who know sensitive personal information about them is being or may be recorded may be unwilling to cooperate with law enforcement officers and make calls for the services of law enforcement officers. In the case of minors, information about those minors could jeopardize their safety. The Legislature finds that these interests or concerns not only necessitate the exemption of the recordings but outweigh any public benefit that may be derived from their disclosure.

The bill also authorizes the law enforcement agency having custody over the recording to disclose the recording to another law enforcement agency in furtherance of that agency's official duties and responsibilities.

The bill also specifies that the law enforcement agency may permit the following people to inspect the recording:

- A person recorded or depicted in the recording;
- The agent or attorney of a person recorded or depicted in the recording, if inspection is authorized by that person; and
- A person not recorded or depicted in the recording, if inspection is authorized by all persons recorded or depicted in the recording.³⁶

³⁵ For example, law enforcement officers may be called to investigate a case of abuse, abandonment or neglect of a child which occurs in a public place, such as a parking lot or a public park. The public records exemption for child abuse cases is codified in s. 39.202, F.S., not in s. 119.071, F.S.

³⁶ Other exemptions provide for limited disclosure of exempted information to specific persons. For example, s. 119.071(2)(d), F.S., exempts any comprehensive inventory of state and local law enforcement resources compiled pursuant to part 1, ch. 293, F.S., and any comprehensive policies or plans compiled by a criminal justice agency pertaining to the mobilization, deployment, or tactical operations involved in responding to an emergency. This information is unavailable for inspection except by personnel authorized by the state or local law enforcement agency, the Office of the Governor, the Department of Legal Affairs, the Department of Law Enforcement, or the Division of Emergency Management as having an official need for access to this information. Further, s. 119.071(3)(b), F.S., exempts building plans, blueprints, schematic drawings, and diagrams, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency. This information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or upon a showing of good cause before a court of competent jurisdiction.

The described inspection of the recording does not apply to information in the recording that is exempt or confidential and exempt pursuant to another provision of s. 119.071, F.S. This provision may not be as broad as intended because some public records exemptions are not codified in s. 119.071, F.S.

Applicable to the new exemption, a law enforcement agency must have a retention policy of not longer than 90 days. A law enforcement agency must disclose its records retention policy for recordings under the new exemption. This provision conflicts with the records retention powers of the Department of State. Records retained by law enforcement agencies are governed by statutes and rules promulgated by the Department of State, Division of Library Services.³⁷ Currently, public records may be destroyed only in accordance with the retention schedules established by the Division of Library Services³⁸ and agencies have a duty to comply with Florida law governing public libraries and state archives.³⁹ It is unclear if the intent of this language is to supersede current law.

The bill allows for a longer retention period longer than 90 for recordings if they are a part of an active criminal investigation or criminal intelligence operation, or a court order provides for a longer retention period. This bill does not save recordings from destruction if for any other purpose, such as civil litigation, or for administrative purposes such as internal affairs investigations or human resources issues. This may be problematic since a litigant may have to wait up to 6 months before filing suit against a governmental entity.⁴⁰

The bill also conforms cross-references in other statutes.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁷ Section 257.36, F.S. See State of Florida General Records Schedule GS2 For Law Enforcement, Correctional Facilities, and District Medical Examiners, effective February 19, 2015. <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (last visited on March 6, 2015).

³⁸ Section 257.36(6), F.S.

³⁹ Section 257.36(5), F.S.

⁴⁰ Section 768.28(6), F.S. It is highly unlikely that once put on notice that litigation is possible that a government entity would engage in the destruction of evidence. However, a litigant might not have filed suit or provided notice before the 90 days had expired and recording is destroyed. In addition, Florida Rule of Civil Procedure 1.380(e), titled "Electronically Stored Information; Sanctions for Failure to Preserve" provides that "[a]bsent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system."

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law.

The bill does not exempt all audio or video recordings made by law enforcement officers. The bill exempts an audio or video recording by a law enforcement officer, if the recording:

- Is taken within the interior of a private residence;
- Is taken on the property of a facility that offers health care, mental health care, or social services;
- Is taken at the scene of a medical emergency;
- Is taken at a place where there is a reasonable expectation of privacy;
- Shows a child younger than 18 years of age inside a school or on school property; or
- Shows a child younger than 14 years of age at any location.

The bill authorizes the law enforcement agency having custody over the recording to disclose the recording to another law enforcement agency in furtherance of that agency's official duties and responsibilities and specifies persons who may inspect the recording.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill, in part, exempts from public disclosure an audio or video recording made by a law enforcement officer at a place where a person recorded or depicted in the recording has *a reasonable expectation of privacy*.⁴¹

⁴¹ Emphasis provided. The term is undefined in the bill but the term is also undefined in several statutes: s. 90.507, F.S. (waiver of privilege against disclosure of confidential matter or communication); s. 365.16, F.S. (obscene or harassing telephone calls); s. 810.14, F.S. (voyeurism); and s. 877.26, F.S. (direct observation, videotaping, or visual surveillance of

Article I, Section 23 of the Florida Constitution provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provide by law.

The Florida Supreme Court has stated that the right of privacy includes a right to “be free from uninvited observation or of interference in those aspect of [Floridians’] lives that fall within the ambit of this zone of privacy unless the intrusion is warranted by the necessity of a compelling state interest.”⁴² Referring to a case which predated Article I, Section 23 of the Florida Constitution, the Florida Supreme Court opined that the people have a fundamental right to control what they reveal about themselves and to whom they chose to reveal themselves, and noted “this power is exercised in varying degrees by differing individuals, the parameters of an individuals’ privacy can be dictated only by that individual.”⁴³

The Florida Supreme Court has opined that before the right of privacy attaches “a reasonable expectation of privacy must exist.”⁴⁴ The test for making that determination is “whether the law recognizes an individual’s legitimate expectation of privacy” in a certain type of record.⁴⁵ The Florida Supreme Court also recognizes that the right to be free of observation and interference in aspects of life that fall within a “zone of privacy.”⁴⁶ In determining whether an individual has a legitimate expectation of privacy in any give case must be made by considering all the circumstances, especially objective manifestations of that expectation.⁴⁷

Courts have used public records exemptions guideposts of when a privacy interest exists. The Florida Fourth District Court of Appeal relied on the Florida Supreme Court’s finding that financial records were private, but also observed that there was a statutory public records exemption for financial information held by a state agency, and noted that

customers in merchant’s dressing room). As indicated in the analysis, the Florida Supreme Court has articulated how it determines whether an individual has a legitimate expectation of privacy for purposes of determining whether the individual has a right to privacy under Article I, Section 23 of the Florida Constitution. The phrase “reasonable expectation of privacy” is usually used in the context of search and seizure cases invoking the Fourth Amendment to the United States Constitution or under Article I Section 12 of the Florida Constitution. It is not clear if the intent of the bill is to allow law enforcement records custodians to use case law based on a reasonable expectation of privacy as has been construed in a search and seizure context in order to decide when to release a record.

⁴² *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1998).

⁴³ *Id* at 151.

⁴⁴ *Winfield v. Division of Pari-Mutual Wagering, Department of Business Regulation*, 477 So.2d 544, 547 (Fla. 1985).

⁴⁵ *Id*. 547.

⁴⁶ *Shaktman*, 553 So.2d at 150.

⁴⁷ *Shaktman*, 533 So.2d at 153. In his concurring opinion, the Chief Justice Ehrlich opined that “the zone of privacy covered by article I, section 23, can be determined only by reference to the expectations of each individual, and those expectations are protected provided they are not spurious or false. A determination of whether an individual has a legitimate expectation of privacy in any given case must be made by considering all the circumstances, especially objective manifestations of that expectation; for example, in cases where disclosure of purportedly private information is sought, circumstances, such as the kind of information, where it is kept, who has access to it and under what circumstances.” *Id*.

“the legislature has recognized the confidential nature of the exact type of information at issue.”⁴⁸ Likewise, the Second District Court of Appeal of Florida found that people have an expectation of privacy in their social security numbers, and as authority, noted that social security numbers were protected from disclosure by both federal and state law and by various rules of procedure.⁴⁹

The public records exception for recordings taken in a place where a person has a reasonable expectation of privacy may also be impermissibly broad under Article II section 3 of the Florida Constitution, which provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The Florida Supreme Court found that a public records exemption unconstitutional because the Legislature had delegated too much discretion to the state agency about when records could be released.⁵⁰ The Court stated that:

statutes granting power to administrative agencies must clearly announce adequate standards to guide the agencies in the execution of the powers delegated. The statute must so clearly define the power delegated that the administrative agency is precluded from acting through whim, showing favoritism or exercising unbridled discretion.⁵¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill permits the records custodian to allow an agent or attorney of a person recorded to inspect the audio or video recording, if the depicted person has provided authorization. The intent of the language is unclear as it implies that an agent or attorney would not have the depicted person’s authorization already and specific authorization is required. In addition, the language may be unnecessarily restrictive if it is read narrowly, because in some instances, the

⁴⁸ *Berkley v. Eisen* 699 So.2d 789, 791 (Fla. 4th DCA 1997).

⁴⁹ *Thomas v. Smith*, 882 So.2d 1037, 1045 (Fla. 2d DCA 2004),

⁵⁰ *Lewis v. Bank of Pasco County*, 346 So.2d 53 (Fla. 1976).

⁵¹ *Lewis*, 346 So.2d at 55-56.

person depicted may not have the capacity to give authorization. For example, if the person in the recording is deceased or incompetent he or she may not have the legal capacity to give his or her authorization.

The bill also provides that the records custodian may permit a third party to view the recording if all the people depicted in the recording give their consent. There are some practical problems with this provision because the records custodian may not be able to identify or locate everyone depicted. In addition, if any one person objects, the recording may not necessarily be released. For example, if a person who fears civil liability in an action objects, then he or she may bar a third party from reviewing the video.

These are technical deficiencies because the bill provides that the records are exempt, and not confidential and exempt. Exempt records may be released at the discretion of the records custodian, who is not necessarily required to limit the release of the recordings to the provisions of this bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 92.56; 119.011; 119.071; 119.0714; 784.046; 794.024; and 794.03.

IX. Additional Information:

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

CS by Criminal Justice on February 16, 2015:

- Creates a public records exemption for an audio or video recording made by a law enforcement officer in the course of the officer performing his or her official duties or responsibilities, if the recording is taken within certain locations, shows a minor inside a school or on school property, or shows a child younger than 14 years of age at any location.
- Specifies how the exemption operates in relation to other exemptions that may apply.
- Provides for future legislative review and repeal of the exemption under the Open Government Sunset Review Act.
- Authorizes the law enforcement agency with custody over the recording to disclose the recording to another law enforcement agency in furtherance of that agency's official duties and responsibilities.
- Specifies persons who may inspect the recording.
- Requires a law enforcement agency to have a retention policy of not longer than 90 days for the audio or video recordings unless the recording is part of an active criminal investigation or criminal intelligence operation or a court orders its retention for a longer period.

- Requires a law enforcement agency to disclose its records retention policy for recordings under the new exemption.
- Provides a statement of public necessity for 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.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (g) through (k) of subsection (2) of
section 119.071, Florida Statutes, are redesignated as
paragraphs (h) through (l), respectively, and a new paragraph
(g) is added to that subsection, to read:

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



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11 (2) AGENCY INVESTIGATIONS.-

12 (g)1. An audio or video recording made by a law enforcement
13 officer in the course of the officer performing his or her
14 official duties and responsibilities is exempt from 119.07(1)
15 and s. 24(a), Art. 1 of the State Constitution, if the
16 recording:

17 a. Is taken within the interior of a private residence;

18 b. Is taken on the property of a facility that offers
19 health care, mental health care, or social services;

20 c. Is taken at the scene of a medical emergency; or

21 d. Is taken in a place where a person recorded or depicted
22 in the recording has a reasonable expectation of privacy.

23 2. If the audio or video recording or a portion of such
24 recording is exempt or confidential and exempt pursuant to
25 another law, that exemption applies and determines under which
26 circumstances, if any, the recording or a portion of the
27 recording may be disclosed to the public.

28 3. The law enforcement agency having custody of an audio or
29 video recording described in subparagraph 1. may disclose the
30 recording to another law enforcement agency in furtherance of
31 that agency's official duties and responsibilities.

32 4.a. In accordance with s. 119.07, the following persons
33 may inspect an audio or video recording described in
34 subparagraph 1.:

35 (I) A person recorded or depicted in the recording.

36 (II) The agent or attorney of a person recorded or depicted
37 in the recording, if inspection is authorized by that person or
38 his or her legal representative.

39 (III) A person not recorded or depicted in the recording,



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40 if inspection is authorized by all persons recorded or depicted
41 in the recording.

42 b. This subparagraph does not apply to information in the
43 recording that is exempt or confidential and exempt pursuant to
44 another provision of law.

45 5. A law enforcement agency under this paragraph must have
46 a retention policy of not shorter than 4 years for audio or
47 video recordings unless the audio or video recording is part of
48 an active criminal investigation or criminal intelligence
49 operation or a court orders its retention for a longer period. A
50 law enforcement agency must disclose its records retention
51 policy for audio or video recordings under this paragraph.

52 6. This exemption shall be given retroactive application
53 unless the audio or video recording or a portion of such
54 recording is exempt or confidential and exempt pursuant to
55 another exemption, then that exemption determines if
56 retroactivity applies.

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

61 Section 2. Paragraph (a) of subsection (1) of section
62 92.56, Florida Statutes, is amended to read:

63 92.56 Judicial proceedings and court records involving
64 sexual offenses and human trafficking.—

65 (1)(a) The confidential and exempt status of criminal
66 intelligence information or criminal investigative information
67 made confidential and exempt pursuant to s. 119.071(2)(i) ~~s.~~
68 ~~119.071(2)(h)~~ must be maintained in court records pursuant to s.



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69 119.0714(1) (h) and in court proceedings, including testimony
70 from witnesses.

71 Section 3. Paragraph (c) of subsection (3) of section
72 119.011, Florida Statutes, is amended to read:

73 119.011 Definitions.—As used in this chapter, the term:

74 (3)

75 (c) "Criminal intelligence information" and "criminal
76 investigative information" shall not include:

77 1. The time, date, location, and nature of a reported
78 crime.

79 2. The name, sex, age, and address of a person arrested or
80 of the victim of a crime except as provided in s. 119.071(2) (i)
81 ~~s. 119.071(2) (h)~~.

82 3. The time, date, and location of the incident and of the
83 arrest.

84 4. The crime charged.

85 5. Documents given or required by law or agency rule to be
86 given to the person arrested, except as provided in s.
87 119.071(2) (i) ~~s. 119.071(2) (h)~~, and, except that the court in a
88 criminal case may order that certain information required by law
89 or agency rule to be given to the person arrested be maintained
90 in a confidential manner and exempt from the provisions of s.
91 119.07(1) until released at trial if it is found that the
92 release of such information would:

93 a. Be defamatory to the good name of a victim or witness or
94 would jeopardize the safety of such victim or witness; and

95 b. Impair the ability of a state attorney to locate or
96 prosecute a codefendant.

97 6. Informations and indictments except as provided in s.



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98 905.26.

99 Section 4. Paragraph (h) of subsection (1) of section
100 119.0714, Florida Statutes, is amended to read:

101 119.0714 Court files; court records; official records.—

102 (1) COURT FILES.—Nothing in this chapter shall be construed
103 to exempt from s. 119.07(1) a public record that was made a part
104 of a court file and that is not specifically closed by order of
105 court, except:

106 (h) Criminal intelligence information or criminal
107 investigative information that is confidential and exempt as
108 provided in s. 119.071(2)(i) ~~s. 119.071(2)(h)~~.

109 Section 5. Paragraph (b) of subsection (4) of section
110 784.046, Florida Statutes, is amended to read:

111 784.046 Action by victim of repeat violence, sexual
112 violence, or dating violence for protective injunction; dating
113 violence investigations, notice to victims, and reporting;
114 pretrial release violations; public records exemption.—

115 (4)

116 (b) The sworn petition must be in substantially the
117 following form:

118

119 PETITION FOR INJUNCTION FOR PROTECTION
120 AGAINST REPEAT VIOLENCE, SEXUAL
121 VIOLENCE, OR DATING VIOLENCE
122

123 Before me, the undersigned authority, personally appeared
124 Petitioner ...(Name)..., who has been sworn and says that the
125 following statements are true:
126



127 1. Petitioner resides at ...(address)... (A petitioner for
 128 an injunction for protection against sexual violence may furnish
 129 an address to the court in a separate confidential filing if,
 130 for safety reasons, the petitioner requires the location of his
 131 or her current residence to be confidential pursuant to s.
 132 119.071(2)(k) ~~s. 119.071(2)(j)~~, Florida Statutes.)

133 2. Respondent resides at ...(address)....

134 3.a. Petitioner has suffered repeat violence as
 135 demonstrated by the fact that the respondent has:

136 ...(enumerate incidents of violence)...

137
 138
 139
 140

141
 142 b. Petitioner has suffered sexual violence as demonstrated
 143 by the fact that the respondent has: ...(enumerate incident of
 144 violence and include incident report number from law enforcement
 145 agency or attach notice of inmate release.)...

146
 147
 148
 149

150
 151 c. Petitioner is a victim of dating violence and has
 152 reasonable cause to believe that he or she is in imminent danger
 153 of becoming the victim of another act of dating violence or has
 154 reasonable cause to believe that he or she is in imminent danger
 155 of becoming a victim of dating violence, as demonstrated by the



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156 fact that the respondent has: ...(list the specific incident or
157 incidents of violence and describe the length of time of the
158 relationship, whether it has been in existence during the last 6
159 months, the nature of the relationship of a romantic or intimate
160 nature, the frequency and type of interaction, and any other
161 facts that characterize the relationship.)...

162
163
164
165

166
167 4. Petitioner genuinely fears repeat violence by the
168 respondent.

169 5. Petitioner seeks: an immediate injunction against the
170 respondent, enjoining him or her from committing any further
171 acts of violence; an injunction enjoining the respondent from
172 committing any further acts of violence; and an injunction
173 providing any terms the court deems necessary for the protection
174 of the petitioner and the petitioner's immediate family,
175 including any injunctions or directives to law enforcement
176 agencies.

