

Tab 1 SB 426 by Brandes; State Data Center							
156288	A	S	RCS	GO, Hays	Delete L.33 - 39:	12/01	02:47 PM
196080	A	S	RCS	GO, Hays	Delete L.69 - 71:	12/01	02:47 PM

Tab 2 SB 624 by Hays; Public Records/State Agency Information Technology Security Programs							
237354	D	S	RCS	GO, Hays	Delete everything after	12/01	02:47 PM

Tab 3 SB 582 by Gaetz; (Compare to H 0593) Public Corruption							
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Tab 4 CS/SB 196 by TR, Hutson; (Similar to H 0267) Public Records/State-funded Infrastructure Bank							
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Tab 5 SB 438 by Bullard; (Identical to H 0211) Small Business Participation in State Contracting							
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Tab 6 SPB 7036 by GO; School District Purchasing							
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
 GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
 Senator Ring, Chair
 Senator Hays, Vice Chair

MEETING DATE: Tuesday, December 1, 2015

TIME: 1:00—3:00 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 Agency for State Technology			
1	SB 426 Brandes	State Data Center; Providing for terms of continuation of service if the state data center within the Agency for State Technology and an existing customer entity fail to execute a new service-level agreement within a specified time after an existing agreement expires; requiring the state data center to plan, design, and establish pilot projects for and conduct experiments with information technology resources and to implement service enhancements if cost-effective, etc.	
		GO 12/01/2015 AGG AP	
2	SB 624 Hays	Public Records/State Agency Information Technology Security Programs; Creating exemptions from public records requirements for information held by a state agency relating to the detection or investigation of or response to any suspected or confirmed security breaches and the results of external audits and evaluations of a state agency's information technology security program; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc.	
		GO 12/01/2015 RC	
3	SB 582 Gaetz (Compare H 593, S 686)	Public Corruption; Deleting the definition of the term "corruptly" or "with corrupt intent"; redefining the term "bribery" to include knowing and intentional, rather than corrupt, acts; revising the prohibition against unlawful compensation or reward for official behavior to conform to changes made by the act; revising the prohibition against official misconduct to conform to changes made by the act; revising the prohibition against bid tampering to conform to changes made by the act, etc.	
		GO 12/01/2015 CJ RC	

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
 Tuesday, December 1, 2015, 1:00—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 196 Transportation / Hutson (Similar H 267)	Public Records/State-funded Infrastructure Bank; Providing an exemption from public records requirements for any financial statement or other financial information of a private entity applicant that the Department of Transportation requires as part of an application process for assistance from the state-funded infrastructure bank; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.	
		TR 11/04/2015 Fav/CS GO 12/01/2015 RC	

5	SB 438 Bullard (Identical H 211)	Small Business Participation in State Contracting; Defining the terms “contract bundling” and “small business”; directing that agencies avoid contract bundling under certain circumstances; requiring agencies to conduct market research and include written summaries and analyses of such research in solicitations for bundled contracts; requiring the rules ombudsman in the Executive Office of the Governor to establish a system for reporting small business participation in state contracting, etc.	
		GO 11/02/2015 GO 12/01/2015 AGG AP	

Consideration of proposed bill:

6	SPB 7036	School District Purchasing; Requiring each district school board to use certain agreements and contracts for purchasing nonacademic commodities and contractual services under certain circumstances; requiring a district school board to post a written justification for certain determinations on the board’s website, etc.	
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Executive Director, Agency for State Technology			
7	Allison, Jason M. (Tallahassee)	Pleasure of Governor	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, December 1, 2015, 1:00—3:00 p.m.



Cybersecurity: Emerging Threats and Trends

The Florida Senate
Governmental Oversight & Accountability
December 1, 2015



Introduction

- Investments must be made
 - Agency for State Technology - \$992,000
 - Florida Dept. of Highway Safety and Motor Vehicles – \$705,000
 - Florida Department of Economic Opportunity – \$1.11M
 - Florida Department of Revenue – \$2.3M
- Cost of the status quo
 - South Carolina - \$14M data loss and \$20.1M to cover expenses
 - Utah - \$9M
 - OMB - \$19M - \$21M
- Security training is KEY
- Partnerships and collaborations



IT Security - Threat Reality*

- Approximately 5 malware events are generated every second
- 60% of attacks compromise organizations within minutes
- 75% of compromises spread externally within 24 hours
- Over 40% of compromises spread externally in less than 1 hour

*Source: Ponemon Institute, 2014 Global Report on the Cost of Cyber Crime and Verizon, 2015 Data Breach Investigations Report



2015 Verizon Data Breach Investigations Report (DBIR)

70 Contributing Organizations
79,790 Security Incidents
2,122 Confirmed Data Breaches
61 Countries Represented

Top three industries affected by security incidents*

- Public – Executive, legislative, and general government
- Information – Publishing, newspapers, software companies. TV/radio, telecom, etc.
- Financial Services – Banks, insurance companies, securities and commodities companies

*Source: North American Industry Classification System (NAICS) for coding the victim industry.
census.gov/eos/www/naics

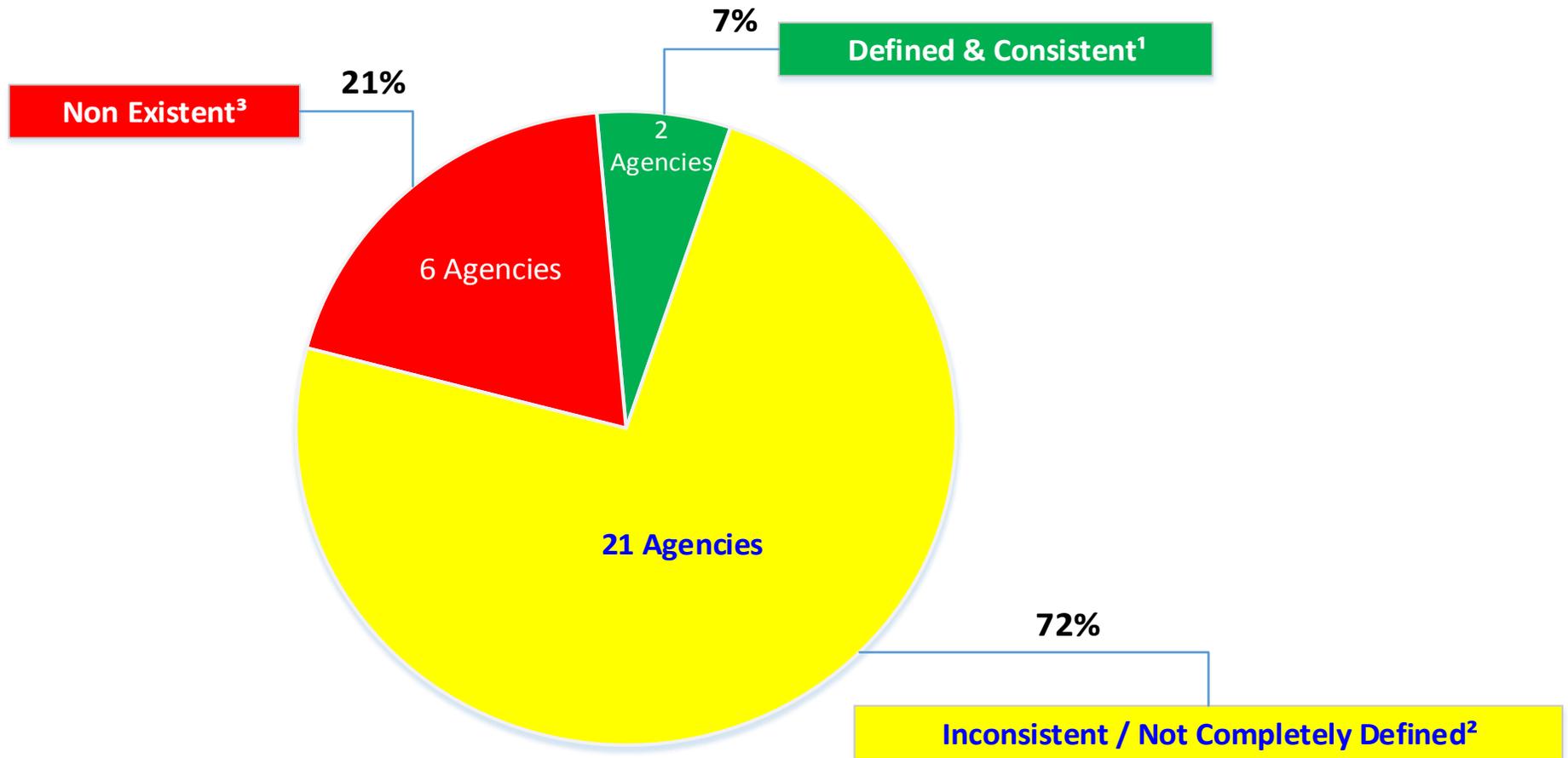


The Cost of Cyber Crime*

RECORDS	PREDICTION (LOWER)	AVERAGE (LOWER)	EXPECTED	AVERAGE (UPPER)	PREDICTION (UPPER)
100	\$1,170	\$18,120	\$24,450	\$35,730	\$555,660
1,000	\$3,110	\$52,260	\$67,480	\$87,140	\$1,461,730
10,000	\$8,280	\$143,360	\$178,960	\$223,400	\$3,866,400
100,000	\$21,900	\$366,500	\$474,600	\$614,600	\$10,283,200
1,000,000	\$57,600	\$892,400	\$1,258,670	\$1,775,350	\$27,500,090
10,000,000	\$150,700	\$2,125,900	\$3,338,020	\$5,241,300	\$73,943,950
100,000,000	\$392,000	\$5,016,200	\$8,852,540	\$15,622,700	\$199,895,100

*Source: 2015 Verizon Data Breach Investigations Report

Overall Maturity Rating Scores



¹ **Defined & Consistent:** There is a defined and consistently implemented control / process in place to address the noted requirement.

² **Inconsistent / Not Completely Defined:** Requirements may be partially addressed through implemented controls/processes, but do not provide full coverage. Alternately, controls/ processes are ad hoc/inconsistent and/or are not documented.

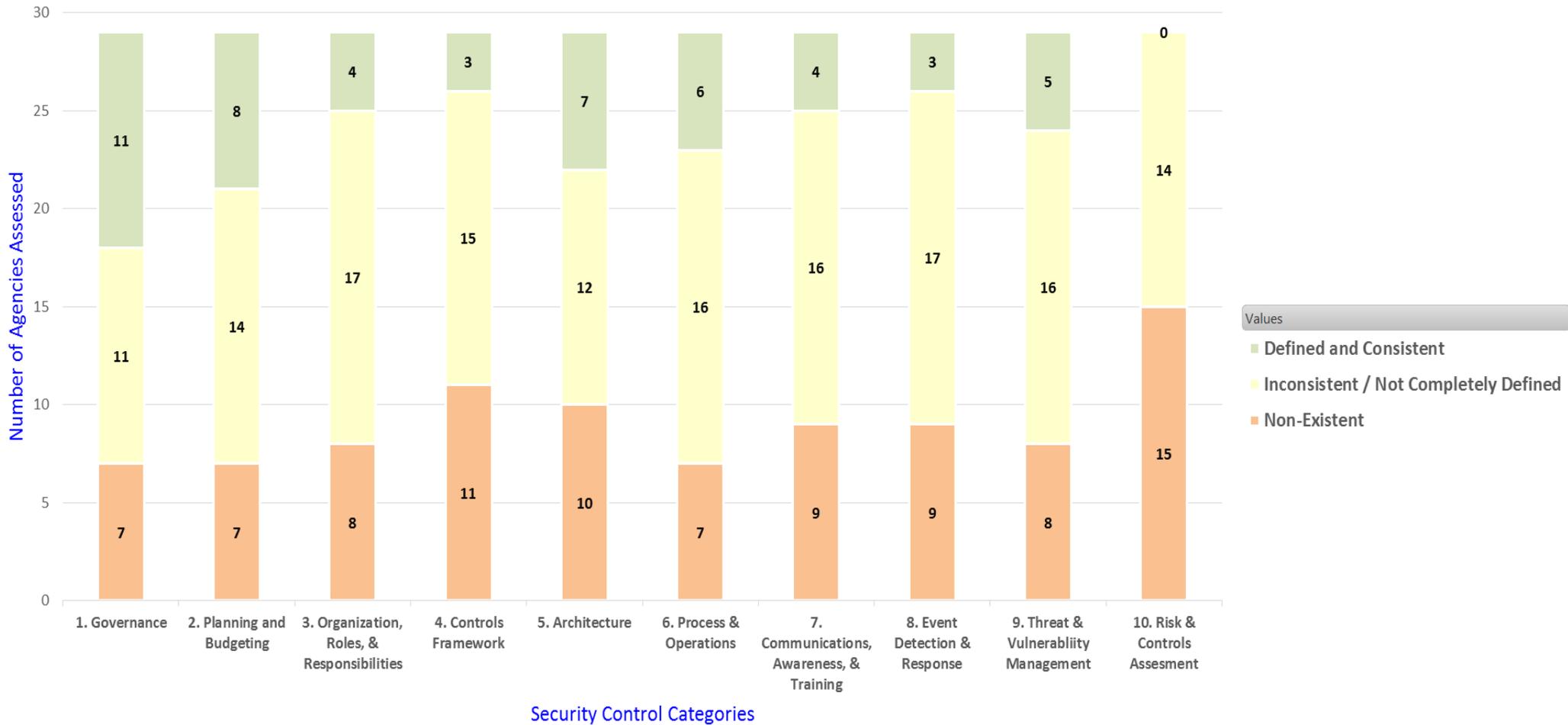
³ **Non Existent:** Complete lack of any recognizable processes or control. In many cases, the enterprise has not recognized that there is an issue to be addressed, or has formally or informally made the decision not to address due to resource, funding, or other limitations.



IT Security Risk Assessment

Agency ▾

Security Controls by Category



Values

- Defined and Consistent
- Inconsistent / Not Completely Defined
- Non-Existent

Security Control Categories

Category ▾

Managed Security Services - *It's a Landlord/Tenant Scenario*



AST owns/protects the property (house)



Agencies protect the keys to the property



Agencies protect their belongings inside the property



Renter vs. Landlord

Renter's Insurance
Utilities
Furnishings
Lawn Care
Groceries

Owner's Insurance
Pest Control
Property Taxes
Appliance Maintenance



Agency vs. Data Center

Security
Mobile Devices
Computers
Servers
Data
Access Control
Applications

Security
Mobile Devices
Computers
Servers
Database
Patching



An agency can:
Have hundreds of applications with multiple versions of each;
Offer dozens of citizen services that interconnect with other agency missions





Emerging Threats & Trends

- One Phish, Two Phish
- Denial of Service Attack
- Malvertising
- Security Professional Shortage



Do YOU know your cyber health?





QUESTIONS?

Jason Allison
Executive Director/State Chief Information Officer
Agency for State Technology
(850) 412-6050
Jason.Allison@ast.myflorida.com



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 426

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: State Data Center

DATE: December 2, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney	GO	Fav/CS
2.			AGG	
3.			AP	

I. Summary:

CS/SB 426 authorizes the Agency for State Technology’s State Data Center to extend a service-level agreement with an existing customer for up to 6 months. The State Data Center must file a report with the Executive Office of the Governor within specified time frames of the signing of an extension or the scheduled expiration of the service-level agreement with the customer. The report must outline issues preventing execution of new agreement and a schedule for resolving such issues.