177 Section 6. Subsection (1) of section 794.024, Florida
178 Statutes, is amended to read:

179 794.024 Unlawful to disclose identifying information.—

180 (1) A public employee or officer who has access to the
181 photograph, name, or address of a person who is alleged to be
182 the victim of an offense described in this chapter, chapter 800,
183 s. 827.03, s. 827.04, or s. 827.071 may not willfully and
184 knowingly disclose it to a person who is not assisting in the



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185 investigation or prosecution of the alleged offense or to any
186 person other than the defendant, the defendant's attorney, a
187 person specified in an order entered by the court having
188 jurisdiction of the alleged offense, or organizations authorized
189 to receive such information made exempt by s. 119.071(2)(i) ~~s.~~
190 ~~119.071(2)(h)~~, or to a rape crisis center or sexual assault
191 counselor, as defined in s. 90.5035(1)(b), who will be offering
192 services to the victim.

193 Section 7. Section 794.03, Florida Statutes, is amended to
194 read:

195 794.03 Unlawful to publish or broadcast information
196 identifying sexual offense victim.—No person shall print,
197 publish, or broadcast, or cause or allow to be printed,
198 published, or broadcast, in any instrument of mass communication
199 the name, address, or other identifying fact or information of
200 the victim of any sexual offense within this chapter, except as
201 provided in s. 119.071(2)(i) ~~s. 119.071(2)(h)~~ or unless the
202 court determines that such information is no longer confidential
203 and exempt pursuant to s. 92.56. An offense under this section
204 shall constitute a misdemeanor of the second degree, punishable
205 as provided in s. 775.082 or s. 775.083.

206 Section 8. The Legislature finds that it is a public
207 necessity that an audio or video recording made by a law
208 enforcement officer in the course of the officer performing his
209 or her official duties and responsibilities be made exempt from
210 the public records requirements of s. 119.07(1), Florida
211 Statutes, and s. 24(a), Article I of the State Constitution, if
212 the recording: is taken within the interior of a private
213 residence; is taken on the property of a facility that offers



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214 health care, mental health care, or social services; is taken at
215 the scene of a medical emergency; is taken at a place where a
216 person recorded or depicted in the recording has a reasonable
217 expectation of privacy. The Legislature finds that information
218 recorded by these devices in these circumstances is
219 significantly more likely to include highly sensitive personal
220 information regarding the persons recorded than in other
221 circumstances. The Legislature finds that public disclosure of
222 these recordings could have an undesirable, chilling effect:
223 persons who know sensitive personal information about them is
224 being or may be recorded may be unwilling to cooperate with law
225 enforcement officers and make calls for the services of law
226 enforcement officers. This exemption allows law enforcement
227 officers to more effectively and efficiently administer their
228 duties, which would otherwise be significantly impaired. In the
229 case of minors, information about those minors could jeopardize
230 their safety if the minors' identities and whereabouts are
231 recorded and open for anyone to request and keep. The
232 Legislature recognizes an individual's right to be free of
233 government intrusion as codified in s. 23, Article I of the
234 State Constitution and finds that these exemptions to the public
235 records laws do not limit the public's right to open government.
236 The Legislature finds that these interests or concerns not only
237 necessitate the exemption of the recordings but outweigh any
238 public benefit that may be derived from their disclosure.

239 Section 9. This act shall take effect July 1, 2015.

240
241 ===== T I T L E A M E N D M E N T =====

242 And the title is amended as follows:



243 Delete everything before the enacting clause
244 and insert:

245 A bill to be entitled
246 An act relating to public records; amending s.
247 119.071, F.S.; providing an exemption from public
248 record requirements for an audio or video recording
249 made by a law enforcement officer in the course of the
250 officer performing his or her official duties and
251 responsibilities, if the recording is taken within
252 certain locations; specifying how the exemption
253 operates in relation to other exemptions that may
254 apply to the recording; authorizing the law
255 enforcement agency with custody over the recording to
256 disclose the recording to another law enforcement
257 agency in furtherance of that agency's official duties
258 and responsibilities; specifying persons who may
259 inspect the recording; requiring a law enforcement
260 agency to have a retention policy for audio or video
261 recordings of not shorter than 4 years; providing an
262 exception; requiring a law enforcement agency to
263 disclose its records retention policy for audio or
264 video recordings; providing retroactive application of
265 the exemption; providing an exception; providing for
266 future legislative review and repeal of the exemption
267 under the Open Government Sunset Review Act; amending
268 ss. 92.56, 119.011, 119.0714, 784.046, 794.024, and
269 794.03, F.S.; conforming cross-references; providing a
270 statement of public necessity; providing an effective
271 date.

By the Committee on Criminal Justice; and Senators Smith,
Thompson, and Bullard

591-01634-15

2015248c1

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; providing an exemption from public
4 record requirements for an audio or video recording
5 made by a law enforcement officer in the course of the
6 officer performing his or her official duties and
7 responsibilities, if the recording is taken within
8 certain locations, shows a minor inside a school or on
9 school property, or shows a child younger than 14
10 years of age at any location; specifying how the
11 exemption operates in relation to other exemptions
12 that may apply to the recording; providing for future
13 legislative review and repeal of the exemption under
14 the Open Government Sunset Review Act; authorizing the
15 law enforcement agency with custody over the recording
16 to disclose the recording to another law enforcement
17 agency in furtherance of that agency's official duties
18 and responsibilities; specifying persons who may
19 inspect the recording; requiring a law enforcement
20 agency to have a retention policy for audio or video
21 recordings of not longer than 90 days; providing an
22 exception; requiring a law enforcement agency to
23 disclose its records retention policy for audio or
24 video recordings; amending ss. 92.56, 119.011,
25 119.0714, 784.046, 794.024, and 794.03, F.S.;

26 conforming cross-references; providing a statement of
27 public necessity; providing an effective date.
28
29 Be It Enacted by the Legislature of the State of Florida:

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

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2015248c1

30
31 Section 1. Paragraphs (g), (h), (i), (j), and (k) of
32 subsection (2) of section 119.071, Florida Statutes, are
33 redesignated as paragraphs (h), (i), (j), (k), and (l),
34 respectively, and paragraph (g) is added to that subsection, to
35 read:
36 119.071 General exemptions from inspection or copying of
37 public records.—
38 (2) AGENCY INVESTIGATIONS.—
39 (g)1. An audio or video recording made by a law enforcement
40 officer in the course of the officer performing his or her
41 official duties and responsibilities is exempt from 119.07(1)
42 and s. 24(a), Art. 1 of the State Constitution, if the
43 recording:
44 a. Is taken within the interior of a private residence;
45 b. Is taken on the property of a facility that offers
46 health care, mental health care, or social services;
47 c. Is taken at the scene of a medical emergency;
48 d. Is taken in a place where a person recorded or depicted
49 in the recording has a reasonable expectation of privacy; or
50 e. Shows a child younger than 18 years of age inside a
51 school, as defined in s. 1003.01, or on school property, as
52 defined in s. 810.095, or shows a child younger than 14 years of
53 age at any location.
54 2. If the audio or video recording or a portion of such
55 recording is exempt or confidential and exempt pursuant to
56 another exemption in this section, that exemption applies and
57 determines under which circumstances, if any, the recording or a
58 portion of the recording may be disclosed to the public.

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

63 4. The law enforcement agency having custody of an audio or
 64 video recording described in subparagraph 1. may disclose the
 65 recording to another law enforcement agency in furtherance of
 66 that agency's official duties and responsibilities.

67 5.a. In accordance with s. 119.07, the following persons
 68 may inspect an audio or video recording described in
 69 subparagraph 1.:

70 (I.) A person recorded or depicted in the recording.

71 (II.) The agent or attorney of a person recorded or
 72 depicted in the recording, if inspection is authorized by that
 73 person.

74 (III.) A person not recorded or depicted in the recording,
 75 if inspection is authorized by all persons recorded or depicted
 76 in the recording.

77 b. This subparagraph does not apply to information in the
 78 recording that is exempt or confidential and exempt pursuant to
 79 another provision of this section.

80 6. A law enforcement agency under this paragraph must have
 81 a retention policy of not longer than 90 days for audio or video
 82 recordings unless the audio or video recording is part of an
 83 active criminal investigation or criminal intelligence operation
 84 or a court orders its retention for a longer period. A law
 85 enforcement agency must disclose its records retention policy
 86 for audio or video recordings under this paragraph.

87 Section 2. Paragraph (a) of subsection (1) of section

591-01634-15

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88 92.56, Florida Statutes, is amended to read:

89 92.56 Judicial proceedings and court records involving
 90 sexual offenses and human trafficking.—

91 (1) (a) The confidential and exempt status of criminal
 92 intelligence information or criminal investigative information
 93 made confidential and exempt pursuant to s. 119.071(2)(i) ~~s.~~
 94 ~~119.071(2)(h)~~ must be maintained in court records pursuant to s.
 95 119.0714(1)(h) and in court proceedings, including testimony
 96 from witnesses.

97 Section 3. Paragraph (c) of subsection (3) of section
 98 119.011, Florida Statutes, is amended to read:

99 119.011 Definitions.—As used in this chapter, the term:

100 (3)

101 (c) "Criminal intelligence information" and "criminal
 102 investigative information" shall not include:

103 1. The time, date, location, and nature of a reported
 104 crime.

105 2. The name, sex, age, and address of a person arrested or
 106 of the victim of a crime except as provided in s. 119.071(2)(i)
 107 ~~s. 119.071(2)(h)~~.

108 3. The time, date, and location of the incident and of the
 109 arrest.

110 4. The crime charged.

111 5. Documents given or required by law or agency rule to be
 112 given to the person arrested, except as provided in s.
 113 119.071(2)(i) ~~s. 119.071(2)(h)~~, and, except that the court in a
 114 criminal case may order that certain information required by law
 115 or agency rule to be given to the person arrested be maintained
 116 in a confidential manner and exempt from the provisions of s.

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117 119.07(1) until released at trial if it is found that the
118 release of such information would:

- 119 a. Be defamatory to the good name of a victim or witness or
- 120 would jeopardize the safety of such victim or witness; and
- 121 b. Impair the ability of a state attorney to locate or
- 122 prosecute a codefendant.

123 6. Informations and indictments except as provided in s.
124 905.26.

125 Section 4. Paragraph (h) of subsection (1) of section
126 119.0714, Florida Statutes, is amended to read:

127 119.0714 Court files; court records; official records.-

128 (1) COURT FILES.-Nothing in this chapter shall be construed
129 to exempt from s. 119.07(1) a public record that was made a part
130 of a court file and that is not specifically closed by order of
131 court, except:

132 (h) Criminal intelligence information or criminal
133 investigative information that is confidential and exempt as
134 provided in s. 119.071(2)(i) ~~s. 119.071(2)(h)~~.

135 Section 5. Paragraph (b) of subsection (4) of section
136 784.046, Florida Statutes, is amended to read:

137 784.046 Action by victim of repeat violence, sexual
138 violence, or dating violence for protective injunction; dating
139 violence investigations, notice to victims, and reporting;
140 pretrial release violations; public records exemption.-

141 (4)

142 (b) The sworn petition must be in substantially the
143 following form:

144
145 PETITION FOR INJUNCTION FOR PROTECTION

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146 AGAINST REPEAT VIOLENCE, SEXUAL
147 VIOLENCE, OR DATING VIOLENCE

148
149 Before me, the undersigned authority, personally appeared
150 Petitioner ...(Name)..., who has been sworn and says that the
151 following statements are true:

152
153 1. Petitioner resides at ...(address)... (A petitioner for
154 an injunction for protection against sexual violence may furnish
155 an address to the court in a separate confidential filing if,
156 for safety reasons, the petitioner requires the location of his
157 or her current residence to be confidential pursuant to s.
158 119.071(2)(k) ~~s. 119.071(2)(j)~~, Florida Statutes.)

159 2. Respondent resides at ...(address)...

160 3.a. Petitioner has suffered repeat violence as
161 demonstrated by the fact that the respondent has:
162 ...(enumerate incidents of violence)...

163
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167
168 b. Petitioner has suffered sexual violence as demonstrated
169 by the fact that the respondent has: ...(enumerate incident of
170 violence and include incident report number from law enforcement
171 agency or attach notice of inmate release.)...

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c. Petitioner is a victim of dating violence and has reasonable cause to believe that he or she is in imminent danger of becoming the victim of another act of dating violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of dating violence, as demonstrated by the fact that the respondent has: ... (list the specific incident or incidents of violence and describe the length of time of the relationship, whether it has been in existence during the last 6 months, the nature of the relationship of a romantic or intimate nature, the frequency and type of interaction, and any other facts that characterize the relationship.)...

.....
.....
.....

4. Petitioner genuinely fears repeat violence by the respondent.

5. Petitioner seeks: an immediate injunction against the respondent, enjoining him or her from committing any further acts of violence; an injunction enjoining the respondent from committing any further acts of violence; and an injunction providing any terms the court deems necessary for the protection of the petitioner and the petitioner's immediate family, including any injunctions or directives to law enforcement agencies.

Section 6. Subsection (1) of section 794.024, Florida

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Statutes, is amended to read:

794.024 Unlawful to disclose identifying information.—
(1) A public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of an offense described in this chapter, chapter 800, s. 827.03, s. 827.04, or s. 827.071 may not willfully and knowingly disclose it to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in an order entered by the court having jurisdiction of the alleged offense, or organizations authorized to receive such information made exempt by s. 119.071(2)(i) ~~s. 119.071(2)(h)~~, or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), who will be offering services to the victim.

Section 7. Section 794.03, Florida Statutes, is amended to read:

794.03 Unlawful to publish or broadcast information identifying sexual offense victim.—No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter, except as provided in s. 119.071(2)(i) ~~s. 119.071(2)(h)~~ or unless the court determines that such information is no longer confidential and exempt pursuant to s. 92.56. An offense under this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. The Legislature finds that it is a public

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233 necessity that an audio or video recording made by a law
234 enforcement officer in the course of the officer performing his
235 or her official duties and responsibilities be made exempt from
236 the public records requirements of s. 119.07(1) and s. 24(a),
237 Article I of the State Constitution, if the recording: is taken
238 within the interior of a private residence; is taken on the
239 property of a facility that offers health care, mental health
240 care, or social services; is taken at the scene of a medical
241 emergency; is taken at a place where a person recorded or
242 depicted in the recording has a reasonable expectation of
243 privacy; or shows a child younger than 18 years of age inside a
244 school or on school property or a child younger than 14 years of
245 age at any location. The Legislature finds that information
246 recorded by these devices in these circumstances is
247 significantly more likely to include highly sensitive personal
248 information regarding the persons recorded than in other
249 circumstances. The Legislature finds that public disclosure of
250 these recordings could have an undesirable, chilling effect:
251 persons who know sensitive personal information about them is
252 being or may be recorded may be unwilling to cooperate with law
253 enforcement officers and make calls for the services of law
254 enforcement officers. In the case of minors, information about
255 those minors could jeopardize their safety. The Legislature
256 finds that these interests or concerns not only necessitate the
257 exemption of the recordings but outweigh any public benefit that
258 may be derived from their disclosure.

259 Section 9. This act shall take effect July 1, 2015.

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 Governmental Oversight and Accountability

BILL: SB 556

INTRODUCER: Senator Montford

SUBJECT: State Symbols

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

SB 556 designates Tupelo honey as the official state honey.

II. Present Situation:

Currently, no honey is designated as the official state honey.

Chapter 15, F.S., designates official state emblems. To date, there are designations for a state tree, fruit, beverage, citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal, saltwater mammal, butterfly, reptile, saltwater reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera, renaissance festival, railroad museums, transportation museum, flagship, soil, fiddle contest, band, sports hall of fame, pie, maritime museum, and horse.

Tupelo honey is produced from the Ogeechee Tupelo (*Nyssa ogeche*) tree. The Ogeechee Tupelo is known as “an important honey tree” and is located along rivers, swamps and ponds of the Coastal Plain that are frequently flooded.¹ The Ogeechee Tupelo is also known as the White Tupelo and ranges from the Ogeechee River of Georgia to the Apalachicola and Chattahoochee River basins of northwest Florida.² The White Tupelo has a short blossoming season in April and May.³ Tupelo honey will not granulate, and some doctors recommend this honey to diabetic patients due to its high laevulose content.⁴

¹ See U.S. Forest Service website located at http://www.na.fs.fed.us/pubs/silvics_manual/volume_2/nyssa/ogeche.htm.

² See Tupelo Beekeepers Association website located at <http://www.tupelobeekeepers.com/>.

³ *Id.*

⁴ *Id.*

III. Effect of Proposed Changes:

Section 1 creates s. 15.0521, F.S., to designate Tupelo honey as the official honey of Florida.

Section 2 provides that this act shall take effect upon becoming a law.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 15.0521 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Montford

3-00904-15

2015556__

1 A bill to be entitled
2 An act relating to state symbols; creating s. 15.0521,
3 F.S.; designating tupelo honey as the official state
4 honey; providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Section 15.0521, Florida Statutes, is created to
9 read:

10 15.0521 Official state honey.—Tupelo honey is designated as
11 the official Florida state honey.

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

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 Governmental Oversight and Accountability

BILL: SB 574

INTRODUCER: Senator Montford

SUBJECT: Government Procurement

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Pre-meeting
2.			AED	
3.			AP	

I. Summary:

SB 574 recognizes “reverse auctions” as a means to procure commodities and contractual services. A reverse auction allows eligible users to submit electronic bids for goods and services in real time on a website that uses third-party software managed by an approved vendor and state agency or other governmental entity. The bill revises the term “eligible user.” The Department of Management Services (DMS) is required to maintain a program for reverse auctions and to adopt rules to administer reverse auctions. DMS is authorized to contract for equipment and services to implement reverse auctions.

The authority of the Department of Agriculture and Consumer Services to use its own online system for procuring commodities and contractual services remains unchanged. SB 574 authorizes the Department of Education to conduct reverse auctions and other online procurement programs in providing assistance to district school boards. The bill authorizes the Board of Governors to adopt regulations governing a university’s participation in reverse auctions.

The bill also reenacts specified sections of F.S. to incorporate changes made to ch. 287, F.S.

II. Present Situation:

Chapter 287, F.S., regulates state agency¹ procurement of personal property and services.² Agencies may use a variety of procurement methods, depending on the cost and characteristics

¹ As defined in s. 287.012(1), F.S., “agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

² Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- "Single source contracts," which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- "Invitations to bid (ITB)," which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- "Requests for proposals (RFP)," which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- "Invitations to negotiate (ITN)," which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.³

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁴ However, specified contractual services and commodities are not subject to competitive-solicitation requirements.⁵

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by DMS, a water management district, or state agencies.⁶

Online Procurement of Commodities and Contractual Services

Pursuant to s. 287.057(22), F.S., DMS is required to maintain a program for online procurement of commodities and contractual services in consultation with the Chief Financial Officer (Department of Financial Services) and the Agency for State Technology (AST). DMS has authority to contract for equipment and services to develop and implement online procurement in consultation with the AST and in compliance with standards of AST.⁷ DMS is required to adopt rules for the administration of the program for online procurement.⁸ DMS may also impose and collect fees for use of the online procurement system.⁹

DMS's online procurement program is MyFloridaMarketPlace (MFMP). MFMP is used by the Division of State Purchasing for formal solicitations (ITB, RFP, and ITN) and by state agencies

³ See ss. 287.012(6) and 287.057, F.S.

⁴ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁵ See s. 287.057(3)(e), F.S.

⁶ See ss. 287.042(2)(c) and 120.57(3), F.S.

⁷ Section 287.057(22)(a), F.S. Also, see s. 282.0051(4), F.S. (AST has responsibility to perform project oversight on all state agency information technology project costs of \$10 million or more that are funded in the General Appropriations Act or other law.)

⁸ Section 287.057(22)(b), F.S. See Rules 60A-1.030-1.033, F.A.C.

⁹ Section 287.057(22)(c), F.S.

for informal quotes and electronic invoicing.¹⁰ MFMP has been in operation for more than ten years.¹¹

Section 570.07(42), F.S., provides the Department of Agriculture and Consumer Services with the authority to utilize its own online system for procurement of commodities and contractual services.

Reverse Auctions

Reverse auctions are not a current method of procuring commodities and contractual services for state agencies under Ch. 287, F.S. DMS's MFMP sourcing application has conducted reverse auctions within the confines of the existing competitive procurement solicitations of ITB, RFP, and ITN. The MFMP application has inherent reverse auction functionality. In reverse auctions, vendors do not see the prices of competing vendors, because of the sealed bid, proposal or reply requirements of s. 287.057, F.S., but they do see their ranking.¹² DMS previously used this functionality to conduct two reverse auctions: 1) In 2007 for STC 250-040-08-1 for PCs, Laptops and Monitors, and 2) Office Supplies and Toner Cartridges.

The reverse auction functionality is available for use by the Division of State Purchasing. To roll-out this functionality, state agencies would require system changes to the MFMP application; however, to support a state agency pilot those changes could be accomplished for minimal cost.

Additionally, the vendor community has used MFMP to respond to formal solicitations conducted by the Division of State Purchasing and informal quotes by state agencies. Through the MFMP Utilization Initiative, DMS has made a significant investment in communicating and training vendors in how to use MFMP application. Using the reverse auction functionality of MFMP would require minimal additional vendor training efforts, however, transitioning to a new third party system would require vendors to become familiar with a wholly new system.

III. Effect of Proposed Changes:

Section 1 amends s. 287.012, F.S., to define "reverse auction" and amend the definition of "eligible user."

"Reverse auction" is defined as a procurement of commodities or contractual services conducted on a centralized website that uses third-party software and is jointly managed by an approved vendor and state agency or other governmental entity using state procurement processes. Eligible users submit electronic bids through the website in response to a competitive solicitation.

The definition of the term "eligible user" includes those that "participate in reverse auctions". The term "eligible user" would appear to include vendors selling commodities or services to state

¹⁰ Analysis from DMS dated February 3, 2015, on file with the Committee on Governmental Oversight and Accountability.

¹¹ See http://www.dms.myflorida.com/business_operations/state_purchasing.

¹² DMS analysis dated February 3, 2015.

agencies. Section 287.057, F.S., describes bids for procurements as sealed prior to bidding. A reverse auction requires bids to be open.

Section 2 amends s. 287.057, F.S., to require the Department of Management Services to:

- maintain a program for reverse auctions;
- contract for equipment and services necessary for reverse auctions;
- adopt rules for reverse auctions;
- impose and collect fees for reverse auctions; and
- compensate a provider for managing a reverse auction website.

Section 3 amends s. 570.07(42), F.S., by revising the functions, powers, and duties of the Department of Agriculture and Consumer Services to conform to changes made by this bill.

Section 4 amends s. 1006.27(1), F.S., by authorizing the Department of Education (DOE) to use reverse auctions and other online procurement programs in assisting district school boards with purchases of buses, equipment and supplies and by requiring DOE to adopt rules establishing procedures for the use of reverse auctions by district school boards.

Section 5 amends s. 1010.04(4)(b), F.S., by providing the Board of Governors with authority to adopt regulations governing a state university's participation in reverse auctions.

Section 6 reenacts sections 120.57(3)(g) and 283.33(3), F.S., relating to procedures for a protest of a contract solicitation or award and contracts for printing of publications to incorporate amendments made by this bill to s. 287.012, F.S.

Section 7 reenacts s. 627.351(6)(e), F.S., relating to Citizens Property Insurance Corporation's purchase of commodities and contractual services for the purpose of incorporating amendments made by this bill to s. 287.057, F.S.

Section 8 provides an effective date of July 1, 2015.

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.

C. Government Sector Impact:

Minimal.

VI. Technical Deficiencies:

The concept of reverse auctions requires that bids be open so that vendors can bid against each other. This conflicts with the sealed bid requirement of s. 287.057, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 287.012, 287.057, 570.07, 1006.27, and 1010.04.

This bill reenacts the following sections of the Florida Statutes: 120.57(3)(g), 283.33(3), and 627.351(6)(e).

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.



824732

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (i) of subsection (12) of section
1001.42, Florida Statutes, is amended to read:

1001.42 Powers and duties of district school board.—The
district school board, acting as a board, shall exercise all
powers and perform all duties listed below:

(12) FINANCE.—Take steps to assure students adequate



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11 educational facilities through the financial procedure
12 authorized in chapters 1010 and 1011 and as prescribed below:

13 (i) *Contracts for materials, supplies, and services.*—
14 Contract for materials, supplies, and services needed for the
15 district school system. No contract for supplying these needs
16 shall be made with any member of the district school board, with
17 the district school superintendent, or with any business
18 organization in which any district school board member or the
19 district school superintendent has any financial interest
20 whatsoever. The district school board may adopt rules to
21 facilitate the efficient and effective procurement of materials,
22 supplies, and services, including the use of online procurement
23 and electronic auction services. For purposes of this paragraph,
24 the term "electronic auction services" means a competitive
25 procurement conducted on a centralized website using third-party
26 software, jointly managed by an approved vendor and the district
27 school board, for the purpose of obtaining competitive prices in
28 an auction environment.

29 Section 2. Subsection (1) of section 1006.27, Florida
30 Statutes, is amended to read:

31 1006.27 Pooling of school buses and related purchases by
32 district school boards; transportation services contracts.—

33 (1) The department shall assist district school boards in
34 securing school buses, contractual needs, equipment, and
35 supplies at as reasonable prices as possible by providing a plan
36 under which district school boards may voluntarily pool their
37 bids for such purchases. The department shall prepare bid forms
38 and specifications, obtain quotations of prices and make such
39 information available to district school boards in order to



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40 facilitate this service and use electronic auction services, as
41 defined in s. 1001.42(12)(i), or other efficient procurement
42 tools. District schools may also use electronic auction services
43 or other efficient procurement tools for such purchases.

44 District school boards from time to time, as prescribed by State
45 Board of Education rule, shall furnish the department with
46 information concerning the prices paid for such items and the
47 department shall furnish to district school boards periodic
48 information concerning the lowest prices at which school buses,
49 equipment, and related supplies are available based upon
50 comparable specifications.

51 Section 3. This act shall take effect July 1, 2015.

52
53 ===== T I T L E A M E N D M E N T =====

54 And the title is amended as follows:

55 Delete everything before the enacting clause
56 and insert:

57 A bill to be entitled
58 An act relating to electronic auction services;
59 amending s. 1001.42, F.S.; revising the powers and
60 duties of the district school board to authorize the
61 adoption of rules regarding procurement practices;
62 defining the term "electronic auction services";
63 amending s. 1006.27, F.S.; authorizing a district
64 school board's use of electronic auction services in
65 conjunction with bid pooling for school buses and
66 related purchases; providing an effective date.

By Senator Montford

3-00643-15

2015574__

1 A bill to be entitled
 2 An act relating to government procurement; amending s.
 3 287.012, F.S.; revising the term "eligible user";
 4 defining the term "reverse auction"; amending s.
 5 287.057, F.S.; requiring the Department of Management
 6 Services to maintain a program for reverse auctions;
 7 authorizing the department to contract for equipment
 8 and services necessary to implement reverse auctions;
 9 requiring the department to adopt certain rules;
 10 authorizing the department to impose and collect fees
 11 for use of the reverse auction program; requiring the
 12 department to compensate a provider for managing a
 13 reverse auction website under specified conditions;
 14 amending s. 570.07, F.S.; revising the functions,
 15 powers, and duties of the Department of Agriculture
 16 and Consumer Services to conform to changes made by
 17 the act; amending s. 1006.27, F.S.; authorizing the
 18 Department of Education to use reverse auctions and
 19 other online procurement programs in assisting
 20 district school boards with transportation services
 21 contracts; requiring the State Board of Education to
 22 adopt certain rules; amending s. 1010.04, F.S.;
 23 authorizing the Board of Governors to adopt
 24 regulations establishing procedures governing a state
 25 university's participation in reverse auctions and
 26 other online procurement programs; reenacting ss.
 27 120.57(3)(g) and 283.33(3), F.S., relating to
 28 procedures for a protest of a contract solicitation or
 29 award and contracts for printing of publications,

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

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30 respectively, to incorporate the amendments made to s.
 31 287.012, F.S., in references thereto; reenacting s.
 32 627.351(6)(e), F.S., relating to Citizens Property
 33 Insurance Corporation, to incorporate the amendments
 34 made to s. 287.057, F.S., in a reference thereto;
 35 providing an effective date.
 36

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

38
 39 Section 1. Subsection (11) of section 287.012, Florida
 40 Statutes, is amended, present subsections (28) and (29) are
 41 redesignated as subsections (29) and (30), respectively, and a
 42 new subsection (28) is added to that section, to read:

43 287.012 Definitions.—As used in this part, the term:

44 (11) "Eligible user" means any person or entity authorized
 45 by the department pursuant to rule to purchase from state term
 46 contracts, ~~or~~ to use the online procurement system, or
 47 participate in reverse auctions.

48 (28) "Reverse auction" means a procurement of commodities
 49 or contractual services conducted on a centralized website that
 50 uses third-party software and is jointly managed by an approved
 51 vendor and an agency or other governmental entity using the
 52 procurement processes in s. 287.057 or other applicable law.
 53 Eligible users are allowed to submit bids electronically in real
 54 time through the website in response to a competitive
 55 solicitation.

56 Section 2. Subsection (22) of section 287.057, Florida
 57 Statutes, is amended to read:

58 287.057 Procurement of commodities or contractual

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services.-

(22) The department, in consultation with the Chief Financial Officer and the Agency for State Technology, shall maintain a program for online procurement of commodities and contractual services and reverse auctions. To enable the state to promote open competition and leverage its buying power, agencies shall participate in the online procurement program and reverse auctions, and eligible users may participate in either ~~the~~ program. Only vendors prequalified as meeting mandatory requirements and qualifications criteria may participate in online procurement and reverse auctions.

(a) The department, in consultation with the Agency for State Technology and in compliance with the standards of the agency, may contract for equipment and services necessary to develop and implement online procurement and reverse auctions.

(b) The department shall adopt rules to administer the program for online procurement and reverse auctions. The rules must include, but not be limited to:

1. Determining the requirements and qualification criteria for prequalifying vendors.

2. Establishing the procedures for conducting online procurement and reverse auction events.

3. Establishing the criteria for eligible commodities and contractual services.

4. Establishing the procedures for providing access to online procurement and reverse auction events.

5. Determining the criteria warranting any exceptions to participation in the online procurement program and reverse auctions.

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(c) The department may impose and shall collect all fees for the use of the online procurement systems and reverse auctions.

1. The fees may be imposed on an individual transaction basis or as a fixed percentage of the cost savings generated. At a minimum, the fees must be set in an amount sufficient to cover the projected costs of the services, including administrative and project service costs in accordance with the policies of the department.

2. If the department contracts with a provider for online procurement or for management of a website that administers reverse auctions, the department, pursuant to appropriation, shall compensate the provider from the fees after the department has satisfied all ongoing costs. The provider shall report transaction data to the department each month so that the department may determine the amount due and payable to the department from each vendor.

3. All fees that are due and payable to the state on a transactional basis or as a fixed percentage of the cost savings generated are subject to s. 215.31 and must be remitted within 40 days after receipt of payment for which the fees are due. For fees that are not remitted within 40 days, the vendor shall pay interest at the rate established under s. 55.03(1) on the unpaid balance from the expiration of the 40-day period until the fees are remitted.

4. All fees and surcharges collected under this paragraph shall be deposited in the Operating Trust Fund as provided by law.

Section 3. Subsection (42) of section 570.07, Florida

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117 Statutes, is amended to read:

118 570.07 Department of Agriculture and Consumer Services;
119 functions, powers, and duties.—The department shall have and
120 exercise the following functions, powers, and duties:

121 (42) Notwithstanding the provisions of s. 287.057(22) that
122 require all agencies to use the online procurement program or
123 reverse auctions system developed by the Department of
124 Management Services, the department may continue to use its own
125 online system. However, vendors using utilizing such system are
126 ~~shall be~~ prequalified as meeting mandatory requirements and
127 qualifications and shall remit fees pursuant to s. 287.057(22),
128 and any rules implementing s. 287.057.

129 Section 4. Subsection (1) of section 1006.27, Florida
130 Statutes, is amended to read:

131 1006.27 Pooling of school buses and related purchases by
132 district school boards; transportation services contracts.—

133 (1) The department shall assist district school boards in
134 securing school buses, contractual needs, equipment, and
135 supplies at as reasonable prices as possible by providing a plan
136 under which district school boards may voluntarily pool their
137 bids for such purchases. The department shall prepare bid forms
138 and specifications, obtain quotations of prices and make such
139 information available to district school boards in order to
140 facilitate this service. The service may also include the use of
141 reverse auctions as defined in s. 287.012 or other online
142 procurement programs. District school boards from time to time,
143 as prescribed by State Board of Education rule, shall furnish
144 the department with information concerning the prices paid for
145 such items and the department shall furnish to district school

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146 boards periodic information concerning the lowest prices at
147 which school buses, equipment, and related supplies are
148 available based upon comparable specifications. The State Board
149 of Education shall adopt rules establishing procedures for the
150 use of reverse auctions or other online procurement programs by
151 district school boards.

152 Section 5. Paragraph (b) of subsection (4) of section
153 1010.04, Florida Statutes, is amended to read:

154 1010.04 Purchasing.—

155 (4)

156 (b) The Board of Governors may, by regulation, provide for
157 alternative procedures, including reverse auctions as defined in
158 s. 287.012 or other online procurement programs, for state
159 universities for bidding or purchasing in cases in which the
160 character of the item requested renders competitive bidding
161 impractical.

162 Section 6. Paragraph (g) of subsection (3) of s. 120.57 and
163 subsection (3) of s. 283.33, Florida Statutes, are reenacted for
164 the purpose of incorporating the amendments made by this act to
165 s. 287.012, Florida Statutes, in references thereto.

166 Section 7. Paragraph (e) of subsection (6) of s. 627.351,
167 Florida Statutes, is reenacted for the purpose of incorporating
168 the amendments made by this act to s. 287.057, Florida Statutes,
169 in a reference thereto.

170 Section 8. This act shall take effect July 1, 2015.

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 Governmental Oversight and Accountability

BILL: SB 898

INTRODUCER: Senator Altman

SUBJECT: Special Risk Class

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	AP	_____

I. Summary:

SB 898 adds certified 911 public safety telecommunicators (911 operators) to the Special Risk Class of the Florida Retirement System (FRS). These members are not eligible to upgrade prior service in these positions from Regular Class to Special Risk Class.

For the certified 911 operators participating in the FRS pension plan, these members will be eligible to received unreduced normal retirement benefits at younger age and with less creditable service than members of the Regular Class participating in the FRS pension plan. However, it is unclear whether the annual accrual rate will increase from 1.6 percent per year (Regular Class) to 3 percent per year (Special Risk Class).

For the certified 911 operators participating in the FRS investment plan, the overall contribution in the investment account will increase from 6.3 percent of salary (Regular Class) to 14 percent of salary (Special Risk Class).

Regardless of whether the 911 operator participates in the FRS pension plan or the FRS investment plan, these members will be eligible for a higher disability benefit if the member is totally and permanently disabled in the line of duty. This benefit increases from a minimum of 42 percent of average final compensation (Regular Class) to a minimum of 65 percent of average final compensation (Special Risk Class).

The FRS-participating employers of the certified 911 operators (mostly counties and state agencies with law enforcement and firefighting responsibilities) will incur additional costs based on the higher employer-paid contributions assessed for members of the Special Risk Class (compared to the members of the Regular Class). As a percentage of payroll, the additional costs associated with each member moving from the Regular Class to the Special Risk Class will be

12.45 percentage points higher based on current contribution rates¹ and 14.78 percentage points based on the blended rates recommended by the state actuary for the 2014 FRS actuarial valuation.²

II. Present Situation:

911 Public Safety Telecommunicators

A “911 public safety telecommunicator” (911 operator) is public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls; dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency; providing real-time information from federal, state, and local crime databases; or supervising or serving as the command officer to a person or persons having such duties and responsibilities.³

Beginning October 1, 2012, any person employed as a 911 operator at a public safety answering point must be certified by the Department of Health (department).⁴ To be certified, the applicant must:

- Complete an appropriate 911 public safety telecommunication training program;
- Certify under oath that the applicant is not addicted to alcohol or any controlled substance;
- Certify under oath that the applicant is free from any physical or mental defect or disease that might impair the applicant’s ability to perform his duties;
- Pass an examination approved by the department which measures the applicant’s competency and proficiency in the subject material of the training program.⁵

The department also requires 20 hours of training for the biennial renewal certification of 911 operators.⁶

As of February 10, 2015, the department reported 8,222 certified 911 operators in Florida.

Membership in the Florida Retirement System

Currently, 911 operators are members of the Regular Class of the Florida Retirement System. The Regular Class of the FRS consists of state and local government employees who do not meet the criteria for membership in the Special Risk Class, the Special Risk Administrative Class, the Elected Officers’ Class or the Senior Management Service Class. As of June 30, 2014, there were 537,993 active members⁷ in the Regular Class of the FRS comprising roughly 86.5 percent of the active FRS membership.

¹ Section 121.71(4) and (5), F.S.

² See SB 7038 (2015)

³ Section 401.465(1)(a), F.S.

⁴ Section 401.465(2)(a), F.S.

⁵ Section 401.465(2)(d), F.S.

⁶ Section 401.465(2)(e), F.S.