The bill authorizes the Agency for State Technology to plan, design, and conduct testing with information technology resources and implement service enhancements that are within the scope of the services provided by the state data center, if cost-effective. The fiscal impact of these pilot projects on the Agency for State Technology is indeterminate.

The bill provides an effective date of July 1, 2016.

II. Present Situation:

Agency for State Technology

The Agency for State Technology (AST) was created on July 1, 2014.¹ The executive director of AST is appointed by the Governor and confirmed by the Senate. The duties and responsibilities of AST include:²

- Developing and publishing information technology (IT) policy for management of the state’s IT resources.
- Establishing and publishing IT architecture standards.

¹ Chapter 2014-221, Laws of Florida.

² Section 282.0051, F.S.

- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects.
- Performing project oversight on all state IT projects with total costs of \$10 million or more.
- Identifying opportunities for standardization and consolidation of IT services that support common business functions and operations.
- Establishing best practices for procurement of IT products in collaboration with DMS.
- Participating with DMS in evaluating, conducting and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Collaborating with DMS in IT resource acquisition planning.
- Developing standards for IT reports and updates.
- Upon request, assisting state agencies in development of IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine compliance with IT standards and guidelines developed by AST.
- Providing operational management and oversight of the state data center.
- Recommending other IT services that should be designed, delivered, and managed as enterprise IT services.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- In consultation with state agencies, proposing methodology for identifying and collecting current and planned IT expenditure data at the state agency level.
- Performing project oversight on any cabinet agency IT project that has a total project cost of \$25 million or more and impacts one or more other agencies.
- Consulting with departments regarding risks and other effects for IT projects implemented by an agency that must be connected to or accommodated by an IT system administered by a cabinet agency.
- Reporting annually to the Governor, the President of the Senate and the Speaker of the House regarding state IT standards or policies that conflict with federal regulations or requirements.

State Data Center Service-Level Agreements

The State Data Center is established within AST and provides data center services that comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.³ The State Data Center must enter into a service-level agreement with each customer entity to provide required type and level of service or services. If a customer fails to execute an agreement within 60 days after commencement of service, the State Data Center may cease service.

From 2008 until removed in 2014, s. 282.203, F.S., contained a provision providing for an existing customer's service-level agreement with the department to continue under the terms of the previous fiscal year's agreement, if a customer did not execute a new service-level agreement within 60 days of the agreement's expiration.

³ Section 282.201, F.S.

Below is a table listing the customers of the AST’s State Data Center. The customers include state agencies, a water management district, a county, local agencies and non-profit organizations.

AST Agency Customers	
Agency for Health Care Administration	Department of Veterans' Affairs
Agency for Persons with Disabilities	Office of Governor
Agency for State Technology	Emergency Management
Department of Citrus	Fish & Wildlife Conservation Commission
Department of Business & Professional Regulations	Statewide Guardian Ad Litem
Department of Corrections	Highway Safety & Motor Vehicles
Department of Children & Families	Justice Administrative Commission
Department of Economic Opportunity	Office of Auditor General
Department of Environmental Protection	Northwood State Resource Center
Department of Financial Services	Public Employees Relations Commission
Department of Juvenile Justice	Public Service Commission
Department of Military Affairs	State Attorney
Department of Management Services	Water Management District - Suwannee
Department of Education	Santa Rosa County
Department of Elder Affairs	Miami Dade Expressway Authority
Department of Health	Greater Orlando Aviation Authority
Department of Lottery	Children Home Society - Jacksonville
Department of Revenue	COPE Center
Department of State	Brevard Family Partnership
Department of Transportation	Community Based Care of Seminole

Funding Methodology

The Department of Financial Services (DFS) has responsibility for the preparation of the annual Statewide Cost Allocation Plan (SWCAP) required under the provisions of the U.S. Management and Budget (OMB) Circular A-87.⁴ The circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state and local governments and federally recognized Indian tribal governments. The SWCAP is the mechanism by which the state identifies, summarizes, and allocates statewide indirect costs. The SWCAP also includes financial and billing information for central services directly charged to agencies or programs. DFS must ensure that SWCAP represents the most favorable allocation of central services cost allowable to the state by the Federal government.⁵

Appendix C of OMB Circular A-87, defines “billed central services” as central services that are billed to benefited agencies and/or programs on an individual fee-for-service or similar basis.

⁴ Section 215.195(1), F.S. Also, see 2 CFR Part 225, Appendix C, Appendix D, and Appendix E.

⁵ *Id.*

Typical expenditures of billed central services include computer services, transportation services, insurance, and fringe benefits.⁶

The services provided by the State Data Center to state agencies are an example of “billed central services.” The State Data Center must adhere to the SWCAP in accounting for agency resources utilized.

Pilot Projects

From 2008 until removed in 2014, s. 282.203, F.S., contained a provision providing for the data center to plan, design, and establish pilot projects and conduct experiments with information technology resources.

III. Effect of Proposed Changes:

Section 1 amends s. 282.201, F.S., to provide that a State Data Center service-level agreement may be extended for to 6 months. If the State Data Center and an existing customer execute a service-level agreement extension or fail to execute a new service-level agreement, the State Data Center must submit a report to the Executive Office of the Governor within 5 days after the date of the executed extension, or 15 days before the scheduled expiration date of the service-level agreement. Such report must explain the specific issues preventing execution of a new service-level agreement and describing the plan and schedule for resolving those issues.

The section also authorizes AST to plan, design, and conduct testing with information technology resources and implement service enhancements that are within the scope of services provided by the state data center, if cost effective.

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ 2 CFR Part 225, Appendix C.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 282.201 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.)

The CS by Governmental Oversight on December 1, 2015:

- Authorizes the State Data Center to extend service-level agreements with an existing customer for up to 6 months;
- Requires the State Data Center to file a report with the Executive Office of the Governor within 5 days after the date of execution of extension agreement and within 15 days before schedule expiration date of service-level agreement; the report must explain the specific issues preventing execution of new service-level agreement and describe a plan and schedule for resolving those issues; and
- Authorizes AST to plan, design, and conduct testing with information technology resources and implement service enhancements that are within the scope of the services provided by the State Data Center, if cost-effective.

B. Amendments:

None.



156288

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 33 - 39
and insert:
center may cease service. A service-level agreement may not have
an original a term exceeding 3 years, except that it may be
extended for up to 6 months. If the state data center and an
existing customer entity execute an extension or fail to execute
a new service-level agreement before the expiration of an
existing service-level agreement, the state data center shall



156288

11 submit a report to the Executive Office of the Governor within 5
12 days after the date of the executed extension, or 15 days before
13 the scheduled expiration date of the service-level agreement,
14 which explains the specific issues preventing execution of a new
15 service-level agreement and describing the plan and schedule for
16 resolving those issues. Each service-level agreement, ~~and~~ at a
17 minimum, must:

18
19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 Delete lines 3 - 8

22 and insert:

23 282.201, F.S.; revising requirements for a certain
24 service-level agreement entered into by the state data
25 center within the Agency for State Technology with a
26 customer entity; authorizing extension of an original
27 agreement to a specified time; requiring the state
28 data center to submit a specified report to the
29 Executive Office of the Governor under certain
30 circumstances; deleting a requirement for a certain
31 notice to be given to the agency before an agreement
32 may be terminated; requiring the state data



196080

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 69 - 71

and insert:

(g) Plan, design, and conduct testing with information
technology resources and implement service enhancements that are
within the scope of the services provided by the state data
center, if cost-effective.

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



196080

11 And the title is amended as follows:

12 Delete lines 9 - 12

13 and insert:

14 center to plan, design, and conduct testing with
15 information technology resources and implement certain
16 service enhancements if cost-effective; providing an
17 effective

By Senator Brandes

22-00592-16

2016426__

A bill to be entitled

An act relating to the state data center; amending s. 282.201, F.S.; providing for terms of continuation of service if the state data center within the Agency for State Technology and an existing customer entity fail to execute a new service-level agreement within a specified time after an existing agreement expires; making a technical change; requiring the state data center to plan, design, and establish pilot projects for and conduct experiments with information technology resources and to implement service enhancements if cost-effective; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section 282.201, Florida Statutes, is amended, and paragraph (g) is added to that subsection, to read:

282.201 State data center.—The state data center is established within the Agency for State Technology and shall provide data center services that are hosted on premises or externally through a third-party provider as an enterprise information technology service. The provision of services must comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.

(2) STATE DATA CENTER DUTIES.—The state data center shall:

(d) Enter into a service-level agreement with each customer

Page 1 of 3

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

22-00592-16

2016426__

entity to provide the required type and level of service or services. If a customer entity fails to execute an agreement within 60 days after commencement of a service, the state data center may cease service. If the state data center and existing customer entity fail to execute a new service-level agreement within 60 days after expiration of the service-level agreement from the prior fiscal year, services provided by the state data center thereafter are deemed to be governed under the terms of the expired service-level agreement. A service-level agreement may not have a term exceeding 3 years and at a minimum must:

1. Identify the parties and their roles, duties, and responsibilities under the agreement.
2. State the duration of the contract term and specify the conditions for renewal.
3. Identify the scope of work.
4. Identify the products or services to be delivered with sufficient specificity to permit an external financial or performance audit.
5. Establish the services to be provided, the business standards that must be met for each service, the cost of each service, and the metrics and processes by which the business standards for each service are to be objectively measured and reported.
6. Provide a timely billing methodology to recover the cost of services provided to the customer entity pursuant to s. 215.422.
7. Provide a procedure for modifying the service-level agreement based on changes in the type, level, and cost of a service.

Page 2 of 3

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

22-00592-16

2016426__

59 8. Include a right-to-audit clause to ensure that the
60 parties to the agreement have access to records for audit
61 purposes during the term of the service-level agreement.

62 9. Provide that a service-level agreement may be terminated
63 by either party for cause only after giving the other party ~~and~~
64 ~~the Agency for State Technology~~ notice in writing of the cause
65 for termination and an opportunity for the other party to
66 resolve the identified cause within a reasonable period.

67 10. Provide for mediation of disputes by the Division of
68 Administrative Hearings pursuant to s. 120.573.

69 (g) Plan, design, and establish pilot projects for and
70 conduct experiments with information technology resources and
71 implement service enhancements if cost-effective.

72 Section 2. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: October 9, 2015

I respectfully request that **Senate Bill #426**, relating to **State Data Center**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal flourish extending to the right.

Senator Jeff Brandes
Florida Senate, District 22



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Community Affairs, *Vice Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Education Pre-K - 12
Judiciary

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JEFF BRANDES

22nd District

November 30, 2015

Senator Jeremy Ring
405 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Ring,

I will be unable to present my bill, **SB 426: State Data Center**, in the Senate Committee on Governmental Oversight and Accountability, on Tuesday, December 1st.

I am requesting that my Legislative Assistant, Trent Phillips, be permitted to present this bill on my behalf. Please contact me with any questions you may have about this request.

Kind regards,

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

Jeff Brandes

CC: Joe McVaney
Allison Rudd

REPLY TO:

- 9800 Fourth Street North, Suite 200, St. Petersburg, Florida 33702 (727) 563-2100
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

12-1-15

Meeting Date

04126

Bill Number (if applicable)

Topic STATE DATA CTR

Amendment Barcode (if applicable)

Name JAMES TAYLOR

Job Title EXECUTIVE DIRECTOR

Address _____

Phone (07) 718-278

Street

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA TECHNOLOGY COUNCIL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 624

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Public Records/State Agency Information Technology Security Programs

DATE: December 3, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	Fav/CS
2.			RC	

I. Summary:

CS/SB 624 provides a public records exemption for information relating to information technology (IT) security incidents or breaches. Such information will be confidential and exempt if the information could facilitate unauthorized access, modification, disclosure or destruction of data, information or IT resources.

The bill also provides that portions of risk assessments, external audits, evaluations or other reports of a state agency's IT security program are confidential and exempt from public disclosure. The portions of such documents will be confidential and exempt if the information they contain would facilitate unauthorized modification, disclosure or destruction of data, information, or IT resources.

The bill provides a public necessity statement for both exemptions.

The bill will go into effect upon becoming law and applies the exemptions to records in existence prior to and after the effective date.

This is a new public records exemption, so a two-thirds vote by each chamber will be necessary for passage.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

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

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

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

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

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

² FLA. CONST., art. I, s. 24(a).

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” 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.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.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 In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁷ 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 otherwise provided for by law.¹⁸

Agency for State Technology

The Agency for State Technology (AST) is responsible for establishing standards for information technology (IT) security for state agencies.¹⁹ AST is responsible for assisting agencies in performing the following functions:

- Completing risk assessments and IT security audits, which must be submitted to AST;²⁰
- Establishing procedures for accessing information to ensure confidentiality and integrity of the data;²¹
- Responding to and recovering from security breaches;²²

¹³ 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).

¹⁴ 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).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ Section 119.15(7), F.S.

¹⁹ Section 282.318(3), F.S.

²⁰ Section 282.381(3)(b)3., F.S.

²¹ Section 282.381(3)(b)5., F.S.

²² Section 282.381(3)(b)7. and 8., F.S.

In addition, each state agency head is required to perform the following functions:²³

- Designate an information security manager;
- Annually submit to AST the agency's IT security plan consistent with AST rules and guidelines;
- Conduct a comprehensive risk assessment every three years consistent with AST risk assessment methodology;
- Develop protocols for reporting IT security incidents and breaches to the Cybercrime Office of the Department of Law Enforcement (FDLE) and AST;
- Implement safeguards established by AST to address risk to the agency's information and technology;
- Ensure internal audits and evaluations of the agency's IT are conducted;
- Include IT security requirements consistent with AST and Department of Management Services protocols in solicitations for procurements;
- Train employees about IT security risks and protocols; and
- Develop a process for detecting, responding to and reporting information security breaches. State agencies must report each security incidents and breaches to AST, as well as the Department of Legal Affairs, individuals whose personal information was involved, and credit reporting agencies under certain circumstances.²⁴

The following information is confidential and exempt from public records laws:

- Comprehensive risk assessments pursuant to s. 282.318(4)(c), F.S.;
- Internal policy and procedures that could facilitate the unauthorized modification, disclosure or destruction of data or IT resources, pursuant s. 282.318(4)(d), F.S.; and
- Internal audit reports and evaluations of an agency's IT security resources, pursuant to s. 282.318(4)(f), F.S.

These documents must be released to the Auditor General, the Cybercrime Office of FDLE, AST. If an agency is under the Governor's jurisdiction, then the documents must be provided to the Chief Inspector General.

III. Effect of Proposed Changes:

Section 1 makes confidential and exempt those records held by a state agency related to the detection, investigation or response to a security incident. Currently, agency heads are required to perform certain IT-related duties under s. 282.318(4), F.S. In particular, agency heads are required to develop and implement IT security protocols consistent with AST guidelines. If there is a security breach, an agency head must notify AST and the individual whose information was compromised.²⁵ The bill creates a new public records exemption for information that an agency generates while carrying out its duties. Records relating to an agency's detection, investigation or response to suspected or confirmed security incidents or breaches will be confidential and exempt if the records would facilitate the unauthorized access, modification, disclosure or destruction of:

²³ Section 282.318(4), F.S.

²⁴ Section 282.318(4)(i), F.S. and s. 501.171, F.S.

²⁵ Section 282.318(4)(i)1. and 2. F.S.

- Physical or virtual data or information; or
- IT resources, including protocols for protecting those resources as well as any existing or proposed IT security methods.