⁷ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 115. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf. (last viewed on March 7, 2015).

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency and forensic medical care who meet statutory criteria for membership as set forth in s. 121.0515, F.S. As of June 30, 2014, there were 68,593 active members⁸ in the Special Risk Class of the FRS comprising roughly 11 percent of the active FRS membership.

In originally establishing the Special Risk Class of membership in the FRS, the Legislature recognized that persons employed in certain categories of positions:

are required to perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity, and that such persons, because of diminishing physical and mental faculties, may find that they are not able, without risk to the health and safety of themselves, the public, or their coworkers, to continue performing such duties and thus enjoy the full career and retirement benefits enjoyed by persons employed in other membership classes and that, if they find it necessary, due to the physical and mental limitations of their age, to retire at an earlier age and usually with less service, they will suffer an economic deprivation therefrom.⁹

The table below shows the differences between Regular Class membership and Special Risk Class membership in the FRS.

	Regular Class	Special Risk
Annual Service Credit	1.6 percent to 1.68 percent for each year of service	3 percent for each year of service
Unreduced Normal Retirement Benefit	If initially enrolled in the FRS before July 1, 2011: Age 62 and vested; Any age with 30 years of service. If initially enrolled in the FRS on or after July 1, 2011: Age 65 and vested; Any age with 33 years of service.	If initially enrolled in the FRS before July 1, 2011: Age 55 and vested; Any age with 25 years of service. If initially enrolled in the FRS on or after July 1, 2011: Age 60 and vested; Any age with 30 years of service.
Disability Retirement (totally and permanently disabled in the line of duty)	42 percent of average final compensation minimum with lifetime benefit (no survivor benefit)	65 percent of average final compensation minimum with lifetime benefit (no survivor benefit)
Investment Plan Contribution into member account	6.3 percent of salary (including 3 percent of member contribution)	14 percent of salary (including 3 percent of member contribution)

⁸ *Id.*

⁹ Section 121.0515(1), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 121.0515, F.S., to grant Special Risk Class membership to certified 911 public safety telecommunicators in the FRS.

Section 2 provides that this bill fulfills an important state interest.

The bill is effective July 1, 2015.

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

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated”.

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System who employ certified 911 public safety telecommunicators), including state agencies, universities, community colleges, counties, municipalities and special districts.

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:

FRS-participating employers of 911 operators will experience significant cost increases associated with including these employees in the Special Risk Class. As Regular Class members, the retirement contributions for these 911 operators are equal to 5.56 percent of

covered salaries. As Special Risk Class members, those costs will increase to 20.34 percent of covered salaries (a 365 percent increase in costs).

As previously noted, there were 8,222 certified 911 operators in Florida as of February 15, 2015. According to the Bureau of Labor Statistics, the median annual salary of similar positions in 2012 was \$36,300.¹⁰ If 50 percent of the certified 911 operators (4,111) are members of the FRS, the additional costs incurred by FRS-participating employers would be roughly \$22 million annually.

VI. Technical Deficiencies:

The bill adds certified 911 operators to the Special Risk Class. However, lines 182-184 states that the new members of the Special Risk Class are not eligible for the increased annual service accrual rate of 3 percent. There is no affirmative statement in the bill that directs a specific annual accrual rate for this class of positions.

VII. Related Issues:

If the certified 911 operators will not be eligible for the 3 percent accrual rate that other Special Risk Class members earn, their employers will be paying higher FRS contribution rates for benefits that are not offered to their employees.

VIII. Statutes Affected:

This bill substantially amends section 121.0515 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 Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2014-15 Edition*, Police, Fire, and Ambulance Dispatchers, on the Internet at <http://www.bls.gov/ooh/office-and-administrative-support/police-fire-and-ambulance-dispatchers.htm> (last visited March 8, 2015).

By Senator Altman

16-00892-15

2015898__

1 A bill to be entitled
 2 An act relating to the special risk class; amending s.
 3 121.0515, F.S.; revising criteria for membership in
 4 the special risk class to include members employed as
 5 911 public safety telecommunicators; providing that
 6 such a telecommunicator is not eligible for a certain
 7 adjustment in his or her monthly retirement benefit;
 8 making technical changes; declaring the act fulfills
 9 an important state interest; providing an effective
 10 date.

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

13
 14 Section 1. Paragraph (h) of subsection (2), subsection (3),
 15 and paragraph (d) of subsection (8) of section 121.0515, Florida
 16 Statutes, are amended to read:

17 121.0515 Special Risk Class.—

18 (2) MEMBERSHIP.—

19 (h) Effective August 1, 2008, "special risk member"
 20 includes any member who meets the special criteria for continued
 21 membership set forth in paragraph (3) (k) ~~(3) (j)~~.

22 (3) CRITERIA.—A member, to be designated as a special risk
 23 member, must meet the following criteria:

24 (a) Effective October 1, 1978, the member must be employed
 25 as a law enforcement officer and be certified, or required to be
 26 certified, in compliance with s. 943.1395, except that, however,
 27 sheriffs and elected police chiefs are not required to be
 28 certified ~~excluded from meeting the certification requirements~~
 29 ~~of this paragraph~~. In addition, the member's duties and

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30 responsibilities must include the pursuit, apprehension, and
 31 arrest of law violators or suspected law violators; or as of
 32 July 1, 1982, the member must be an active member of a bomb
 33 disposal unit whose primary responsibility is the location,
 34 handling, and disposal of explosive devices; or the member must
 35 be the supervisor or command officer of a member or members who
 36 have such responsibilities. Administrative support personnel,
 37 including, but not limited to, those whose primary duties and
 38 responsibilities are in accounting, purchasing, legal, and
 39 personnel, are not included;

40 (b) Effective October 1, 1978, the member must be employed
 41 as a firefighter and be certified, or required to be certified,
 42 in compliance with s. 633.408 and be employed solely within the
 43 fire department of a local government employer or an agency of
 44 state government with firefighting responsibilities. In
 45 addition, the member's duties and responsibilities must include
 46 on-the-scene fighting of fires; as of October 1, 2001, fire
 47 prevention or firefighter training; as of October 1, 2001,
 48 direct supervision of firefighting units, fire prevention, or
 49 firefighter training; or as of July 1, 2001, aerial firefighting
 50 surveillance performed by fixed-wing aircraft pilots employed by
 51 the Florida Forest Service of the Department of Agriculture and
 52 Consumer Services; or the member must be the supervisor or
 53 command officer of a member or members who have such
 54 responsibilities. ~~Administrative support personnel, including,~~
 55 ~~but not limited to, those whose primary duties and~~
 56 ~~responsibilities are in accounting, purchasing, legal, and~~
 57 ~~personnel, are not included.~~ All periods of creditable service
 58 in fire prevention or firefighter training, or as the supervisor

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59 or command officer of a member or members who have such
60 responsibilities, and for which the employer paid the special
61 risk contribution rate, are included. Administrative support
62 personnel, including, but not limited to, those whose primary
63 duties and responsibilities are in accounting, purchasing,
64 legal, and personnel, are not included;

65 (c) Effective October 1, 1978, the member must be employed
66 as a correctional officer and be certified, or required to be
67 certified, in compliance with s. 943.1395. In addition, the
68 member's primary duties and responsibilities must include ~~be~~ the
69 custody, and physical restraint ~~if~~ when necessary, of prisoners
70 or inmates within a prison, jail, or other criminal detention
71 facility, or while on work detail outside the facility, or while
72 being transported; or as of July 1, 1984, the member must be the
73 supervisor or command officer of a member or members who have
74 such responsibilities. Administrative support personnel,
75 including, but not limited to, those whose primary duties and
76 responsibilities are in accounting, purchasing, legal, and
77 personnel, are not included; however, wardens and assistant
78 wardens, as defined by rule, are included;

79 (d) Effective October 1, 1999, the member must be employed
80 by a licensed Advance Life Support (ALS) or Basic Life Support
81 (BLS) employer as an emergency medical technician or a paramedic
82 and be certified in compliance with s. 401.27. In addition, the
83 member's primary duties and responsibilities must include on-
84 the-scene emergency medical care or as of October 1, 2001,
85 direct supervision of emergency medical technicians or
86 paramedics, or the member must be the supervisor or command
87 officer of one or more members who have such responsibility.

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88 Administrative support personnel, including, but not limited to,
89 those whose primary responsibilities are in accounting,
90 purchasing, legal, and personnel, are not included;

91 (e) Effective January 1, 2001, the member must be employed
92 as a community-based correctional probation officer and be
93 certified, or required to be certified, in compliance with s.
94 943.1395. In addition, the member's primary duties and
95 responsibilities must be the supervised custody, surveillance,
96 control, investigation, and counseling of assigned inmates,
97 probationers, parolees, or community controllees within the
98 community; or the member must be the supervisor of a member or
99 members who have such responsibilities. Administrative support
100 personnel, including, but not limited to, those whose primary
101 duties and responsibilities are in accounting, purchasing, legal
102 services, and personnel management, are not included; however,
103 probation and parole circuit and deputy circuit administrators
104 are included;

105 (f) Effective January 1, 2001, the member must be employed
106 in one of the following classes and must spend at least 75
107 percent of his or her time performing duties that ~~which~~ involve
108 contact with patients or inmates in a correctional or forensic
109 facility or institution:

- 110 1. Dietitian (class codes 5203 and 5204);
- 111 2. Public health nutrition consultant (class code 5224);
- 112 3. Psychological specialist (class codes 5230 and 5231);
- 113 4. Psychologist (class code 5234);
- 114 5. Senior psychologist (class codes 5237 and 5238);
- 115 6. Regional mental health consultant (class code 5240);
- 116 7. Psychological Services Director-DCF (class code 5242);

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117 8. Pharmacist (class codes 5245 and 5246);
 118 9. Senior pharmacist (class codes 5248 and 5249);
 119 10. Dentist (class code 5266);
 120 11. Senior dentist (class code 5269);
 121 12. Registered nurse (class codes 5290 and 5291);
 122 13. Senior registered nurse (class codes 5292 and 5293);
 123 14. Registered nurse specialist (class codes 5294 and
 124 5295);
 125 15. Clinical associate (class codes 5298 and 5299);
 126 16. Advanced registered nurse practitioner (class codes
 127 5297 and 5300);
 128 17. Advanced registered nurse practitioner specialist
 129 (class codes 5304 and 5305);
 130 18. Registered nurse supervisor (class codes 5306 and
 131 5307);
 132 19. Senior registered nurse supervisor (class codes 5308
 133 and 5309);
 134 20. Registered nursing consultant (class codes 5312 and
 135 5313);
 136 21. Quality management program supervisor (class code
 137 5314);
 138 22. Executive nursing director (class codes 5320 and 5321);
 139 23. Speech and hearing therapist (class code 5406); or
 140 24. Pharmacy manager (class code 5251);
 141 (g) Effective October 1, 2005, through June 30, 2008, the
 142 member must be employed by a law enforcement agency or medical
 143 examiner's office in a forensic discipline recognized by the
 144 International Association for Identification and must qualify
 145 for active membership in the International Association for

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146 Identification. The member's primary duties and responsibilities
 147 must include the collection, examination, preservation,
 148 documentation, preparation, or analysis of physical evidence or
 149 testimony, or both, or the member must be the direct supervisor,
 150 quality management supervisor, or command officer of one or more
 151 individuals with such responsibility. Administrative support
 152 personnel, including, but not limited to, those whose primary
 153 responsibilities are clerical or in accounting, purchasing,
 154 legal, and personnel, are not included;
 155 (h) Effective July 1, 2008, the member must be employed by
 156 the Department of Law Enforcement in the crime laboratory or by
 157 the Division of State Fire Marshal in the forensic laboratory in
 158 one of the following classes:
 159 1. Forensic technologist (class code 8459);
 160 2. Crime laboratory technician (class code 8461);
 161 3. Crime laboratory analyst (class code 8463);
 162 4. Senior crime laboratory analyst (class code 8464);
 163 5. Crime laboratory analyst supervisor (class code 8466);
 164 6. Forensic chief (class code 9602); or
 165 7. Forensic services quality manager (class code 9603);
 166 (i) Effective July 1, 2008, the member must be employed by
 167 a local government law enforcement agency or medical examiner's
 168 office and must spend at least 65 percent of his or her time
 169 performing duties that involve the collection, examination,
 170 preservation, documentation, preparation, or analysis of human
 171 tissues or fluids or physical evidence having potential
 172 biological, chemical, or radiological hazard or contamination,
 173 or use chemicals, processes, or materials that may have
 174 carcinogenic or health-damaging properties in the analysis of

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175 such evidence, or the member must be the direct supervisor of
 176 one or more individuals having such responsibility. If a special
 177 risk member changes to another position within the same agency,
 178 he or she must submit a complete application as provided in
 179 paragraph (4) (a);

180 (j) Effective July 1, 2016, the member must be employed as
 181 a 911 public safety telecommunicator certified under s. 401.465.
 182 However, such telecommunicators are not eligible for the
 183 adjustment in the monthly retirement benefit provided pursuant
 184 to s. 121.091(1)(a)2.; or

185 (k) ~~(j)~~ The member must have already qualified for and be
 186 actively participating in special risk membership under
 187 paragraph (a), paragraph (b), or paragraph (c), must have
 188 suffered a qualifying injury as defined in this paragraph, must
 189 not be receiving disability retirement benefits as provided in
 190 s. 121.091(4), and must satisfy the requirements of this
 191 paragraph.

192 1. The ability to qualify for the class of membership
 193 defined in paragraph (2) (h) occurs when two licensed medical
 194 physicians, one of whom is a primary treating physician of the
 195 member, certify the existence of the physical injury and medical
 196 condition that constitute a qualifying injury as defined in this
 197 paragraph and that the member has reached maximum medical
 198 improvement after August 1, 2008. The certifications from the
 199 licensed medical physicians must include, at a minimum, that the
 200 injury to the special risk member has resulted in a physical
 201 loss, or loss of use, of at least two of the following: left
 202 arm, right arm, left leg, or right leg; and that:

203 a. The ~~That this~~ physical loss or loss of use is total and

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204 permanent, unless ~~except if~~ the loss of use is due to a physical
 205 injury to the member's brain, in which event the loss of use is
 206 permanent with at least 75 percent loss of motor function with
 207 respect to each arm or leg affected.

208 b. The ~~That this~~ physical loss or loss of use renders the
 209 member physically unable to perform the essential job functions
 210 of his or her special risk position.

211 c. ~~That~~, Notwithstanding this physical loss or loss of use,
 212 the individual can perform the essential job functions required
 213 by the member's new position, as provided in subparagraph 3.

214 d. ~~That~~ Use of artificial limbs is not possible or does not
 215 alter the member's ability to perform the essential job
 216 functions of the member's position.

217 e. ~~That~~ The physical loss or loss of use is a direct result
 218 of a physical injury and not a result of any mental,
 219 psychological, or emotional injury.

220 2. For the purposes of this paragraph, "qualifying injury"
 221 means an injury sustained in the line of duty, as certified by
 222 the member's employing agency, by a special risk member that
 223 does not result in total and permanent disability as defined in
 224 s. 121.091(4) (b). An injury is a qualifying injury if the injury
 225 is a physical injury to the member's physical body resulting in
 226 a physical loss, or loss of use, of at least two of the
 227 following: left arm, right arm, left leg, or right leg.
 228 Notwithstanding any other provision of this section, an injury
 229 that would otherwise qualify as a qualifying injury is not
 230 ~~considered~~ a qualifying injury if and when the member ceases
 231 employment with the employer for whom he or she was providing
 232 special risk services on the date the injury occurred.

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233 3. The new position, as described in sub-subparagraph 1.c.,
 234 ~~which that~~ is required for qualification as a special risk
 235 member under this paragraph is not required to be a position
 236 with essential job functions that entitle an individual to
 237 special risk membership. Whether a new position as described in
 238 sub-subparagraph 1.c. exists and is available to the special
 239 risk member is a decision to be made solely by the employer in
 240 accordance with its hiring practices and applicable law.

241 4. This paragraph does not grant or create additional
 242 rights for any individual to continued employment or to be hired
 243 or rehired by his or her employer that are not already provided
 244 by state law ~~within the Florida Statutes~~, the State
 245 Constitution, the Americans with Disabilities Act, if
 246 applicable, or any other ~~applicable state or~~ federal law.

247 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

248 (d) Notwithstanding any other provision of this subsection,
 249 this subsection does not apply to any special risk member who
 250 qualifies for continued membership pursuant to paragraph (3) (k)
 251 ~~(3) (j)~~.

252 Section 2. The Legislature finds that a proper and
 253 legitimate state purpose is served when employees and retirees
 254 of the state and its political subdivisions, and the dependents,
 255 survivors, and beneficiaries of such employees and retirees, are
 256 extended the basic protections afforded by governmental
 257 retirement systems. These persons must be provided benefits that
 258 are fair and adequate and are managed, administered, and funded
 259 in an actuarially sound manner, as required by s. 14, Article X
 260 of the State Constitution and part VII of chapter 112, Florida
 261 Statutes. Therefore, the Legislature determines and declares

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

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262 that this act fulfills an important state interest.

263 Section 3. This act shall take effect July 1, 2015.

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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 Governmental Oversight and Accountability

BILL: SB 934

INTRODUCER: Senator Brandes

SUBJECT: Public Works Projects

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Pre-meeting
2.			CA	
3.			AP	

I. Summary:

SB 934 creates an unnumbered section of law relating to public works projects. The bill defines the terms “political subdivision,” “project labor agreement,” and “public works” or “public works project.” The bill prohibits state and political subdivisions that contract for construction, maintenance, repair, or improvement of public works from imposing certain conditions on contractors, subcontractors, or material suppliers or carriers.

Except as required by federal or state law, the bill prohibits the state or a political subdivision from requiring a contractor, subcontractor, or material supplier or carrier to become a party to any agreement with employees, their representatives, or any labor organization, including any area-wide, regional, or state building or construction trade or crafts council, organization, association, or similar body, as a condition of bidding, negotiating, being awarded any bid or contract, or performing work on a public works project.

SB 934 also prohibits the state or a political subdivision from restricting a qualified contractor, subcontractor, or material supplier or carrier from submitting bids, being awarded a bid or contract, or performing work on a public works project.

The bill provides that the provisions become effective upon becoming a law.

II. Present Situation:

The Consultants’ Competitive Negotiation Act

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for design professional services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and

reasonable price. The vast majority of states currently require a QBS process when selecting the services of design professionals.

Florida's Consultants' Competitive Negotiation Act (CCNA), was enacted by the Legislature in 1973,¹ to specify the procedures to be followed when procuring professional services by an agency.²

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process to be followed when state and local government agencies procure the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:³

- A project, when the basic construction cost is estimated by the agency to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.⁴ In the first phase, the "competitive selection," the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, it considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.⁵

The CCNA prohibits the agency from requesting, accepting, and considering, during the selection process, proposals for the compensation to be paid.⁶ Section 287.055(2)(d), F.S., defines the term "compensation" to mean "the amount paid by the agency for professional services regardless of whether stated as compensation" or as other types of rates.

In the second phase, the "competitive negotiation," the agency then negotiates compensation with the most qualified of the three selected firms for professional services at compensation which the agency determines is "fair, competitive, and reasonable."⁷ If a satisfactory contract cannot be negotiated, the agency must formally terminate negotiations with that firm and must

¹ Chapter 73-19, L.O.F.

² Section 287.055(2)(b), F.S., defines "Agency" as "the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S."

³ Section 287.055(3)(a)1., F.S.

⁴ Sections 287.055(4) and (5), F.S.

⁵ The following is a full listing of the factors that s. 287.055(4)(b), F.S., requires agencies to consider: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.

⁶ Section 287.055(4)(b), F.S.

⁷ Section 287.055(5)(a), F.S.

then negotiate with the second most qualified firm. The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.⁸ If a satisfactory contract cannot be negotiated with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until a contract is reached.⁹ Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects but instead is limited to utilizing the statutorily defined procedures.¹⁰

Procurement of Construction Services for Public Property and Publicly Owned Buildings

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the Department of Management Services (DMS) establish, through the adoption of rules¹¹, the following construction contract procedures:

- For determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- For awarding each state agency construction project to the lowest qualified bidder as well as procedures to be followed in cases in which DMS declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of state construction contracts to the lowest qualified bidder.
- For governing negotiations for construction contracts and modifications to contract documents when such negotiations are determined by the DMS secretary to be in the best interest of the state.
- For entering into performance-based contracts for the development of public facilities when DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:¹²

- Prequalification of bidders;
- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

⁸ Section 287.055(5)(b), F.S.

⁹ Section 287.055(5)(c), F.S.

¹⁰ Op. Att’y Gen. Fla. 2011-21 (2011).

¹¹ Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F.S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

¹² Section 255.29(4)(a)-(d), F.S.

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.¹³ County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 must also be competitively bid.¹⁴ Counties, municipalities, special districts,¹⁵ or other political subdivisions seeking to construct or improve a public building must competitively bid the project if the projected cost is in excess of \$300,000.¹⁶

The solicitation of competitive bids or proposals for any state construction project that is projected to cost more than \$200,000 must be publicly advertised in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.¹⁷ If the construction project is projected to exceed \$500,000, the advertisement must be published at least 30 days prior to the bid opening in the FAR, and at least once 30 days prior to the bid opening in a newspaper of general circulation in the county where the project is located.¹⁸

Preference for Employment of State Residents in Construction Contracts Funded By State Funds

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds.¹⁹ Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications²⁰ to those of non-residents.²¹ If a construction contract is funded by local funds, the contract may contain such a provision.²² In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.²³

Department of Transportation Construction Projects

Chapter 337, F.S., governs contracting by the Department of Transportation (DOT). Any person who wants to bid for a construction contract in excess of \$250,000 must be certified by DOT as qualified.²⁴ Certification is also required to bid on road, bridge, or public transportation construction project of more than \$250,000.²⁵ The purpose of certification is to ensure

¹³ Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

¹⁴ Section 255.0525(2), F.S.

¹⁵ Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.).

¹⁶ *Id.* For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

¹⁷ Section 255.0525(1), F.S.

¹⁸ *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. See Section 255.0525(2), F.S.

¹⁹ Section 255.099(1), F.S.

²⁰ Section 255.099(1)(a), F.S., defines "substantially equal qualifications" as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

²¹ Section 255.099(1), F.S.

²² *Id.*

²³ Section 255.099(1)(b), F.S.

²⁴ Section 337.14(1), F.S. and ch. 14-22, F.A.C.

²⁵ Section 337.14(2), F.S.

professional and financial competence relating to the performance of construction contracts by evaluating bidders “with respect to equipment, past record, experience, financial resources, and organizational personnel of the applicant necessary to perform the specific class of work for which the person seeks certification.”²⁶

Each application for certification of qualification must be accompanied by the latest annual financial statement of the applicant completed within the last twelve months.²⁷ If the application or the annual financial statement shows the financial condition of the applicant more than four months prior to the date on which the application is received by DOT, then an audited interim financial statement must be submitted and accompanied by an updated application.²⁸ If the applicant meets the qualifications, DOT issues a certificate of qualification that is valid for 18 months after the date of the applicant’s financial statement, or shorter time period as DOT prescribes.²⁹ Such certificate of qualification may be revoked by DOT for a contractor who is deemed delinquent on a previously awarded contract.³⁰

DOT does not prohibit a qualified, licensed or certified contractor from bidding; however, a contract may not be awarded if the bid is determined to be irregular or non-responsive. DOT does require training for certain work categories, such as bridge work and other technical road and bridge areas.

Federal Labor and Wage Laws

The National Labor Relations Act of 1935³¹ and the Labor Management Relations Act of 1947³² constitute a comprehensive scheme of regulations guaranteeing employees the right to organize, to bargain collectively through chosen representatives, and to engage in concerted activities to secure their rights in industries involved in or affected by interstate commerce.

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States.³³ A state may set the rate higher than the federal minimum, but not lower.³⁴ It also requires employers to pay time and a half to its employees for overtime hours worked,³⁵ and establishes standards for recordkeeping³⁶ and child

²⁶ Section 337.14(1), F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 337.14(4), F.S.

³⁰ Section 337.16, F.S.

³¹ 29 U.S.C. ss. 151 to 169 (encouraging the practice and procedure of collective bargaining and protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection).

³² 29 U.S.C. ss. 141 to 187 (prescribing the rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce).

³³ 29 U.S.C. s. 206.

³⁴ 29 U.S.C. s. 218(a).

³⁵ 29 U.S.C. s. 207.

³⁶ 29 U.S.C. s. 211.

labor.³⁷ Over 135 million workers are covered under the act,³⁸ most jobs are covered by the FLSA, but not all jobs are covered. In addition, some jobs are covered, but are considered “exempt” from the FLSA overtime requirements.³⁹

On February 12, 2014, President Obama signed Executive Order 13658, which establishes a minimum wage for certain federal contractors.⁴⁰ The Executive Order requires parties who contract with the federal government to pay workers performing work on or in connection with covered federal contracts at least \$10.10 per hour beginning on January 1, 2015. Beginning January 1, 2016, and annually thereafter, such workers must be paid an amount determined by the Secretary of Labor in accordance with the Executive Order. The order stated that “[r]aising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs.”⁴¹

State Labor and Wage Regulations

Article I, s. 6 of the State Constitution creates a constitutional right to collectively bargain for public sector employees. It provides, in pertinent part, that “[t]he right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged.” The Florida Supreme Court has held that public employees maintain the same rights to collectively bargain as do private employees.⁴²

In addition, the State Constitution provides that “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”⁴³ The State Constitution requires that employers pay employees no less than the minimum wage for all hours worked in Florida.⁴⁴ The current state minimum wage is \$8.05 per hour,⁴⁵ which is higher than the federal rate.⁴⁶

³⁷ 29 U.S.C. s. 212.

³⁸ <http://www.dol.gov/whd/workers.htm> (last visited February 11, 2015).

³⁹ 29 U.S.C. s. 213; www.dol.gov/whd/regs/compliance/whdfs14.pdf (last visited February 11, 2015).

⁴⁰ A copy of the Executive Order can be found online at: <http://www.whitehouse.gov/the-press-office/2014/02/12/executive-order-minimum-wage-contractors> (last visited February 19, 2015).

⁴¹ *Id.*

⁴² See *Hillsborough Cnty. Gov'tl Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So.2d 358 (Fla. 1988); *City of Tallahassee v. Public Employees Relations Comm'n*, 410 So.2d 487 (Fla. 1981); *Dade Cnty. Classroom Teachers Ass'n v. Legislature of Fla.*, 269 So.2d 684 (Fla. 1972).

⁴³ Article X, s. 24(a), FLA. CONST. and s. 448.110, F.S.

⁴⁴ Article X, s. 24(c), FLA. CONST.

⁴⁵ <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notice> (last visited February 11, 2015).

⁴⁶ The federal minimum wage is \$7.25 per hour. For more information about federal minimum wage provisions, see <http://www.dol.gov/whd/minimumwage.htm> (last visited February 11, 2015).

Federal Project Labor Agreements

In 2009, President Barack Obama signed Executive Order 13502 authorizing the use of project labor agreements for federal construction projects.⁴⁷ The Executive Order defines “project labor agreement” as “a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).” The Executive Order provides that executive agencies may, on a project-by-project basis, require the use of a project labor agreement by a contractor where such an agreement will advance the federal government’s goal of achieving economy and efficiency in the procurement, produce labor-management stability, and ensure compliance with laws and regulations concerning safety and health, equal employment opportunity, and labor and employment standards.

Federal Prevailing Wage Requirements

The Davis-Bacon Act applies to contractors and subcontractors performing work on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public works projects or public buildings.⁴⁸ The United States Department of Labor, Wage and Hour Division, issues two types of wage determinations: general determinations (also known as area determinations) and project determinations. The wage and fringe benefits⁴⁹ in the applicable Davis-Bacon wage determination must be the minimum paid by contractors and subcontractors to laborers and mechanics.⁵⁰

III. Effect of Proposed Changes:

Section 1 creates an unnumbered section of law relating to public works projects. The following terms are defined:

- “Political subdivision” is defined as a separate agency or unit of local government created or established by law or ordinance and the officers thereof⁵¹ and is authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- “Project labor agreement” means an arrangement mentioned, detailed, or outlined within the project plans, the specifications, or any bidding document of a public works project that:
 - Imposes requirements, controls, or limitations on:
 - staffing,
 - sources of employee referrals,

⁴⁷ A copy of the Executive Order can be found online at:

http://www.whitehouse.gov/the_press_office/ExecutiveOrderUseofProjectLaborAgreementsforFederalConstructionProjects (last visited February 11, 2015); the Executive Order is codified in subpart 22.5 of the Federal Acquisition Regulation.

⁴⁸ 40 U.S.C. s. 3142(a).

⁴⁹ Examples of fringe benefits include life insurance, health insurance, pension, vacation, holidays, sick leave, and other “bona fide” fringe benefits. <http://www.dol.gov/whd/programs/dbra/faqs/fringes.htm#Fringe> (last visited February 19, 2015).

⁵⁰ 40 U.S.C. s. 3142(b).

⁵¹ The bill notes that the term “political subdivision” includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, tax district, water management district, board, public corporation, institution of higher education, or other public agency or body.

- assignments of work,
- sources of insurance or benefits, including health, life, and disability insurance and retirement pensions, training programs or standards, or wages; or
- Requires a contractor to enter into any sort of agreement as a condition of submitting a bid that directly or indirectly limits or requires the contractor to recruit, train, or hire employees from a particular source to perform work on public works or a public works project.

- “Public works” or “public works project” means a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof, including repair, renovation, or remodeling, owned, in whole or in part, by any political subdivision that is to be paid in whole or in part with state funds.

This section prohibits the state or any political subdivision from requiring a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works to:

- Pay employees a predetermined amount of wages or wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control or limit staffing;
- Recruit, train, or hire employees from a designated or single source;
- Designate any particular assignment of work for employees;
- Participate in proprietary training programs; or
- Enter into any type of project labor agreement.

Except as required by federal or state law or if the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds is required under federal law, the prohibition on the state and any political subdivision from imposing certain conditions on a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works would not apply.

The bill also prohibits the state or a political subdivision that contracts for a public works project from requiring a contractor, subcontractor, or material supplier or carrier become a party to any agreement with employees, their representatives, or any labor organization, including any area-wide, regional, or state building or construction trade or crafts council, organization, association, or similar body, as a condition of bidding, negotiating, being awarded any bid or contract, or performing work on a public works project.

Additionally, the bill provides that the state or a political subdivision that contracts for a public works project may not prohibit a contractor, subcontractor, or material supplier or carrier who is qualified, licensed, or certified from submitting bids, being awarded a bid or contract, or performing work on a public works project.

Impact on DOT

This legislation imposes a wide-ranging and general prohibition against DOT placing any requirement upon a bidding contractor or supplier beyond simply being either qualified, licensed or certified in order for that contractor or supplier to submit bids, to be awarded any bid or contract, or to perform work on a public works project. Given the nature of DOT's projects, beyond simply being a qualified, licensed or certified contractor or supplier is not necessarily sufficient; e.g., a general contractor should not be qualified to bid on a bridge contract. Currently, DOT does not award contracts in response to non-compliant bidders for any number of reasons, including the failure of the bidder to meet specification requirements crucial to the safe and effective completion of transportation projects. The broad provision within the bill removes the authority of DOT to impose these requirements.

Also, the bill is inconsistent with pre-certification requirements found in ch. 337, F.S., which require that bidders must first be certified by DOT as qualified pursuant to statute and rules of the agency. By allowing bids to be submitted by entities that are either "qualified, licensed or certified," the existing mandated pre-qualification process is undermined as ch. 14-22, F.A.C., imposes more specific requirements beyond just being qualified, licensed or certified.

Additionally, SB 934 will impact DOT's procurement and contract procedures with its suppliers and contractors. The potential elimination of the pre-qualification process will have effects on the quality and durability of DOT's projects. The specific bidding and certification requirements of ch. 14-22 F.A.C. could be abrogated by the bill. The bill expands the number of contractors and suppliers that will be eligible to bid on public works projects, by reducing or eliminating certain pre-qualification standards. As proposed, the bill is contrary to established procurement methods, contract administration and governance which are aimed at ensuring those entities desiring to perform work under contract with DOT meet certain qualifications for quality, training and performance.

The legislation may impede DOT's ability to provide a quality and safe product. Contractors or subcontractors may be authorized to work or provide a product without the proper training. Also, the contractor may prevail in a contract award bid protest whereby the bid did not meet the advertisement criteria or specifications of the project. A contractor using this bill as a result of not being awarded a contract would delay projects and jeopardize the safety, health and welfare of the traveling public.

Impact on State Agencies and Local Government

If a state or political subdivision is prohibited from requiring in its specifications or project plans that a contractor, subcontractor or material supplier or carrier engaged in a public works project, participate in proprietary training, the lack of specialized training, in product placement, installation or use, could potentially invalidate a product warranty, or cause the delivery of an inferior product.

The bill allows "any" bidder to submit a bid and this would make it difficult for DMS or state agencies to compare bids because it prevents DMS from coordinating scopes of work in bid packages, and effectively eliminate DMS's, and all agencies', authority to prequalify bidders as

required under ss. 255.29(1) and 287.055, F. S. The lack of tangible qualifications may also create a significant increase in workload for agencies due to an increase in the receipt of bids from “unqualified” bidders.

Section 2 provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Right to Work

Florida is a “right to work” state. Article I, s. 6 of the State Constitution protects Florida citizens from employers’ actions relating to their membership, or non-membership, in a labor union. This section also protects an employees’ right to collectively bargain and prohibits public employees from striking. The Florida Supreme Court has stated that “[t]here is little question that Article I, section 6 was intended to, and does, benefit all employees, public or private.”⁵² The right to collectively bargain is a fundamental right vested in all Florida employees by the State Constitution and any government action attempting to restrict the enjoyment thereof is subject to strict scrutiny and must be justified by a compelling state interest.⁵³

The bill may impact existing agreements that local government subdivisions have with labor organizations.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁵² *Hillsborough*, 522 So.2d at 362.

⁵³ *Coastal Fla. Police Benevolent Ass’n, Inc. v. Williams*, 838 So.2d 543 (Fla. 2003).

B. Private Sector Impact:

Indeterminate. The bill appears to conflict with Florida's law providing a preference for employment of state residents in construction projects funded by state funds,⁵⁴ and this could potentially result in fewer qualified Floridians being hired for these projects.

C. Government Sector Impact:

Significant. Fiscal impacts could be realized by DOT due to the proposed relief from certain warranty requirements imposed by suppliers since the bill would operate to prohibit DOT from requiring specific training certifications from designated or single sources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an unnumbered section of law relating to public works projects.

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.

⁵⁴ Section 255.099, F.S.



403772

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Governmental Oversight and Accountability
(Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 66 - 92

and insert:

6. Participate in proprietary training programs, unless
such training is a condition of a product warranty or guarantee;

or

7. Enter into any type of project labor agreement.

(b) Paragraph (a) does not apply if the payment of
prevailing or minimum wages to persons working on projects



403772

11 funded in whole or in part by federal funds is required under
12 federal law.

13 (3) The state or any political subdivision that contracts
14 for the construction, maintenance, repair, or improvement of
15 public works shall not require that a contractor, subcontractor,
16 or material supplier or carrier engaged in the construction,
17 maintenance, repair, or improvement of public works execute or
18 otherwise become a party to any agreement with employees, their
19 representatives, or any labor organization as described in 29
20 U.S.C. s. 152(5) and 42 U.S.C. s. 2000e(d), including any area-
21 wide, regional, or state building or construction trade or
22 crafts council, organization, association, or similar body, as a
23 condition of bidding, negotiating, being awarded any bid or
24 contract, or performing work on a public works project.

25 (4) The state or any political subdivision that contracts
26 for the construction, maintenance, repair, or improvement of any
27 public works project may not prohibit any contractor,
28 subcontractor, or material supplier or carrier engaged in the
29 construction, maintenance, repair, or improvement of public
30 works who is qualified, licensed, or certified as required by
31 state law to perform such work from submitting a bid, being
32 awarded a bid or contract upon being selected, negotiating a
33 contract upon being awarded, or performing work on a public
34 works project.

35
36 ===== T I T L E A M E N D M E N T =====

37 And the title is amended as follows:

38 Delete lines 9 - 12

39 and insert:



403772

40
41
42

and political subdivisions from imposing certain
restrictions on qualified bidders; providing an
effective date.

By Senator Brandes

22-01327A-15

2015934__

1 A bill to be entitled
 2 An act relating to public works projects; providing
 3 definitions; prohibiting state and political
 4 subdivisions that contract for the construction,
 5 maintenance, repair, or improvement of public works
 6 from imposing certain conditions on certain
 7 contractors, subcontractors, or material suppliers or
 8 carriers; providing an exception; prohibiting state
 9 and political subdivisions from restricting qualified
 10 bidders from submitting bids, being awarded any bid or
 11 contract, or performing work on a public works
 12 project; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Project labor agreements for certain publicly
 17 funded public works projects.—

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

19 (a) “Political subdivision” means a separate agency or unit
 20 of local government created or established by law or ordinance
 21 and the officers thereof. The term includes, but is not limited
 22 to, a county; a city, town, or other municipality; or a
 23 department, commission, authority, school district, tax
 24 district, water management district, board, public corporation,
 25 institution of higher education, or other public agency or body
 26 authorized to expend public funds for construction, maintenance,
 27 repair, or improvement of public works.