The bill also creates a new public records exemption applicable to information held by all agencies, independent of any duties imposed on an agency head by s. 282.318(4), F.S. The exemption will protect portions of risk assessments, evaluations, external audits and other reports of a state agency's IT security program. External audits are defined as any audit conducted by an entity other than the state agency subject to the audit. This will make an audit performed by a private company or another agency, such as AST, confidential and exempt.²⁶

Portions of such documents will be confidential and exempt from public disclosure only if the disclosure of such information could facilitate unauthorized access, modification, disclosure or destruction of:

- Physical or virtual data or information; or
- IT resources, including protocols for protecting those resources as well as any existing or proposed IT security methods.

Both exemptions provide that a state agency must to share confidential and exempt information with the Auditor General, AST and the Cybercrimes Office of the FDLE. State agencies under the Governor's jurisdiction are required to release the confidential and exempt information to the Chief Inspector General. The bill permits agencies to share confidential and exempt information with local governments, other state agencies, and federal agencies for IT purposes or in furtherance of the agency's official duties. The bill permits a state agency to have some flexibility in sharing confidential and exempt information with other governmental entities without the requiring an agency to get a court order to do so. For example, AST has some local government clients and may need to share IT security information with them. In addition, AST may need to share IT security information with federal agencies that fund state-administered programs.

The bill provides for retroactive application for both public records exemptions; thus information held by a state agency before these exemptions becomes law will become confidential and exempt. These exemptions will be subject to review and repeal on October 2, 2021, pursuant to the OGSR.

Section 2 provides the public necessity statements for both public records exemptions, as required by the Florida Constitution.

Subsection 1 address the public necessity for records relating to the detection, investigation or response to security incidents or breaches.

²⁶ Currently, agency heads are required to perform internal audits, which are currently confidential and exempt pursuant to s. 282.318(4)(f), F.S. As the law currently reads, it is not explicitly clear if an audit performed by AST or a private company hired by a state agency qualifies as an 'internal audit.'

Subparagraph (1)(b)1. states that releasing information related to security incidents and breaches could impede and impair investigations and that releasing such information before it is complete could jeopardize the investigation.

Subparagraph (1)(b)2. states that investigations of security incidents is likely to include gathering sensitive personal information (such as financial or health information) that is not otherwise protected under a public records exemption. Such information could be used for purposes of identity theft or other crimes and should not be released.

Subparagraph (1)(b)3. provides that the release of a records, including computer forensic reports, or other information that would reveal the weakness of a state agency's data security upon the conclusion of an investigation could reveal security weaknesses that could compromise the agency in the future, as well compromise other agencies.

Subparagraph (1)(b)4. provides that information held by an agency relating to a security breach or incident may contain proprietary information. Disclosure of such information could result in identification of vulnerabilities and result in further breaches. The public necessity statement goes on to state that the release of proprietary information could cause financial loss and give a business's competitors an unfair advantage.

Subparagraph (1)(b)5. states that disclosure of records could compromise the integrity of state agency data and IT resources and impair the administration of government programs. This paragraph also states that the exemption should be retroactive because it is remedial in nature.

Subsection 2 contains the public necessity statement for risk assessments, evaluations, external audits and other reports of a state agency's IT security system. The bill states that the Legislature finds that reviews of an agency's IT system are valuable. Risk assessments, evaluations, external audits and other reports would identify vulnerabilities in systems and make recommendations for remedies, therefore disclosure of such information would compromise the integrity of an agency's IT resources and impair the administration of government. The bill goes on to state that the exemption is remedial in nature, and should be given retroactive application.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

There is no known private sector impact from this bill. However, the public necessity statement suggests that this bill will help private sector businesses.²⁷

C. Government Sector Impact:

Unknown. Presumably, the redactions will create additional work for records custodians, however, this most likely will be absorbed by existing agency resources.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 282.318 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.)

The CS by Governmental Oversight on December 1, 2015:

- Reorganizes the structure of the exemptions.
- Provides clearer definition of what information is subject to the exemptions.
- Provides that information related the physical and virtual security is confidential and exempt.
- Provides additional description of information technology resources.
- Clarifies that the exemptions apply to all agencies, thereby reducing ambiguity as to whether information is exempt only in the hands of AST.
- Adds a definition of external audit.
- Expands the general agency exemption to include risk assessments, and other reports of a state agency's IT security program.

²⁷ 2015 Agency Legislative Bill analysis by the State Agency by AST dated November 3, 2015. FDLE and the Auditor General did not comment on this issue in the bill analyses.

²⁸ The bill analyses provided by AST, FDLE and the Auditor General indicate that this bill will not impact their agencies.

- Provides that confidential and exempt information may be shared with local governments, other state agencies, and the federal government.
- Removes portions of the public necessity statement which were related to existing public records exemptions or were otherwise not directly related to the new exemptions.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/01/2015	.	
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	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (i) of subsection (4) of section
282.318, Florida Statutes, is amended, present subsection (5) of
that section is renumbered as subsection (6), and a new
subsection (5) is added to that section, to read:

282.318 Security of data and information technology.—

(4) Each state agency head shall, at a minimum:



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11 (i) Develop a process for detecting, reporting, and
12 responding to threats, breaches, or information technology
13 security incidents which is that are consistent with the
14 security rules, guidelines, and processes established by the
15 Agency for State Technology.

16 1. All information technology security incidents and
17 breaches must be reported to the Agency for State Technology.

18 2. For information technology security breaches, state
19 agencies shall provide notice in accordance with s. 501.171.

20 3. Records held by a state agency which identify detection,
21 investigation, or response practices for suspected or confirmed
22 information technology security incidents, including suspected
23 or confirmed breaches, are confidential and exempt from s.
24 119.07(1) and s. 24(a), Art. I of the State Constitution, if the
25 disclosure of such records would facilitate unauthorized access
26 to or the unauthorized modification, disclosure, or destruction
27 of:

28 a. Data or information, whether physical or virtual; or

29 b. Information technology resources, which includes:

30 (I) Information relating to the security of the agency's
31 technologies, processes, and practices designed to protect
32 networks, computers, data processing software, and data from
33 attack, damage, or unauthorized access; or

34 (II) Security information, whether physical or virtual,
35 which relates to the agency's existing or proposed information
36 technology systems.

37
38 Such records shall be available to the Auditor General, the
39 Agency for State Technology, the Cybercrime Office of the



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40 Department of Law Enforcement, and, for state agencies under the
41 jurisdiction of the Governor, the Chief Inspector General. Such
42 records may be made available to a local government, another
43 state agency, or a federal agency for information technology
44 security purposes or in furtherance of the state agency's
45 official duties. This exemption applies to such records held by
46 a state agency before, on, or after the effective date of this
47 exemption. This subparagraph is subject to the Open Government
48 Sunset Review Act in accordance with s. 119.15 and shall stand
49 repealed on October 2, 2021, unless reviewed and saved from
50 repeal through reenactment by the Legislature.

51 (5) The portions of risk assessments, evaluations, external
52 audits, and other reports of a state agency's information
53 technology security program for the data, information, and
54 information technology resources of the state agency which are
55 held by a state agency are confidential and exempt from s.
56 119.07(1) and s. 24(a), Art. I of the State Constitution if the
57 disclosure of such portions of records would facilitate
58 unauthorized modification, disclosure, or destruction of:

59 (a) Data or information, whether physical or virtual; or

60 (b) Information technology resources, which include:

61 1. Information relating to the security of the agency's
62 technologies, processes, and practices designed to protect
63 networks, computers, data processing software, and data from
64 attack, damage, or unauthorized access; or

65 2. Security information, whether physical or virtual, which
66 relates to the agency's existing or proposed information
67 technology systems.

68



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69 Such portions of records shall be available to the Auditor
70 General, the Cybercrime Office of the Department of Law
71 Enforcement, the Agency for State Technology, and, for agencies
72 under the jurisdiction of the Governor, the Chief Inspector
73 General. Such portions of records may be made available to a
74 local government, another state agency, or a federal agency for
75 information technology security purposes or in furtherance of
76 the state agency's official duties. For purposes of this
77 subsection, "external audit" means an audit that is conducted by
78 an entity other than the state agency that is the subject of the
79 audit. This exemption applies to such records held by a state
80 agency before, on, or after the effective date of this
81 exemption. This subsection is subject to the Open Government
82 Sunset Review Act in accordance with s. 119.15 and shall stand
83 repealed on October 2, 2021, unless reviewed and saved from
84 repeal through reenactment by the Legislature.

85 Section 2. (1) (a) The Legislature finds that it is a public
86 necessity that public records held by a state agency which
87 identify detection, investigation, or response practices for
88 suspected or confirmed information technology security
89 incidents, including suspected or confirmed breaches, be made
90 confidential and exempt from s. 119.07(1), Florida Statutes, and
91 s. 24(a), Article I of the State Constitution if the disclosure
92 of such records would facilitate unauthorized access to or the
93 unauthorized modification, disclosure, or destruction of:

- 94 1. Data or information, whether physical or virtual; or
95 2. Information technology resources, which includes:
96 a. Information relating to the security of the agency's
97 technologies, processes, and practices designed to protect



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98 networks, computers, data processing software, and data from
99 attack, damage, or unauthorized access; or

100 b. Security information, whether physical or virtual, which
101 relates to the agency's existing or proposed information
102 technology systems.

103 (b) Such records shall be made confidential and exempt for
104 the following reasons:

105 1. Records held by a state agency which identify
106 information technology detection, investigation, or response
107 practices for suspected or confirmed information technology
108 incidents or breaches are likely to be used in the investigation
109 of the incident or breach. The release of such information could
110 impede the investigation and impair the ability of reviewing
111 entities to effectively and efficiently execute their
112 investigative duties. In addition, the release of such
113 information before completion of an active investigation could
114 jeopardize the ongoing investigation.

115 2. An investigation of an information technology security
116 incident or breach is likely to result in the gathering of
117 sensitive personal information, including identification numbers
118 and personal financial and health information not otherwise
119 exempt or confidential and exempt from public records
120 requirements under any other law. Such information could be used
121 for the purpose of identity theft or other crimes. In addition,
122 release of such information could subject possible victims of
123 the incident or breach to further harm.

124 3. Disclosure of a risk assessment or evaluation, including
125 computer forensic analysis, or other information that would
126 reveal weaknesses in a state agency's data security could



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127 compromise the future security of that agency or other entities
128 if such information were available upon conclusion of an
129 investigation or once an investigation ceased to be active. The
130 disclosure of such a report or information could compromise the
131 security of state agencies and make those state agencies
132 susceptible to future data incidents or breaches.

133 4. Such records are likely to contain proprietary
134 information about the security of the system at issue. The
135 disclosure of such information could result in the
136 identification of vulnerabilities and further breaches of that
137 system. In addition, the release of such information could give
138 business competitors an unfair advantage and weaken the position
139 of the entity supplying the proprietary information in the
140 marketplace.

141 5. The disclosure of such records could potentially
142 compromise the confidentiality, integrity, and availability of
143 state agency data and information technology resources, which
144 would significantly impair the administration of vital
145 governmental programs. It is necessary that this information be
146 made confidential in order to protect the technology systems,
147 resources, and data of state agencies. The Legislature further
148 finds that this public records exemption be given retroactive
149 application because it is remedial in nature.

150 (2) (a) The Legislature also finds that it is a public
151 necessity that portions of risk assessments, evaluations,
152 external audits, and other reports of a state agency's
153 information technology security program for the data,
154 information, and information technology resources of the state
155 agency which are held by a state agency be made confidential and



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156 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
157 Article I of the State Constitution if the disclosure of such
158 portions of records would facilitate unauthorized access to or
159 the unauthorized modification, disclosure, or destruction of:
160 1. Data or information, whether physical or virtual; or
161 2. Information technology resources, which includes:
162 a. Information relating to the security of the agency's
163 technologies, processes, and practices designed to protect
164 networks, computers, data processing software, and data from
165 attack, damage, or unauthorized access; or
166 b. Security information, whether physical or virtual, which
167 relates to the agency's existing or proposed information
168 technology systems.
169 (b) The Legislature finds that it may be valuable, prudent,
170 or critical to a state agency to have an independent entity
171 conduct a risk assessment, an audit, or an evaluation or
172 complete a report of the state agency's information technology
173 program or related systems. Such documents would likely include
174 an analysis of the state agency's current information technology
175 program or systems which could clearly identify vulnerabilities
176 or gaps in current systems or processes and propose
177 recommendations to remedy identified vulnerabilities. The
178 disclosure of such portions of records would jeopardize the
179 information technology security of the state agency, and
180 compromise the integrity and availability of agency data and
181 information technology resources, which would significantly
182 impair the administration of governmental programs. It is
183 necessary that such portions of records be made confidential and
184 exempt from public records requirements in order to protect



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185 agency technology systems, resources, and data. The Legislature
186 further finds that this public records exemption shall be given
187 retroactive application because it is remedial in nature.

188 Section 3. This act shall take effect upon becoming a law.
189

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

191 And the title is amended as follows:

192 Delete everything before the enacting clause
193 and insert:

194 A bill to be entitled
195 An act relating to public records; amending s.
196 282.318, F.S.; creating exemptions from public records
197 requirements for certain records held by a state
198 agency which identify detection, investigation, or
199 response practices for suspected or confirmed
200 information technology security incidents and for
201 certain portions of risk assessments, evaluations,
202 external audits, and other reports of a state agency's
203 information technology program; authorizing disclosure
204 of confidential and exempt information to certain
205 agencies and officers; providing for retroactive
206 application; providing for future legislative review
207 and repeal of the exemptions; providing statements of
208 public necessity; providing an effective date.

By Senator Hays

11-00620A-16

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 282.318, F.S.; creating exemptions from public records
 4 requirements for information held by a state agency
 5 relating to the detection or investigation of or
 6 response to any suspected or confirmed security
 7 breaches and the results of external audits and
 8 evaluations of a state agency's information technology
 9 security program; authorizing disclosure of
 10 confidential and exempt information to certain
 11 agencies and officers; providing for retroactive
 12 application; providing for future legislative review
 13 and repeal of the exemptions; providing statements of
 14 public necessity; providing an effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Paragraph (i) of subsection (4) of section
 19 282.318, Florida Statutes, is amended, present subsection (5) of
 20 that section is renumbered as subsection (6), and a new
 21 subsection (5) is added to that section, to read:
 22 282.318 Security of data and information technology.—
 23 (4) Each state agency head shall, at a minimum:
 24 (i) Develop a process for detecting, reporting, and
 25 responding to threats, breaches, or information technology
 26 security incidents that are consistent with the security rules,
 27 guidelines, and processes established by the Agency for State
 28 Technology.
 29 1. All information technology security incidents and

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

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30 breaches must be reported to the Agency for State Technology.
 31 2. For information technology security breaches, state
 32 agencies shall provide notice in accordance with s. 501.171.
 33 3. Information held by a state agency relating to the
 34 detection, investigation, or response to any suspected or
 35 confirmed security incidents, including suspected or confirmed
 36 breaches, which, if disclosed, could facilitate the unauthorized
 37 access to or the unauthorized modification, disclosure, or
 38 destruction of data or information technology resources is
 39 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 40 of the State Constitution, except that such information shall be
 41 available to the Auditor General, the Agency for State
 42 Technology, the Cybercrime Office of the Department of Law
 43 Enforcement, and, for state agencies under the jurisdiction of
 44 the Governor, the Chief Inspector General. This exemption
 45 applies to such information held by a state agency before, on,
 46 or after the effective date of this exemption. This subparagraph
 47 is subject to the Open Government Sunset Review Act in
 48 accordance with s. 119.15 and shall stand repealed on October 2,
 49 2021, unless reviewed and saved from repeal through reenactment
 50 by the Legislature.
 51 (5) The results of external audits and evaluations of a
 52 state agency's information technology security program for the
 53 data, information, and information technology resources of the
 54 state agency are confidential and exempt from s. 119.07(1) and
 55 s. 24(a), Art. I of the State Constitution, except that such
 56 information shall be available to the Auditor General, the
 57 Cybercrime Office of the Department of Law Enforcement, the
 58 Agency for State Technology, and, for agencies under the

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59 jurisdiction of the Governor, the Chief Inspector General; and
 60 may be made available to other state agencies for information
 61 technology security purposes. This exemption applies to such
 62 information held by a state agency before, on, or after the
 63 effective date of this exemption. This subsection is subject to
 64 the Open Government Sunset Review Act in accordance with s.
 65 119.15 and shall stand repealed on October 2, 2021, unless
 66 reviewed and saved from repeal through reenactment by the
 67 Legislature.