28 (b) “Project labor agreement” means an arrangement
 29 mentioned, detailed, or outlined within the project plans, the

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

22-01327A-15

2015934__

30 specifications, or any bidding document of a public works
 31 project that:

32 1. Imposes requirements, controls, or limitations on
 33 staffing, sources of employee referrals, assignments of work,
 34 sources of insurance or benefits, including health, life, and
 35 disability insurance and retirement pensions, training programs
 36 or standards, or wages; or

37 2. Requires a contractor to enter into any sort of
 38 agreement as a condition of submitting a bid that directly or
 39 indirectly limits or requires the contractor to recruit, train,
 40 or hire employees from a particular source to perform work on
 41 public works or a public works project.

42 (c) “Public works” or “public works project” means a
 43 building, road, street, sewer, storm drain, water system, site
 44 development, irrigation system, reclamation project, gas or
 45 electrical distribution system, gas or electrical substation, or
 46 other facility, project, or portion thereof, including repair,
 47 renovation, or remodeling, owned, in whole or in part, by any
 48 political subdivision that is to be paid for in whole or in part
 49 with state funds.

50 (2) (a) Except as provided in paragraph (b) or as required
 51 by federal or state law, the state or any political subdivision
 52 that contracts for the construction, maintenance, repair, or
 53 improvement of public works may not require that a contractor,
 54 subcontractor, or material supplier or carrier engaged in the
 55 construction, maintenance, repair, or improvement of public
 56 works:

57 1. Pay employees a predetermined amount of wages or wage
 58 rate;

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22-01327A-15

2015934__

59 2. Provide employees a specified type, amount, or rate of
 60 employee benefits;
 61 3. Control or limit staffing;
 62 4. Recruit, train, or hire employees from a designated or
 63 single source;
 64 5. Designate any particular assignment of work for
 65 employees;
 66 6. Participate in proprietary training programs; or
 67 7. Enter into any type of project labor agreement.
 68 (b) Paragraph (a) does not apply if the payment of
 69 prevailing or minimum wages to persons working on projects
 70 funded in whole or in part by federal funds is required under
 71 federal law.
 72 (3) The state or any political subdivision that contracts
 73 for the construction, maintenance, repair, or improvement of
 74 public works shall not require that a contractor, subcontractor,
 75 or material supplier or carrier engaged in the construction,
 76 maintenance, repair, or improvement of public works execute or
 77 otherwise become a party to any agreement with employees, their
 78 representatives, or any labor organization as described in 29
 79 U.S.C. s. 152(5) and 42 U.S.C. s. 2000e(d), including any area-
 80 wide, regional, or state building or construction trade or
 81 crafts council, organization, association, or similar body, as a
 82 condition of bidding, negotiating, being awarded any bid or
 83 contract, or performing work on a public works project.
 84 (4) The state or any political subdivision that contracts
 85 for the construction, maintenance, repair, or improvement of any
 86 public works project may not prohibit a contractor,
 87 subcontractor, or material supplier or carrier engaged in the

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2015934__

88 construction, maintenance, repair, or improvement of public
 89 works who is qualified, licensed, or certified to do any of the
 90 work described in the bid documents from submitting bids, being
 91 awarded any bid or contract, or performing work on a public
 92 works project.
 93 Section 2. This act shall take effect upon becoming a law.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1054

INTRODUCER: Senator Evers

SUBJECT: Retirement

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Pre-meeting
2.			CA	
3.			AP	

I. Summary:

SB 1054 grants local government employers the authority to reassess its designation of positions in, and remove vacant positions from, the Senior Management Service Class of the Florida Retirement System. The first period during which positions may be reassessed is July 1, 2015 through December 31, 2015, and every five years thereafter.

II. Present Situation:

The Senior Management Service Class (SMSC) of the Florida Retirement System was established initially on February 1, 1987.¹ The SMSC consists of state and local government employees who are statutorily defined as members of the SMSC or fill full-time positions designated by the local employers as having managerial or policymaking responsibilities. As of June 30, 2014, there were 7,607 active members in the SMSC² comprising roughly 1.2 percent of the active FRS membership.

The SMSC includes the following local government positions:

- Presidents of each community college;³
- Managers of each participating municipality or county;⁴
- Appointed district school superintendents;⁵

¹ Section 121.055, F.S.

² The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 115. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf

³ Section 121.055(1)(b), F.S.

⁴ *Id.*

⁵ *Id.*

- Executive director or staff director of any metropolitan planning organization participating in the FRS;⁶
- Up to 10 nonelective full-time positions to be designated by each local agency employer;⁷ and
- For local agencies with 100 or more regularly established positions, additional nonelective full-time positions to be designated but not to exceed 1 percent of the regularly established positions within the agency.⁸

To be included in the SMSC, the positions designated by the local agency employer must be managerial or policymaking positions. The employee filling the position must serve at the pleasure of the local agency employer without civil service protection, and who either (a) heads an organizational unit or (b) has responsibility to effect or recommend personnel, budget, expenditure, or policy decisions in his or her areas of responsibility.

The local agency employer must publish the intent to designate positions for inclusion in the Senior Management Service Class once a week for two consecutive weeks in a newspaper of general circulation published in the county or counties affected, as provided in chapter 50, Florida Statutes. The SMSC eligibility then belongs to the position and the incumbent filling that position.

Once a position is designated as a SMSC position, it is not removed from the SMSC unless the duties and responsibilities of the position change substantially and it no longer meets the requirements for participation in this class of membership.

A local agency employer includes a board of county commissioners; an elected clerk of the circuit court, sheriff, property appraiser, tax collector, or supervisor of elections; a community college board of trustees; a district school board; the governing body of a municipality, metropolitan planning organization, or special district.⁹

The table below shows the differences between Regular Class membership and SMSC membership in the FRS. If the position is no longer in the SMSC, it will, by default, be within the Regular Class.

	Regular Class	SMSC
Annual Service Credit	1.6 percent to 1.68 percent for each year of service	2 percent for each year of service
Investment Plan Contribution into member account	6.3 percent of salary (including 3 percent of member contribution)	7.67 percent of salary (including 3 percent of member contribution)

⁶ Section 121.055(1)(l), F.S.

⁷ Section 121.055(1)(b)1.b., F.S.

⁸ *Id.*

⁹ Section 121.021(42)(a), F.S.

III. Effect of Proposed Changes:

SB 1054 allows local agency employers to reassess positions previously designated as SMSC positions. The local employers may request removal of the reviewed positions from the SMSC if done within the 6-month period and the position is vacant at the time of removal from the class. The change in the designated SMSC positions is effective beginning the month after the notification is received by the division. The bill establishes a SMSC redesignation window every five years.

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 six-month window in 2015 and each five years thereafter creates a temporary increase in agency workload. The time to process these requests for removal, re-designation and other related SMSC changes is estimated at 20 hours per week for the 6-month processing period. The estimated cost is \$18,900 in staff overtime to accommodate this periodic increase in workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 121.055 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Evers

2-00660A-15

20151054__

1 A bill to be entitled
 2 An act relating to retirement; amending s. 121.055,
 3 F.S.; authorizing local agency employers to reassess
 4 designation of positions for inclusion in the Senior
 5 Management Service Class; providing for removal of
 6 certain positions; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Subsection (2) of section 121.055, Florida
 11 Statutes, is amended to read:
 12 121.055 Senior Management Service Class.—There is hereby
 13 established a separate class of membership within the Florida
 14 Retirement System to be known as the "Senior Management Service
 15 Class," which shall become effective February 1, 1987.
 16 (2) (a) Participation in this class shall cease when the
 17 member terminates employment in an eligible position. Once a
 18 position is designated as eligible for inclusion in the class,
 19 that position may ~~shall~~ not be removed from the class unless the
 20 duties and responsibilities of the position change substantially
 21 and therefore no longer meet the requirements provided in this
 22 section for participation in the class, except as provided in
 23 paragraph (b).
 24 (b) Beginning Effective July 1, 2015 ~~1997~~, and every 5
 25 years thereafter, each local agency employer may, between July
 26 ~~1, 1997~~, and December 31, ~~1997~~, reassess its designation of
 27 positions for inclusion in the Senior Management Service Class
 28 as provided in paragraph (1) (b). Each local agency employer, ~~and~~
 29 may request removal from the class of any such positions that it

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20151054__

30 deems appropriate, provided that the removal may only take
 31 effect if such position is vacant on the effective date of the
 32 removal. The ~~Such~~ removal of any previously designated positions
 33 ~~is shall be~~ effective on the first day of the month following
 34 written notification of removal to the division before ~~prior to~~
 35 January 1, ~~1998~~.
 36 Section 2. This act shall take effect July 1, 2015.

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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 Governmental Oversight and Accountability

BILL: SB 7012

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Credit History Information and Credit Scores/Office of Financial Regulation

DATE: March 9, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	_____	BI Submitted as Committee Bill
2.	<u>Kim</u>	<u>McVaney</u>	_____	Pre-meeting
3.	_____	_____	_____	_____

I. Summary:

SB 7012 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee professional staff of a public records exemption that makes credit history information and credit scores held by the Office of Financial Regulation (OFR) confidential and exempt from public-records requirements.¹ The OFR licenses and regulates loan originators (non-depository mortgage brokers and mortgage lenders).² Applicants for initial licensure or renewal of a license must meet minimum requirements in order to demonstrate character, financial responsibility, and general fitness, as required by the federal SAFE Mortgage Licensure Act of 2008.³ As part of this licensure process, an applicant must authorize the release of an independent credit report and credit score to the OFR.⁴

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2015, unless reenacted by the Legislature. This bill continues the exemption and does not expand the scope of the public records exemption. The reenactment of the exemption would continue to protect sensitive personal financial information of applicants from being disclosed. The release of such sensitive personal information would be defamatory and make those persons vulnerable to identity theft and other crimes.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with

¹ Section 494.00125, F.S.

² Chapter 494, F.S.

³ Parts II and III of chapter 494, F.S.

⁴ Sections 494.00312, 494.00313, 494.00611, and 494.00612, F.S.

the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁵ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.⁶ The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.⁷

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 Act⁸ guarantees every person's right to inspect and copy any state or local government public record.⁹ The Sunshine Law¹⁰ 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.¹¹

The Legislature may create an exemption to public records or open meetings requirements.¹² An exemption must specifically state the public necessity justifying the exemption¹³ and must be tailored to accomplish the stated purpose of the law.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

⁵ FLA. CONST., art. I, s. 24(a).

⁶ FLA. CONST., art. I, s. 24(b).

⁷ FLA. CONST., art. I, s. 24(b).

⁸ Chapter 119, F.S.

⁹ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

¹⁰ Section 286.011, F.S.

¹¹ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

¹² FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ FLA. CONST., art. I, s. 24(c).

meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable public purpose if it meets one of the following criteria: It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸ Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or it protects trade or business secrets.²⁰ In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.²¹

The OGSR also requires specific questions to be considered during the review process.²² In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁴

Regulation of Loan Originators

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(b), F.S.

²² Section 119.15(6)(a), F.S. The 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?

²³ FLA. CONST., art. I, s. 24(c).

²⁴ Section 119.15(7), F.S.

Federal SAFE Mortgage Licensing Act

The federal Housing and Economic Recovery Act was enacted on July 30, 2008,²⁵ Title V of this Act is titled “The Secure and Fair Enforcement for Mortgage Licensing Act of 2008” (SAFE Act or SAFE). The intent of SAFE is to provide greater accountability and regulation of individual loan originators (mortgage brokers and mortgage lenders) and enhance consumer protections by establishing minimum licensure and registration requirements for loan originators.²⁶ Loan originators must undergo state licensure and annual renewal, provide fingerprints to the regulator for submission to any state or registry authorized to conduct a criminal background check, and allow the regulator to access a credit report through the registry.

The Act directs the establishment of a nationwide mortgage licensing system and registry (NMLS or registry). The SAFE Act requires states to comply with these minimum standards²⁷ and participate in the registry to facilitate states' compliance with the requirements of SAFE.²⁸ The registry collects and maintains specified information on loan originators. The purpose of the registry is to create a common database on loan originators among federal and state regulators, provide information to the public about the employment history of loan originators, and maintain a history of disciplinary and enforcement actions against loan originators.

The SAFE Act creates confidentiality standards for the federal and state regulators who participate in the registry, which collects a common pool of information from each participant. For example, only state regulators have access to review credit information, including credit scores, on licensees and must comply with certain terms and conditions.²⁹ For example, only authorized recipients may have access to or view the services and consumer report information. Authorized recipients may not redisseminate or provide third party access to the services or consumer report information.³⁰

Except as otherwise provided, SAFE applies federal or state privacy or confidentiality laws, and any privilege arising under federal or state law, after information has been disclosed to the NMLS. Such information may be shared with all state and federal regulatory officials with mortgage regulatory authority without loss of privilege or loss of confidentiality protections provided by such laws.³¹ Any state law in conflict with this standard is superseded to the extent it provides less confidentiality or privilege.³² These requirements do not apply to information that is in the registry regarding a loan originator's employment history, or publicly adjudicated disciplinary and enforcement history.³³

²⁵ Public Law 110-289.

²⁶ H.R. 3221, Public Law 110-289, Title V, s. 1502.

²⁷ The SAFE Act provides that, if a state does not enact minimum regulatory standards that comply with the SAFE after the enactment, the U.S. Department of Housing and Urban Development (HUD) will enforce the minimum standards for loan originators operating in Florida as state-licensed loan originators.

²⁸ NLMS Resource Center, available at <http://mortgage.nationwidelicencingsystem.org/safe/Pages/default.aspx> 9last visited January 30, 2015).

²⁹ Frequently Asked Questions, NMLS, available at <http://mortgage.nationwidelicencingsystem.org/profreq/Pages/FAQ.aspx#credit> (last visited January 30, 2015).

³⁰ Correspondence from the Office of Financial Regulation (January 27, 2015) (on file with Senate Banking and Insurance Committee).

³¹ H.R. 3221, Public Law 110-289, Title V, s. 1512.

³² Title V, sec. 1512(a)-(c).

³³ Title V, sec. 1512(d).

Florida Regulation of Loan Originators

In Florida, the Office of Financial Regulation (OFR) regulates non-depository loan originators and other specified financial entities.³⁴ In 2009, the Legislature enacted and the Governor approved legislation³⁵ bringing the state into compliance with the SAFE Mortgage Licensing Act of 2008. Effective October 1, 2010, the OFR began accepting and processing applications for loan originator licenses.

The licensure and renewal process includes a review of the applicant's credit report and credit information by the state regulator, which OFR accesses through the registry. Every individual applying for state licensure as a mortgage loan originator is required to complete the credit authorization process through the NMLS.³⁶ The credit report obtained through NMLS is a TransUnion Credit Report with a Vantage Score. The OFR is required to comply with terms and conditions relating to the confidentiality of this information.

Once the OFR accesses a credit report, the OFR evaluates any adverse information contained in an applicant's credit report in the context of the "totality of the circumstances."³⁷ For example, an adverse item may result from inaccuracies in the credit report or factors that do not necessarily reflect negatively upon the applicant's character, general fitness, or financial responsibility.³⁸ The OFR must notify applicants of specific items of concern and provide the applicant with an opportunity to explain the circumstances surrounding the specific items and provide additional relevant information or documentation relating to the OFR's determination. During this process, the OFR must consider the following information for determining whether a person has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the OFR's determination that the person will operate honestly, fairly, and efficiently:

1. The relevant person's entire credit history as reflected in the credit report.
2. The information provided by the relevant person.
3. The responses contained in the license application.
4. The previous licensing history with the OFR including whether the relevant person was named in any regulatory action by the OFR.
5. Other information that reflects upon an applicant's character, general fitness, or financial responsibility.
6. The time and context of the information available and any pattern of behavior the information may demonstrate.³⁹

³⁴ The OFR is organized under the Financial Services Commission. The commission is composed of the Governor and Cabinet. Section 20.121(3), F.S.

³⁵ Chapter 2009-241, Laws of Florida.

³⁶ See Frequently Asked Questions at <http://mortgage.nationwidelicensingsystem.org/profreq/Pages/FAQ.aspx#credit> (last visited January 29, 2015).

³⁷ Rule 69V-40.0113, F.A.C.

³⁸ A 2013 Federal Trade Commission report found that one in five consumers had an error on at least one of their three credit reports. The report can be viewed at <http://www.ftc.gov/news-events/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports> (last visited January 29, 2015).

³⁹ Rule 69V-40.0113, F.A.C.

In considering the totality of circumstances, the fact that an applicant has been a debtor in a bankruptcy or has been the control person of a bankrupt company cannot be the sole basis of the OFR’s determination to deny the issuance of a license.⁴⁰ The OFR may not use a credit score or the absence or insufficiency of credit history information to determine charter, general fitness, or financial responsibility. If the OFR uses information contained in a credit report as the basis for denying a license, the OFR is required to provide particularity for the grounds or basis for denial.⁴¹

The OFR⁴² provided the following data⁴³ concerning denials and withdrawals in recent years:

Loan Originator Application Denials & Withdrawals			
	FY 2011-12	FY 2012-13	FY 2013-14
Denials	1958	134	165
Withdrawals	340	93	97
Total	2298	227	262
Loan Originator Renewal Denials & Withdrawals			
	FY 2011-12	FY 2012-13	FY 2013-14
Denials	76	31	58
Withdrawals	28	18	16
Total	104	49	74

Public Records Under Review

Section 494.00125(3), F.S., provides that credit history information and credit scores held by the OFR related to the licensure under ch. 494, F.S., are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. However, this public records exemption does not apply to information that is otherwise publicly available. The OFR is authorized to provide such credit history information and credit scores to other governmental entities having regulatory or law enforcement authority.

Credit reports can include credit history information regarding credit card usage and limits, loans, outstanding tax liens, uncollectible debt, bankruptcies, and foreclosures. Chapter 494, F.S., defines the term, “credit report,” to mean any written, oral, or other information obtained from a consumer-reporting agency as described in the federal Fair Credit Reporting Act, which bears on an individual’s credit worthiness, credit standing, or credit capacity. A credit score alone, as calculated by the reporting agency, is not considered a credit report.⁴⁴ The term, “credit score,” is defined in s. 494.001(8), F.S.

⁴⁰ Sections 494.00611, 494.00321, and 494.067, F.S.

⁴¹ *Id.*

⁴² Correspondence from the Office of Financial Regulation (January 26, 2015) (on file with the Senate Committee on Banking and Insurance).

⁴³ If an applicant has been denied licensure in any state, the applicant must disclose this reportable event in future application submission in any state. Because of this requirement, many applicants will withdraw their application rather than having a record of a licensure denial that would be available on the registry. The OFR does not track on their internal licensing system the reasons for denials.

⁴⁴ Section 494.001(7), F.S.

III. Effect of Proposed Changes:

The bill repeals the expiration date, thereby continuing the public records exemption for credit history information and credit scores held by the Office of Financial Regulation pursuant to s. 494.00125, F.S. The effective date of the bill is October 1, 2015.

The continuation of this exemption will protect sensitive personal financial information of applicants from being subject to disclosure. The release of such information could make those persons vulnerable to identity theft and other crimes and could adversely affect the name or reputation of an applicant.

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

None.

B. Public Records/Open Meetings Issues:

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The continuation of this exemption protects an applicant's sensitive, personal financial information held by the OFR. The disclosure of such information could make those persons vulnerable to identity theft and other crimes. In addition, the release of such exempted information contained in a credit report or a credit score could adversely affect the name or reputation of an applicant.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 494.00321, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Banking and Insurance

597-01476-15

20157012__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 494.00125, F.S., which
 4 provides a public records exemption for credit history
 5 information and credit scores held by the Office of
 6 Financial Regulation for purposes of licensing loan
 7 originators, mortgage brokers, and mortgage lenders;
 8 saving the exemption from repeal under the Open
 9 Government Sunset Review Act; providing an effective
 10 date.

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

13
 14 Section 1. Subsection (3) of section 494.00125, Florida
 15 Statutes, is amended to read:

16 494.00125 Public records exemptions.—

17 (3) CREDIT INFORMATION.—

18 (a) Credit history information and credit scores held by
 19 the office and related to licensing under ss. 494.001-494.0077
 20 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 21 I of the State Constitution.

22 (b) Credit history information and credit scores made
 23 confidential and exempt pursuant to paragraph (a) may be
 24 provided by the office to another governmental entity having
 25 oversight or regulatory or law enforcement authority.

26 (c) This subsection does not apply to information that is
 27 otherwise publicly available.

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

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

597-01476-15

20157012__

30 ~~repealed on October 2, 2015, unless reviewed and saved from~~
 31 ~~repeal through reenactment by the Legislature.~~
 32 Section 2. This act shall take effect October 1, 2015.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 946

INTRODUCER: Senator Bullard

SUBJECT: Legal Holidays and Special Observances

DATE: March 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	Pre-meeting
2.			EP	
3.			RC	

I. Summary:

SB 946 designates the second Monday in October of each year “Sir Lancelot Jones Day.” The bill provides that the Governor may issue a proclamation and encourages citizens to honor the legacy of Sir Lancelot Garfield Jones, who contributed to the preservation of Biscayne Bay and the establishment of Biscayne National Park.

II. Present Situation:

Laws designating legal holidays and special observances are located in Chapter 683 of the Florida Statutes. There are 21 legal holidays and 31 special observances. There are a variety of ways in which a holiday or observance may be enacted. Celebration of legal holidays and special observances can be statewide or limited to certain groups, such as schools, counties or branches of government. The dates, days or months designated in Chapter 683 may require the government or group to perform an action or may simply call for commemoration or observance. For example, on Pan American Day the Governor must issue a proclamation and all public schools must honor the republics of Latin America.¹ Gasparilla Day is a legal holiday on which government offices and banks are closed only in Hillsborough County.² Observance of a legal holiday may also be discretionary; for example, a chief judge in a judicial circuit is authorized to designate Rosh Hashanah or Good Friday as a legal holiday and close the courts in his or her circuit.³

State holidays on which all branches of state government are closed are found in section 110.117, F.S. The State of Florida recognizes nine holidays for which state employees are paid. Some legal holidays and state holidays, such as Christmas, overlap.⁴

¹ Section 683.05, F.S.

² Section 683.08, F.S.

³ Section 683.19, F.S.

⁴ Section 110.17(1)(i), F.S. and section 683.01(1)(t), F.S.

In 2014, Senate Resolution 1158 designated October 13, 2014 as “Lancelot Jones Day” in Florida. Currently, there is no legal holiday or special observance of Sir Lancelot Jones.

Sir Lancelot Garfield Jones was born in 1898 and resided in Porgy Key, near Biscayne Bay. Mr. Jones’ parents were early settlers of the area and the Jones Family Historic District is listed on the National Register of Historic Places. Mr. Jones was a farmer, fisherman and conservationist who sold his family’s 277 acres of property to the National Park Service to contribute to what is now known as Biscayne National Park.

III. Effect of Proposed Changes:

This bill creates section 683.095, F.S. and designates the second Monday of October of each year as “Sir Lancelot Jones Day.” The bill permits the Governor to issue a proclamation and encourages citizens, public entities, and private organizations to honor Sir Lancelot Garfield Jones and his contributions.

The bill becomes effective upon becoming 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:

None.

C. **Government Sector Impact:**

The bill does not create a paid state holiday⁵ and does not require the governor to issue a proclamation. There should be no fiscal impact on state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 683.095 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.

⁵ 2015 Legislative Bill analysis from the Department of Management Services, dated February 25, 2015, <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=4828&yr=2015> (last visited on March 5, 2015).

By Senator Bullard

39-00137A-15

2015946__

1 A bill to be entitled
2 An act relating to legal holidays and special
3 observances; creating s. 683.095, F.S.; designating
4 the second Monday in October of each year as "Sir
5 Lancelot Jones Day"; authorizing the Governor to issue
6 proclamations commemorating the occasion; encouraging
7 public officials, schools, private organizations, and
8 citizens to commemorate the occasion; providing an
9 effective date.

10 WHEREAS, born in 1898 on a 22-foot boat in Biscayne Bay,
11 entrepreneur and farmer Sir Lancelot Garfield Jones prospered by
12 supplying the nation with Key limes and was an expert fishing
13 guide sought by five presidents and numerous senators,
14 influential industrialists, and other cultural icons eager to
15 experience the beauty of the bay's wildlife, and

16 WHEREAS, Sir Lancelot Garfield Jones lived most of his 99
17 years on the tiny island known as Porgy Key, near the southern
18 end of Biscayne Bay, which was first settled by his pioneer
19 father and Bahamian mother in 1897 in an area long associated
20 with African-American maritime history and which is now on the
21 National Register of Historical Places, and

22 WHEREAS, often referred to as the "Sage of Caesar Creek,"
23 Sir Lancelot Garfield Jones became an educator of schoolchildren
24 and a conservationist whose resolute values toward the
25 preservation of Biscayne Bay greatly contributed to the
26 establishment of Biscayne National Park, which was created to
27 preserve and protect area wildlife for the education,
28 inspiration, recreation, and enjoyment of present and future
29

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30 generations, and

31 WHEREAS, Biscayne National Park is home to a rare
32 combination of terrestrial, marine, and amphibious life in a
33 tropical and subtropical setting of great natural beauty, which
34 annually draws an average of 500,000 visitors, contributes more
35 than \$34 million to the state's economy, and supports 422 jobs,
36 and

37 WHEREAS, the invaluable efforts of Sir Lancelot Garfield
38 Jones to preserve the land he loved and to ensure that future
39 generations would delight in its beauty and abundance have
40 resulted in significant economic, ecological, and cultural
41 contributions to the state, its heritage, and its future, NOW,
42 THEREFORE,

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

44 Section 1. Section 683.095, Florida Statutes, is created to
45 read:

46 683.095 Sir Lancelot Jones Day.-

47 (1) The second Monday in October of each year is designated
48 as "Sir Lancelot Jones Day" to commemorate the contributions of
49 Sir Lancelot Garfield Jones in the preservation of Biscayne Bay
50 and the establishment of Biscayne National Park.

51 (2) The Governor may issue annually a proclamation
52 designating the second Monday in October as "Sir Lancelot Jones
53 Day." Public officials, schools, private organizations, and all
54 citizens are encouraged to honor the legacy of Sir Lancelot
55 Garfield Jones and his contributions to the state by
56 commemorating Sir Lancelot Jones Day on the second Monday in
57
58

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2015946__

59 October of each year.

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

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 Governmental Oversight and Accountability

BILL: SPB 7042

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Florida Retirement System

DATE: March 9, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney		Pre-meeting
2.				
3.				

I. Summary:

SPB 7042 reestablishes renewed membership in the Florida Retirement System (FRS). A retiree of the FRS pension plan, the FRS investment plan, the Senior Management Service Optional Annuity Program (SMSOAP), the State University System Optional Retirement Program (SUSORP) or the State Community College System Optional Retirement Program (SCCSOAP) who is employed in a regularly established position with a covered employer on or after July 1, 2016, will be a renewed member in the FRS as follows:

- FRS (all retirees) → Investment Plan (any eligible class)
- SMSOAP → Investment Plan (any eligible class)
- SUSORP → SUSORP
- SCCSORP → SCCSORP

A renewed member must meet the vesting requirements of the applicable plan in which he becomes a renewed member. Except for renewed members reemployed prior to June 30, 2010, creditable service does not accrue for a retiree’s employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2016, and no employer or employee contributions may be paid into a renewed member’s investment plan account for employment with a covered employer during this time period.

A special actuarial study is required to determine the contribution rates necessary to fund the costs associated with this modification to the FRS.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in ch. 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 186 cities and 262 special districts that have elected to join the system.⁴

The membership of the FRS is divided into five membership classes:

- The Regular Class⁵ consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class⁶ includes 68,593 active members;
- The Special Risk Administrative Support Class⁷ has 84 active members;
- The Elected Officers' Class⁸ has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class⁹ has 7,607 members, plus 184 in renewed membership.¹⁰

¹ The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf.

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 112.

⁴ *Id.*, at p. 146.

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 115.

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰

Benefits payable under the pension plan are calculated based on the member's years of creditable

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in-line-of-duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ Section 4, Art. IV, Fla. Const.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;²⁶ and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.²⁷

Reemployment Restrictions

For the purposes of the pension plan, a “retiree” means a former member of the FRS or an existing system who has terminated employment and is receiving benefit payments from the system in which he or she was a member.²⁸ For the purposes of the investment plan, a “retiree” means a former member of the investment plan who has terminated employment and taken a distribution of vested employee or employer contributions, except for a mandatory distribution of a de minimis account authorized by the state board or a minimum required distribution provided the Internal Revenue Code.²⁹

After retiring under the FRS, a retiree can work for any private employer, for any public employer not participating in the FRS, or for any employer in another state, without affecting his FRS benefits.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁵ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

²⁶ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

²⁷ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

²⁸ Section 121.021(60), F.S.

²⁹ Section 121.4501(2)(k), F.S.

However, there are certain termination requirements and reemployment limitations that affect retirement benefits **if a retiree is employed with an FRS-participating employer** during the first 12 calendar months after the effective retirement date without DROP participation or after the DROP termination date. If a retiree returns to work during the **first six calendar months** of retirement or after his DROP termination date, then his retirement application is voided and all retirement benefits, including any funds accumulated during DROP participation, must be repaid to the FRS Trust Fund. This restriction applies even if the particular position held is not covered by the FRS. A retiree cannot become a newly hired employee until after meeting the definition of termination by remaining unemployed for six calendar months.

A retiree may not receive both wages paid by an FRS-participating employer and an FRS retirement benefit in the same month during the **seventh through twelfth calendar months** of retirement or after the DROP termination date. There are no exceptions to this reemployment limitation during this period. This restriction applies even if the particular position held is not covered by the FRS. A retiree must inform the Division of Retirement if he works for an FRS-participating employer during the reemployment limitation period.

Suspended retirement benefits for the months a reemployed retiree is employed by an FRS-participating employer during the reemployment limitation period will never be paid to the retiree. The reemployed retiree and his employing agency are jointly and severally liable for repaying any retirement benefits the employee receives while working during this period.

There are no limits on working for an FRS-participating employer after a retiree has been retired for 12 calendar months.

If a retiree is re-employed with an FRS participating employer, he will be required to sign a statement that his reemployment does not violate these provisions.³⁰

Before July 1, 2010, there were various exceptions to employment with FRS-participating employers during the reemployment limitation period. All reemployment limitation exceptions that were not specific to educational institutions were closed by operation of chapter 2009-209, Laws of Florida, which also extended from one month to 12 months the exclusionary period immediately after retirement in which a retiree may not be reemployed with any FRS-participating employer.

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (Pension Plan or Investment Plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members who retire again, including former DROP participants, are once more subject to reemployment limitations.

³⁰ The information in this section of the bill analysis comes from the FRS Pension Plan member Handbook, 2013 edition, p. 56, located at: https://www.rol.frs.state.fl.us/forms/member_handbook.pdf. See also ss. 121.091(9), 121.122, and 1012.01(2), F.S.

Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent children of a renewed member may qualify for survivor benefits.

Prior to July 1, 2010, retirees of a state-administered retirement system reemployed by an FRS-participating employer were eligible for renewed membership in the FRS. Currently, retirees initially re-employed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and will not earn creditable service toward a subsequent retirement benefit. This restriction from renewed membership includes retirees of the FRS pension plan, the FRS investment plan, the SUSORP, the SMSOAP, and the SCCSORP.³¹

Reemployed Retirees without Renewed Membership

Information provided by the DMS indicates that as of December of 2013, there were 5,703 employees who retired by June 30, 2010, and subsequently returned to FRS-covered employment, but are not permitted to be renewed members of the FRS. Of that number, 2,918 were retirees of the pension plan, and 2,616 were retirees of the investment plan. Anecdotal evidence suggests that some of these “retirees” were employees who took distributions from investment plan accounts prior to July 1, 2010, and rolled them into IRAs upon their termination from FRS-covered employment. The enactment on the bar to renewed membership means that anyone who took such a distribution is deemed retired, and cannot become a renewed member of the FRS.

III. Effect of Proposed Changes:

The bill allows renewed membership in the FRS investment plan, beginning July 1, 2016, for all retirees of the FRS, the SUSORP, the CCORP, and the SMSOAP.

Section 1 amends s. 121.053, F.S., to make conforming changes consistent with section 3 of the bill.

Section 2 amends s. 121.055, F.S., to make conforming changes consistent with section 3 of the bill.

Section 3 amends s. 121.122, F.S., to provide that a retiree of:

- Either the pension plan or the investment plan of the FRS,
- The State University System Optional Retirement Program,
- The Senior Management Service Optional Annuity Program, or
- The State Community College System Optional Retirement Program,

who is employed in a regularly established position with a covered employer on or after July 1, 2016, will be a renewed member of the appropriate membership class in the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP, in which case the retiree will become a renewed member of the SUSOPRP or SCCSORP. The renewed member must satisfy the vesting requirements of the plan (one year for the investment plan). Members who retired and returned to renewed membership before July 1, 2010, may continue membership in the plan they choose.

³¹ *Id.*, at 57. See also ss. 121.053, 121.091(9), 121.122, and 238.181, F.S.

Creditable service (including credit toward the retiree health insurance subsidy) does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through June 30, 2016. Nor may employer or employee contributions be paid into a renewed member's investment plan account for employment with a covered employer during this time period.

Section 4 amends s. 121.4501, F.S., to make conforming changes consistent with section 3 of the bill.

Section 5 provides a mechanism to adjust employer contribution rates to be paid into the FRS Trust Fund.

Section 6 makes the finding that the changes made by the bill fulfill an important state interest.

Section 7 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution provides that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless: . . . the expenditure is required to comply with a law that applies to all persons similarly situated . . .".

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, universities, community colleges, counties, and municipalities.

This bill may be exempt from the requirements of s. 18, Art. VII of the Florida Constitution to the extent the costs associated with this legislation relate to funding of pension benefits existing on January 8, 1991. Renewed membership was a benefit afforded FRS pension members on that date.

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:

Employers participating in the FRS that hire employees eligible for renewed membership will incur greater personnel costs associated with contributing to the FRS. Likewise, the public sector employees will also contribute 3 percent of their salaries to the FRS.

A special actuarial study is required to determine the contribution rates necessary to fund the costs associated with this modification to the FRS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 121.053, 121.055, 121.122, and 121.4501.

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.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled
 2 An act relating to the Florida Retirement System;
 3 amending s. 121.053, F.S.; authorizing renewed
 4 membership in the retirement system for retirees who
 5 are reemployed in a position eligible for the Elected
 6 Officers' Class under certain circumstances; amending
 7 s. 121.055, F.S.; providing for renewed membership in
 8 the retirement system for retirees of the Senior
 9 Management Service Optional Annuity Program who are
 10 employed on or after a specified date; amending s.
 11 121.122, F.S.; requiring that certain retirees who are
 12 employed on or after a specified date be renewed
 13 members in the investment plan; providing exceptions;
 14 specifying that creditable service does not accrue for
 15 a reemployed retiree during a specified period;
 16 prohibiting certain funds from being paid into a
 17 renewed member's investment plan account for a
 18 specified period of employment; requiring the renewed
 19 member to satisfy vesting requirements; making a
 20 renewed member ineligible to receive disability
 21 benefits; specifying limitations and requirements;
 22 requiring the employer and the retiree to make
 23 applicable contributions to the renewed member's
 24 investment plan account; providing for the transfer of
 25 contributions; prohibiting the purchase of past
 26 service in the investment plan; authorizing a renewed
 27 member to receive additional credit towards the health
 28 insurance subsidy under certain circumstances;
 29 providing that a retiree employed on or after a

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30 specified date in a regularly established position
 31 eligible for the State University System Optional
 32 Retirement Program or State Community College System
 33 Optional Retirement Program is a renewed member of
 34 that program; specifying limitations and requirements;
 35 requiring the employer and the retiree to make
 36 applicable contributions; prohibiting the purchase of
 37 past service in the program; providing for renewed
 38 membership in the optional retirement program for
 39 certain retirees initially reemployed on or after a
 40 specified date; making the renewed member ineligible
 41 to receive disability benefits; specifying limitations
 42 and requirements; requiring the employer and the
 43 retiree to make applicable contributions; providing
 44 for the transfer of contributions; prohibiting the
 45 purchase of past service in the optional retirement
 46 program; authorizing a renewed member to receive
 47 additional credit towards the health insurance subsidy
 48 under certain circumstances; amending s. 121.4501,
 49 F.S.; revising the definition of the term "eligible
 50 employee"; conforming a provision to changes made by
 51 the act; providing for employer contribution rate
 52 increases to fund changes made by the act; providing a
 53 directive to the Division of Law Revision and
 54 Information; declaring that the act fulfills an
 55 important state interest; providing an effective date.