68 Section 2. (1) The Legislature finds that it is a public
 69 necessity that information relating to the detection or
 70 investigation of or response to any suspected or confirmed
 71 security incidents, including suspected or confirmed breaches,
 72 which, if disclosed, could facilitate the unauthorized access to
 73 or unauthorized modification, disclosure, or destruction of data
 74 or information technology resources be made confidential and
 75 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 76 Article I of the State Constitution for the following reasons:

77 (a) Information held by a state agency relating to security
 78 incidents or breaches is likely to result in an investigation of
 79 the incident or breach. The release of such information could
 80 impede the investigation and impair the ability of reviewing
 81 entities to effectively and efficiently execute their
 82 investigative duties. In addition, release of such information
 83 before completion of an active investigation could jeopardize
 84 the ongoing investigation.

85 (b) An investigation of an information technology security
 86 incident or breach is likely to result in the gathering of
 87 sensitive personal information, including social security

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88 numbers, identification numbers, and personal financial and
 89 health information. Such information could be used for the
 90 purpose of identity theft. In addition, release of such
 91 information could subject possible victims of the incident or
 92 breach to further financial harm. Furthermore, matters of
 93 personal health are traditionally private and confidential
 94 concerns between the patient and the health care provider. The
 95 private and confidential nature of personal health matters
 96 pervades both the public and private health care sectors.

97 (c) Release of a computer forensic report or other
 98 information that would reveal weaknesses in a covered entity's
 99 data security could compromise the future security of that
 100 entity, or other entities, if such information were available
 101 upon conclusion of an investigation or once an investigation
 102 ceased to be active. The release of such report or information
 103 could compromise the security of current entities and make those
 104 entities susceptible to future data incidents or breaches.

105 (d) Information held by an agency relating to the detection
 106 or investigation of or response to a suspected or conformed
 107 security incident or breach is likely to contain proprietary
 108 information, including trade secrets, about the security of the
 109 system at issue. The release of the proprietary information
 110 could result in the identification of vulnerabilities and
 111 further breaches of that system. In addition, a trade secret has
 112 independent, economic value, actual or potential, in its being
 113 generally unknown to, and not readily ascertainable by, other
 114 persons who might obtain economic value from its disclosure or
 115 use. Allowing public access to proprietary information,
 116 including a trade secret, through a public records request could

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117 destroy the value of the proprietary information and cause a
 118 financial loss to the covered entity submitting the information.
 119 Release of such information could give business competitors an
 120 unfair advantage and weaken the position of the entity supplying
 121 the proprietary information in the marketplace.

122 (e) The disclosure of such information could potentially
 123 compromise the confidentiality, integrity, and availability of
 124 state agency data and information technology resources, which
 125 would significantly impair the administration of vital
 126 governmental programs. It is necessary that this information be
 127 made confidential in order to protect the technology systems,
 128 resources, and data of state agencies. The Legislature further
 129 finds that this public records exemption be given retroactive
 130 application because it is remedial in nature.

131 (2) The Legislature also finds that it is a public
 132 necessity that the results of external audits and evaluations of
 133 a state agency's information technology security program for the
 134 data, information, and information technology resources of the
 135 state agency be made confidential and exempt from s. 119.07(1),
 136 Florida Statutes, and s. 24(a), Article I of the State
 137 Constitution. A state agency may find it valuable, prudent, or
 138 even critical to have an independent entity conduct an audit and
 139 evaluation of the agency's information technology program or
 140 related systems. Such audits would likely include an analysis of
 141 the current state of the state agency's information technology
 142 program or systems which could clearly identify vulnerabilities
 143 or gaps in current systems or processes and propose
 144 recommendations to remedy identified vulnerabilities. The
 145 disclosure of such information would jeopardize the information

Page 5 of 6

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

11-00620A-16

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146 technology security of the state agency, and compromise the
 147 integrity and availability of agency data and information
 148 technology resources, which would significantly impair the
 149 administration of governmental programs. It is necessary that
 150 this information be made confidential and exempt from public
 151 records requirements in order to protect agency technology
 152 systems, resources, and data. The Legislature further finds that
 153 this public records exemption be given retroactive application
 154 because it is remedial in nature.

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

Page 6 of 6

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The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
Cc: Joe McVaney, Staff Director
Allison Rudd, Administrative Assistant

Subject: Committee Agenda Request

Date: November 12, 2015

I respectfully request that **Senate Bill # 624**, relating to Public Records Exemption- Agency for State Technology, be placed on the:

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

A handwritten signature in cursive script that reads "D. Alan Hays".

Senator Alan Hays
Florida Senate, District 11

THE FLORIDA SENATE
APPEARANCE RECORD

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

12-01-15

Meeting Date

0624

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name JAMES TAYLOR

Job Title Executive Dir.

Address _____
Street

Phone 407 718-2780

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA TECHNOLOGY Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 582

INTRODUCER: Senator Gaetz

SUBJECT: Public Corruption

DATE: November 30, 2015

REVISED: _____

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

I. Summary:

SB 582 amends the laws relating to public corruption. Specifically, the bill:

- Defines “governmental entity” to include the state, political subdivisions of the state or any other public entity that independently exercises any type of governmental function.
- Expands the definition of “public servant” to include officers and employees of the expanded definition of governmental entity and persons who are acting on behalf of a governmental entity.
- Changes the mens rea element for certain public corruption crimes from “corruptly” to “knowingly and intentionally.”

Section 817.568(11), F.S., relating to the criminal use of identification information, is reenacted to incorporate the expanded definition of “public servant.”

The bill has an effective date of October 1, 2016.

II. Present Situation:

Nineteenth Statewide Grand Jury

A statewide grand jury¹ was impaneled in February 2010 upon the petition of Governor Charlie Crist to the Supreme Court of Florida. In the Petition for Order to Impanel a Statewide Grand Jury, Governor Crist requested that the following should be addressed:²

¹ See ss. 905.31-905.40, F.S., known as the Statewide Grand Jury Act.

² Nineteenth Statewide Grand Jury First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions, December 17, 2010, Case No. SC 09-1910. Available online at: [http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/\\$file/19thSWGJInterimReport.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8CLT9A/$file/19thSWGJInterimReport.pdf) (last visited on November 20, 2015).

- Examine criminal activity of public officials who have abused their powers via their public office;
- Consider whether Florida’s prosecutors have sufficient resources to effectively combat corruption;
- Address the effectiveness of Florida’s current statutes in fighting public corruption;
- Identify any deficiencies in current laws, punishments or enforcement efforts and make detailed recommendations to improve our anti-corruption initiatives;
- Investigate crimes, return indictments, and make presentations; and
- Examine public policy issues regarding public corruption and develop specific recommendations regarding improving current laws.

The Nineteenth Statewide Grand Jury issued its First Interim Report: A Study of Public Corruption in Florida and Recommended Solutions on December 17, 2010. In its report, the Nineteenth Statewide Grand Jury made several recommendations to the Legislature, including revisions to ch. 838, F.S., regarding the definitions of the terms “public servant” and “corruptly” and “corrupt intent,” and the offenses of bribery, unlawful compensation or reward for official behavior, official misconduct, and bid tampering.

Color of Law

Florida law does not enhance criminal classifications or felony sentencing penalties for criminal acts committed “under color of law” where the enhancements for wrongful conduct are based on public authority or position or the assertion of such that does not form an element of the underlying crime. The Nineteenth Statewide Grand Jury also recommended that the legislature consider reclassification of such offenses.³

Doctrine of Mens Rea and Scienter

The term “mens rea” is defined as “a guilty mind; a guilty or wrongful purpose; a criminal intent.”⁴ Black’s Law Dictionary notes that the term scienter is defined as “knowingly” and frequently used to signify the defendant’s guilty knowledge.⁵ The general rule is that scienter or mens rea is a necessary element in the indictment for every crime.⁶

The Nineteenth Statewide Grand Jury found that the use of the word “corruptly” or “with corrupt intent” made prosecutions of offenses under ch. 838, F.S., more difficult and might require additional evidence, such as testimony from persons involved.⁷ The Nineteenth Statewide Grand Jury recommended that the additional element of “corruptly” or “with corrupt intent” be removed from the ch. 838, F.S., offenses of bribery, unlawful compensation, official misconduct, and bid tampering.⁸

³ See *supra* note 2.

⁴ BLACK’S LAW DICTIONARY 1137 (4th Rev. 1968).

⁵ *Id.* 1512.

⁶ *Chicone v. State*, 684 So.2d 736, 741 (Fla. 1996). Also, see *U.S. v. Balint*, 258 U.S. 250 (1922).

⁷ See *supra* note 2, at 24.

⁸ *Id.*

Bribery; Misuse of Public Office: Chapter 838, F.S.

Chapter 838, F.S., pertains to bribery and other offenses concerning the misuse of public office.

Section 838.014(4), F.S., defines the term “corruptly” or “with corrupt intent” as acting knowingly and dishonestly for a wrongful purpose.

Section 838.014(6), F.S., defines the term “public servant” as:

- (a) Any officer or employee of a state, county, municipal, or special district agency or entity;
- (b) Any legislative or judicial officer or employee;
- (c) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or
- (d) A candidate for election or appointment to any of the positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

Bribery

Section 838.015, F.S., relates to the offense of bribery.⁹ Any individual who violates this section is guilty of a felony of the second degree, which is punishable as provided for in sections 775.082, 775.083, or section 775.084, F.S.¹⁰

Chapter 838, F.S., also contains 3 other bribery offenses, including bribery in athletic contests,¹¹ commercial bribery receiving,¹² and commercial bribery.¹³ In *Roque v. State*, the Florida Supreme Court held that s. 838.15, F.S., the commercial bribe receiving law, was invalid.¹⁴ The Nineteenth Statewide Grand Jury Report opined that s. 838.16, F.S., commercial bribery, was probably unconstitutionally vague since s. 838.16, F.S., referred to s. 838.15, F.S.¹⁵

⁹ Section 838.015(1), F.S., defines “bribery” as corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept for himself or herself or another, any pecuniary or other benefit not authorized by law with an intent or purpose to influence the performance of any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of a public servant, in violation of a public duty, or in performance of a public duty.

¹⁰ Section 838.015(3), F.S. Under sections 775.082 and 775.083, Florida Statutes, a second degree felony is punishable by a term of imprisonment not to exceed 15 years, and a maximum fine of \$10,000. Section 775.084, Florida Statutes, relates to habitual felony offenders. If a habitual felony offender is convicted of a second degree felony, such offender may be sentenced for a term not exceeding 30 years.

¹¹ Section 838.12, F.S.

¹² Section 838.15, F.S.

¹³ Section 838.16, F.S.

¹⁴ *Roque v. State*, 664 So.2d 928 (Fla. 1995). The Court further noted that s. 838.015, F.S., was impermissibly vague and subject to arbitrary application. *Id.* at 929.

¹⁵ See *supra* note 2, at 34.

Unlawful Compensation or Reward for Official Behavior

Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. Any person who violates this section commits a second degree felony which is punishable as provided for in sections 775.082, 775.083, or section 775.084, F.S.¹⁶

Section 838.016, F.S., pertains to unlawful compensation or reward for official behavior. It is a second degree felony for any person corruptly to give, offer, or promise to any public servant any benefit not authorized by law; or for any public servant corruptly to request, solicit, accept or agree to accept any benefit not authorized by law:

- For the past, present, or future performance, nonperformance or violation of any act or omission; or
- For the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission

which the person believes to have been or the public servant represents to have been either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

Official Misconduct

The offense of official misconduct contained in s. 838.022(1), F.S., provides that it “is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause harm to another to:

- (a) Falsify, or cause another person to falsify, any official record or official document;
- (b) Conceal, cover up, destroy, mutilate, or alter any official record or official document or cause another person to perform such an act; or
- (c) Obstruct, delay, or prevent the communication of information relating to the commission of a felony that directly involves or affects the public agency or public entity served by the public servant.

Any person who violates this section commits a felony of the third degree, which is punishable as provided for in sections 775.082, 775.083, or section 775.084, F.S.¹⁷

Bid Tampering

Section 838.22, F.S., provides that:

- (1) It is unlawful for a public servant, with corrupt intent to influence or attempt to influence the competitive bidding process undertaken by any state, county, municipal, or special district agency, or any other public entity, for the procurement of commodities or services, to:

¹⁶ Section 838.016(4), F.S. Also, see *supra* note 4.

¹⁷ Section 838.022(3), F.S. Under sections 775.082 and 775.083, Florida Statutes, a third degree felony is punishable by a term of imprisonment not to exceed 5 years, and a maximum fine of \$5,000. Section 775.084, Florida Statutes, relates to habitual felony offenders. If a habitual felony offender is convicted of a third degree felony, such offender may be sentenced for a term not exceeding 10 years.

- (a) Disclose material information concerning a bid or other aspects of the competitive bidding process when such information is not publicly disclosed.
- (b) Alter or amend a submitted bid, documents or other materials supporting a submitted bid, or bid results for the purpose of intentionally providing a competitive advantage to any person who submits a bid.
- (2) It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole-source contract for commodities or services.
- (3) It is unlawful for any person to knowingly agree, conspire, combine, or confederate, directly or indirectly, with a public servant to violate subsection (1) or subsection (2).
- (4) It is unlawful for any person to knowingly enter into a contract for commodities or services which was secured by a public servant acting in violation of subsection (1) or subsection (2).
- (5) Any person who violates this section commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).¹⁸

Criminal Use of Personal Identification Information

Section 817.568(11), F.S., provides, in part, that any person who willfully and without authorization fraudulently uses personal identification concerning a public servant as defined in s. 838.014, F.S., without first obtaining the consent of that individual commits a felony of the second degree.

III. Effect of Proposed Changes:

Section 1 amends s. 838.014, F.S., to define the term “governmental entity” as the state, including any unit of the executive, legislative, and judicial branches of government, political subdivisions and any agency or office thereof, or any other public entity that independently exercises any type of governmental function. The bill appears to expand the definition of “governmental entity” to include other public entities, such as Citizens Property Insurance Corporation,¹⁹ statutorily-created direct support organizations,²⁰ and other statutorily-created public entities. The definition of “corruptly” or “with corrupt intent” is eliminated.

The definition of the term “public servant” is expanded to include any officer, director, partner, manager, representative, or employee of a nongovernmental entity, private corporation, quasi-public corporation, or quasi-public entity, or any person subject to chapter 119, F.S., who is acting on behalf of a governmental entity. Also, for purposes of this section, the term “nongovernmental entity” is defined to mean a person, association, cooperative, corporation, partnership, organization, or other entity, whether operating for profit or not for profit, which is not a governmental entity.

¹⁸ See *supra* note 3.

¹⁹ Section 627.351(6), F.S. Citizens Property Insurance Corporation was created in 2002 as a not-for-profit insurer of last resort for home-owners who could not obtain insurance elsewhere.

²⁰ A direct support organization is an organization incorporated under ch. 617, F.S., and approved by the Department of State as a Florida corporation not for profit that is approved by a state agency to operate for the benefit of a specific program, such as the Florida Historic Capitol Museum Council’s direct support organization. See s. 272.131(1)(e), F.S.

Section 2 amends s. 838.015(1), F.S., relating to bribery, to change the mens rea element of the crime from “corruptly” to “knowingly and intentionally.”

Section 3 amends s. 838.016, F.S., relating to unlawful compensation or reward for official behavior, to redefine the mens rea element of the offense from “corruptly” to “knowingly and intentionally.”

Section 4 amends s. 838.022, F.S., relating to official misconduct, to change the mens rea element of the offense from “with corrupt intent” to “knowingly and intentionally.” The law is clarified so that the benefit received by the other person must be an “improper” benefit or the harm caused to another must be an “unlawful” harm.

Section 5 amends s. 838.22, F.S., relating to bid tampering, to change the mens rea element of the offense from “with corrupt intent” to “knowingly and intentionally” influence in an improper manner.

Section 6 reenacts s. 817.568(11), F.S., relating to criminal use of personal identification information, to incorporate the expanded definition of public servant made in section 1 of the bill.

Section 7 provides that the bill takes effect on October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. To the extent the mens rea element of these crimes relating to misuse of public office has become easier to prove, more public servants may be convicted of such crimes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 838.014, 838.015, 838.016, 838.022, and 838.22 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Gaetz

1-00667A-16

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1 A bill to be entitled
 2 An act relating to public corruption; amending s.
 3 838.014, F.S.; deleting the definition of the term
 4 "corruptly" or "with corrupt intent"; defining the
 5 term "governmental entity"; expanding the definition
 6 of the term "public servant" to include certain
 7 persons who are acting on behalf of a governmental
 8 entity; amending s. 838.015, F.S.; redefining the term
 9 "bribery" to include knowing and intentional, rather
 10 than corrupt, acts; amending s. 838.016, F.S.;
 11 revising the prohibition against unlawful compensation
 12 or reward for official behavior to conform to changes
 13 made by the act; amending s. 838.022, F.S.; revising
 14 the prohibition against official misconduct to conform
 15 to changes made by the act; amending s. 838.22, F.S.;
 16 revising the prohibition against bid tampering to
 17 conform to changes made by the act; reenacting s.
 18 817.568(11), F.S., relating to criminal use of
 19 personal identification information, to incorporate
 20 the amendment made to s. 838.014, F.S., in a reference
 21 thereto; providing an effective date.
 22
 23 Be It Enacted by the Legislature of the State of Florida:
 24
 25 Section 1. Section 838.014, Florida Statutes, is amended to
 26 read:
 27 838.014 Definitions.—As used in this chapter, the term:
 28 (1) "Benefit" means gain or advantage, or anything regarded
 29 by the person to be benefited as a gain or advantage, including

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30 the doing of an act beneficial to any person in whose welfare he
 31 or she is interested, including any commission, gift, gratuity,
 32 property, commercial interest, or any other thing of economic
 33 value not authorized by law.
 34 (2) "Bid" includes a response to an "invitation to bid,"
 35 "invitation to negotiate," "request for a quote," or "request
 36 for proposals" as those terms are defined in s. 287.012.
 37 (3) "Commodity" means any goods, merchandise, wares,
 38 produce, chose in action, land, article of commerce, or other
 39 tangible or intangible property, real, personal, or mixed, for
 40 use, consumption, production, enjoyment, or resale.
 41 (4) "Governmental entity" means the state, including any
 42 unit of the executive, legislative, and judicial branches of
 43 government, political subdivisions and any agency or office
 44 thereof, or any other public entity that independently exercises
 45 any type of governmental function ~~"Corruptly" or "with corrupt~~
 46 ~~intent" means acting knowingly and dishonestly for a wrongful~~
 47 ~~purpose.~~
 48 (5) "Harm" means pecuniary or other loss, disadvantage, or
 49 injury to the person affected.
 50 (6) "Public servant" means:
 51 (a) Any officer or employee of a governmental state,
 52 ~~county, municipal, or special district agency or entity;~~
 53 (b) Any legislative or judicial officer or employee;
 54 (c) Any person, except a witness, who acts as a general or
 55 special magistrate, receiver, auditor, arbitrator, umpire,
 56 referee, consultant, or hearing officer while performing a
 57 governmental function; ~~or~~
 58 (d) A candidate for election or appointment to any of the

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59 positions listed in this subsection, or an individual who has
60 been elected to, but has yet to officially assume the
61 responsibilities of, public office; or

62 (e) To the extent that the individual's conduct relates to
63 the performance of a public duty of a governmental entity, any
64 officer, director, partner, manager, representative, or employee
65 of a nongovernmental entity, private corporation, quasi-public
66 corporation, or quasi-public entity, or any person subject to
67 chapter 119 who is acting on behalf of a governmental entity.
68 For purposes of this paragraph, "nongovernmental entity" means a
69 person, association, cooperative, corporation, partnership,
70 organization, or other entity, whether operating for profit or
71 not for profit, which is not a governmental entity.

72 (7) "Service" means any kind of activity performed in whole
73 or in part for economic benefit.

74 Section 2. Subsection (1) of section 838.015, Florida
75 Statutes, is amended to read:

76 838.015 Bribery.—

77 (1) For purposes of this section, "bribery" means ~~corruptly~~
78 to knowingly and intentionally give, offer, or promise to any
79 public servant, or, if a public servant, ~~corruptly~~ to knowingly
80 and intentionally request, solicit, accept, or agree to accept
81 for himself or herself or another, any pecuniary or other
82 benefit not authorized by law with an intent or purpose to
83 influence the performance of any act or omission which the
84 person believes to be, or the public servant represents as
85 being, within the official discretion of a public servant, in
86 violation of a public duty, or in performance of a public duty.

87 Section 3. Subsections (1) and (2) of section 838.016,

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88 Florida Statutes, are amended to read:

89 838.016 Unlawful compensation or reward for official
90 behavior.—

91 (1) It is unlawful for any person ~~corruptly~~ to knowingly
92 and intentionally give, offer, or promise to any public servant,
93 or, if a public servant, ~~corruptly~~ to knowingly and
94 intentionally request, solicit, accept, or agree to accept, any
95 pecuniary or other benefit not authorized by law, for the past,
96 present, or future performance, nonperformance, or violation of
97 any act or omission which the person believes to have been, or
98 the public servant represents as having been, either within the
99 official discretion of the public servant, in violation of a
100 public duty, or in performance of a public duty. This section
101 may not ~~Nothing herein shall~~ be construed to preclude a public
102 servant from accepting rewards for services performed in
103 apprehending any criminal.

104 (2) It is unlawful for any person ~~corruptly~~ to knowingly
105 and intentionally give, offer, or promise to any public servant,
106 or, if a public servant, ~~corruptly~~ to knowingly and
107 intentionally request, solicit, accept, or agree to accept, any
108 pecuniary or other benefit not authorized by law for the past,
109 present, or future exertion of any influence upon or with any
110 other public servant regarding any act or omission which the
111 person believes to have been, or which is represented to him or
112 her as having been, either within the official discretion of the
113 other public servant, in violation of a public duty, or in
114 performance of a public duty.

115 Section 4. Subsection (1) of section 838.022, Florida
116 Statutes, is amended, and subsection (2) of that section is

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117 republished, to read:

118 838.022 Official misconduct.—

119 (1) It is unlawful for a public servant, ~~with corrupt~~
120 ~~intent~~ to knowingly and intentionally obtain an improper a
121 benefit for any person or to cause unlawful harm to another, by
122 ~~te~~:

123 (a) ~~Falsifying~~ Falsify, or causing ~~cause~~ another person to
124 falsify, any official record or official document;

125 (b) Concealing, covering up, destroying, mutilating, or
126 altering ~~Conceal, cover up, destroy, mutilate, or alter~~ any
127 official record or official document or causing ~~cause~~ another
128 person to perform such an act; or

129 (c) Obstructing, delaying, or preventing ~~Obstruct, delay,~~
130 ~~or prevent~~ the communication of information relating to the
131 commission of a felony that directly involves or affects the
132 governmental ~~public agency or public~~ entity served by the public
133 servant.

134 (2) For the purposes of this section:

135 (a) The term "public servant" does not include a candidate
136 who does not otherwise qualify as a public servant.

137 (b) An official record or official document includes only
138 public records.

139 Section 5. Subsections (1) and (2) of section 838.22,
140 Florida Statutes, are amended to read:

141 838.22 Bid tampering.—

142 (1) It is unlawful for a public servant, ~~with corrupt~~
143 ~~intent~~ to knowingly and intentionally influence or attempt to
144 influence, in an improper manner, the competitive bidding
145 process undertaken by any governmental ~~state, county, municipal,~~

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146 ~~or special district agency, or any other public entity,~~ for the
147 procurement of commodities or services, by te:

148 (a) Disclosing ~~Disclose~~ material information concerning a
149 bid or other aspects of the competitive bidding process when
150 such information is not publicly disclosed.

151 (b) Altering or amending ~~Alter or amend~~ a submitted bid,
152 documents or other materials supporting a submitted bid, or bid
153 results for the purpose of intentionally providing a competitive
154 advantage to any person who submits a bid.

155 (2) It is unlawful for a public servant, ~~with corrupt~~
156 ~~intent~~ to knowingly and intentionally obtain an improper a
157 benefit for any person or to cause unlawful harm to another, to
158 circumvent a competitive bidding process required by law or rule
159 by using a sole-source contract for commodities or services.

160 Section 6. For the purpose of incorporating the amendment
161 made by this act to section 838.014, Florida Statutes, in a
162 reference thereto, subsection (11) of section 817.568, Florida
163 Statutes, is reenacted to read:

164 817.568 Criminal use of personal identification
165 information.—

166 (11) A person who willfully and without authorization
167 fraudulently uses personal identification information concerning
168 an individual who is 60 years of age or older; a disabled adult
169 as defined in s. 825.101; a public servant as defined in s.
170 838.014; a veteran as defined in s. 1.01; a first responder as
171 defined in s. 125.01045; an individual who is employed by the
172 State of Florida; or an individual who is employed by the
173 Federal Government without first obtaining the consent of that
174 individual commits a felony of the second degree, punishable as

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175 provided in s. 775.082, s. 775.083, or s. 775.084.

176 Section 7. This act shall take effect October 1, 2016.

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/1/15

Meeting Date

SB 582

Bill Number (if applicable)

Topic Public Corruption

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney

Address 2725 Judge Frank Jamieson Way

Phone (321) 637-5575

Street

Viera FL 32940

City

State

Zip

Email

Speaking: For Against Information

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

Representing 18th Judicial Circuit

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

12/01/2015

Meeting Date

SB 582

Bill Number (if applicable)

Topic Public Corruption

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Associated General Contractors Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/1
Meeting Date

SB 587
Bill Number (if applicable)

Topic Public Corruption

Amendment Barcode (if applicable)

Name Ben Wilcox

Job Title

Address 1719 Old Fort Dr
Street

Phone 544-4448

Tall. FL 32301
City State Zip

Email

Speaking: For Against Information

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

Representing Common Cause Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-1-15

Meeting Date

582

Bill Number (if applicable)

Topic Ethics

Amendment Barcode (if applicable)

Name Brad Burleson

Job Title Lobbyist

Address 403 E. Park Ave

Phone 577-0444

Street

Tallahassee FL

32301

Email brad@ballardfl.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Florida Transportation Builders Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 196

INTRODUCER: Transportation Committee and Senator Hutson

SUBJECT: Public Records/State-funded Infrastructure Bank

DATE: November 30, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Kim	McVaney	GO	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 196 creates a new exemption from the public records inspection and access requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for certain financial information held by the Florida Department of Transportation (FDOT). Specifically, the bill exempts any financial statement or other financial information of a private entity required by the FDOT as part of an application process for assistance from the State-funded Infrastructure Bank (SIB). The exemption does not apply to records of a private applicant in default of a SIB loan.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and reenacted by the legislature. It also provides a statement of public necessity as required by the State Constitution.

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

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

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

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

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

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

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

² FLA. CONST., art. I, s. 24(a).

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

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” 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.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.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 In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:¹⁷

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ 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 otherwise provided for by law.¹⁹

¹³ 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).

¹⁴ 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).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed; however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(a), F.S.

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

State-funded Infrastructure Bank

The 2000 Legislature created the SIB within the FDOT to provide loans and credit enhancements for use in constructing and improving transportation facilities.²⁰ Government units and private entities may apply to the SIB for assistance. As outstanding obligations are repaid to the SIB, those repayments are made available for future lending on other eligible SIB projects. All proceeds are invested by the State Treasurer in accordance with established investment guidelines.²¹

The SIB consists of two separate escrow accounts established with the Department of Financial Services, one federally-funded and one state-funded. Projects eligible for assistance from the former account include those meeting all of the requirements of Title 23, U.S.C.,²² capital projects defined in s. 5302 of Title 49, U.S.C.,²³ and any other projects relating to surface transportation that the U.S.D.O.T. Secretary determines to be appropriate.²⁴

For assistance from the state-funded account, a project must:

- Be on the State Highway System;
- Provide for increased mobility on the state's transportation system; or
- Provide intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals for the movement of people and goods.²⁵

Additionally, projects identified under the Transportation Regional Incentive Program are eligible for assistance from the state-funded account. The FDOT is authorized to match up to 50% of the cost for projects that, at a minimum:

- Serve national, statewide, or regional functions and function as part of an integrated regional transportation system;
- Are identified in the capital improvements element of a comprehensive plan and are in compliance with local government plan policies relative to corridor management;
- Are consistent with the Strategic Intermodal System Plan developed under s. 339.64, F.S.; and
- Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.²⁶

Emergency loans for damages incurred to public-use seaports, airports, and other transit and intermodal facilities with an area that is part of an official state declaration of emergency are also authorized under specified conditions.²⁷

²⁰ Section 339.55, F.S.

²¹ See the FDOT's website for further information describing the SIB, its history, and its capitalization: <http://www.dot.state.fl.us/officeofcomptroller/PFO/sibintro.shtm>.

²² See 23 U.S.C. s. 119 (2014). Generally, projects on the National Highway System.

²³ Generally, public transportation projects.

²⁴ 23 U.S.C. s. 610 (2012).

²⁵ Section 339.55(2)(a), F.S.

²⁶ Section 339.55(2)(b) and see s. 339.2819, F.S.

²⁷ Section 339.55(2)(c), F.S.

Applicants for assistance from either account must submit first to the FDOT a Letter of Interest (LOI) to ensure a potential SIB project meets eligibility, financial, and production criteria. Once the FDOT determines a given LOI is acceptable, the FDOT determines an interest rate for the application based on current market conditions, financial strength of the borrower, term, and risk of the loan. Only then is an applicant invited to complete an application form.²⁸

As examples, some of the financial information items required in an LOI are a proposed financial plan, including details of the plan of finance sufficient in detail to assist in an assessment of creditworthiness (financial statements, operating revenues, and financial projections), details of the sources and uses of all funds, and a description of revenue sources pledged to repay the SIB loan.

Examples of financial information items required in a SIB loan application include funding sources, information regarding any anticipated bond issue or other debt instrument, loan term and amount, and primary and secondary repayment sources.