56
 57 Be It Enacted by the Legislature of the State of Florida:
 58

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59 Section 1. Paragraph (a) of subsection (3) and subsection
60 (5) of section 121.053, Florida Statutes, are amended to read:
61 121.053 Participation in the Elected Officers' Class for
62 retired members.—

63 (3) On or after July 1, 2010:

64 (a) A retiree of a state-administered retirement system who
65 is initially reemployed in ~~elected or appointed for the first~~
66 ~~time to~~ an elective office in a regularly established position
67 with a covered employer may not reenroll in the Florida
68 Retirement System, except as provided in s. 121.122.

69 (5) Any renewed member, as described in s. 121.122(1), (3),
70 (4), or (5) ~~subsection (1) or subsection (2)~~, who is not
71 receiving the maximum health insurance subsidy provided in s.
72 112.363 is entitled to earn additional credit toward the maximum
73 health insurance subsidy. Any additional subsidy due because of
74 such additional credit may be received only at the time of
75 payment of the second career retirement benefit. The total
76 health insurance subsidy received from initial and renewed
77 membership may not exceed the maximum allowed in s. 112.363.

78 Section 2. Paragraph (f) of subsection (1) and paragraph
79 (c) of subsection (6) of section 121.055, Florida Statutes, are
80 amended to read:

81 121.055 Senior Management Service Class.—There is hereby
82 established a separate class of membership within the Florida
83 Retirement System to be known as the "Senior Management Service
84 Class," which shall become effective February 1, 1987.

85 (1)

86 (f) Effective July 1, 1997:

87 1. Except as provided in subparagraph 3., an elected state

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88 officer eligible for membership in the Elected Officers' Class
89 under s. 121.052(2)(a), (b), or (c) who elects membership in the
90 Senior Management Service Class under s. 121.052(3)(c) may,
91 within 6 months after assuming office or within 6 months after
92 this act becomes a law for serving elected state officers, elect
93 to participate in the Senior Management Service Optional Annuity
94 Program, as provided in subsection (6), in lieu of membership in
95 the Senior Management Service Class.

96 2. Except as provided in subparagraph 3., an elected
97 officer of a local agency employer eligible for membership in
98 the Elected Officers' Class under s. 121.052(2)(d) who elects
99 membership in the Senior Management Service Class under s.
100 121.052(3)(c) may, within 6 months after assuming office, or
101 within 6 months after this act becomes a law for serving elected
102 officers of a local agency employer, elect to withdraw from the
103 Florida Retirement System, as provided in subparagraph (b)2., in
104 lieu of membership in the Senior Management Service Class.

105 3. A retiree of a state-administered retirement system who
106 is initially reemployed in a regularly established position on
107 ~~or after~~ July 1, 2010, through June 30, 2016, as an elected
108 official eligible for the Elected Officers' Class may not be
109 enrolled in renewed membership in the Senior Management Service
110 Class or in the Senior Management Service Optional Annuity
111 Program as provided in subsection (6), and may not withdraw from
112 the Florida Retirement System as a renewed member as provided in
113 subparagraph (b)2., as applicable, in lieu of membership in the
114 Senior Management Service Class. Effective July 1, 2016, a
115 retiree of the Senior Management Service Optional Annuity
116 Program who reenters covered employment shall be enrolled as a

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117 renewed member as provided in s. 121.122.

118 (6)

119 (c) *Participation.*—

120 1. An eligible employee who is employed on or before
121 February 1, 1987, may elect to participate in the optional
122 annuity program in lieu of participating in the Senior
123 Management Service Class. Such election shall ~~must~~ be made in
124 writing and filed with the department and the personnel officer
125 of the employer on or before May 1, 1987. An eligible employee
126 who is employed on or before February 1, 1987, and who fails to
127 make an election to participate in the optional annuity program
128 by May 1, 1987, is ~~shall be~~ deemed to have elected membership in
129 the Senior Management Service Class.

130 2. Except as provided in subparagraph 6., an employee who
131 becomes eligible to participate in the optional annuity program
132 by reason of initial employment commencing after February 1,
133 1987, may, within 90 days after the date of commencing
134 employment, elect to participate in the optional annuity
135 program. Such election shall ~~must~~ be made in writing and filed
136 with the personnel officer of the employer. An eligible employee
137 who does not within 90 days after commencing employment elect to
138 participate in the optional annuity program is ~~shall be~~ deemed
139 to have elected membership in the Senior Management Service
140 Class.

141 3. A person who is appointed to a position in the Senior
142 Management Service Class and who is a member of an existing
143 retirement system or the Special Risk or Special Risk
144 Administrative Support Classes of the Florida Retirement System
145 may elect to remain in such system or class in lieu of

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146 participating in the Senior Management Service Class or optional
147 annuity program. Such election shall ~~must~~ be made in writing and
148 filed with the department and the personnel officer of the
149 employer within 90 days after such appointment. An eligible
150 employee who fails to make an election to participate in the
151 existing system, the Special Risk Class of the Florida
152 Retirement System, the Special Risk Administrative Support Class
153 of the Florida Retirement System, or the optional annuity
154 program is ~~shall be~~ deemed to have elected membership in the
155 Senior Management Service Class.

156 4. Except as provided in subparagraph 5., an employee's
157 election to participate in the optional annuity program is
158 irrevocable if the employee continues to be employed in an
159 eligible position and continues to meet the eligibility
160 requirements set forth in this paragraph.

161 5. Effective from July 1, 2002, through September 30, 2002,
162 an active employee in a regularly established position who has
163 elected to participate in the Senior Management Service Optional
164 Annuity Program has one opportunity to choose to move from the
165 Senior Management Service Optional Annuity Program to the
166 Florida Retirement System Pension Plan.

167 a. The election shall ~~must~~ be made in writing and ~~must be~~
168 filed with the department and the personnel officer of the
169 employer before October 1, 2002, or, in the case of an active
170 employee who is on a leave of absence on July 1, 2002, within 90
171 days after the conclusion of the leave of absence. This election
172 is irrevocable.

173 b. The employee shall receive service credit under the
174 pension plan equal to his or her years of service under the

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175 Senior Management Service Optional Annuity Program. The cost for
176 such credit is the amount representing the present value of that
177 employee's accumulated benefit obligation for the affected
178 period of service.

179 c. The employee shall ~~must~~ transfer the total accumulated
180 employer contributions and earnings on deposit in his or her
181 Senior Management Service Optional Annuity Program account. If
182 the transferred amount is not sufficient to pay the amount due,
183 the employee shall ~~must~~ pay a sum representing the remainder of
184 the amount due. The employee may not retain any employer
185 contributions or earnings from the Senior Management Service
186 Optional Annuity Program account.

187 6. A retiree of a state-administered retirement system who
188 is initially reemployed on or after July 1, 2010, through June
189 30, 2016, may not renew membership in the Senior Management
190 Service Optional Annuity Program. Effective July 1, 2016, a
191 retiree of the Senior Management Service Optional Annuity
192 Program who reenters covered employment shall be enrolled as a
193 renewed member as provided in s. 121.122.

194 Section 3. Subsection (2) of section 121.122, Florida
195 Statutes, is amended, and subsections (3) through (6) are added
196 to that section, to read:

197 121.122 Renewed membership in system.—

198 (2) A retiree of a state-administered retirement system who
199 is initially reemployed in a regularly established position on
200 or after July 1, 2010, through June 30, 2016, may not be
201 enrolled as a renewed member.

202 (3) A retiree of a state-administered retirement system
203 specified in subsection (2) who is employed on or after July 1,

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204 2016, in a regularly established position shall be a renewed
205 member of the investment plan, regardless of the position held,
206 unless employed in a position eligible for participation in the
207 State University System Optional Retirement Program or the State
208 Community College System Optional Retirement Program as provided
209 in subsections (4) and (5), respectively. A renewed member must
210 satisfy the vesting requirements and other provisions of this
211 chapter.

212 (a) Creditable service, including credit toward the retiree
213 health insurance subsidy provided in s. 112.363, does not accrue
214 for a retiree's employment in a regularly established position
215 with a covered employer during the period from July 1, 2010,
216 through June 30, 2016.

217 (b) Employer and employee contributions, interest,
218 earnings, or any other funds may not be paid into a renewed
219 member's investment plan account for any employment in a
220 regularly established position with a covered employer from July
221 1, 2010, through June 30, 2016, by the renewed member or the
222 employer on behalf of the member.

223 (c) To be eligible to receive a retirement benefit, the
224 renewed member must satisfy the vesting requirements in s.
225 121.4501(6).

226 (d) The member is ineligible to receive disability benefits
227 as provided in s. 121.091(4) or s. 121.591(2).

228 (e) The member is subject to the reemployment after
229 retirement limitations provided in s. 121.091(9), as applicable.

230 (f) The member must satisfy the requirements for
231 termination from employment provided in s. 121.021(39).

232 (g) Upon the renewed membership or reemployment of a

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233 retiree, the employer and the retiree shall pay the applicable
 234 employer and employee contributions required under ss. 112.363,
 235 121.71, 121.74, and 121.76. The contributions are payable only
 236 for employment and salary earned in a regularly established
 237 position with a covered employer on or after July 1, 2016. The
 238 employer and employee contributions shall be transferred to the
 239 investment plan and placed in a default fund as designated by
 240 the state board. The retiree may move the contributions once an
 241 account is activated in the investment plan.

242 (h) The member may not purchase any past service in the
 243 investment plan, including employment in a regularly established
 244 position with a covered employer from July 1, 2010, through June
 245 30, 2016.

246 (i) A renewed member who is a retiree of the investment
 247 plan or pension plan and who is not receiving the maximum health
 248 insurance subsidy provided in s. 112.363 is entitled to earn
 249 additional credit toward the subsidy. Such credit may be earned
 250 only for employment in a regularly established position with a
 251 covered employer on or after July 1, 2016. Any additional
 252 subsidy due because of additional credit may be received only at
 253 the time of paying the second career retirement benefit. The
 254 total health insurance subsidy received by a retiree receiving
 255 benefits from initial and renewed membership may not exceed the
 256 maximum allowed under s. 112.363.

257 (4) A retiree of a state-administered retirement system
 258 specified in subsection (2) who is employed on or after July 1,
 259 2016, in a regularly established position eligible for
 260 participation in the State University System Optional Retirement
 261 Program shall become a renewed member of the optional retirement

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262 program. The renewed member must satisfy the vesting
 263 requirements and other provisions of this chapter. Once
 264 enrolled, a renewed member remains enrolled in the optional
 265 retirement program while employed in an eligible position for
 266 the optional retirement program. If employment in a different
 267 covered position results in the retiree's enrollment in the
 268 investment plan, the retiree is no longer eligible to
 269 participate in the optional retirement program unless employed
 270 in a mandatory position under s. 121.35.

271 (a) The member is subject to the reemployment after
 272 retirement limitations provided in s. 121.091(9), as applicable.

273 (b) The member must satisfy the requirements for
 274 termination of employment provided in s. 121.021(39).

275 (c) Upon renewed membership or reemployment of a retiree,
 276 the employer and the retiree shall pay the applicable employer
 277 and employee contributions required under s. 121.35.

278 (d) The member, or the employer on behalf of the member,
 279 may not purchase any past service in the optional retirement
 280 program or employment from July 1, 2010, to June 30, 2016, when
 281 renewed membership is not available.

282 (5) A retiree of a state-administered retirement system
 283 specified in subsection (2) who is employed on or after July 1,
 284 2016, in a regularly established position eligible for
 285 participation in the State Community College System Optional
 286 Retirement Program as provided in s. 121.051(2)(c)4., shall
 287 become a renewed member of the optional retirement program. The
 288 renewed member must satisfy the eligibility requirements of this
 289 chapter and s. 1012.875 for the optional retirement program.
 290 Once enrolled, a renewed member remains enrolled in the optional

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291 retirement program while employed in an eligible position for
 292 the optional retirement program. If employment in a different
 293 covered position results in the retiree's enrollment in the
 294 investment plan, the retiree is no longer eligible to
 295 participate in the optional retirement program.

296 (a) The member is subject to the reemployment after
 297 retirement limitations provided in s. 121.091(9), as applicable.

298 (b) The member must satisfy the requirements for
 299 termination of employment provided in s. 121.021(39).

300 (c) Upon renewed membership or reemployment of a retiree,
 301 the employer and the retiree shall pay the applicable employer
 302 and employee contributions required under ss. 121.051(2)(c) and
 303 1012.875.

304 (d) The member, or the employer on behalf of the member,
 305 may not purchase any past service in the optional retirement
 306 program or employment accrued from July 1, 2010, to June 30,
 307 2016.

308 (6) A retiree of a state-administered retirement system who
 309 is initially reemployed in a regularly established position on
 310 or after July 1, 2016, shall be enrolled in the investment plan
 311 unless eligible for participation in the State University System
 312 Optional Retirement Program as provided in s. 121.35 or in the
 313 State Community College System Optional Retirement Program as
 314 provided in ss. 121.051(2)(c) and 1012.875. A renewed member
 315 must satisfy the vesting requirements and other provisions
 316 provided in this chapter.

317 (a) The member is not entitled to disability benefits as
 318 provided in s. 121.091(4) or s. 121.591(2).

319 (b) The member is subject to the reemployment after

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320 retirement limitations as provided in s. 121.091(9), as
 321 applicable.

322 (c) The member must meet the termination from employment
 323 provisions as provided in s. 121.021(39).

324 (d) Upon the renewed membership of a reemployed retiree,
 325 the employer and the retiree shall pay the applicable employer
 326 and employee contributions as required by ss. 112.363, 121.71,
 327 121.74, and 121.76. The contributions are payable only for
 328 employment and compensation earned in a regularly established
 329 position with a covered employer on or after July 1, 2016. The
 330 employer and employee contributions shall be transferred to the
 331 investment plan and placed in a default fund as designated by
 332 the state board. The retiree may move the contributions once an
 333 account is activated in the investment plan.

334 (e) The member or the employer on behalf of the member may
 335 not purchase any past service in the optional retirement program
 336 or employment accrued from July 1, 2010 to June 30, 2016.

337 (f) A renewed member who is a retiree of the investment
 338 plan or pension plan and is not receiving the maximum health
 339 insurance subsidy provided in s. 112.363 is entitled to earn
 340 additional credit toward the subsidy. Such credit may be earned
 341 only for employment in a regularly established position with a
 342 covered employer on or after July 1, 2016. Any additional
 343 subsidy due because of additional credit may be received only at
 344 the time of paying the second career retirement benefit. The
 345 total health insurance subsidy received by a retiree receiving
 346 benefits from initial and renewed membership may not exceed the
 347 maximum allowable under s. 112.363.

348 Section 4. Paragraph (e) of subsection (2) and paragraph

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349 (f) of subsection (4) of section 121.4501, Florida Statutes, are
350 amended to read:

351 121.4501 Florida Retirement System Investment Plan.—

352 (2) DEFINITIONS.—As used in this part, the term:

353 (e) "Eligible employee" means an officer or employee, as
354 defined in s. 121.021, who:

355 1. Is a member of, or is eligible for membership in, the
356 Florida Retirement System, including any renewed member of the
357 Florida Retirement System initially enrolled before July 1,
358 2010; ~~or~~

359 2. Participates in, or is eligible to participate in, the
360 Senior Management Service Optional Annuity Program as
361 established under s. 121.055(6), the State Community College
362 System Optional Retirement Program as established under s.
363 121.051(2)(c), or the State University System Optional
364 Retirement Program established under s. 121.35; or

365 3. Is a retiree of a state-administered retirement system
366 employed in a regularly established position on or after July 1,
367 2016, enrolled as a renewed member as provided under s. 121.122.
368

369 The term does not include any member participating in the
370 Deferred Retirement Option Program established under s.
371 121.091(13), a retiree of a state-administered retirement system
372 initially reemployed in a regularly established position on or
373 after July 1, 2010, through June 30, 2016, or a mandatory
374 participant of the State University System Optional Retirement
375 Program established under s. 121.35.

376 (4) PARTICIPATION; ENROLLMENT.—

377 (f) 1. A member of the investment plan who takes a

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378 distribution of any contributions from his or her investment
379 plan account is considered a retiree. A retiree who is initially
380 reemployed in a regularly established position on or after July
381 1, 2010, and before June 30, 2016, is not eligible ~~for to be~~
382 ~~enrolled in~~ renewed membership, except as provided in s.
383 121.122.

384 2. A retiree who is initially reemployed on or after July
385 1, 2016, shall be a renewed member as provided in s. 121.122.

386 Section 5. (1) In order to fund the benefit changes
387 provided for in this act, the required employer contribution
388 rates of the Florida Retirement System established in 121.71(4),
389 Florida Statutes, shall be adjusted effective July 1, 2016 as
390 follows:

391 (a) The Regular Class is increased by X.XX percentage
392 points.

393 (b) The Special Risk Class is increased by X.XX percentage
394 points.

395 (c) The Special Risk Administrative Support Class is
396 increased by X.XX percentage points.

397 (d) The Elected Officers' Class—Legislators, Governor, Lt.
398 Governor, Cabinet Officers, State Attorneys, Public Defenders is
399 increased by X.XX percentage points.

400 (e) The Elected Officers' Class—Justices, Judges is
401 increased by X.XX percentage points.

402 (f) The Elected Officer's Class—County Elected Officers is
403 increased by X.XX percentage points.

404 (g) The Senior Management Service Class is increased by
405 X.XX percentage points.

406 (h) The DROP is increased by X.XX percentage points.

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407 (2) The adjustments provided in subsection (1) shall be
408 made in addition to other changes to such contribution rates
409 which may be enacted into law to take effect on July 1, 2015,
410 and July 1, 2016. The Division of Law Revision and Information
411 is requested to adjust accordingly the contribution rates
412 provided in s. 121.71, Florida Statutes.

413 Section 6. The Legislature finds that a proper and
414 legitimate state purpose is served when employees and retirees
415 of the state and its political subdivisions, and the dependents,
416 survivors, and beneficiaries of such employees and retirees, are
417 extended the basic protections afforded by governmental
418 retirement systems. These persons must be provided benefits that
419 are fair and adequate and that are managed, administered, and
420 funded in an actuarially sound manner, as required by s. 14,
421 Article X of the State Constitution and part VII of chapter 112,
422 Florida Statutes. Therefore, the Legislature determines and
423 declares that this act fulfills an important state interest.

424 Section 7. This act shall take effect July 1, 2015.