III. Effect of Proposed Changes:

The bill creates a public records exemption for any financial statement or other financial information of a *private* entity required by the FDOT as part of an application to the SIB, provides for inapplicability of the exemption under certain conditions, and includes a public necessity statement.²⁹

Section 1 creates subsection (10) of s. 339.55, F.S., to make exempt from the state's public records laws any financial statement or other financial information required of a private entity by the FDOT as part of an application process for assistance from the SIB. The exemption ceases if a private entity recipient of a SIB loan subsequently goes into default.

The bill provides a statement of public necessity as required by the State Constitution, stating disclosure of the specified information:

- Could harm a private entity by giving the private entity's competitors insights into its financial status and business plan, putting the private entity at a competitive disadvantage.
- Could create the opportunity for theft, identity theft, fraud, and other illegal activity, jeopardizing the financial security of the private entity and placing it at risk for substantial financial harm.

The bill further states:

- Private entities may be unwilling to submit an application to the SIB for a loan without the exemption, which unwillingness could limit the FDOT's opportunities for cost-effective or strategic solutions for constructing and improving transportation facilities.
- The harm to a private entity in disclosing confidential³⁰ financial information significantly outweighs any public benefit derived from disclosure.

²⁸ See the FDOT's website for the LOI and application forms: <http://www.dot.state.fl.us/officeofcomptroller/PFO/sib-loi%20application%20and%20awards.shtm>.

²⁹ The right of the public to inspect or copy the financial information of a government-unit applicant for a SIB loan is unchanged by the bill.

³⁰ See Technical Deficiencies analysis section below.

The exemption is subject to the OGSR Act and will stand repealed on October 2, 2021, unless reviewed and reenacted by the Legislature.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. This bill creates a public record exemption for any financial statement or other financial information of a private entity required by the FDOT as part of an application for a loan from the SIB; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. This bill creates a new public record exemption and includes a public necessity statement.

The public necessity statement should support the exemption; however, in this instance, the exemption appears to be broader than the purpose described in the public necessity statement. The public necessity statement (on lines 33 and 55 of the bill) provides that financial statements or financial information required “as part of an application” to the state infrastructure bank be exempt. This suggests that it is the information submitted on the application form and supporting documents. The actual exemption appears to be much broader in that it includes information not only submitted with application form but information submitted throughout the “application process” (see line 21 of the bill). To meet constitutional requirements, the exemption should be sufficiently justified by the public necessity statement.

Breadth of Exemption

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

The breadth of the exemption is unclear as the bill does not define ‘financial information.’

The bill creates a public record exemption for the financial statement or other financial information of a private entity SIB applicant, which exemption ceases if the private entity goes into default. The Legislature may consider narrowing the exemption by permitting all financial information be made public once a loan is granted.

The exemption may be overly broad in that the exemption provides that the entirety of any financial statement as well as any other financial information of a private company applying for a public loan be made exempt from public records law. While the public necessity statement attempts to justify the exemption for financial information submitted to the FDOT, the public necessity statement does not appear to address the exemption for nonfinancial information contained in a financial statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The specified private entity financial information is exempt from public disclosure, unless the private entity goes into default.

C. Government Sector Impact:

The FDOT may experience insignificant administrative expenses in implementing the exemption, which expenses are expected to be absorbed within existing resources.

VI. Technical Deficiencies:

It is unclear from the bill how financial statements and financial information differ. If the intent is to protect financial information, the Legislature may consider limiting the exemption to financial information, regardless of whether it is contained in the financial statement. In any case, the Legislature should consider defining the terms “financial information” and “financial statement” for clarity.

The bill provides that the specified information is exempt, but does not deem the information to be confidential, as well. Use of the word “confidential” in the public necessity statement (on line 50) may create confusion. To avoid confusion, the legislature may consider changing the word “confidential” on line 50 to “sensitive,” as is reflected on line 38.

The public necessity statement provides that the exemption is necessary because disclosure of financial information could lead to theft, identity theft, fraud or other illegal activity of the business. It is unclear how a business can be the victim of identity theft.

VII. Related Issues:

The value of providing public access to the financial information only after a private entity recipient goes into default is unclear.

VIII. Statutes Affected:

This bill substantially amends section 339.55 of the Florida Statutes.

IX. Additional Information:

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

CS by Transportation on November 4, 2015:

The CS makes a technical change to reference the “application process,” rather than the “application,” as relevant financial information is required in the LOI as part of the application process.

- B. **Amendments:**

None.

By the Committee on Transportation; and Senator Hutson

596-01091-16

2016196c1

1 A bill to be entitled
 2 An act relating to public records; amending s. 339.55,
 3 F.S.; providing an exemption from public records
 4 requirements for any financial statement or other
 5 financial information of a private entity applicant
 6 that the Department of Transportation requires as part
 7 of an application process for assistance from the
 8 state-funded infrastructure bank; providing an
 9 exception to the exemption; providing for future
 10 legislative review and repeal of the exemption;
 11 providing a statement of public necessity; providing
 12 an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Subsection (10) is added to section 339.55,
 17 Florida Statutes, to read:
 18 339.55 State-funded infrastructure bank.—
 19 (10) (a) Any financial statement or other financial
 20 information of a private entity applicant that the department
 21 requires as part of an application process for assistance from
 22 the state-funded infrastructure bank is exempt from s. 119.07(1)
 23 and s. 24(a), Art. I of the State Constitution. This exemption
 24 does not apply to records of an applicant who is in default of a
 25 loan issued under this section.
 26 (b) This subsection is subject to the Open Government
 27 Sunset Review Act in accordance with s. 119.15 and shall stand
 28 repealed on October 2, 2021, unless reviewed and saved from
 29 repeal through reenactment by the Legislature.

Page 1 of 2

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

596-01091-16

2016196c1

30 Section 2. The Legislature finds that it is a public
 31 necessity that any financial statement or other financial
 32 information of a private entity that the Department of
 33 Transportation requires as part of an application to the state-
 34 funded infrastructure bank be protected from disclosure. The
 35 disclosure of such information could harm a private entity in
 36 the marketplace by giving the private entity's competitors
 37 insights into its financial status and business plan, thereby
 38 putting the private entity at a competitive disadvantage.
 39 Additionally, the disclosure of sensitive financial information
 40 regarding a private entity could create the opportunity for
 41 theft, identity theft, fraud, and other illegal activity,
 42 thereby jeopardizing the financial security of the private
 43 entity and placing it at risk for substantial financial harm.
 44 Without this exemption, private entities might be unwilling to
 45 submit an application to the state-funded infrastructure bank.
 46 This unwillingness to submit applications could, in turn, limit
 47 opportunities the department might otherwise have for finding
 48 cost-effective or strategic solutions for constructing and
 49 improving transportation facilities. The Legislature also finds
 50 that the harm to a private entity in disclosing confidential
 51 financial information significantly outweighs any public benefit
 52 derived from the disclosure of such information. For these
 53 reasons, the Legislature declares that any financial statement
 54 or other financial information that the department requires as
 55 part of an application to the state-funded infrastructure bank
 56 is exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 57 Article I of the State Constitution.
 58 Section 3. This act shall take effect July 1, 2016.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and Civil Justice
Children, Families, and Elder Affairs
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Environmental Preservation and Conservation

SENATOR TRAVIS HUTSON

6th District

November 4, 2015

The Honorable Jeremy Ring
Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Ring:

I would like to respectfully request that my bill, SB 196 – Public Records/State-Funded Infrastructure Banks – be placed on the Committee on Governmental Oversight and Accountability's agenda.

SB 196 exempts the financial information of private applicants to the state-funded infrastructure bank. This exemption seeks to protect private entities from publicly disclosing financial information that could potentially lead to a competitive disadvantage in the marketplace, or criminal activity with regard to the of applicants financial security.

Thank you in advance for your consideration of this request. If you have any questions or concerns, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis Hutson".

Senator Travis Hutson
District 6

REPLY TO:

4875 Palm Coast Parkway, NW, Suite 5, Palm Coast, Florida 32137 (386) 446-7610 FAX: (888) 263-3475
 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 438

INTRODUCER: Senator Bullard

SUBJECT: Small Business Participation in State Contracting

DATE: November 16, 2015 REVISED: _____

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

I. Summary:

SB 438 requires each agency of the executive branch to award 35 percent of its annual contracting dollars to small businesses either directly or as subcontractors. The bill requires a vendor awarded a contract pursuant to s. 287.057, F.S., relating to the purchase of commodities or contractual services, to use small businesses as subcontractors or subvendors. Executive branch agencies must take reasonable measures to avoid unnecessary “contract bundling.” The bill provides relevant definitions, and creates reporting requirements.

The bill may result in an indeterminate increase in expenditures by state agencies relating to contracts for commodities and services.

II. Present Situation:

Chapter 287, Florida Statutes

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 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;

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.

- "Invitations to bid," 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," 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," 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 the Department of Management Services (DMS), a water management district, or state agencies.⁶

Existing Small Business Efforts

Part IV of Chapter 288, F.S., specifies a number of efforts directed towards helping the success of small businesses. The rules ombudsmen in the Executive Office of the Governor is tasked in s. 288.7015, F.S., with reviewing state agency administrative rules that disproportionately impact small and minority businesses.

Section 288.705, F.S., requires all state agencies to provide the Florida Small Business Development Center Procurement System with all formal solicitations for contractual services, supplies, and commodities. The Small Business Development Center must coordinate with Minority Business Development Centers to compile and distribute this information to small and minority businesses requesting such service for the period of time necessary to familiarize the business with the market represented by state agencies. Each year, the Small Business Development Center must report certain information to the Department of Economic Opportunity on the use of the statewide contracts register.

Section 287.0947, F.S., specifies that the Secretary of DMS may create the Florida Advisory Council on Small and Minority Business Development (Council) with the purpose of advising and assisting the secretary in carrying out the secretary's duties with respect to minority businesses and economic and business development. The Council must meet at the call of its chair, at the request of a majority of its membership, at the request of the commission or its executive administrator, or at such times as may be prescribed by rule, but not less than once a

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.

year, to offer its views on issues related to small and minority business development of concern to this state.⁷

The powers and duties of the Council include, but are not limited to: researching and reviewing the role of small and minority businesses in the state's economy; reviewing issues and emerging topics relating to small and minority business economic development; studying the ability of financial markets and institutions to meet small business credit needs and determining the impact of government demands on credit for small businesses; assessing the implementation of a state economic development comprehensive plan, as it relates to small and minority businesses; assessing the reasonableness and effectiveness of efforts by any state agency or by all state agencies collectively to assist minority business enterprises; and advising the Governor, the secretary, and the Legislature on matters relating to small and minority business development which are of importance to the international strategic planning and activities of this state.⁸

The Council must also present an annual report⁹ to the secretary that sets forth in appropriate detail the business transacted by the Council during the year and any recommendations to the secretary, including those to improve business opportunities for small and minority business enterprises.

Some of the duties of the Office of Supplier Diversity of DMS, established in s. 287.09451, F.S., include communicating on a monthly basis with the Small and Minority Business Advisory Council to keep the council informed on issues relating to minority enterprise procurement, serving as an advocate for minority business enterprises, and coordinating with the small and minority business ombudsman, as defined in s. 288.703, F.S.

Florida Small Minority Business Assistance Act

The Florida Minority Business Assistance Act¹⁰ provides a statewide contracts register¹¹ and the Florida Minority Business Loan Mobilization Program.¹²

The Florida Minority Business Assistance Act defines the term "small business" as "an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."¹³

⁷ Section 287.0947(4), F.S.

⁸ Section 287.0947(5), F.S.

⁹ The annual reports are available on the world-wide web at:

http://www.dms.myflorida.com/other_programs/office_of_supplier_diversity_osd/small_and_minority_business_council/annual_report

¹⁰ Sections 288.703-288.706, F.S., comprises the Florida Small and Minority Business Assistance Act. *See* s. 288.702, F.S.

¹¹ Section 288.705, F.S.

¹² Section 288.706, F.S.

¹³ Section 288.703(6), F.S.

Section 288.7031, F.S., provides that the definition of the term “small business” contained herein applies to the state and all political subdivisions of the state.

Performance Bond Requirements

Section 255.05, F.S., requires that any person entering into a formal contract with the state or any county, city, or political subdivision thereof, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work, before commencing the work or before recommencing the work after a default or abandonment, to execute, deliver, and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. The statute specifies some exceptions and the form for the bond.

Section 24.111(2)(i), F.S., specifies that the Department of the Lottery must require performance bonds for the duration of contracts with its vendors.

Section 153.10(4), F.S., specifies that counties must require a performance bond of 2.5 percent of the amount of bids for the construction of water system improvements or sewer improvements. Sewer system improvement contracts bid pursuant to s. 153.79, F.S., also require a performance bond.

Section 337.18, F.S., requires surety bonds from successful bidders for certain Department of Transportation contracts, though the department may waive the requirement for contracts under \$250,000, if certain conditions are met.

Role of Rules Ombudsman in the Executive Office of the Governor

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman¹⁴ in the Executive Office of the Governor, for considering the impact of agency rules on the state’s citizens and businesses. In carrying out duties as provided by law, the ombudsman must consult with Enterprise Florida, Inc., at which point this office may recommend to improve the regulatory environment of this state. The duties of the rules ombudsman are to:

- Carry out the responsibility related to rule adoption procedures with respect to small businesses;
- Review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and
- Make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to businesses.

Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

¹⁴ The ombudsman is defined in s. 288.703(5), F.S., as an office or individual whose responsibilities include coordinating with the Office of Supplier Diversity for the interests of and providing assistance to small and minority business enterprises in dealing with governmental agencies and in developing proposals for changes in state agency rules.

Prompt Payment of Invoices by Department of Financial Services

Section 215.422, F.S., governs the processing times of invoices submitted by a state agency or the judicial branch for payment to the Chief Financial Officer (CFO) with the Department of Financial Services (DFS). Invoices submitted by agencies are required to be filed with the CFO no later than 20 days after receipt of invoice and receipt, inspection, and approval of the goods or services.¹⁵ DFS must make prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.¹⁶ If a warrant in payment of an invoice is not made within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, the agency or judicial branch must pay the vendor interest¹⁷ on the unpaid balance until payment is issued to the vendor.¹⁸

III. Effect of Proposed Changes:

Section 1 creates section 287.0577, F.S., to address small business participation in state contracting, contract bundling, set-asides for small businesses, and bonding and reporting requirements.

Definitions

The bill creates definitions for “contract bundling” and “small business.” The word “appropriate” contained within the definition of “contract bundling” is a subjective term that is not defined. The term “small business” means a business entity organized for profit that is independently owned and operated, that is not dominant within the business entity's industry, and that:

- Currently is, and for at least the previous 3 years has been, domiciled in the state.
- Has a workforce of 50 or fewer permanent full-time positions, whether employees, independent contractors, or other contract personnel.
- Has had, for at least the previous 3 years, average annual gross sales that do not exceed the following:
 - For a contractor licensed under chapter 489, F.S., \$5 million per year.
 - For a sole proprietorship performing contractual services within the scope of the proprietor's professional license or certification, \$500,000 per year.
 - For any other business entity, \$1 million per year.
- Currently has, and for at least the previous 3 years has had, together with its affiliates, a net worth that does not exceed \$5 million. For a sole proprietorship, the net worth limit of \$5 million includes both personal and business investments but does not include the proprietor's primary residence.

The definition of the term “small business” contains some of the criteria used to qualify as a “small business” in s. 288.703, F.S., of the Florida Small and Minority Business Assistance Act. The definition of “small business” contained in the bill is more specific, and, in some respects, inconsistent with the criteria to qualify as a small business under the Florida Small and Minority

¹⁵ Section 215.422(1), F.S.

¹⁶ Section 215.422(2), F.S.

¹⁷ See Section 55.03(1), F.S.

¹⁸ Section 215.422(3)(b), F.S.

Business Assistance Act. Section 288.7031, F.S., provides, in part, that the definitions of ‘small business,’ . . . provided in s. 288.703 apply to the state and all political subdivisions of the state.” This may create confusion as to the applicability of the term “small business.”

Bundling

Description of Statutory Change

The bill requires agencies, to the maximum extent practicable, to structure agency contracts to facilitate competition by Florida small businesses, taking steps to eliminate obstacles to their participation and avoiding unnecessary contract bundling that may preclude small businesses’ participation as prime contractors. Before issuing a solicitation for a bundled contract, an agency must conduct market research to determine whether contract bundling is necessary. If the agency determines that contract bundling is necessary, the agency must include in the solicitation a written summary of the agency’s market research and a written analysis of the research that explains why contract bundling is necessary.

Implication of Statutory Change

State agencies will be required to conduct market research to determine whether bundling is necessary and justified. More than likely, this market research will increase costs associated with the overall procurement process. In addition, it is not clear whether small businesses will have an opportunity to protest a procurement that includes bundling. If this new claim of protest is ripe under this legislation, then agency costs will increase to defend the procurement process.

Some phrases in the bill, such as “not appropriate for award to a small business” on lines 35-36, “prime contractor” on lines 36-37, and “not dominant within the business entity’s industry” on lines 39-40, are not defined, which could lead to uncertainty in applying the definition of “contract bundling.” The bill does not provide for a specific entity to determine if a business entity is dominant within that business’s industry.

It is unclear whether an agency determination on contract bundling might constitute an agency action that will give rise to administrative rights for those affected by that determination, either as a protest of a contract solicitation or award, or as a decision which affects the substantial interests of a party.

The phrase “to the maximum extent practicable” contained in the contract bundling requirement for a state agency may present unintended consequences. The term “practicable” is not always synonymous with the best choice for the situation. Florida’s Attorney General has noted that the term “practicable” means “that which is performable, feasible, possible.”¹⁹ Florida courts have noted the terms “practicable” and “practical” do not have the same meaning.²⁰ The Florida 1st District Court of Appeal stated that “*practicable* means capable of being effected or accomplished, and *practical* means adapted to actual conditions”.²¹

¹⁹ Op. Att’y Gen. Fla. 81-69 (1981).

²⁰ *Hoffman v. Laffitte*, 564 So.2d 170, 171 (Fla. 1st DCA 1990).

²¹ *Id.* at 172.

Set-asides

Description of Statutory Change

The bill requires each agency to annually award to small businesses, either directly or indirectly as subcontractors, at least 35 percent of the total dollar amount of contracts awarded. Each contract awarded under s. 287.057, F.S. relating to procurement of commodities or contractual services, must require the vendor to use small businesses as subcontractors or subvendors. The percentage of funds, in terms of gross contract amount and revenues that must be expended for subcontracting with small businesses must be determined by the agency before the solicitation for the contract is issued; however, the contract may not allow a vendor to expend less than 35 percent of the gross contract amount for subcontracting with small businesses.

Each contract must include specific requirements for the timely payment of subcontractors by the prime contractor and specific terms and conditions applicable if a prime contractor does not pay a subcontractor within the time limits specified in the contract. The bill also requires that prompt payment from the owner of a prime contractor to subcontractors be made within 12 calendar days after receipt of a proper pay application or invoice for payment. Payment by a prime contractor of a subcontractor, subvendor, or sub-consultant must be made within 2 calendar days after receipt of a proper pay application or invoice for payment. Additionally, all contracts must include twice a month billing.

Implication of Statutory Change

State agencies may be required to conduct more procurements or require contractors to engage small businesses as subcontractors. With an increase in the number of procurements, the state agencies will incur greater costs. If the set aside thresholds are met through subcontracting, the overall costs of the services procured may increase, along with the aggregated profits and administrative costs of the contractors. The bill also doesn't provide for a single entity to confirm whether small businesses meet the definition supplied in the bill. As a result, individual agencies will need to make the determinations of whether a small business qualifies for the required set-asides. The Legislature may wish to consider whether it would be more efficient for a single entity to determine whether a business qualifies under the provisions of the bill, in order to avoid duplication of effort by businesses and agencies.

It is unclear whether lines 83-84 require the use of subvendors on all contracts, or only those contracts which would already use subcontractors.

Prompt Payment

Description of Statutory Change

The bill requires payment by the owner of a prime contractor within 12 calendar days, and payment by prime contractor of a subcontractor, subvendor, or sub-consultant within 2 calendar days after receipt of a proper pay application or invoice. It is not clear whether the phrase "owner of a prime contractor" is intended to be some entity other than the "prime contractor".

Implication of Statutory Change

Section 287.0585(1), F.S., however, requires a contractor to make payments to subcontractors and suppliers within 7 working days of receipt of payment from a state agency for contractual services. If timely payment is not made to the subcontractor, penalty provisions apply.²² This modification may place a substantial financial burden on prime contractors doing business with the state and using subcontractors. Additionally, s. 215.422, F.S., provides processing time limits for invoices submitted by state agencies.²³

It is unclear whether this provision is intended to supersede the general provision of the prompt pay law and s. 287.0585(1), F.S. If it does supersede the current law provisions, the state and its prime contractors may have difficulty complying while continuing the same level of accountability prior to the payment of subcontractor invoices.

Bonding

Description of Statutory Change

Notwithstanding any provision of law, an agency, general contractor, or prime contractor may not require a vendor to post a bid bond, performance bond, or other surety for a contract that does not exceed \$500,000. This subsection does not apply to any requirement for posting a bond pending the protest of a solicitation; the protest of a rejected bid, proposal, or reply; or the protest of a contract award.

This provision might act to override some of the performance bond requirements currently specified in Florida law.

Implications of Statutory Change

State agencies may bear greater risk for non-performance by the small businesses. Any uninsured default may increase the costs to the state agencies. This greater risk may be offset through the purchase of surety bonds by the state agencies on behalf of the small businesses. As a result, the state agency may have to choose between bearing the risk of default by the small business and incurring additional costs associated with contracting with the small business.

Reporting

The bill requires the rules ombudsman in the executive office of the Governor to establish a system to measure and report the use of small businesses in state contracting. This system must maintain information and statistics on small business participation, awards, dollar volume of expenditures, and other appropriate types of information to analyze progress in small businesses' access to state contracts and to monitor agency compliance with this section. An agency must report its compliance with the reporting system at least annually and at the request of the rules

²² Section 287.0585(1), F.S., provides for "a penalty in the amount of one-half of 1 percent of the amount due, per day, from the expiration of the period allowed . . . for payment." The penalty cannot exceed 15 percent of the outstanding balance owed. This section also authorizes attorney's fees and costs as ordered by the court for proceedings brought under this section.

²³ Section 215.422(2), F.S., requires the Department of Financial Services to approve payment of an invoice no later than 10 days after an agency's filing of an approved invoice.

ombudsman. All agencies must cooperate with the rules ombudsman in establishing this reporting system. The rules ombudsman must also report agency compliance for the preceding fiscal year to the Governor and Cabinet, the President of the Senate, and the Speaker of the House of Representatives by February 1 of each year.

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The establishment of state preference laws may potentially implicate the Equal Protection Clause and the Commerce Clause of the U.S. Constitution.

The Equal Protection Clause

The United States Constitution provides that “no State shall . . . deny to any person within its jurisdiction, the equal protection of law.”²⁴ The in-state preference provisions in this bill may constitute an equal protection violation. If such legislation is challenged, the court would most likely use a rational basis test to determine the constitutionality of the alleged discriminatory treatment.²⁵ Under the rational basis test, a court must uphold a state statute so long as the classification bears a rational relationship to a legitimate state interest.²⁶

²⁴ U.S. CONST. amend. XIV, § 1. *See also* FLA. CONST. art. I, s. 2.

²⁵ *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (stating that “unless a classification warrants some form of heightened review because it jeopardizes exercise of a fundamental right or categorizes on the basis of an inherently suspect characteristic, the Equal Protection Clause requires only that the classification *rationaly* further a legitimate state interest.”).

²⁶ *Id.*

The Commerce Clause

The United States Constitution provides that Congress shall have the power “to regulate commerce . . . among the states.”²⁷ The Commerce Clause acts not only as a positive grant of power to Congress, but also as a negative constraint upon the states.²⁸

Courts have used a two-tiered analysis to determine whether a statutory scheme violates the Commerce Clause:

1. “If a statute ‘directly regulates or discriminates against interstate commerce, or [if] its effect is to favor in-state economic interests over out-of-state interests,’ the court may declare it unconstitutional as applied, without further inquiry.”²⁹
2. “. . . if the statute regulates evenhandedly and if it has only an indirect effect on interstate commerce, the court must determine whether the state’s interest is legitimate and, if so, whether the burden on interstate commerce exceeds the local benefits.”³⁰

However, when a state or local government is acting as a “market participant” rather than a “market regulator,” it is not subject to the limitations of the Commerce Clause.³¹ A state is considered to be a “market participant” when it is acting as an economic actor such as a purchaser of goods and services.³² Since the state is acting as a “market participant” under this bill, the in-state preference provisions herein are likely to be upheld as an exception to the Commerce Clause.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may shift some contracting dollars towards smaller businesses. In addition, prime contractors may be required to pay subcontractors prior to receiving payment from the state. This may require prime contractors to borrow money to pay its subcontractors. Such costs may be passed onto the state through the overall costs of the project.

²⁷ U.S. CONST. art. I, s. 8, cl. 3.

²⁸ See *Gibbons v. Ogden*, 22 U.S. 1 (1824).

²⁹ *National Collegiate Athletic Ass’n v. Associated Press*, 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009) (citing *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578-579 (1986)).

³⁰ *Id.* at 1211-1212 (citations omitted); See *Bainbridge v. Turner*, 311 F.3d 1104, 1108-1109 (11th Cir. 2002).

³¹ See *White v. Massachusetts Council of Constr. Employers, Inc.*, 460 U.S. 204 (1983) (providing that a state may grant and enforce a preference to local residents when entering into construction projects for public projects); *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 93 (1984) (stating that “[t]he precise contours of the market-participant doctrine have yet to be established.”); *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *Reeves, Inc. v. Stake*, 447 U.S. 429 (1980).

³² *Id.*

C. Government Sector Impact:

This bill may increase the costs incurred by state agencies in contracting for goods and services. State agencies may see costs increase in an indeterminate amount due to required market research and possible legal challenges to contract awards. State agencies may see costs increase in an indeterminate amount due to the increase in number of procurements. The Florida Department of Law Enforcement (FDLE) estimated that the impact of this bill would require one FTE position at a total cost of \$61,504.³³ If other agencies' costs for implementing this bill are similar to FDLE, the impact on the state could be substantial.

State agencies may also see costs increase in an indeterminate amount for the purchase of surety bonds on behalf of the small business or the risk of default of the small business.

It is unclear whether the rules ombudsman will incur additional costs to create the reporting system required by the bill.

VI. Technical Deficiencies:

The proposed payment requirements conflict with existing statutory provisions. Section 287.0585(1), F.S., requires payment by contractor within 7 working days after the contractor receives payment from the government entity. The bill requires payment within 12 or 2 days of the small business submitting an invoice to the contractor or government entity. Also, s. 215.422, F.S., requires prompt payment of an invoice no later than 10 days after an agency's filing of an approved invoice.

The proposed definition of "small business" contained in section 1 of the bill potentially creates a conflict with the definition of "small business" contained in the Florida Small and Minority Business Assistance Act.

VII. Related Issues:

For clarity, the existing duties of the rules ombudsman specified in s. 288.7015, F.S., should be cross referenced to the new duties specified by this bill.

Additionally, for agencies that use federal funding sources to pay for contracted services and goods, there may be requirements that do not permit subcontracting.

VIII. Statutes Affected:

This bill creates section 287.0577 of the Florida Statutes.

³³ See FDLE Legislative Bill Analysis dated October 7, 2015 (a copy on file with the Governmental Oversight and Accountability Committee).

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 Bullard

39-00627-16

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1 A bill to be entitled
 2 An act relating to small business participation in
 3 state contracting; creating s. 287.0577, F.S.;
 4 defining the terms "contract bundling" and "small
 5 business"; directing that agencies avoid contract
 6 bundling under certain circumstances; requiring
 7 agencies to conduct market research and include
 8 written summaries and analyses of such research in
 9 solicitations for bundled contracts; requiring certain
 10 agencies to award a percentage of contracts to small
 11 businesses; requiring contract vendors to use small
 12 businesses in the state as subcontractors or
 13 subvendors; providing requirements with respect to
 14 payment of prime contractors and subcontractors;
 15 prohibiting agencies, general contractors, and prime
 16 contractors from requiring certain bonds or other
 17 sureties for certain contracts; requiring the rules
 18 ombudsman in the Executive Office of the Governor to
 19 establish a system for reporting small business
 20 participation in state contracting; requiring agencies
 21 to cooperate with such reporting; requiring specified
 22 annual reports; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Section 287.0577, Florida Statutes, is created
 27 to read:

28 287.0577 Small business participation in state contracting;
 29 contract bundling; set-asides for small businesses; bonding and

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

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30 reporting requirements.-
 31 (1) DEFINITIONS.-As used in this section, the term:
 32 (a) "Contract bundling" means the consolidation of
 33 contracts for the procurement of commodities or contractual
 34 services, at least part of which may be provided or performed by
 35 one or more small businesses, into a single contract that is not
 36 appropriate for award to a small business as the prime
 37 contractor.
 38 (b) "Small business" means a business entity organized for
 39 profit that is independently owned and operated, that is not
 40 dominant within the business entity's industry, and that:
 41 1. Is currently, and for at least the previous 3 years has
 42 been, domiciled in the state.
 43 2. Has a workforce of 50 or fewer permanent full-time
 44 positions, whether employees, independent contractors, or other
 45 contract personnel.
 46 3. Has had, for at least the previous 3 years, average
 47 annual gross sales that do not exceed the following:
 48 a. For a contractor licensed under chapter 489, \$5 million
 49 per year.
 50 b. For a sole proprietorship performing contractual
 51 services within the scope of the proprietor's professional
 52 license or certification, \$500,000 per year.
 53 c. For any other business entity, \$1 million per year.
 54 4. Currently has, and for at least the previous 3 years has
 55 had, together with its affiliates, a net worth that does not
 56 exceed \$5 million. For a sole proprietorship, the net worth
 57 limit of \$5 million includes both personal and business
 58 investments but does not include the proprietor's primary

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59 residence.

60
61 The term includes any such business entity organized as any form
62 of corporation, partnership, limited liability company, sole
63 proprietorship, joint venture, association, trust, cooperative,
64 or other legal entity.

65 (2) CONTRACT BUNDLING; SOLICITATION.—

66 (a) An agency, to the maximum extent practicable, shall
67 structure agency contracts to facilitate competition by and
68 among small businesses, taking all reasonable steps to eliminate
69 obstacles to participation and avoiding unnecessary contract
70 bundling that may preclude small businesses' participation as
71 prime contractors.

72 (b) Before issuing a solicitation for a bundled contract,
73 an agency must conduct market research to determine whether
74 contract bundling is necessary. If the agency determines that
75 contract bundling is necessary, the agency must include in the
76 solicitation a written summary of the agency's market research
77 and a written analysis of the research that explains why
78 contract bundling is necessary.

79 (3) SET-ASIDES FOR SMALL BUSINESSES.—

80 (a) An agency shall annually award to small businesses,
81 either directly or indirectly as subcontractors, at least 35
82 percent of the total dollar amount of contracts awarded.

83 (b) Each contract awarded under s. 287.057 must require the
84 vendor to use small businesses as subcontractors or subvendors.
85 The percentage of funds, in terms of gross contract amount and
86 revenues, which must be expended for subcontracting with small
87 businesses shall be determined by the agency before the

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88 solicitation for the contract is issued; however, the contract
89 may not allow a vendor to expend less than 35 percent of the
90 gross contract amount for subcontracting with small businesses.

91 (c) Each contract must include specific requirements for:

92 1. The timely payment of subcontractors by the prime
93 contractor and specific terms and conditions applicable if a
94 prime contractor does not pay a subcontractor within the time
95 limits specified in the contract.

96 2. The prompt payment by an owner of a prime contractor
97 within 12 calendar days, and payment by a prime contractor of a
98 subcontractor, subvendor, or sub-consultant within 2 calendar
99 days, after receipt of a proper pay application or invoice. All
100 contracts shall include twice a month billing.

101 (4) BONDING REQUIREMENTS.—Notwithstanding any other
102 provision of law, an agency, a general contractor, or a prime
103 contractor may not require a vendor to post a bid bond,
104 performance bond, or other surety for a contract that does not
105 exceed \$500,000. This subsection does not apply to any
106 requirement for posting a bond pending the protest of a
107 solicitation; the protest of a rejected bid, proposal, or reply;
108 or the protest of a contract award.

109 (5) REPORTING REQUIREMENTS.—The rules ombudsman in the
110 Executive Office of the Governor shall:

111 (a) Establish a system to measure and report the use of
112 small businesses in state contracting. This system shall
113 maintain information and statistics on small business
114 participation, awards, dollar volume of expenditures, and other
115 appropriate types of information to analyze progress in small
116 businesses' access to state contracts and to monitor agency

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117 compliance with this section. Such reporting must include, but
118 is not limited to, the identification of all subcontracts in
119 this state contracting by dollar amount and by number of
120 subcontracts and identification of the use of small businesses
121 as prime contractors and subcontractors by dollar amounts of
122 contracts and subcontracts, number of contracts and
123 subcontracts, industry, and any conditions or circumstances that
124 significantly affected the performance of subcontractors. An
125 agency shall report its compliance with the reporting system at
126 least annually and at the request of the rules ombudsman in the
127 Executive Office of the Governor. All agencies shall cooperate
128 with the rules ombudsman in the Executive Office of the Governor
129 in establishing this reporting system.

130 (b) Report agency compliance with paragraph (a) for the
131 preceding fiscal year to the Governor and Cabinet, the President
132 of the Senate, and the Speaker of the House of Representatives
133 by February 1 of each year. The report must contain, at a
134 minimum, the following:

- 135 1. Total expenditures of each agency by industry.
- 136 2. The dollar amount and percentage of contracts awarded to
137 small businesses by each agency.
- 138 3. The dollar amount and percentage of contracts awarded
139 indirectly to small businesses as subcontractors by each agency.
- 140 4. The total dollar amount and percentage of contracts
141 awarded to small businesses, whether directly or indirectly as
142 subcontractors.

143 Section 2. This act shall take effect July 1, 2016.

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 7036

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: School District Purchasing

DATE: November 30, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		GO Submitted as Committee Bill
2.				
3.				

I. Summary:

SPB 7036 requires each district school board, when purchasing nonacademic commodities and services, to use the purchasing agreements and state term contracts through the Department of Management Services pursuant to s. 287.056, F.S., unless the district school board determines that it is not to the economic advantage of that school district to use the agreements and contracts.

For each determination that the agreements and contracts are not to the economic advantage of the school district, the district school board must provide a written statement justifying such determination and post the statement on the district school board’s website.

The bill may result in an indeterminate decrease in expenditures by district school boards.

II. Present Situation:

Chapter 287, Florida Statutes

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

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.

- "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," 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," 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," 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 the Department of Management Services (DMS), a water management district, or state agencies.⁶

State Contracts and Purchasing Agreements

DMS's Division of State Purchasing procures state term contracts and establishes purchasing agreements for selected products and services.⁷ Section 287.056(1), F.S., requires state agencies to purchase commodities and contractual services from purchasing agreements and state term contracts in accordance with s. 287.057, F.S. Other eligible users of state term contracts and purchasing agreements include any local government, school board or other special district, authority, or government entity and any independent, nonprofit college or university located within the state and accredited by the Southern Association of Colleges and Schools.⁸ Statewide contracts and purchasing agreements enable eligible users to pool their buying power to lower total costs and reduce administrative burden in the purchase of products and services.

District School Boards

Purchases and leases by school districts must comply with requirements of law and rules of the State Board of Education.⁹ Each school district is required to establish purchasing rules.¹⁰ Section 1010.04(3), F.S., permits the district school board to purchase from current county

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 287.042(1)(a) and (2)(a), F.S.

⁸ See s. 287.056(1), F.S., and Rule 60A-1.005, F.A.C.

⁹ Section 1010.04(1)(a), F.S. See also s. 1001.42(12)(j), F.S.

¹⁰ Section 1010.04(2), F.S. See also Rule 6A-1.012, F.A.C.

contracts if such contracts are to the economic advantage of these entities and the county purchasing agent is authorized by law to make purchases for the benefit of other governmental agencies within the county.

Section 1001.451, F.S., authorizes school districts with 20,000 or fewer unweighted full-time equivalent students to enter into cooperative agreements to form regional consortium service organizations to provide purchasing.

Section 1006.27, F.S., requires the Department of Education to assist district school boards with procuring school buses, contractual needs, equipment, and supplies at reasonable prices by providing a plan under which district school boards may voluntarily pool their bids for such purchases.

Section 1006.283, F.S., authorizes a consortium of school districts to implement an instructional materials program that includes purchase of instructional materials.

III. Effect of Proposed Changes:

Section 1 amends s. 1010.04, F.S., to require each district school board, when purchasing nonacademic commodities and services, to use the purchasing agreements and state term contracts available under s. 287.056, F.S., unless the district school board determines that it is not to the economic advantage of that school district to use the agreements and contracts. For each determination that the agreements and contracts are not to the economic advantage of the school district, the district school board must provide a written statement justifying such determination and post the statement on the district school board's website.

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may shift some contracting dollars towards businesses that have entered into purchasing agreements with the DMS and vendors who hold state term contracts.

C. Government Sector Impact:

District school boards may realize some cost savings to the extent goods and services are available at lower costs through the state term contracts and purchasing agreements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1010.04 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.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01464-16

20167036pb

1 A bill to be entitled
 2 An act relating to school district purchasing;
 3 amending s. 1010.04, F.S.; requiring each district
 4 school board to use certain agreements and contracts
 5 for purchasing nonacademic commodities and contractual
 6 services under certain circumstances; requiring a
 7 district school board to post a written justification
 8 for certain determinations on the board's website;
 9 providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Subsection (1) of section 1010.04, Florida
 14 Statutes, is amended to read:
 15 1010.04 Purchasing.—
 16 (1) (a) Purchases and leases by school districts and Florida
 17 College System institutions shall comply with the requirements
 18 of law and rules of the State Board of Education.
 19 (b) For purchasing nonacademic commodities and contractual
 20 services, each district school board must use the purchasing
 21 agreements and state term contracts available under s. 287.056,
 22 unless the district school board determines that it is not to
 23 the economic advantage of that school district to use the
 24 agreements and contracts. For each determination that the
 25 agreements and contracts are not to the economic advantage of
 26 the school district, the district school board must provide a
 27 written statement justifying such determination and post the
 28 statement on the district school board's website.
 29 (c) ~~(b)~~ Purchases and leases by state universities shall

Page 1 of 2

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

585-01464-16

20167036pb

30 comply with the requirements of law and regulations of the Board
 31 of Governors.
 32 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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

AMENDED

2300

A black and white copy of this document is not official

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

Jason M. Allison

is duly appointed Executive Director,
**Executive Director,
Agency for State Technology**

for a term beginning on the
Fourth day of May, A.D., 2015,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Third day of June, A.D., 2015.*

Ken Detzner

Secretary of State



DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11 document



RICK SCOTT
GOVERNOR

RECEIVED
DEPARTMENT OF STATE
2015 MAY -8 PM 4:17
CONSTITUTIONAL SERVICE
DIVISION OF ELECTIONS

May 4, 2015

Secretary Kenneth W. Detzner
Department of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 20.61, Florida Statutes:

Jason Allison
454 San Martin Drive
Tallahassee, Florida 32312

as Executive Director of the Agency for State Technology, subject to confirmation by the Senate. This appointment is effective May 4, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to be "RS".

Rick Scott
Governor

RS/vh

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Jason M. Allison
Executive Director, Agency for State Technology

NOTICE OF HEARING

TO: Mr. Jason M. Allison

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, December 01, 2015, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 1:00 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 23rd day of November, 2015

Committee on Governmental Oversight and
Accountability



Senator Jeremy Ring
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability
Office of the Sergeant at Arms

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2015 MAY 28 AM 10:42

STATE OF FLORIDA

County of Leon

DIVISION OF ELECTIONS
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Executive Director, Agency for State Technology

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

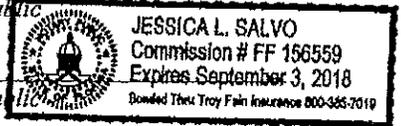
Jason M. Allison

Signature

Sworn to and subscribed before me this 27 day of May, 2015.

Jessica Salvo

Signature of Officer Administering Oath or of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

454 San Martin Drive

Street or Post Office Box

Tallahassee, FL 32312

City, State, Zip Code

Jason M. Allison

Print name as you desire commission issued

Jason M. Allison

Signature

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Jason Allison

ANSWER: "yes i do"

Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Governmental Oversight

DATE: December 1, 2015



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture
Appropriations Subcommittee on Education
Education Pre-K-12
Government Oversight and Accountability
Transportation, Vice Chair

JOINT COMMITTEE:

Joint Administrative Procedures Committee
Joint Select Committee on Collective
Bargaining

SENATOR DWIGHT BULLARD

39th District

December 1st, 2015

Chairman Ring,

I am requesting to be excused from our Governmental Oversight and Accountability Committee meeting on Tuesday, December 1st, due to a family-related issue. Thank you for your consideration.

Sincerely,

Dwight M. Bullard

State Senator, District 39

REPLY TO:

- 10720 Caribbean Boulevard, #435, Cutler Bay, Florida 33189
- 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5039

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 12/1/2015 1:02:08 PM

Ends: 12/1/2015 2:04:47 PM

Length: 01:02:40

1:02:08 PM Meeting called to order
1:02:20 PM Quorum present
1:02:25 PM Senator Bullard is excused today
1:03:09 PM Jason Allison recognized to speak, Executive Director of the Agency for State Tech
1:14:40 PM Senator Ring poses question to Jason Allison
1:16:18 PM Senator Hays recognized for comments
1:17:17 PM Senator Ring with question
1:17:56 PM Jason Allison response
1:18:01 PM Senator Ring with follow-up
1:18:54 PM Jason Allison response
1:18:57 PM Senator Ring follow-up
1:19:54 PM Jason Allison response
1:20:06 PM Senator Ring with another question
1:20:41 PM Jason Allison response
1:21:23 PM Senator Ring with follow-up
1:22:23 PM Jason Allison response
1:22:26 PM Senator Hays recognized with comment
1:22:40 PM Jason Allison response
1:23:02 PM Senator Ring with comment
1:23:38 PM Senate Confirmation Appointment of Jason Allison
1:24:32 PM Jason Allison sworn in
1:24:40 PM Jason Allison recognized to address the committee
1:26:47 PM Senator Hays moves for recommendation for confirmation of Jason Allison
1:27:47 PM Roll call for confirmation of Jason Allison
1:28:04 PM Confirmation of Jason Allison recommended favorably
1:28:13 PM Senator Gaetz recognized to present SB 582
1:31:05 PM Senator Latvala with question
1:33:16 PM Phil Archer, State Attorney recognized to speak
1:34:17 PM Senator Latvala poses question to Phil Archer
1:34:49 PM Phil Archer with response to Senator Latvala's question
1:35:11 PM Senator Latvala with follow-up
1:36:11 PM Phil Archer with response to Senator Latvala
1:36:28 PM Senator Latvala with follow-up
1:36:37 PM Phil Archer with response to Senator Latvala
1:37:23 PM Senator Latvala with follow-up
1:38:05 PM Phil Archer with response to Senator Latvala
1:38:27 PM Senator Latvala with response to Phil Archer
1:39:10 PM Phil Archer with response to Senator Latvala
1:39:23 PM Senator Latvala with response to Phil Archer
1:39:47 PM Phil Archer with response to Senator Latvala
1:40:25 PM Senator Latvala with response to Phil Archer
1:41:24 PM Phil Archer with response to Senator Latvala
1:41:56 PM Senator Latvala with response to Phil Archer
1:42:15 PM Phil Archer with response to Senator Latvala
1:42:50 PM Senator Latvala with response to Phil Archer
1:43:19 PM Phil Archer with response to Senator Latvala
1:43:38 PM Senator Latvala with response to Phil Archer
1:43:51 PM Senator Ring interjecting with comments to move meeting forward
1:44:38 PM Senator Hays recognized with a question
1:45:23 PM Phil Archer with response to Senator Hays
1:46:08 PM Senator Hays with response to Phil Archer
1:48:08 PM Senator Gaetz recognized

1:49:29 PM Senator Latvala recognized
1:50:29 PM Senator Gaetz response to Senator Latvala
1:50:48 PM Senator Latvala response to Senator Gaetz
1:51:16 PM Senator Gaetz response to Senator Latvala
1:52:15 PM Senator Ring with comments
1:53:10 PM Warren Husband of the FL Assoc. General Contractors Council recognized to speak
1:53:37 PM Senator Ring with response
1:54:34 PM Warren Husband response
1:54:49 PM Ben Wilcox of Common Cause Florida waives in support
1:55:03 PM Brad Burleson of FL Transportation Builders Assoc. recognized to speak
1:55:33 PM Senator Ring opens debate on SB 582
1:56:32 PM Senator Hays recognized to speak
1:56:49 PM Senator Gaetz recognized to speak
1:57:49 PM Senator Gaetz requests that SB 582 be temporarily postponed
1:58:30 PM Senator Latvala recognized to speak
1:58:56 PM Senator Hays recognized to speak
1:59:54 PM SB 426 presented on behalf of Senator Brandes
2:00:34 PM 196080 Amendment adopted
2:01:04 PM 156288 Amendment adopted
2:01:21 PM James Taylor of the FL Technology Council waives in support
2:01:40 PM SB 426 reported favorably
2:01:59 PM SB 624 presented by Senator Hays
2:02:11 PM 237354 Amendment adopted
2:02:48 PM James Taylor of the FL Technology Council waives in support
2:02:58 PM Roll called for SB 624
2:03:11 PM SB 624 reported favorably
2:03:17 PM Senator Ring presents SPB 7036
2:03:40 PM SPB 7036 roll call
2:04:29 PM SPB 7036 reported favorably as a committee bill
2:04:38 PM Meeting adjourned